

WISCONSIN LAW SUMMARY



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WISCONSIN SUBSTANTIVE LAW

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WISCONSIN SUBSTANTIVE LAW

Issues	Details & Court Case / Statute Cite
<p>Statute of Limitation</p> <ul style="list-style-type: none"> ▪ Personal Injury ▪ Property Damage ▪ Wrongful Death ▪ Contract ▪ UIM & UM ▪ Government Entities ▪ Contribution ▪ Statute of Repose 	<p>Personal Injury: 3 years. Wis. Stat. § 893.54(1)</p> <p>Injury to Property: 6 years. Wis. Stat. § 893.52</p> <p>Wrongful Death: 3 years. Wis. Stat. § 893.54(2)</p> <p>Contract: 6 years. Wis. Stat. § 893.43</p> <p>Underinsured Motorist: 6 years from the date of loss, which is the date on which a final resolution is reached in the underlying claim against the tortfeasor. <i>Yocherer v. Farmers Ins. Exchange</i>, 252 Wis.2d 114, 643 N.W.2d 457 (2002).</p> <p>Uninsured Motorist: 6 years. <i>Sahloff v. Western Cas. & Sur. Co.</i>, 45 Wis.2d 60, 171 N.W.2d 914 (1969).</p> <p>Claim against Government Entity: Within 120 days of the event causing the injury, damage or death. Must submit written notice upon the attorney general stating the time, date, location, circumstances and names of the persons involved. Wis. Stat. § 893.82(3) and Wis. Stat. § 890.80.</p> <p>Contribution Claim: 1 year after the cause of action accrues or is barred for an action for contribution based on tort, if the right of contribution does not arise out of a prior judgment allocating the comparative negligence between the parties. Wis. Stat. § 893.92.</p> <p>Statute of Repose: No cause of action may accrue nor be commenced to recover damages from injury to property after the 7-year exposure period, which begins to run immediately following the date of substantial completion of the improvement to real property. If a person sustains damages during the period beginning on the first day of the 5th year and ending on the last day of the 7th year, as a result of the deficiency or defect in the improvement to real property, the time for commencing an action for the damages is extended by 3 years after the date on which the damages occurred. Wis. Stat. § 893.89 (1-3).</p>
<p>Punitive Damages insurable?</p> <p>Yes</p>	<p>Directly assessed punitive damages are insurable in Wisconsin, but the remedy of punitive damages is only available if the plaintiff proves by <i>clear and convincing evidence</i> that the defendant's conduct was</p>

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	wanton, willful or in reckless disregard of the plaintiff's rights or interest. <i>Brown v. Maxey</i> , 124 Wis.2d 426, 369 N.W.2d 677 (1985). (emphasis added)
<p>Bad faith claims allowed?</p> <p>Yes</p> <p>Both first and third party cases allowed.</p>	<p>First-party bad faith includes both an objective and subjective component. The objective component addresses whether the insurer "acted as a reasonable insurer would have acted under the particular facts and circumstances to conduct a fair and neutral evaluation of the claim." If the answer to this inquiry is no, then the subjective component must be addressed. The subjective component asks whether a subjective intent to act in bad faith can be inferred from a reckless disregard of a lack of a reasonable basis for denial or a reckless indifference to facts or proofs submitted by the insured. <i>Brethorst v. Allstate Prop. & Cas. Ins. Co.</i>, 334 Wis.2d 23, 798 N.W.2d 467 (2011).</p> <p>The insurer, under first-party bad faith, can debate any issue that's "fairly debatable," which means if the insurer can point to an objectively reasonable basis in fact or law for having denied the claim. <i>Anderson v. Continental Ins. Co.</i>, 85 Wis.2d 675, 271 N.W.2d 368 (1978); <i>Brethorst v. Allstate Prop. & Cas. Ins. Co.</i>, 334 Wis.2d 23, 798 N.W.2d 467 (2011).</p> <p>A third-party bad faith claim against an insured typically arises when the insurer fails to settle the claim within policy limits and the third-party claimant obtains a verdict in excess of those limits. <i>Roehl Transp., Inc. v. Liberty Mut. Ins. Co.</i>, 325 Wis.2d 56, 784 N.W.2d 542 (2010); <i>Kranzush v. Badger State Mut. Cas. Co.</i>, 103 Wis.2d 56, 307 N.W.2d 256 (1982).</p> <p>In third-party bad faith claims, Wisconsin recognizes a fiduciary duty running from the insurer to the insured and this duty imposes three duties upon the insurer when handling a third-party liability claim against its insured:</p> <ol style="list-style-type: none"> 1. Duty to make a diligent effort to ascertain all facts of the claim so an informed and reasonable evaluation can be made; (<i>Hilker v. W. Auto. Ins. Co. of Ft. Scott, Kan.</i>, 204 Wis. 1, 231 N.W. 257 (1930), on reh'g, 204 Wis. 1, 235 N.W. 413 (1931)). 2. Duty to advise the insured that the recovery could exceed policy limits so the insured can take independent action to protect his or her own interest; and 3. Duty to keep the insured timely and adequately informed of any settlement offers and of the progress of any settlement negotiations. (<i>Baker v. Nw. Nat. Cas. Co.</i>, 22 Wis.2d 77, 125 N.W.2d 370 (1953)). <p><i>Kranzush v. Badger State Mut. Cas. Co.</i>, 103 Wis.2d 56, 307 N.W.2d 256 (1982).</p>

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	<p>The insurer will only be liable for bad faith if the fact finder concludes that insurers failure to perform one or more of the above duties demonstrates such a significant disregard of the insured's interests that its final decision not to pay policy limits to settle the case is made in bad faith. Wis. JI-Civil 2760.</p> <p>A liability insurance company may be liable for the tort of bad faith when the insurance company fails to act in good faith and exposes the insured to liability for sums within the deductible amount. <i>Roehl Transp., Inc. v. Liberty Mut. Ins. Co.</i>, 325 Wis.2d 56, 784 N.W.2d 542 (2010).</p> <p>In <i>Roehl</i>, the court concluded that Roehl Transport could bring a bad faith tort claim against Liberty Mutual for breach of its duty of good faith when Roehl Transport's interests, namely Roehl Transport's exposure of its substantial deductible, were within Liberty Mutual's control. <i>Roehl Transp., Inc. v. Liberty Mut. Ins. Co.</i>, 325 Wis.2d 56, 784 N.W.2d 542 (2010).</p> <p>Plaintiff, who was injured on insured's property, could file a bad faith claim against insurer after insurer refused to pay for plaintiff's medical bills under medical expense coverage. <i>Meleski v. Schbohm LLC</i>, 341 Wis.2d 716, 817 N.W.2d 887 (Ct. App. 2012).</p> <p>The tort of insurance-company bad faith is based on a breach of a duty imposed as a consequence of the contractual relationship and is designed to provide a remedy when the insurance company breaches the implied covenant of good faith and fair dealing found in every contract. <i>Meleski v. Schbohm LLC</i>, 341 Wis.2d 716, 817 N.W.2d 887 (Ct. App. 2012).</p>
The Standard for Negligence	<p>The standard of concept or duty applicable to a negligence action is "ordinary care." Wis. JI-Civil 1005; <i>Osborne v. Montgomery</i>, 203 Wis. 223, 234 N.W. 372 (1931); <i>Dakter v. Cavallino</i>, 2015 WI 67, 363 Wis. 2d 738, 866 N.W.2d 656. Ordinary care is the care which a reasonable person would use in similar circumstances. A person is not using ordinary care and is negligent, if the person, without intending to do harm, does something, or fails to do something, that a reasonable person would recognize as creating an unreasonable risk of injury or damage to a person or property. Wis. JI-Civil 1005.</p> <p>The concept of duty as it relates to negligence cases, is inexorably interwoven with foreseeability. The duty of each person is to exercise ordinary care to refrain from any act which will cause foreseeable harm to another, to refrain from any act which creates an unreasonable risk to others. <i>Tesar v. Anderson</i>, 329 Wis.2d 240, 789 N.W.2d 351 (Ct. App. 2010).</p>

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	<p>To constitute a cause of action for negligence in Wisconsin, there must be: (1) a duty to conform to a certain standard of conduct to protect others against unreasonable risks; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the injury; and (4) actual loss or damage as a result of the injury. <i>Wilson ex rel. Goff v. Trade Lake Mut. Ins. Co.</i>, 332 Wis.2d 315, 797 N.W.2d 934 (Ct. App. 2011).</p> <p>Wisconsin broadly defines the concept of duty. <i>Schuster v. Altenberg</i>, 144 Wis.2d 223, 424 N.W.2d 159 (1988). Therefore, a defendant is typically not precluded from liability because there is a finding that he or she had no duty. See <i>Smaxwell v. Bayard</i>, 2004 WI 101, ¶133, 274 Wis.2d 278, 682 N.W.2d 923 (determination to deny liability essentially one of public policy rather than duty).</p> <p>The plaintiff's burden for establishing duty is minimal and they must only show that the defendant's act or omission <i>may have caused foreseeable harm to someone</i>. <i>Miller v. Wal-Mart Stores, Inc.</i>, 219 Wis.2d 250, 580 N.W.2d 233 (1998) (emphasis added).</p>
Negligence Statute (comparative negligence)	Contributory negligence does not bar recovery if the contributory negligence was not greater than the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in the proportion to the amount of negligence attributed to the person recovering. Wis. Stat. § 895.045(1).
Joint and Several Liability? Yes	<p>The negligence of plaintiff shall be measured separately against each person found to be causally negligent. Wis. Stat. § 895.045(1).</p> <p>A person found to be causally negligent whose percentage of causal negligence is 51% or more shall be jointly and severally liable for the damages allowed. The liability of each person found to be causally negligent for less than 51% of the fault is limited to the percentage of the total causal negligence attributed to that person. Wis. Stat. § 895.045(1).</p>
Common Scheme or Plan	<p>If two or more persons act in accordance with a common scheme or plan that results in a third party's injury, those parties are jointly and severally liable for the damage allowed. Wis. Stat. § 895.045(2); <i>Collins v. Eli Lilly Co.</i>, 116 Wis.2d 166, 342 N.W.2d 37 (1984); <i>Kenosha Cemetery Ass'n v. Depaoli</i>, 2013 WI App 138, 351 Wis.2d 682, 840 N.W.2d 137.</p> <p>"Something more than causal negligence is required before the actions of a tortfeasor will come within the parameters of Wis. Stat. § 895.045(2). Concerted action must be proved." <i>Richards v. Badger Mut. Ins. Co.</i>, 309 Wis.2d 541, 749 N.W.2d 581 (2008).</p>

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	<p>There are three factual predicates necessary to proving concerted action: (1) there must be an explicit or tacit agreement among the parties to act in accordance with a mutually agreed upon scheme or plan. The agreement need not be expressed in words, but it may be implied and understood to exist from the conduct itself(parallel action, without more, is insufficient to show a common scheme or plan); (2) there must be mutual acts committed in furtherance of that common scheme or plan that were negligent or intentional; and (3) the tortious acts that are undertaken to accomplish the common scheme or plan must be the acts that result in damages. Wis. JI-Civil 1740; <i>Richards v. Badger Mut. Ins. Co.</i>, 309 Wis.2d 541, 749 N.W.2d 581 (2008).</p>
Assumption of the Risk	<p>While Wisconsin has abolished implied assumption of the risk as an absolute defense, a plaintiff's assumption of the risk may be considered as part of the comparative negligence analysis. <i>Kubichek v. Koteckii</i>, 332 Wis.2d 522, 796 N.W.2d 858 (Ct. App. 2011); <i>Moulas v. PBC Prods., Inc.</i>, 213 Wis.2d 406, 419, 570 N.W.2d 739 (Ct. App. 1997), <i>aff'd</i>, 217 Wis.2d 449, 576 N.W.2d 929 (1998).</p>
Dog Bite Laws	<p>The owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property. Wis. Stat. § 174.02(1)(a).</p> <p>The owner of a dog is liable for two times the full amount of damages if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal or property. Wis. Stat. § 174.02 (1)(b).</p> <p>"Owner" includes any person who owns, harbors or keeps a dog. Wis. Stat. § 174.001(5).</p> <p>In <i>Augsburger</i>, a man was found not to have been a "harborer" of his daughter's dogs when he permitted his daughter and her family to live in a house he owned while he resided elsewhere. Mere ownership of the property on which a dog resides is not sufficient to establish that an individual is an owner of a dog. Rather, the totality of the circumstances determines whether the legal owner of the property has exercised the requisite control over the property to be considered a harborer and thus an owner. <i>Augsburger v. Homestead Mut. Ins. Co.</i>, 359 Wis.2d 385, 856 N.W.2d 874 (Wis. 2014).</p>
Slip/Trip & Fall Laws	<p>A landowner's liability for injuries sustained on the landowner's property depends on the fault of the parties involved. A person injured while on the property of another doesn't automatically entitle the injured party to damages. Comparative negligence must be determined first. (See section on negligence statute above).</p>

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	<p>Wisconsin enlarged the duties of landowners when the court abolished the distinction between the duty owed by a land occupier to licensees and the duty owed to invitees. <i>Douglas v. Dewey</i>, 154 Wis.2d 451, 453 N.W.2d 500 (Ct. App. 1990).</p> <p>The duty of the owner or possessor of land toward persons who come upon property with the consent of the owner or possessor does not relate solely to defects or conditions which may be on such premises. Rather, the duty of an owner or possessor of land towards all persons who come upon property with the consent of the owner or occupier is that of ordinary care. <i>Smaxwell v. Bayard</i>, 274 Wis.2d 278, 682 N.W.2d 923 (2004) (citing <i>Shannon v. Shannon</i>, 150 Wis.2d 434, 443 (1989)).</p>
Open and Obvious Doctrine	<p>The open and obvious doctrine is a factor to consider in a comparative fault analysis. A plaintiff's negligence in confronting an open and obvious danger must be compared with any negligence on the part of the defendant landowner. <i>Hansen v. New Holland North America, Inc.</i>, 215 Wis.2d 655, 574 N.W.2d 250 (Ct. App. 1997).</p> <p>The open and obvious danger defense applies whenever a plaintiff voluntarily confronts an open and obvious condition and a reasonable person in the position of the plaintiff would recognize the condition and the risk the condition presents even where the reasonable person in position of plaintiff would not appreciate the gravity of harm threatened by the open and obvious condition. <i>Pagel v. Marcus Corp.</i>, 313 Wis.2d 78, 756 N.W.2d 447 (Ct. App. 2008) (citing Restatement (Second) of Torts § 388)).</p> <p>When the danger is open and obvious to a reasonable person, warning of what the reasonable person already knows is unnecessary, and thus, the failure to warn cannot be negligent. <i>Pagel v. Marcus Corp.</i>, 313 Wis.2d 78, 756 N.W.2d 447 (Ct. App. 2008) (citing Restatement (Second) of Torts § 388)).</p> <p>Two conditions have been recognized that preclude invoking the open and obvious danger defense: (1) if the injured person was distracted or (2) if the injured person could not avoid the condition. <i>Griebler v. Doughboy Recreational, Inc.</i>, 160 Wis.2d 547, 466 N.W.2d 897 (1991) (recognized by the court of appeals in <i>Waters v. U.S. Fid. & Guar. Co.</i>, 124 Wis.2d 275, 369 N.W.2d 755 (Ct. App. 1985); <i>Maci v. State Farm Fire & Cas. Co.</i>, 105 Wis.2d 710, 314 N.W.2d 914 (Ct. App. 1981)).</p> <p>It is the duty of every person to exercise ordinary care to recognize and appreciate all dangers that are open and obvious to them, or which should have been recognized and appreciated by a reasonably prudent person under the same or similar circumstances. The defense that the warning of the existence of danger was not seen or heard does not free one from negligence. In addition, one who looks and fails to</p>

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	see, or listens and fails to hear, a warning of danger which under like or similar circumstances would have been seen or heard by a reasonably prudent person is as guilty of negligence as one who did not look or listen at all. Wis. JI-Civil 1007.
Employer's Duty to Furnish Safe Place	<p>A higher standard is imposed on business owners via Wisconsin's Safe Place Statute Wis. Stat. § 101.11.</p> <p>It requires that employers use "processes reasonably adequate" to render the employment and place of employment safe and to do everything "reasonably necessary to protect the life, health, safety or welfare" of its employees and those that frequent the business. Every employer and owner must construct, repair or maintain the place of employment as to render it safe. Wis. Stat. § 101.11; Wis. JI-Civil 1900.02-1911. <i>Criswell v. Seaman Body Corp.</i>, 233 Wis. 606, 290 N.W. 177 (1940).</p> <p>A safe place duty is imposed upon an owner only when there is retention of a right of control beyond mere legal ownership or right of inspection. If there is no evidence that the owner retained control beyond inspection, the owner has no duty under the safe place statute. <i>Couillard v. Van Ess</i>, 141 Wis.2d 459, 415 N.W.2d 554 (Ct. App. 1987).</p>
Snow/Ice Removal Requirements	<p>In Wisconsin, the responsibility of keeping sidewalks free of snow and ice falls on the municipalities and not the homeowners. Civil liability on the part of the municipality due to snow and ice on public sidewalks is established based on whether the municipality was unreasonable in allowing the condition to continue. <i>Schattschneider v. Milwaukee & Suburban Transport Corp.</i>, 72 Wis.2d 252, 240 N.W.2d 182 (1976).</p> <p>Reasonableness factors include: the location of the snow/ice build-up, climate conditions at the time, accumulation amounts and practicality of removal, traffic, and intended use of the sidewalk. <i>Schattschneider v. Milwaukee & Suburban Transport Corp.</i>, 72 Wis.2d 252, 240 N.W.2d 182 (1976).</p> <p>A municipality is not liable for injuries sustained by reason of snow or ice accumulation unless the accumulation has existed for 3 weeks. Wis. Stat. § 893.83.</p>
Landlord/Tenant Laws	A landlord has a duty to: 1) keep a reasonable state of repair portions of the premises and equipment over which the landlord maintains control; 2) keep in a reasonable state of repair all equipment under the landlord's control necessary to supply services that the landlord has expressly or impliedly agreed to furnish to the tenant, such as water, heat, air conditioning or an elevator; 3) make all necessary structural repairs; 4) except for residential premises subject to a local housing code, and except as provided in subd. (3)(b), repair or replace any plumbing, electrical wiring, machinery, or equipment furnished with the

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	<p>premises and no longer in reasonable working condition; 5) for residential tenancy, comply with any local housing code applicable to the premises. Wis. Stat. § 704.07(2)(a).</p> <p>If the premises are part of a building, other parts of which are occupied by one or more other tenants, negligence or improper use by one tenant does not relieve the landlord from the landlord's duty as to the other tenants to make repairs. Wis. Stat. § 704.07(2)(b).</p> <p>A landlord must exercise ordinary care toward tenants and others on leased premises with permission. <i>Pagelsdorf v. Safeco Ins. Co. of America</i>, 91 Wis.2d 734, 284 N.W.2d 55 (1979); <i>Tempesta v. Scottsdale Indem. Co.</i>, 2016 U.S. Dist. LEXIS 105577 (affirming holding from <i>Pagelsdorf</i> that lack of notice does not immunize a property owner from liability)</p> <p>If the premises becomes untenable because of damage by fire, water or other casualty or a hazardous health condition, the tenant may leave the premises unless the landlord promptly repairs, rebuilds, or eliminates the health hazard, or the tenant may remove if the inconvenience to the tenant by reason of the nature and period of repair, rebuilding or elimination would impose undue hardship on the tenant. If the tenant justifiably moves out under this subsection, the tenant is not liable for rent after the premises become untenable and the landlord must repay any rent paid in advance apportioned to the period after the premises become untenable, but if the tenant remains in possession of the premises, they cannot withhold rent in full. Wis. Stat. § 704.07(4). This subsection does not apply if the damage or condition is caused by the negligence or improper use by the tenant. <i>Id.</i></p>
<p>Attractive Nuisance Laws?</p> <p>Yes.</p>	<p>In Wisconsin, causes of action for attractive nuisance arise if the injury was caused by an artificial condition on the property that the owner knew or should have known was unreasonably dangerous, especially to children, and knew or should have known it was likely that a child would trespass near the property and not discover the condition or realize its risk. Wis. Stat. § 895.529.</p>
<p>Dram Shop Liability?</p> <p>Yes.</p>	<p>A person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person. Wis. Stat. § 125.035(2). <i>Schinner v. Gundrum</i>, 349 Wis.2d 529, 833 N.W.2d 685 (2013).</p> <p>However, a person is not immune from civil liability if the person procuring, selling, dispensing or giving away alcohol beverages causes consumption by force or by representing that the beverages contain no alcohol. Additionally, a person is not immune from civil liability if the provider knew or should have known that the underage person was under the legal drinking age and if the alcohol beverage provided to the underage person was a substantial factor in causing injury to a third party. Wis. Stat. § 125.035(3) & (4)(b).</p>

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	<p>In determining whether a provider knew or should have known that the underage person was under the legal drinking age, all relevant circumstances surrounding the procuring, selling, or giving away of alcohol may be considered. Wis. Stat. § 125.035(4)(b).</p> <p>Wisconsin provides a complete defense to all civil liability if all of the following occur:</p> <ol style="list-style-type: none"> 1. The underage person falsely represents he or she is of legal drinking age; 2. The underage person supports the false representation with documentation that he or she attained legal drinking age; 3. The alcohol is provided in good faith reliance on underage person’s representation that he or she has reached legal drinking age; and 4. The appearance of underage person was such that an ordinary and prudent person would believe that he or she has attained legal drinking age. <p>Wis. Stat. § 125.035(4)(b)(1-4).</p>
<p>Social Host Liability?</p> <p>Generally, no.</p>	<p>Wis. Stat. § 125.035, which is applicable and stated in more detail in the section above, also applies in this situation. Simply put, a social host is immune from civil liability arising out of the act of dispensing or providing alcohol beverages to another person. Wis. Stat. § 125.035.</p> <p>However, this immunity does not apply if a social host: (1) causes consumption by force, (2) causes consumption by representing that the beverage does not contain alcohol or (3) knew or should have known the underage person was under the legal drinking age and that the beverage was a substantial factor in causing injury to a third party. Wis. Stat. § 125.035(3) & (4)(b).</p> <p>Section 125.07 specifically addresses alcoholic beverages and underage persons and can be applicable to social host cases. It states, in part:</p> <ol style="list-style-type: none"> 1. No person may procure for, sell, dispense, or give away any alcohol beverages to any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. 2. No licensee or permittee may sell, vend, deal or traffic in alcohol beverages to or with any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age. 3. No adult may knowingly permit or fail to take action to prevent the illegal consumption of alcohol beverages by an underage person on premises owned by the adult or under the adult’s control.

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	<p>4. No adult may intentionally encourage or contribute to an underage person who does any of the following:</p> <ul style="list-style-type: none"> • Procures or attempts to procure alcohol beverages from a licensee or permittee; • Possess or consume alcohol unless accompanied by parent/guardian/spouse who is of legal drinking age; • Enters, knowingly attempts to enter or is on premises for which a license or permit for the retail sale of alcohol beverages has been issued; • Falsely represents his or her age for the purpose of receiving alcohol beverages from a licensee or permittee; • Not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages, unless the underage person is in the course of their employment. <p>Wis. Stat. § 125.07(1)(a)(1-4).</p>
Reallocation of Uncollectible Amounts	<p>The negligence of immune and nonparty defendants should be redistributed to the remaining defendants in order to avoid requiring one defendant to “bear a liability resulting from the causal negligence attributed to the immune and nonparty defendants.” <i>Larsen v. Wisconsin Power & Light Co.</i>, 120 Wis.2d 508, 355 N.W.2d 557 (Ct. App. 1984).</p>
<p>Court approval needed for bodily injury settlement of a minor or individual adjudicated incompetent?</p> <p>Yes, and guardian must be appointed.</p>	<p>A compromise or settlement of an action or proceeding to which a minor individual adjudicated incompetent is a party may be made by the guardian, if the guardian is represented by an attorney, or the guardian ad litem with the approval of the court in which such action or proceeding is pending. Wis. Stat. § 807.10(1).</p> <p>A cause of action in favor of or against a minor or individual adjudicated incompetent, may, without the commencement of an action thereon, be settled by the guardian, if the guardian is represented by an attorney, with the approval of the court appointing the guardian, or by the guardian ad litem with the approval of any court of record. An order approving a settlement or compromise under this subsection and directing the consummation thereof shall have the same force and effect as a judgment of the court. Wis. Stat. § 807.10(2).</p>
Emotional Distress considered as Bodily Injury	<p>Wisconsin recognizes a claim for intentional infliction of emotional distress. <i>Bowen v. Lumbermens Mut. Cas. Co.</i>, 183 Wis.2d 627, 517 N.W.2d 432 (1994); Wis. JI-Civil 1510.</p> <p>A claimant for negligent infliction of emotional distress need not prove physical manifestation of severe emotional distress. <i>Musa v. Jefferson County Bank</i>, 240 Wis.2d 327, 620 N.W.2d 797 (2001).</p>

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	<p>Before one can recover for emotional distress caused by another: plaintiff must show that defendant's conduct was intentional, that is for purpose of causing emotional distress for plaintiff; that defendant's conduct was extreme and outrageous; that defendant's conduct was cause-in-fact of plaintiff's injuries and that plaintiff suffered extreme disabling emotional response to defendant's conduct. <i>Alsteen v. Gehl</i>, 21 Wis.2d 349, 124 N.W.2d 312 (1963).</p>
<p>Bystander Laws? Yes</p>	<p>In <i>Bowen</i>, three factors were identified to insure a genuine emotional claim: (1) that the victim was seriously injured, (2) that the plaintiff had a substantial personal relationship to the injured party, and (3) that the plaintiff witnessed an extraordinary event. <i>Bowen v. Lumbermens Mutual Casualty Co.</i>, 183 Wis.2d 627, 517 N.W.2d 432 (1994).</p> <p>Also in <i>Bowen</i>, it was established that a bystander may recover for negligent infliction of emotional distress if: (1) the defendant's conduct fell below the applicable standard of care; (2) the plaintiff suffered an injury (severe emotional distress; no physical manifestations necessary); (3) the defendant's conduct was a cause-in-fact of the plaintiff's injury; (4) the victim of the defendants conduct suffered a severe or fatal injury; (5) the victim and plaintiff are related as spouses, parent-child, grandparent-grandchild, or sibling; and (6) the plaintiff observed the incident and injury or the scene within minutes after the incident occurred. <i>Bowen v. Lumbermens Mutual Casualty Co.</i>, 183 Wis.2d 627, 517 N.W.2d 432 (1994).</p> <p>The court abandoned previously used zone of danger test and fear for one's safety rules. <i>Bowen v. Lumbermens Mutual Casualty Co.</i>, 183 Wis.2d 627, 517 N.W.2d 432 (1994).</p>
<p>Intra Family Immunity? No.</p>	<p>Parental-immunity rule in negligence has been abrogated except where alleged negligent act involves negligent act of parental authority over child, or where alleged negligent act involved exercise of ordinary parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care. <i>Lemmen v. Servais</i>, 39 Wis.2d 75, 158 N.W.2d 341 (1968); <i>Tesar v. Anderson</i>, 329 Wis.2d 240, 789 N.W.2d 351 (Ct. App. 2010).</p> <p>Therefore, a child or his or her parent can sue the other parent for negligence. <i>Tesar v. Anderson</i>, 329 Wis.2d 240, 789 N.W.2d 351 (Ct. App. 2010)</p>
<p>Collateral Source? Yes.</p>	<p>The collateral source rule in Wisconsin provides that the damages to be awarded to an injured person are not to be affected by the fact that the claimant received compensation from other sources, such as sick leave or insurance. <i>Cunniën v. Superior Iron Works</i>, 175 Wis. 172, 184 N.W. 767 (1921); <i>Leitinger v. DBart, Inc.</i>, 302 Wis.2d 110, 736 N.W.2d 1 (2007).</p>

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<p>Set offs? No.</p>	<p>Wisconsin applies the collateral source rule to gratuitous medical services provided or paid for by the state, such as Medicare and Medicaid. <i>Payne v. Bilco Co.</i>, 54 Wis.2d 424, 195 N.W.2d 641 (1972); <i>Koffman v. Leichtfuss</i>, 246 Wis.2d 31, 630 N.W.2d 201 (2011).</p> <p>Collateral source rule permits a plaintiff to seek recovery for the reasonable value of medical services without consideration of payments made by the plaintiff's insurer. <i>Thoreson v. Milwaukee & Suburban Transp. Corp.</i>, 56 Wis.2d 231, 201 N.W.2d 745 (1972). "The collateral source rule has never been applied to benefit a tortfeasor, and the policies that underlie the collateral source rule support its use to benefit only injured plaintiffs." <i>Estate of Kriefall v. Sizzler United States Franchise, Inc.</i>, 2012 WI 70, 342 Wis.2d 29.</p> <p>In Wisconsin, a defendant insurance company does not receive the benefit of the written-off amounts. "Where the plaintiff's health care providers settle the plaintiff's medical bills with the plaintiff's insurers at reduced rates, the collateral source rule dictates that the defendant-tortfeasor not receive the benefit of the written-off amounts." <i>Koffman v. Leichtfuss</i>, 246 Wis.2d 31, 630 N.W.2d 201 (2011); <i>Leitinger v. DBart, Inc.</i>, 302 Wis.2d 110, 736 N.W.2d 1 (2007).</p> <p>In <i>Orlowski</i>, the WI Supreme Court held that uninsured motorists making a UIM claim will be able to seek the full amount of past medical expenses, including those amounts written off by medical providers based on contractual agreements between those medical providers and health insurers. <i>Orlowski v. State Farm Mutual Automobile Ins. Co.</i>, 339 Wis.2d 1, 810 N.W.2d 775 (2012).</p> <p>Billing statements or invoices that are patient health care records are presumed to state the reasonable value of the health care services provided and the health care services provided are presumed to be reasonable and necessary to the care of the patient. Any party attempting to rebut the presumption of the reasonable value of the health care services provided may not present evidence of payments made, or benefits conferred by collateral sources. Wis. Stat. § 908.03(6m)(bm).</p>
<p>Child Support Lien Laws</p>	<p>If a person obligated to pay support fails to pay any court-ordered amount of support, that amount becomes a lien in favor of the department upon all property of the person. The lien becomes effective when the information is entered in the statewide support lien docket and that docket is delivered to the register of deeds in the county where the property is located. Wis. Stat. § 49.854(2)(a).</p>
<p>Wrongful Death and Survivorship Actions</p>	<p>In addition to the causes of action that survive at common law, all of the following also survive:</p> <ol style="list-style-type: none"> 1. Causes of action to determine paternity;

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	<ol style="list-style-type: none"> 2. Causes of action for the recovery of personal property or the unlawful withholding or conversion of personal property; 3. Causes of action for the recovery of the possession of real estate and for the unlawful withholding of the possession of real estate; 4. Causes of action for assault and battery; 5. Causes of action for false imprisonment; 6. Causes of action for invasion of privacy; 7. Causes of action for a violation of s. 968.31(2m) or other damage to the person; 8. Causes of action for all damage done to the property rights or interests of another; 9. Causes of action for goods taken and carried away; 10. Causes of action for damages done to real or personal estate; 11. Equitable actions to set aside conveyances of real estate; 12. Equitable actions to compel a reconveyance of real estate; 13. Equitable actions to quiet title to real estate; 14. Equitable actions for specific performance of contracts relating to real estate. <p>Causes of action for wrongful death shall survive the death of the wrongdoer whether or not the death of the wrongdoer occurred before or after the death of the injured person. Wis. Stat. § 895.01(1).</p> <p>Any action described above shall be prosecuted to judgment against the personal representative, the plaintiff shall be entitled to recover only for the value of the goods taken, including any unjust enrichment of the defendant, or for the damages actually sustained, without any vindictive or exemplary damages or damages for alleged outrage to the feelings of the injured party. Wis. Stat. § 895.02.</p> <p>Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death has not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death has not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state. Wis. Stat. § 895.03.</p> <p>An action for wrongful death may be brought by the personal representative of the deceased person or by the person to whom the amount recovered belongs. Wis. Stat. § 895.04(1).</p>

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	The plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or in an intentional disregard of the rights of the plaintiff. Wis. Stat. § 895.043(3).
<p>Workers' Compensation Subrogation against General Liability Policy?</p> <p>Yes</p>	<p>The making of a claim for compensation against an employer or compensation insurer for the injury or death of an employee shall not affect the right of the employee, the employee's personal representative, or other person entitled to bring action to make claim or maintain an action in tort against any other party for such injury or death . . . affect the right of the injured employee or the employee's dependents to recover compensation. An employer or compensation insurer that has paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. Wis. Stat. § 102.29(1)(a).</p> <p>The employer and compensation insurer shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel. <i>Employers Mut. Liability Ins. Co. v. Liberty Mut. Ins. Co.</i>, 131 Wis.2d 540, 388 N.W.2d 658 (Ct. App. 1986).</p> <p>In case of liability of the employer or insurer to make payment in the state treasury under section 102.49 (death benefit payments) or 102.59 (state fund payments for loss of hand, arm, foot, leg, or eye), if the injury or death was due to the actionable act, neglect or default of a third party, the employer or insurer shall have a right of action against the third party to recover the sum so paid into the state treasury . . . Contributory negligence of the employee because of whose injury or death such payment was made shall bar recovery if such negligence was greater than the negligence of the person against whom recovery is sought, and the recovery allowed the employer or insurer shall be diminished in proportion to the amount of negligence attributable to such injured or deceased employee. Wis. Stat. § 102.29(2).</p>
<p>Recreational Immunity Statute</p>	<p>No owner and no officer, employee or agent of an owner owes to any person who enters the owner's property to engage in a recreational activity:</p> <ol style="list-style-type: none"> 1. A duty to keep the property safe for recreational activities. 2. A duty to inspect the property, except as provided under § 23.115(2). 3. A duty to give warning of an unsafe condition, use or activity on the property. Wis. Stat. § 895.52(2)(a)(1-3). <p>No owner and no officer, employee or agent of an owner is liable for the death of, any injury to, or any death or injury caused by, a person engaging in a recreational activity on the owner's property or for any death or injury resulting from an attack by a wild animal. Wis. Stat. § 895.52(2)(b).</p>

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	<p>Exceptions to the above rules occur when a death or injury occurs on property owned by the state or its agencies and the owner charges admission; or a death or injury caused by a malicious act or failure to warn of known, unsafe condition occurring on property designated by the department of natural resources or by another state agency for a recreational activity. Wis. Stat. § 895.52(3).</p> <p>Additional exceptions exist where liability is not limited for a private property owner or employee or agent of a private property owner whose property is used for a recreational activity if any of the following conditions exist:</p> <ul style="list-style-type: none"> • Private owner collects money, goods or services in payment for use of the property during which the death or injury occurs, and the aggregate value of all payments received for use of land during the year exceeds \$2,000; • Death or injury is caused by the malicious failure of the private property owner or an employee or agent of the private owner to warn against an unsafe condition on the property, which owner knew; • Death or injury is caused by a malicious act of the private owner or employee or agent of private owner. • Death or injury occurs on private owner’s property to a social guest who has been expressly and individually invited by the private owner for the specific occasion during which the death or injury occurs on platted land, residential property or within 300 feet of a commercial/manufacturing building/structure. • Death or injury is sustained by an employee of a private property owner acting within the scope of his or her duties. <p>Wis. Stat. § 895.52(6).</p> <p>Except as expressly provided, there is no creation of a duty of care or ground of liability toward any person who uses another’s property for a recreational activity. Wis. Stat. § 895.52(7).</p>
<p>Summary of Wisconsin Regulatory Rules</p>	<p>This rule is to promote the fair and equitable treatment of policyholders, claimants, and insurers by defining certain claim adjustment practices which are considered to be unfair methods and practices in the business of insurance. Wis. Admin. Code Ins. § 6.11(1).</p> <p>Any of the following acts, if committed by any person without just cause and performed with such frequency as to indicate general business practice, shall constitute unfair methods and practices in the business of insurance:</p>

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	<ol style="list-style-type: none"> 1. Failure to promptly acknowledge pertinent communications regarding insurance policy claims; 2. Failure to initiate and conclude a claims investigation; 3. Failure to promptly provide necessary claims forms, instructions and reasonable assistance to insureds/claimants; 4. Failure to attempt in good faith to effectuate fair and equitable settlement of claims in which liability is clear; 5. Failure to promptly provide reasonable basis for denial of claim or offer of a compromise settlement upon request of a claimant; 6. Knowingly misrepresenting pertinent facts or policy provisions; 7. Failure to affirm or deny coverage within a reasonable time after proof of loss; 8. Failure to settle a claim under one portion of the policy in order to influence a settlement under another portion of the policy; 9. Unless otherwise provided in policy, failure to offer settlement under applicable first party coverage based on belief that responsibility for payment should be assumed by others 10. Compelling suits to be instituted by offering substantially less than amounts ultimately recovered in suit; 11. Refusing payment of claims solely based on insured's request, without making an independent evaluation; 12. Failure to make use of permitted arbitration, where appropriate; 13. Adopting or making known to insureds/claimants a policy of appealing from arbitration awards in favor of insureds to compel them to settle for less than the amount awarded in arbitration. <p>Wis. Admin. Code Ins. § 6.11(3)(a)(1-13).</p> <p>Except where a different period is specified by statute or rule, and except in good cause shown, the terms "prompt" and "promptly" are used to mean responsive action within 10 consecutive days from the receipt of communication concerning the claim. Wis. Admin. Code Ins. § 6.11(4).</p> <p>Unfair methods and practices in the business of insurance include: knowingly misrepresenting to claimants pertinent facts or policy provisions; failing to provide adequate claims handling personnel, systems and procedures to effectively service claims in Wisconsin; failing to adopt reasonable standards for investigation of claims arising under its insurance policies; violating the requirements established in § 632.85 stating that 1) if a health care plan or a self-insured health plan provides coverage of any emergency medical services, the health care plan shall provide coverage of emergency medical services that are provided in a hospital emergency facility and that are needed to evaluate or stabilize in an</p>

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	emergency medical condition and 2) a health care plan or a self-insured health plan that is required to provide coverage as stated above, may not require prior authorization for the provision or coverage of the emergency medical services. Wis. Admin. Code Ins. § 6.11(3)(b)(1-4); Wis. Stat. § 632.85(2) & (3).
Occurrence Trigger	In <i>Schinner</i> , the WI Supreme Court significantly narrowed the definition of “occurrence” in terms of triggering insurance defense and coverage obligations. The court defined occurrence by limiting the limits of an “accident” to those acts or events lacking volition, even if the resulting injury was unintended or unexpected. It is the insured’s intent to act in light of foreseeable harm rather than the insured’s subjective intention or expectation of injury that controls the “occurrence” analysis in Wisconsin. <i>Schinner v. Gundrum</i> , 349 Wis.2d 529, 833 N.W.2d 685 (2013).
Duty to Defend	<p>“In return for the premiums paid by the insured, the insurance company assumes the contractual duties of indemnification and defense for claims described in the policy . . . An insurance carrier’s duty to defend its insured in a third party suit is broader than its duty of indemnification and is predicated on allegations in a complaint which, if proved, would give rise to recovery under the terms and conditions of the insurance policy. “<i>Elliott v. Donahue</i>, 169 Wis.2d 310, 485 N.W.2d 403 (1992). In the context of liability insurance, a primary insurer generally has a duty to defend the insured. 14 Couch on Insurance § 200:35.</p> <p>The general rule is that an insurer has a duty to defend until its policy limits are exhausted, only then after the total policy limits are reached is the insurer freed from the duty to defend. <i>See St. John’s Home of Milwaukee v. Continental Cas. Co.</i>, 147 Wis.2d 764 (Ct. App. 1988).</p> <p>Wisconsin heavily favors the insured with regard to the duty to defend – any doubt is resolved in favor of the insured. <i>Wausau Tile, Inc. v. Cnty Concrete Corp.</i>, 226 Wis.2d 235, 593 N.W.2d 445 (1999).</p> <p>Wisconsin adopted the “fairly debatable” standard. A claim is fairly debatable where a genuine dispute arises over the status of the law or facts at the time the claim is tendered. <i>Madsen v. Thresmen’s Mut. Ins. Co.</i>, 149 Wis.2d 594, 439 N.W.2d 607 (Ct. App. 1989).</p> <p>An insurer that fails to provide an insured with a defense and is later held to have breached its contractual obligations can be responsible for payment of a judgment in excess of policy limits. <i>Newhouse v. Citizens Sec. Mut. Ins. Co.</i>, 176 Wis.2d 824, 501 N.W.2d 1 (Ct. App. 1993). The insured must show that he was made worse off by the breach than he would have been had the breach not occurred. Explained by the Seventh Circuit in <i>Hamlin, Inc. v. Hartford Accident and Indem. Co.</i>, 86 F.3d 93, 95 (7th Cir. 1996).</p>

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Product Liability Law	<p>In an action for damages caused by a manufactured product based on a claim of strict liability, a manufacturer is liable to a claimant if the claimant establishes all of the following by a preponderance of the evidence:</p> <ol style="list-style-type: none"> 1) That the product is defective because it contains a manufacturing defect, is defective in design, or is defective because of inadequate instructions or warnings; <ol style="list-style-type: none"> a. A product contains a manufacturing defect if the product departs from its intended design even though all possible care was exercised in the manufacturing of the product. b. A product is defective in design if the foreseeable risks of harm opposed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the manufacturer and the omission of the alternative design renders the product not reasonably safe. c. A product is defective because of inadequate instructions or warnings only if the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the manufacturer and the omission of instructions or warnings renders the product not reasonably safe. 2) That the defective condition rendered the product unreasonably dangerous to persons or property; 3) That the defective condition existed at the time of the product left the control of the manufacturer; 4) That the product reached the user or consumer without substantial change in the condition in which it was sold; 5) That the defective condition was a cause of the claimant's damages. <p>Wis. Stat. § 895.047(1)(a-e).</p> <p>A seller or distributor of a product is not liable based on a claim of strict liability unless the manufacturer would be liable under the conditions above and any of the following applies:</p> <ol style="list-style-type: none"> 1) The claimant proves by a preponderance of the evidence that the seller or distributor has contractually assumed one of the manufacturer's duties to manufacture, design, or provide warnings or instructions with respect to the product. 2) The claimant proves by a preponderance of the evidence that neither the manufacturer nor its insurer is subject to service of process within his state. 3) A court determines that the claimant would be unable to enforce a judgment against the manufacturer or its insurer.

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	<p>Defendant is not liable for damages if the product alleged to have caused the damage was manufactured 15 years or more before the claim accrues, unless the manufacturer makes a specific representation that the product will last for a period beyond 15 years. Wis. Stat. § 895.047(5). However, this section does not apply to an action based on a claim for damages caused by a latent disease.</p>
<p>Statutory Caps & Punitive Damages</p>	<p>Tort recovery for any damage, injury, or death against a government agency or its officers and employees for acts done within their official capacity is limited to \$250,000. Wis. Stat. § 893.82(6).</p> <p>Wisconsin doesn't allow for the recovery of punitive damages against any government agency or its officers and employees for acts done within their official capacity. Wis. Stat. § 893.82(6).</p> <p>When punitive damages are awarded, the amount may not exceed twice the amount of any compensatory damages recovered by the plaintiff or \$200,000, whichever is greater. Wis. Stat. § 895.043(6).</p> <p>The total noneconomic damages recoverable for bodily injury, including any action or proceeding based on contribution or indemnification and any action for a claim by a person other than the injured person for noneconomic damages recoverable for bodily injury, may not exceed \$750,000 if the accident causing injury occurred on or after April 6, 2006. Wis. Stat. § 893.55(4) (Accidents prior to April 6, 2006 are not subject to this cap).</p> <p>Damages from wrongful death suit may be awarded to any person entitled to bring a wrongful death action but cannot exceed \$500,000 per occurrence in the case of a deceased minor, or \$350,000 per occurrence in the case of a deceased adult, for loss of society and companionship may be awarded to the spouse, children or parents of the deceased, or the siblings of the deceased, if the siblings were minors at the time of the death. Wis. Stat. § 895.04(4).</p>

*****NOTICE*****

The reference materials contained in this summary have been abridged from a variety of sources and should not be construed as legal advice. Please consult legal counsel with any questions concerning this summary.