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MEMORANDUM

To: Members of the Legislature

From: Eric Englund

Date: October 17, 2005

Subject: Opposition to Senate Bill 356 (Son of "All Sums")

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On behalf of our membership we respectfully ask that you **OPPOSE** SENATE BILL 356 (SB 356). SB 356 creates numerous problems and raises many concerns for insurers and businesses in Wisconsin.

Here's why:

- This bill deals with the highly technical "choice of laws" issue that sometimes arises during the course of dispute resolutions in civil litigation. The issue arises when there is potential for multiple states/countries to have their laws apply in resolving a dispute.
- For 99.9% of your constituents, "choice of law" issues do not arise when they have claims against insurance companies.
- Occasionally the "choice of law" issue will arise in resolving a dispute in civil litigation. When this issue does arise, the courts typically look to the contract, which in some instances provides whether the laws of state A or state B should apply.
- What happens when the contract is silent regarding choice of laws? Typically the courts answer that question in looking at a variety of factors including:
 - o Place of contract
 - o Place of negotiation of the contract
 - o Place of contract performance
 - o Location of the subject matter of the contract
 - o Domicile, residence, nationality, place of incorporation and place of business of the parties involved.
- The essence of SB 356 is an effort by Arjo Wiggins to have the Wisconsin Legislature resolve the "choice of law" issue that might possibly arise in contract disputes between themselves and certain insurers over the Fox River clean up.
- Who is Arjo Wiggins? They are a subsidiary of [Worms & Cie](#) a multi-national industrial and service group listed on the Paris stock exchange. Worms & Cie/Arjo Wiggins previously owned Appleton Paper. On 11/9/01 Appleton Paper was purchased by its workers, with Worms & Cie retaining all but \$25,000,000 of the liability for the Fox River clean up (see [Fox River Watch](#)). At the heart of SB 356 is an effort by Worms & Cie/Arjo Wiggins to have the Wisconsin Legislature step into complex litigation between itself, its insurers, and other potentially responsible parties for the Fox River clean up and provide a retroactive change to their insurance contracts to grant Arjo Wiggins a favorable outcome legislatively.
- The substance of SB 356 can be found in the original "all sums" legislation (AB 222/SB 137), which was rejected by the Senate Agricultural and Insurance Committee on 9/2/05 on a 6-1 vote.

- SB 356 is narrowly crafted special interest legislation seeking to benefit one non-Wisconsin company. It ignores the long-term ramifications on business contracts should the Wisconsin Legislature deem it necessary/appropriate to pass legislation which retroactively change/modify contracts.
- The dispute between Worm & Cie/Arjo Wiggins, its insurers and other potentially responsible parties for the Fox River clean up are best resolved by an independent judiciary that has the expertise and resources to examine all the facts on a case by case basis.
- “Choice of law” issues are judicial matters, not legislative.
- Interestingly, a Declaratory Judgment Action has been filed in Brown County by certain insurers requesting that a Wisconsin court determine various insurance coverage issues involving Arjo Wiggins/Worm & Cie, their predecessors and successors. Arjo Wiggins now ask you, the Legislature, to intervene in a private contract dispute that is already being addressed by a Wisconsin court in Brown County.

We are undertaking additional research on the matter, but did want to provide you with our preliminary analysis of this legislation.

The Wisconsin Insurance Alliance urges you to reject SB 356 and allow the Wisconsin legal process to work. We'd be pleased to meet with you and/or your staff to answer any questions you might have.