



## Alerts

### Wisconsin Modifies Toxic Tort Litigation Law

April 19, 2011

*Toxic Tort Alert*

Wisconsin Governor Scott Walker recently signed into law a tort reform bill that extensively modifies civil cases in Wisconsin, including toxic tort litigation. The legislation applies to lawsuits filed after February 1, 2011.

- **Punitive Damages Limitation:** § 895.043(6), Wis. Stats., creates a limitation on the amount of punitive damages that can be awarded. Previously, Wisconsin did not have any limitation on a punitive damages award. Under the new statute, punitive damages are not to exceed twice the amount of any compensatory damages recovered by the plaintiff or \$200,000, whichever is greater. The legal standard necessary to impose punitive damages is unchanged – a plaintiff must still show that the defendant acted maliciously toward the plaintiff or intentionally disregarded the rights of the plaintiff.
- **Expert Witness Testimony:** §§ 907.02 and 907.03, Wis. Stats., have been amended to conform with the federal rules. Previously, expert testimony was admissible if it was helpful to the trier of fact. Now, an expert may testify if the testimony is based on sufficient facts or data, is the product of reliable principles, and the expert applies those principles and methods to the facts.
- **Product Liability Law:** Several statutes have been created that extensively modify product liability law in Wisconsin.
  - § 895.045(3) – Comparative negligence is now applied in strict liability cases.
  - § 895.046 – Addresses the liability of manufacturers, distributors, and sellers in toxic tort cases. It requires that the claimant prove that the manufacturer, distributor or seller manufactured, distributed, sold or promoted the specific product alleged to have caused injury unless the claimant can establish: a) no other lawful process exists for redress, b) the injury or harm suffered can be caused only by a manufactured product chemically and physically identical to the alleged product, and c) the manufacturer, distributor or seller sold or promoted a complete integrated product in the form used by the claimant or to which the claimant was exposed. This new statute also includes a limitation on liability to 25 years from the date the product was last manufactured, distributed, sold or promoted to the date the claimant's cause of action accrued.
  - § 895.047 – Defines the liability of manufacturers, defines product defect, limits the liability of sellers and distributors, and sets forth

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applicable defenses. This section is only applicable to strict liability claims.

- **Damages for Frivolous Claims:** § 895.044, Wis. Stats., imposes new standards for the award of damages for frivolous claims. If the court finds that a party or its attorney knows that an action is without any reasonable basis and fails to withdraw or correct it within 21 days after service of a motion, the court must award actual costs, including reasonable attorney fees.

Download to read the [2011 Wisconsin Act 2](#).

For more information, please contact [Craig T. Liljestrand](#) or your regular [Hinshaw attorney](#).

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