

# WISCONSIN INSURANCE ALLIANCE

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## MEMORANDUM

To: Senate Judiciary Committee

From: Eric Englund

Date: January 31, 2008

Subject: SB-319

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We appear today in opposition to this legislation.

For over a hundred years Wisconsin courts have followed the well settled principal that the duty of the jury is to resolve questions of fact and that it is error to have the jury instructed on how their findings of fact will be impacted by the application of existing law. In other words, the duty of the jury is to resolve issue of facts...not understand or apply the law to those facts. The reason for this distinction has been stated time and time again by our Wisconsin Supreme Court. Our Court has recognized that the job of the jury in resolving disputes of fact is extremely complex and that this most difficult task becomes compromised and confused if they are made aware of how their fact-findings will be applied to the law.

Our Wisconsin Supreme Court said it best in a 1975 decision:

“It is argued that the refusal to fully inform the jurors is contrary to the traditional trust we place in the ability of juries to do justice. Of course, this criticism is in itself based on a fundamental distrust of the jury system, for it assumes that jurors are not faithful to their oath to follow the instructions of the trial judge. We decline to explore the pros and cons of this controversy, because any change in the rule would be contrary to the established basis for the use of juries, particular in negligence cases...we suggest that the jury should be admonished, and impressed, that its function in a negligence case is fact finding only and that it is not its role to usurp the legislative function or the judicial function in interpreting the comparative negligence status. It is the role of the judge, and not the jury, to implement the general policies of the comparative negligence statues.”

McGowan v. Story, 70 Wis. 2d 189, 234 N.W.2d 325 (1975) at 329-330

We ask that you not support this legislation.