

# New Tort Reform Legislation Provides Companies Broader Protections from Lawsuits

Governor Scott Walker signed into law a series of tort reform measures designed to provide businesses broad new protections from lawsuits in Wisconsin. This new law will affect what many consider to be the most extensive changes to the state's civil litigation system in over a decade. The law will make it more difficult to sue businesses in Wisconsin courts, and will cap certain damages.

## Fifteen-Year Statute of Repose Created

In particular, it will now be more difficult to bring suit and recover damages for injuries alleged to be caused by older products. Under the new law, no manufacturer can be held liable for injuries caused by a product if the product was manufactured 15 years or more before the date the product allegedly caused a plaintiff's injury.

## Risk Contribution Theory Overruled

The new law also protects businesses by reversing *Thomas v. Mallet*, a controversial 2005 decision of the Wisconsin Supreme Court. In that decision, the Supreme Court permitted a plaintiff to recover against several manufacturers of lead paint under a so-called "risk contribution theory" for injuries caused by his ingestion of white lead carbonate, despite the fact that he could not prove which company made or sold the lead paint that he was exposed to, or even the type of white lead carbonate he ingested. This risk contribution theory is now eliminated except in rare cases that meet certain strict requirements. Instead, in the majority of product liability cases, plaintiffs must prove that their injuries were caused by the specific company being sued.

## Liability of Distributors Limited

Innocent sellers and distributors of allegedly defective products also are shielded from liability if they received the product in a sealed container and if they had no reasonable opportunity to test or inspect it. Instead, plaintiffs must first attempt to sue the product's manufacturer.

### POSTED:

Feb 3, 2011

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## **Expert Testimony Standards Heightened**

Prior to the new law, Wisconsin courts allowed experts to testify if the court determined that the testimony generally would assist the judge or jury in understanding the evidence. The judge would not first evaluate the reliability of those expert opinions, but would leave it to the jury to determine how much importance to place on that evidence. Under the new law, Wisconsin courts now must follow the federal "Daubert" standard and independently determine whether the opinions are reliable before allowing that evidence to be presented to the jury.

## **Punitive Damages Capped**

The new law limits the extent of damages available to plaintiffs who ultimately are successful. Punitive damages are now limited to either \$200,000 or double the amount of compensatory damages awarded, whichever is higher.

## **Noneconomic Damages for Nursing Homes Capped**

The new tort reform law limits noneconomic damages for injuries caused by long-term care providers such as nursing homes. The law limits such damages for injuries such as pain and suffering, loss of companionship and mental distress to \$750,000 per occurrence of medical malpractice by a health care provider. The new law also caps the noneconomic damages recoverable in a wrongful death action against a health care provider at \$500,000 in the case of a deceased minor, and \$350,000 in the case of a deceased adult. The law also applies a three-year statute of limitations to actions against nursing homes and other long-term care providers.

## **Sanctions for Frivolous Claims**

In an effort to crack down on frivolous lawsuits, the new law also makes it easier for courts to sanction parties or attorneys who bring such suits. In particular, it permits courts to award damages to parties forced to defend against claims that are unsupported by law, brought in bad faith or solely for the purpose of harassment.

The new tort reform law including these measures will become effective the day after its publication date, which under Wisconsin law must occur within ten



working days of the date it was signed by the Governor. The law provides that it will apply to all claims filed on or after its effective date. Given the significance of these changes, we expect that the law will be challenged by plaintiffs arguing that it should only apply to claims stemming from injuries occurring after the effective date.

Reinhart will continue to monitor the implementation and effect of this new legislation. For more information about the law or how it could affect your company, please contact your Reinhart attorney or a member of [Reinhart's Product Liability Team](#).

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