

**TESTIMONY OF MIKE CROOKS RELATIVE TO STATUTORY
INTEREST RATE LRB 3110/1 ASSEMBLY BILL 456
OFFERED ON BEHALF OF CTCW ON 08/21/03.**

The Wisconsin Supreme Court has recognized that the purpose of sec. 807.01 is to encourage pretrial settlement.¹ The court has made it equally clear, however, that sec. 807.01(4) is not intended to force a party into settlement of a suit that would more appropriately be resolved at trial.² Unfortunately, forced settlement is precisely what is occurring due to defendants' fear of the current statutory interest rate of 12%.

The 12% interest rate simply cannot be justified in today's economy. When subsection (4) first went into effect, the 12% interest rate made sense. At that time, the interest rate on a 6-month treasury bill was fluctuating around 10%.³ The 2% premium to the treasury bill rate afforded by the statute was effective in encouraging pretrial settlement without forcing it upon the defendants.

¹ Nelson v. McLaughlin, 211 Wis. 2d 487, 501, 565 N.W.2d 123, 130 (1997)

² Id.

³ Federal Reserve Statistical Release, Historical Data, Monthly Auction Average Annual Yield of a 6-month U.S. Treasury Bill (2003) at <http://www.federalreserve.gov/releases/h15/data/m/tbaa6m.txt>

However, as the economy has struggled through the burst of the dot-com bubble, numerous corporate accounting scandals, the tragedy of Sept. 11, and a war with Iraq, interest rates have plummeted. Today, the interest rate on a 6-month treasury bill stands at just 1.04%.⁴ The 12% yield under the current offer of settlement statute far exceeds that of any "safe" investment in the present-day market. Furthermore, the 12% rate of return on an offer of settlement is guaranteed if a plaintiff's recovery exceeds his statutory offer by even the slightest of amounts.

Unfortunately, the harm caused by the 12% statutory interest rate goes beyond simply forcing defendants to settle lawsuits. Because the 12% interest accrues until the amount recovered at trial is paid, it also forces defendants to forego appeals that could properly absolve them of liability. Thus, the current high rate of interest impinges upon a defendant's opportunity for vindication at both the trial and the appellate level.

One additional feature of the 12% interest rate that renders it unjust is the one-sided nature of its application. While the language of the statute neutrally speaks of a "party" that makes an offer of settlement, in reality it is only plaintiffs that can recover an amount "greater than or equal to the amount specified in the offer of settlement." It is understandable to provide this exclusive, plaintiffs-only benefit at a reasonable rate of interest in order to encourage settlement, but it is altogether unjust to offer it at an interest rate of 12%.

If Assembly Bill 456 is passed, sec. 807.01 will continue to encourage the settlement of lawsuits. However, it will do so by providing a reasonable premium for unaccepted settlement offers rather than the current excessive rate of 12%. Furthermore, unlike the original statute, the

⁴Federal Reserve Statistical Release, Selected Interest Rates (Daily) (2003) at <http://www.federalreserve.gov/Releases/H15/update/>.

amended law proposed by Bill 456 will allow the statutory interest rate to change with the times. Thus, should interest rates become excessively high or excessively low in the future, there will still be the same incentive for both plaintiffs and defendants to settle cases.

In conclusion, Bill 456 should be passed because it will provide a satisfactory incentive to settle civil cases without chilling the opportunity of defendants to vindicate their rights at the trial or appellate level.