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## Legal Liability Risk Reduction for You

*News and Updates for Sports, Fitness & Recreational Businesses*

### **Sweeping Tort Reform Bill Becomes Law in Wisconsin**

*By Alexander "Sandie" Pendleton*

On January 27<sup>th</sup>, 2011, Wisconsin Governor Scott Walker (R) signed a new law that dramatically changes numerous aspects of Wisconsin tort law. Some of these changes will benefit companies and organizations that provide sports or recreational opportunities, and/or that manufacture sports or recreational products.

Although the new law affects numerous areas of tort law in Wisconsin, the provisions that will be of most interest to recreational-opportunity providers, and manufacturers of motorized and non-motorized recreational products, include:

- A cap on punitive damages (\$200,000 or two times compensatory damages, whichever is greater).
- New rules making it easier for courts to punish parties or their attorneys for maintaining "bad faith" claims.
- A new rebuttable presumption in strict products liability cases that if a claimant was legally intoxicated, such intoxication was a cause of the claimant's injuries.
- A new statute of repose in strict products liability cases, providing that if the product that caused the injury was more than 15 years old, the claimant's case is barred (unless certain exceptions exist, such as the manufacturer represented that the product would last for more than 15 years).
- A new defense in strict products liability cases providing that if the product when sold complied with relevant state or federal standards, such creates a rebuttable presumption that the product is not defective.
- A new "inherent characteristic of the product" defense in strict products liability cases.
- A stricter standard regarding who can provide expert testimony in trials.
- Changes in the comparative negligence rules in strict products liability cases.

February 1<sup>st</sup> is the effective date of the new law (2011 Wis. Act 2). The new rules and defenses in products liability cases (especially the statute of repose and "governmental standard" changes) provide opportunities and challenges for recreational-product manufacturers, and such manufacturers should review the new law with counsel. If we can assist you in such a review, contact us.

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*(The information and views discussed in this article are for general information purposes only. An organization that has specific questions as to the effect the above development may have for it should discuss such with its attorney, or with an attorney who is familiar with this area of the law and the organization's specific operations or concerns.)*

**About Pendleton:** Alexander "Sandie" Pendleton is a shareholder with the Milwaukee law firm of Pendleton Legal, S.C. Sandie has over twenty years of experience counseling clients involved in sports and recreational activities, including power sports activities, and is a frequent speaker and writer on recreational liability issues.

**About Pendleton Legal, S.C.:** At Pendleton Legal, S.C., we continue to believe the right to the "Pursuit of Happiness" is a right worth preserving. Our S/F/R Team (Sports, Fitness & Recreation Team) guides and fights for businesses and organizations that provide recreational opportunities and products, so that our clients are not overwhelmed by liability that might otherwise threaten their continued success (or even existence). Preserving the right is often not an easy or simple task, but we know this mission is an important one to our

clients, and to the future of a free society. In addition to our S/F/R services, we provide legal expertise across the numerous areas of law encountered by businesses and organizations in the normal course of their day-to-day operations and growth. If you would like to explore whether we can help your organization achieve its mission, contact us.