

TO: Members, Senate Committee on Health & Human Services

FROM: Jim Hough, on behalf of
Civil Trial Counsel of Wisconsin

DATE: October 17, 2007

RE: **OPPOSITION TO SENATE BILL 138**

The Civil Trial Counsel of Wisconsin respectfully urges your opposition to Senate Bill 138 relating to allowing recovery between adult children and their parents for loss of society and companionship in wrongful death cases.

Loss of society and companionship was never part of the common law but is a creature of the legislature which has very carefully and thoughtfully limited recovery to spouses, minor siblings and minor children and their parents. Wisconsin law allows plaintiffs to be compensated for all expenses that can be measured by objective standards. For example, families can be paid for medical bills, lost wages, loss of earning capacity, funeral expenses, pain and suffering and punitive damages.

Members of the Wisconsin Legislature are being told that this legislation is necessary because, among other reasons, of a misinterpretation (by the Supreme Court) of the statute and not because of a “conscious decision” made by the Legislature. During the 1997-1998 legislative debate, the issue was openly discussed and debated. Further, the Supreme Court pointed out in *Czapinski v. St. Francis Hospital, Inc.*, 236 Wis.2d 316 (*Wis.2000*), that the Senate rejected an amendment which would have defined “child” in s.655.007 to include adult or minor child.

Loss of society and companionship is impossible to measure objectively. No amount of money can replace the joy and companionship that could have been shared with a loved one. The State of Wisconsin has, however, chosen to allow such recovery in the limited circumstances referred to above. While the entire concept of allowing recovery for loss of society and companionship is debatable, the legislature should be commended for limiting those eligible to recover. Where might we go next? (Grandparents, cousins, significant-others, close friends, associates?)

Again, we respectfully urge you to oppose this legislation and avoid encouraging additional difficult and costly litigation.

[CTCW is a statewide association of over 500 trial lawyers who engage primarily in the defense of civil litigation.]