

January 11, 2006

Linda Elmer - file
Alderman Michael S. D'Amato
Milwaukee Common Council
200 E. Wells St, Suite 200
Milwaukee, WI 53233

Re: SB356-Choice of Law for environmental claims

Chairman
Dear Alderman D'Amato,

Enclosed please find documents including SB356, documents from Wisconsin First Initiative, emails from Mayor John Antaramian and State Senator Rob Cowles as well as a recent Milwaukee Journal Sentinel article regarding PCBs in the Milwaukee River. I have also included a copy of a letter to Sharon Cook regarding the City Attorney's opinion on the legislation.

I am forwarding this information for your perusal and hope you will consider joining as a sponsor on a resolution in support of this initiative.

I believe this legislation would provide significant help to the city of Milwaukee and reclaim the millions of dollars of our tax base, which are currently encumbered as brownfields and vacant lots. This legislation could significantly aid private entities in making recoveries from the insurance companies, lessening ultimate liability for Milwaukee and other municipalities in Wisconsin.

I am looking forward to meeting with you to discuss this matter. Thank you for your cooperation.

Sincerely,



David Halbrooks
Government Relations Specialist
Zigman Joseph Stephenson

Resolution authorizing and directing the Intergovernmental Relations Division-Department of Administration to lobby for passage of a State of Wisconsin environmental insurance choice of law bill.

This resolution authorizes and directs the Intergovernmental Relations Division – Department of Administration to lobby for passage of Senate Substitute Amendment 1 to Senate Bill 356, a Wisconsin environmental insurance choice of law bill introduced in the state legislature. This legislation would require that, unless otherwise specified in the policy, Wisconsin law would apply with respect to every environmental claim that is submitted under a general liability insurance policy, provided that claim has not been settled or finally adjudicated on or before the day the bill becomes law. The bill also provides that it will not be interpreted to modify common law rules regarding what state’s law would apply with respect to claims involving damage outside of Wisconsin, or construed to infer that the legislature intends to change the common law of this state with respect to the interpretation of general liability insurance policies that are not subject to environment claims.

Whereas, Over 7,000 abandoned or underused site in Wisconsin, including many in Milwaukee, have known environmental contamination; and

Whereas, Many sites remain contaminated because their owners lack sufficient funds to clean them up; and

Whereas, While the Wisconsin Department of Natural Resources operates a program to fund the clean-up of such neglected, contaminated sites, this program is not funded at a level sufficient to clean up all sites; and

Whereas, One of the primary reasons that private funds are unavailable for environmental remediation of contaminated sites is the widespread failure to insurance companies to pay claims to property owners in a timely manner, or to make any payments at all; and

Whereas, Insurance companies are able to withhold or delay payments on claims for environmentally-contaminated properties because of a gap in Wisconsin insurance law, namely the lack of a provision requiring that Wisconsin law applies to environmental claims for damage within Wisconsin; and

Whereas, Insurance policies written before 1986 generally contained no choice of law provision, allowing insurance companies to “forum shop,” and select a state in which to litigate whose laws are more favorable to the insurance companies; and

Whereas, Insurance companies are able to withhold or delay payments on claims by prolonging litigation by mounting numerous defenses, and requiring courts to determine choice of law considerations for every defense; and

Whereas, These litigation delay tactics employed by the insurance companies can keep cases tied up in court for years, allowing contaminated sites to further deteriorate; and

Whereas, Should a court decide that laws from another state will apply, insurance companies could escape liability for legitimate claims by their insureds because the laws from those other states could include pollution exclusions and other laws favorable to insurance companies; and

Whereas, The proposed legislation is consistent with a Choice of Law Statute relating to fire and property insurance, which passed both the Senate and Assembly unanimously in 1976; and

Whereas, Senate President Alan Lasee, along with Senators Coggs, Cowles, Wirch and Roessler, has introduced Senate Bill 356 to the State Legislature, to remedy the problem with Wisconsin’s environmental insurance law, particularly by requiring courts to apply Wisconsin law to claims involving contaminated property in Wisconsin, unless otherwise specified by the insurance policy; and

Whereas, In 16 other states, including Minnesota, Oregon, Colorado, Louisiana, Florida, and Delaware, the choice of law provision has been adopted by either legislation or case law, thereby eliminating costly delays that have been common in Wisconsin, and making those states more competitive in terms of ability to redevelop brownfield sites; and

Whereas, The City of Milwaukee would benefit in several ways from the ability to recover clean-up costs from insurance companies with policies in effect before 1985 by preventing them from “forum shopping” their cases to states with more favorable laws;

Whereas, The City of Milwaukee owns hundreds of environmentally contaminated parcels of land acquired through the tax-delinquency process which could be redeveloped through the insurance proceeds from prior owners of the properties; and whereas, the City of Milwaukee would also benefit from the increased property tax assessments if these properties as well as privately owned properties were remediated and redeveloped; therefore be it

Resolved, By the Common Council of the City of Milwaukee, that the Intergovernmental Relations Division – Department of Administration, is authorized and directed to lobby for passage of Senate Substitute Amendment 1 to Senate Bill 356, the primary purpose being to require courts to apply Wisconsin law to environmental claims brought under general liability insurance policies unless otherwise specified in the policy.

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 356**

October 25, 2005 – Offered by Senator A. LASEE.

- 1 **AN ACT** *to create* 632.28 of the statutes; **relating to:** choice of law in cases
2 involving environmental claims under general liability insurance policies.

Analysis by the Legislative Reference Bureau

Under common law rules in Wisconsin, if there is a dispute over which state's laws should be used to resolve a controversy that involves an insurance policy, the court first looks at whether the policy specifies the law that will be used. If the policy does not, the court uses a "grouping-of-contacts" approach, which looks at a number of factors, called contacts, such as the place of contracting, the place of performance, and the location of the place of business of the parties, to determine which state has the most significant relationship to the transaction. If the insured risk, which is the policyholder's insured activity, is located principally in one state, that contact is given greater weight than any other single contact for determining which state's laws will be applied. This substitute amendment provides that, unless the policy specifies otherwise, Wisconsin law will be applied in every case that involves an environmental claim that is made under a general liability insurance policy, regardless of the state in which the policy was issued or delivered. An environmental claim is defined in the substitute amendment as a claim made by an insured for defense or indemnity based on the insured's liability or potential liability for bodily injury or property damage arising from the presence of pollutants in this state as a result of a release of pollutants in this state.

The substitute amendment provides that the statutory requirement regarding the application of Wisconsin law applies with respect to every environmental claim

that is submitted under a general liability insurance policy and that has not been settled or finally adjudicated on or before the day the bill becomes law. The substitute amendment also provides that nothing in the statutory requirement regarding the application of Wisconsin law is to be 1) interpreted to modify common law rules regarding what state's law applies with respect to claims that involve damage arising from pollution outside of Wisconsin or 2) construed to raise the inference that the legislature intends to change the common law of this state with respect to the interpretation of general liability insurance policies that are not subject to environmental claims.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 632.28 of the statutes is created to read:

2 **632.28 Environmental claims; choice of law. (1) DEFINITIONS.** In this
3 section:

4 (a) "Environmental claim" means a claim for defense or indemnity that is
5 submitted by an insured and that is based on the insured's liability or potential
6 liability for bodily injury or property damage arising from the presence of pollutants
7 in this state as a result of a release of pollutants in this state.

8 (b) "Pollutant" means any solid, liquid, or gaseous irritant or contaminant,
9 including smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos, petroleum
10 products, lead, products containing lead, and waste.

11 (c) "Pollution" means the presence of pollutants in or on land, air, or water.

12 **(2) CHOICE OF LAW.** Except as otherwise provided in the policy, Wisconsin law
13 shall be applied in a case involving an environmental claim that is submitted under
14 a general liability insurance policy, regardless of the state in which the general
15 liability insurance policy was issued or delivered.

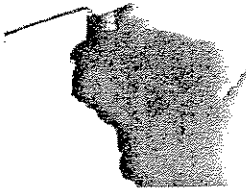
16 **(3) APPLICABILITY.** This section applies to all environmental claims that are
17 submitted under general liability insurance policies and that are not settled or

1 finally adjudicated on or before the effective date of this subsection [revisor inserts
2 date], regardless of when the claim arose.

3 **(4) INTERPRETATION AND CONSTRUCTION.** (a) Nothing in this section shall be
4 interpreted to modify common law rules governing a choice of law determination for
5 a claim for defense or indemnity that is submitted under a general liability insurance
6 policy and that involves bodily injury or property damage arising from pollution
7 outside this state.

8 (b) Nothing in this section shall be construed to raise or support any inference
9 that it is the intention of the legislature to change the common law of this state with
10 respect to the interpretation of a general liability insurance policy not subject to an
11 environmental claim.

12 **(END)**



WISCONSIN FIRST

Our State, Our Laws

WHY WE NEED CHOICE OF LAW LEGISLATION IN WISCONSIN

- The proposed legislation resolves the choice of law issues associated with liability insurance coverage for pollution in Wisconsin by establishing that Wisconsin law governs insurance claims for pollution. Specifically, it provides that claims made under a general liability policy for bodily injury or property damage arising from pollution located in Wisconsin and caused by a release of pollutants in Wisconsin (so called environmental claims) are to be governed by Wisconsin law.
- Hypothetical: The Wisconsin DNR claims that a Wisconsin-based company has polluted Wisconsin's environment through its business operations at its Wisconsin facility. The Wisconsin company was owned at the time by a parent corporation that also owns companies in other states and purchases insurance for all of the companies, but none of those other companies are involved.
- Coverage Claim: The Wisconsin business sues in Wisconsin state court seeking insurance coverage for claims by the Wisconsin DNR that its Wisconsin facilities polluted Wisconsin's natural resources. Because the environmental problem occurred over a number of years, there are multiple insurers that provide primary or excess coverage.
- Choice of Law: The insurers argue that the laws of other states should be applied to the insurance issues including the states which are the:
 - place of negotiation of the insurance policy
 - place where the policy was issued
 - place where the policy was delivered
 - place of incorporation or place of business of other companies affiliated with the Wisconsin business

The insurers will argue for the law of the state that would deny insurance coverage, even though Wisconsin law would allow it.

- Problem: In the same case involving the same site, the same claim and the same insured, insurers may be asking the Court to apply the laws of six or seven different states to the same fact situation. The Wisconsin judge may be asked to apply a different state's law to policies issued in different years or to policies at different levels (primary or excess) issued in the same year or even to policies issued by the same company in different years.
- Solution: This bill sets a simple rule for choice of law in environmental cases that promotes consistency, simplicity, predictability and ease of application by Wisconsin judges. It assures that Wisconsin's policies will be followed in addressing issues related to the cleanup of Wisconsin's natural resources.



WISCONSIN First

Our State, Our Laws

ESTABLISHING THE PREEMINENCE OF WISCONSIN LAW

A few legal reasons this matters

- Costs of cleaning up an environmental contamination site are “damages” under a typical general liability insurance policy. *Johnson Controls v. Employers Insurance of Wausau*, 2003 WI 108, 264 Wis. 2d 60, 665 N.W.2d 257. Some other states have ruled that such costs are not “damages” meaning there is no insurance coverage.
- The “sudden and accidental pollution exclusion” only excludes coverage if the pollution damage was expected or intended. *Just v. Land Reclamation, Ltd.*, 155 Wis. 2d 737, 456 N.W.2d 570 (1990). Some other states have ruled that coverage is excluded for gradual pollution, even if the insured did not intend any damage.
- Where environmental damage occurs over a period of years, all of the insurance policies during the period the damage occurred are triggered. *Society Insurance v. Town of Franklin*, 2000 WI App. 35, 233 Wis. 2d 207, 607 N.W.2d 342. Some other states have ruled that only the policy in effect at the start of the damage or when the damage was discovered has coverage.
- A letter from the DNR or EPA identifying the insured as a potentially responsible party triggers the duty to defend. *Johnson Controls v. Employers Insurance of Wausau*, 2003 WI 108, 264 Wis. 2d 60, 665 N.W.2d 257. Some other states have ruled that there is no duty to defend until an actual lawsuit is filed, which never happens in many environmental cases.
- An environmental loss does not become a “known loss” so as to cut off any continuing coverage under general liability policies until the point where the insured is aware of the damage and is substantially certain that it has liability for the damage. *State v. Hydrite Chemical Co.*, 2005 WI App. 60, 280 Wis. 2d 647, 695 N.W.2d 816. Other courts have applied a broader “known loss” rule, under which insurance coverage is cut off sooner.
- An insurer that breaches its duty to defend its insured loses its coverage defenses. *Professional Office Buildings, Inc. v. Royal Indemnity Co.*, 145 Wis. 2d 573, 427 N.W.2d 427 (Ct. App. 1988). Most states do not have such a rule.

Original URL: <http://www.jsonline.com/news/metro/oct05/360900.asp>

River is rife with PCBs

Lincoln Park needs work, will get warning signs

By **LEE BERGQUIST**

lbergquist@journalsentinel.com

Posted: Oct. 4, 2005

Tom Reep, 40, has lived along Lincoln Park and the adjoining Milwaukee River his whole life.

As a youngster, he fished and swam in the river - long before he learned that a banned family of chemicals known as PCBs, or polychlorinated biphenyls, had been trickling into it for decades.

The state Department of Natural Resources says it has been aware of PCB-contaminated fish in the river going back to the 1970s, and studies in the mid-1990s confirmed the presence of PCBs in the water and sediment along the park.

But years have passed and still no work has started to remove the contaminants from the river and a tributary, Lincoln Creek, leaving Reep and others frustrated.

"They had enough information . . . to know exactly what they were contending with," he said. "There was no question in anyone's mind that this was a health risk hazard."

"Children are over at the edge of the fishing pier and sometimes they are knee-deep in mud."

But DNR officials also insist that they are anxious to clean up the river - a project the agency estimates could cost up to \$36.1 million.

Until that work is done, state officials say, they want to mount a better public education campaign for those who fish and play along Lincoln Park.

The state has ordered construction of 171 signs for the park. The signs, in English, Spanish and Hmong, will tell anglers of the potential health hazards of eating fish from the river and warn park users not to walk on the riverbed, according to the Department of Health and Family Services.

Also, in about a week, the DNR and local government units will ask the U.S. Environmental Protection Agency for emergency funding to start cleaning up the pollutants, though DNR officials are reluctant to say when the work could begin.

Why? The business of cleaning up toxic hot spots can be a protracted affair, slowed by years of planning and engineering and the high cost of the work. In the case of the tainted stretches along Lincoln Park, officials also have no idea who dumped PCBs in the river in the first place.

Lincoln Creek snakes through the city's north side until it flows sluggishly into the river.

Factories have long operated in the creek's watershed. They used the PCBs to cut metal and build machines that were the foundations of the city's industrial might. The chemicals were banned in 1977, and many of the factories, machine shops and tool and die businesses that dotted the area are vacant today.

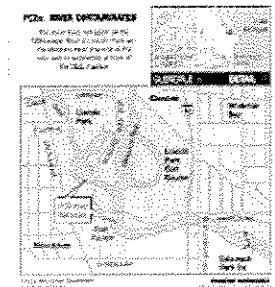
PCBs in the Milwaukee River

Quotable

“ The DNR seems to have had a very nonchalant attitude about this. ”

- James White,
Milwaukee County
supervisor

Contamination



Graphic/*Enrique Rodriguez*

[Click to enlarge](#)

Eventually, PCBs wended their way into the Milwaukee River. Contamination could have occurred from direct dumping. But a more likely scenario is that chemicals entered the creek by running off a factory floor and into a storm drain, or washing into the creek from adjacent land, said Jim Schmidt, a remediation supervisor with the DNR.

An earlier study said that PCBs were likely to have come from an area between N. 46th St. on the west and Teutonia Ave. on the east, but Schmidt said, "We don't have a smoking gun."

To find the polluter, he said, the DNR will have to seek funding to pay for crews to start the laborious task of popping manhole covers and tracing the source of the contaminants, which degrade little over time.

The DNR found in a study released in August that PCBs have settled in layers more deeply into the Milwaukee River's sediments than previously known.

The study also found that the sheer volume of PCBs is greater there than anywhere on the river. The findings came from a \$125,000 study released in August and paid for by the EPA.

To clean up the PCBs, sediments would be removed or capped on parts of the creek below Green Bay Ave. and sections of the river to the Estabrook Dam. The most toxic hot spots are the westernmost channel of the river along the park and in sediments in front of the Blatz Pavilion at W. Hampton Ave.

The findings are important because as PCBs move through the water and pile up in the sediments, they join the river's food chain.

For humans, the most immediate danger is eating too many fish contaminated with PCBs, which the EPA has labeled as a probable human carcinogen.

In the Milwaukee River system, where PCBs are found up and down the river, the only spot with higher levels of PCBs is Cedar Creek in Ozaukee County, the DNR says.

But progress has moved too slowly for a problem with broad public health implications, according to neighbors and a local public official.

"The DNR seems to have had a very nonchalant attitude about this," said Milwaukee County Supervisor James White, who represents the area.

For about five years, White said, he has been sitting in on meetings on PCBs and another issue, repairs to the aging Estabrook Dam, with the DNR and other local officials.

"It's been going on for years - it's like beating a dead horse," agreed Ruth Varnado, executive director of the Lincoln Park Community Center.

According to state public health officials, infants and children of women who have eaten a lot of contaminated fish may have lower birth weights and impairments in their physical and learning development.

PCBs may also affect reproduction and the immune system. Direct contact with PCBs can be a hazard as well if sediments are ingested, but officials say the biggest risk is eating fish.

Both White and Reep say they have demanded warning signs along the river for years. White recalls a meeting as far back as 2000 where he made such a request.

But Sharon Gayan, the DNR's Milwaukee River basin supervisor, and William G. Wawrzyn, a fisheries biologist with the DNR, who attended that meeting, said they do not recall such a request.

They added, however, that state and local health officials put up some warning signs in about 2000, although most were vandalized.

While progress seems to have gone slowly, the DNR says it has made considerable strides. Two previous studies, in 1997 and 1999, helped drive the process forward, though the data were not detailed enough to send crews into the river and launch a cleanup, Gayan said.

She said that employees logged 2,500 to 3,500 hours on the project between 2000 and 2005, and that it took nearly a year to design a study for last month's report that had the scientific rigor to satisfy the EPA - a possible source of future funding for the project.

Funding, in fact, has been a key hang-up for the project.

In Wisconsin, PCBs are being cleaned up in several locations, including Cedar Creek and the Sheboygan and Fox rivers. In each case, the DNR or the EPA has identified companies responsible for the pollution.

"The big difference is that you have ongoing parties with the wherewithal to do a cleanup," said Charles Krohn, a regional water leader with the DNR. In Lincoln Creek, we don't have a responsible party."

The Fox is one of the largest PCB projects in the country. The DNR estimates that it will cost \$400 million before all of the work is done.

On Cedar Creek, Krohn said, PCB contaminants were turning up in samples in the mid-1980s. Two companies, Mercury Marine and Amcast Industrial Corp., have paid millions of dollars for cleanup work.

Ironically, as more is learned about the severity of PCB problems, the Milwaukee River is getting cleaner and the fishery continues to improve.

"Ten years ago, there wasn't much living in that river," Wawrzyn said.









Smallmouth bass are rebounding. The DNR is reintroducing walleye. Trout and salmon from Lake Michigan make spawning runs as far north as Grafton, Wawrzyn said.

That's brought more people to the river to fish - and has raised worries that some anglers are eating too many of the fish they catch.

"I am flabbergasted," Wawrzyn said. "I see the population that's fishing out there. I see whole families. I see them keep everything. . . . That's a concern."

From the Oct. 5, 2005, editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

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 Reply |  Reply All |  Forward |  Delete |  Junk |  Put in Folder ▼ |  Print View |  Save Address

From : Mayor John Antaramian <wisconsin-first@charter.net>
Sent : Monday, October 24, 2005 4:26 PM
To : "*Local Elected Officials and Staff" <local-leaders@charter.net>
Subject : Senate Bill 356

 |  |  |  Inbox

One of the biggest problems I have faced as a municipal elected official is the number of contaminated properties within the borders of my community. Not only do they contribute nothing to the tax base, but these properties often cannot be redeveloped without the infusion of millions of dollars for environmental remediation. These contaminated sites also lower the value of adjacent properties and many of these sites constitute an immediate danger to the health and safety of my constituents.

Since the adoption of the Land Recycling Act in 1994, and the subsequent amendments to the state budgets in 1997, 1999 and 2001, the State of Wisconsin has made major substantive change in the statutes to promote the remediation and reuse of contaminated sites.

The primary reason that there are still over 7,000 sites with known contamination is the lack of resources for remediation despite millions of dollars in brownfield grant programs and the best efforts of DNR and the Department of Commerce.

In overruling the *City of Edgerton* decision, the Wisconsin Supreme Court in the *Johnson*

Controls case clearly resolved the environmental liability issue for pre-1986 insurance policies. **However, the issue of the choice of laws regarding liability remains as the largest single impediment to using insurance proceeds to remediate contaminated sites.**

The adoption of Senate Bill 356 has the potential to result in a massive infusion of private resources to clean up contaminated properties across the state. By making it clear that Wisconsin law would apply to contaminated sites in Wisconsin, insurers would pay the cost of environmental cleanups without delay or litigation because Wisconsin law would clearly define the issue of liability.

Scarce governmental resources could be targeted for truly orphan sites, rather than going to properties where there was an insurance policy in effect when the contamination occurred.

The passage of this legislation would expedite the remediation and reuse of thousands of contaminated areas and return these sites to the local property tax rolls. It would also help to address the immediate threat to health and safety of the people we represent.

I urge your support for Senate Bill 356 and I ask you to contact the state representatives and senators who represent your community in the state legislature. Together, we can redevelop environmentally contaminated properties and put them back on the local property tax rolls.

Sincerely,

Mayor John M. Antaramian, City of Kenosha

To contact your elected official on the legislative hotline:

- Statewide Toll-Free: 800-362-9472
- Hearing Impaired: 800-228-2115
- Local Madison Number: 608-266-9960

To send an email message to your elected official:

- Click Here to bring up the "*Who Are My Legislators*" website.
- Type your home address into the box. Press enter.
- Click on the *Email Legislator* link.
- Cut and paste the script below, and add your home address.

Sample Script:

Subject: Please Support Senate Bill 356

Dear Legislator,

As somebody who works in local government, I want to make you aware of the serious problem of contaminated properties within our community. Not only do they contribute nothing to the tax base, but these properties often cannot be redeveloped without the infusion of millions of dollars for environmental remediation.

The adoption of Senate Bill 356 has the potential to result in a massive infusion of private resources to clean up contaminated properties across the state. By making it clear that Wisconsin law would apply to contaminated sites in Wisconsin, insurers would pay the cost of environmental cleanups without delay or litigation









The passage of SB 356 would clean up thousands of contaminated areas and return these sites to the local property tax rolls. It would also help to address the immediate threat to health and safety of the people we

represent.

I strongly urge you to support SB 356, and hope to hear back from your office on this important matter


Sincerely,

(Please put your name and address here.)

 Reply |  Reply All |  Forward |  Delete |  Junk |  Put in Folder ▾ |  Print View |  Save Address

From : State Senator Rob Cowles <wisconsin-first@charter.net>
Sent : Friday, October 21, 2005 9:45 AM
To : "**Friends of the Environment" <EnvironmentalFriends@charter.net>
Subject : Wisconsin First Initiative

 |  |  |  |  Inbox

 Attachment : Lasee_SB356.pdf (0.07 MB)

I have consistently remained passionate about protecting Wisconsin's environment, remediating Wisconsin's brownfields and waterways and preserving and creating new Wisconsin-based jobs. I have always believed in these three goals in the context of prudent conservative fiscal management.

A bipartisan group of Wisconsin senators have introduced Senate Bill 356. I believe that this bill helps achieve my long-range goals. I am attaching a link to the legislation, along with a memorandum that State Senate President Alan Lasee has written on the subject.

I would encourage you to **write or telephone your legislator expressing support for SB 356. I remind you that you can use the legislative toll-free hotline at 800-362-9472.**

Sincerely,

Rob Cowles

P.S. If you drop your legislator an email, I would certainly welcome receiving a copy at sen.cowles@legis.state.wi.us.

To call your elected official on the legislative hotline:

- Statewide Toll-Free: 800-362-9472
- Hearing Impaired: 800-228-2115
- Local Madison Number: 608-266-9960

To send an email message to your elected official:

- Click Here to bring up the "Who Are My Legislators" website.
- Type your home address into the box. Press enter.
- Click on the *Email Legislator* link.
- Cut and paste the script below, and add your home address.

Script:

Subject: Please Support Senate Bill 356

Dear Legislator,

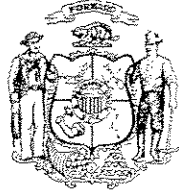
When land becomes environmentally contaminated, it should be cleaned up. Wisconsin insurance claims involving environmental contamination should not be denied because of legal loopholes from another state. *We need to put our Wisconsin laws first, and make sure to clean up contaminated land.*

Senate Bill 356 protects the rights and interests of insurance policyholders. I'm hoping you'll join me in supporting this bill, and help ensure that the contaminated land gets cleaned up.

I hope to hear back from your office.

Sincerely,

(Please put your name and address here.)



1st Senate District
State Capitol • PO Box 7882
Madison, WI 53707-7882

Alan Lasee *Senate President*

Tel 608 266 3512
Fax 608 267 6792
email: sen.lasee@legis.state.wi.us
web: www.legis.state.wi.us/senate/sen1/news/

October 3, 2005

Dear Colleagues:

On Friday, I introduced Senate Bill 356 designed to ensure that Wisconsin law will govern insurance disputes over contaminated property in Wisconsin.

Courts in other states often interpret liability insurance policies differently than Wisconsin courts. As a result, claims that are covered under Wisconsin law may not be covered under another state's law. My legislation will make sure that Wisconsin policyholders will have the benefit of Wisconsin law for claims involving contaminated property in Wisconsin.

Do not be misled by misinformation being spread by the insurance industry:

- This bill does not interfere with the contractual rights of the insurance companies. It honors choice-of-law provisions in insurance policies, including provisions that select the law of a state other than Wisconsin. The legislation applies only when a policy has no choice-of-law provision.
- Contrary to the claims of the insurance industry, most liability policies do not contain choice-of-law provisions. This allows carriers to go forum-shopping for a state whose law favors the insurance industry when a claim arises. What possible interest does Wisconsin have in having another state's law govern the outcome of insurance claims involving contaminated sites in Wisconsin?
- This bill does not intrude upon the role of the courts. It simply provides that the decisions of Wisconsin's courts will govern Wisconsin's contaminated property.
- Far from being unconstitutional, this proposed legislation is consistent with decades-old Wisconsin legislation providing for Wisconsin law to apply to claims under fire and property insurance policies. Moreover, the legislation is consistent with other Wisconsin statutes—ruled constitutional by the Wisconsin Supreme Court—that mandate the application of Wisconsin law to matters of special interest to Wisconsin residents.
- Wisconsin-based insurers insuring Wisconsin residents will not be affected by this bill, as claims under these policies are already governed by Wisconsin law. This bill affects only non-Wisconsin insurers seeking to deny Wisconsin-based claims on the basis of the law of another state.

Senate Bill 356 protects the right and interests of Wisconsin's policyholders. The insurance claims of your constituents involving environmental contamination in Wisconsin should not be denied because a court in another state ruled that the laws of New York or another state governed that policy. I hope you will join me in supporting Senate Bill 356.

Sincerely,

Alan

December 1, 2005

Sharon Cook
Legislative Liaison Director
200 E. Wells St.
Room 606
Milwaukee, WI 53202

Dear Sharon;

I have had an opportunity to review the October 17, 2005 letter to you from City Attorney Grant Langley and Assistant City Attorney Stuart S. Mukamal regarding Senate Bill 356. In the letter, the City Attorney asserts that S.B. 356 would have "little practical effect." I respectfully, but strongly, disagree.

The assertion that insureds today "rarely" have occasion to rely upon pre-1986 commercial general liability ("CGL") policies is simply untrue. Environmental contamination resulting from the lax handling and regulation of hazardous wastes and substance decades ago continues to be discovered throughout the city and the state. Often such contamination lies buried — and undetected — for decades. As a result, insureds continue to rely upon old CGL policies and Wisconsin courts continue to confront many cases involving claims arising from environmental contamination that pre-date use of the "absolute pollution exclusion" starting in approximately 1986. Indeed, the "highly publicized Wisconsin Supreme Court cases" referenced by the City Attorney prove that, contrary to their assertion, insureds continue to rely upon pre-1986 policies and that courts continue to be called upon to interpret such policies.

If the City Attorney is correct that the City of Milwaukee rarely has occasion to rely upon pre-1986 CGL policies, the City has been extremely lucky. I can assure you that you many City residents and businesses have not been so fortunate. I am surprised that the City Attorney's office would think so little of the fact that the legislation will make it possible to fund the environmental remediation of many privately-owned contaminated sites throughout the City. Likewise, private citizens exposed to hazardous substances years ago (e.g., asbestos), whose injuries have only recently become manifest, frequently rely upon pre-1986 policies to cover their injuries. The legislation will allow such claims by Wisconsin residents to be resolved on the basis of Wisconsin law. Such tangible benefits should not be overlooked.

Also untrue is the City Attorney's assertion that "virtually every" CGL policy specifies the state whose law governs interpretation of such policies. If that were the case, the insurance industry would have little or no reason to fear or oppose S.B. 356. In fact, use of choice of law provisions in pre-1986 CGL policies was extremely rare — and that is why the insurance industry is opposing S.B. 356 so vociferously.

Sharon Cook
December 1, 2005
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Because it so widely acknowledged by attorneys familiar with CGL policies that choice of law provisions were rarely used in pre-1986 policies, I can only assume that the City Attorney is basing his assertion upon new and recently issued policies. As he acknowledges, however, these policies contain pollution exclusions and, therefore, are irrelevant when assessing the potential impact of the legislation.

S.B. 356 offers real benefits to municipalities throughout the state. First, the legislation increases the likelihood of insurance coverage when a municipality is the target of an environmental liability claim as a result of tax delinquency proceedings. Second, S.B. 356 will promote the remediation and redevelopment of privately-owned brownfield sites — allowing such sites to return to productive use and the tax rolls. I am confident that most city officials in Milwaukee and elsewhere will not dismiss these benefits.

Very truly yours,


David Halbrooks

cc: City Attorney Grant Langley
Assistant City Attorney Stuart Mukamal
Alderman Michael D'Amato w/ attachments
Alderman Michael Murphy w/ attachments

CITY OF MILWAUKEE

Form CA-43

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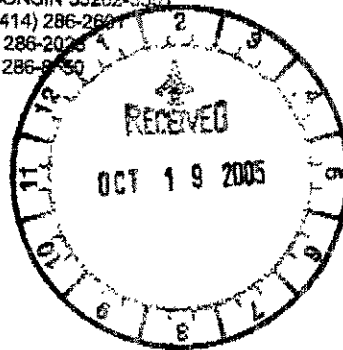


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October 17, 2005



Mr. Michael Miller
Legislative Coordinator-Sr.
Department of Administration
Room 606 – City Hall

Re: Senate Bill 356 (Choice of Law in Cases Involving Environmental Claims Under General Liability Policies)

Dear Mr. Miller:

On October 10, 2005, you requested the views of this office concerning the above-referenced legislation. This Bill would require the application of Wisconsin law to the evaluation of environmental claims arising under general liability policies, irrespective of where the policies were written, unless the policy specifically states to the contrary.

At the outset, this Bill, even if passed, will likely have little practical effect. This is because virtually every comprehensive general liability policy does specify its "governing law"—i.e., the state whose laws would apply to the interpretation and application of the policy's terms. Because this Bill would apply only in those instances where the policy fails to do so, it is our opinion, based upon our experience in reviewing insurance contracts generally, that there will be very few cases in which it will operate to assure the applicability of Wisconsin law where no "governing law" is specified.

Additionally, this law will have little effect upon the City for an additional reason—the City rarely (if ever) relies upon general liability policies for environmental coverage. Since 1986, such policies have almost invariably contained broad coverage exclusions applicable to environmental claims. While there have been several highly publicized

Mr. Michael Miller
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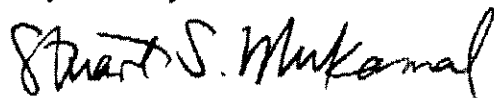
Wisconsin Supreme Court cases extending general liability coverage to include environmental claims, those cases have all involved the application of pre-1986 policy language. While it is certainly not impossible that the City might find itself in a position to claim coverage for an environmental claim on its part arising under a pre-1986 policy, the likelihood of such circumstances actually occurring is relatively small, and will decrease further as time passes.

While we do not perceive any reason as to why the City would oppose passage of this Bill, it is our conclusion that its passage would have little effect upon the City. If you have any further questions concerning this Bill, please do not hesitate to contact this office.

Very truly yours,



GRANT F. LANGLEY
City Attorney



STUART S. MUKAMAL
Assistant City Attorney

SSM:lmb
97887

From: Stuart Mukamal
To: Grant Langley, Sharon Cook
Date: 10/26/2005 11:20:55 AM
Subject: Re: SB 356 substitute amendment

Hi, Sharon:

My quick review indicates that any changes reflected in the substitute version would not change the conclusions reached in our letter. While we see no reason to oppose passage of this bill (and some reason to support it in the sense that it is logical to apply Wisconsin law to environmental claims arising in Wisconsin where the policy does not specify a "governing law"), it won't affect the City much because the City does not generally rely on or resort to pre-1986 general liability policies for coverage of environmental investigation and cleanup costs. I get the sense that this bill is impelled by uncertainties that may have arisen in litigation between private-sector parties.

Stu Mukamal.

>>> Sharon Cook 10/26/2005 11:12:31 AM >>>

your letter to us about SB 356 says it would have little effect on the city. could you take a look at the substitute that has been introduced and is on a fast track in Madison?? Executive session today. I've had calls from the Alliance of cities and email from John Antaramian in Kenosha looking for support or at least our opinion. as I understand the sub changes the bill quite a bit.

for your convenience, here's the link

<http://www.legis.state.wi.us/2005/data/SB356hst.html>