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Significant Recent Wisconsin Federal Court Decisions Can you see me

Federal court interpretations of Wisconsin law are of persuasive value to, but not binding on, Wisconsin courts. Yet they affect how Wisconsin law is argued and develops. Here is a look at seven significant Wisconsin federal court decisions interpreting Wisconsin law in 2022.

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Each year, the U.S. Court of Appeals for the Seventh Circuit and Wisconsin's two federal district courts issue decisions interpreting Wisconsin statutes and common law or predicting how the Wisconsin Supreme Court would rule on unaddressed questions. Although these decisions are not binding on Wisconsin courts, they influence how Wisconsin law develops.

This article reviews seven recent federal decisions interpreting and applying Wisconsin statutes and common law relating to the economic loss doctrine, product liability, defamation, worker's compensation, contracts, franchises and dealerships, and corporate commissions.

Top 7 Recent Wisconsin Federal Court Decisions

Click on the links below to jump to a section and read summaries of the decisions.

Tort Law

1. Economic Loss Doctrine

Taizhou Yuanda Investment Group Co. v. Z Outdoor Living LLC

Issue: Could a manufacturer bring tort claims against vendors who failed to pay for products they had ordered when the manufacturer alleged it devoted resources to manufacturing additional products based on the vendors' misrepresentations that they would pay?

Holding: These tort claims are not allowed; the alleged misrepresentations did not trigger the fraudulent-inducement exception to Wisconsin's economic loss doctrine because they were interwoven with, rather than extraneous to, existing contracts.

2. Product Liability

Burton v. American Cyanamid Co.

Issue: Did a court's ruling that defendants had no duty to warn apply to plaintiffs not named in cases in which the court made this ruling?

Holding: The balance of factors weighed in favor of applying issue preclusion to these plaintiffs and therefore a grant of summary judgment in the defendants' favor on the plaintiffs' failure-to-warn claims.

Defamation

3. Judicial-Proceedings Privilege

Financial Fiduciaries LLC v. Gannett Co.

Issue: Did a publisher defame a trustee by reporting on unproven allegations in an action brought by trust beneficiaries to remove the trustee for violation of fiduciary duties?

Holding: A newspaper's actions in summarizing proceedings and reporting on allegations in the pleadings fit within Wisconsin's judicial-proceedings privilege and thus the privilege protects the publisher from libel actions.

Worker's Compensation

4. Exclusive Remedy Provision

Estate of de Ruiz v. ConAgra Foods Packaged Foods LLC

Issue: Was the tort claim of an estate against the employer of the decedent's spouse barred by the exclusive-remedy provision of Wisconsin's Worker's Compensation Act?

Holding: The estate's claim was not barred because Wisconsin courts likely would adopt the position that the provision bars a nonemployee's claims only when the nonemployee's injury completely depends on the employee's injuries.

Contract Law

5. Quasi-contract and Fraudulent Inducement

Putzmeister America Inc. v. Pompaction Inc.

Issue: Were the defendant's counterclaims viable in the plaintiff's suit for nonpayment under a distribution agreement?

Holding: The defendant's quantum meruit-unjust enrichment counterclaim failed because quasi-contractual theories of relief do not apply when an enforceable contract exists. The fraudulent-inducement counterclaim failed because the defendant did not plead the facts with sufficient particularity.

Business Law

6. Motor Vehicle Dealer Law

River States Truck & Trailer Inc. v. Daimler Vans USA LLC

Issue: Did the market-withdrawal exception to liability for improper dealership termination under Wisconsin's Motor Vehicle Dealer Law apply where the manufacturer discontinued sales of one brand of Sprinter vans but continued selling another brand of the same vehicle?

Holding: A narrow definition of "line-make" supported applicability of the market-withdrawal exception, and the defendants did not improperly terminate dealerships under the Motor Vehicle Dealer Law.

7. Failure to Pay Commissions

R.L. Mlazgar Associates Inc. v. Spring City Electrical Manufacturing Co.

Issue: Did a sales-contract assignee have a viable cause of action for unpaid commissions against the assignor's contractual counterparty, which manufactured the goods to be sold?

Holding: A choice-of-law clause designating Pennsylvania law precluded claims under Wisconsin law for sales pursuant to the assigned contract, butthe plaintiff had viable claims under Wisconsin's commissions statute for sales under a separate contract between the plaintiff and the manufacturer.

Economic Loss Doctrine – Fraudulent Inducement Exception

The Seventh Circuit examined two claimed exceptions to Wisconsin's economic loss doctrine in *Taizhou Yuanda Investment Group Co. v. Z Outdoor Living LLC.*[1] Chinese-based manufacturer Taizhou filed breach of contract, fraud, and conversion claims against Wisconsin-based vendors who failed to pay for outdoor furniture ordered pursuant to production deals. Taizhou justified its assertion of tort claims by arguing that 1) the "fraud in the inducement" exception to the economic loss doctrine applied because Taizhou only continued to fulfill orders for the defendants because they repeatedly misled Taizhou about payment for prior orders,

and 2) some of Taizhou's manufacturing costs were not economic losses to which the doctrine applies. The U.S. District Court for the Western District of Wisconsin dismissed Taizhou's tort claims after rejecting these arguments, and, for the reasons discussed below, the Seventh Circuit affirmed.

The Seventh Circuit began with the general proposition that "[u]nder Wisconsin law … the economic loss doctrine bars recovery in tort for economic losses sustained from a contractual dispute."[2] Citing the Wisconsin Supreme Court's decision in *Kaloti Enterprises Inc. v. Kellogg Sales Co.*,[3] the Seventh Circuit then explained that "the economic loss doctrine does not bar tort recovery related to a fraudulently induced contract" and that to trigger this exception, the purchase orders allegedly secured by fraud must constitute "a new, separate contract (or contracts) because the fraud must be extraneous to an existing contract, rather than interwoven with it, to be actionable as a tort."[4] The Seventh Circuit further explained that "the critical distinction between fraud that is interwoven with a contract as opposed to extraneous to the contract is whether one would expect for the matter over which the fraud occurred to be dealt with in the contract."[5]

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Applying this framework, the Seventh Circuit held that Taizhou's complaint failed to trigger the fraud-in-the-inducement exception. Taizhou's complaint made clear that the purchase orders were continuations of performance under existing agreements and therefore not extraneous to them. And the nonpayment of which Taizhou complained "was so salient a risk that one would expect it to have been dealt with in the contract."[6]

The Seventh Circuit further held that Taizhou's devotion of additional manufacturing capacity and procurement of additional raw materials were "clear economic losses under Wisconsin law."[7] Quoting the Wisconsin Supreme Court's decisions in *Kaloti* and *Wausau Tile Inc. v. County Concrete Corp.*,[8] the Seventh Circuit explained that "economic loss" includes both "recovery as a result of failing to live up to a contracting party's expectations" and "lost business and profits."[9] Taizhou's alleged losses could be categorized as either or both, and thus the alleged losses constituted economic losses subject to the doctrine.

Product Liability – Duty to Warn and Issue Preclusion

The latest episode in a long-running white-lead-carbonate litigation, *Burton v. American Cyanamid Co.*,[10] required the U.S. District Court for the Eastern District of Wisconsin to determine whether the law-of-the-case doctrine and issue preclusion necessitated dismissal of claims of more than 150 plaintiffs. The court had previously granted summary judgment dismissing negligence claims based on a finding that manufacturers of white lead carbonate had no duty to warn the plaintiffs of the dangers of lead-based paint, because by the time the plaintiffs were living in their homes in the 1990s and early 2000s, the public was aware of those dangers.[11] The court had denied summary judgment on the plaintiffs' strict-liability claims, concluding that the relevant period for consumer knowledge for those claims was 1910-1947 and that there was a genuine issue of material fact regarding consumer knowledge during that period.[12] The Seventh Circuit reversed that ruling, holding the relevant period for consumer knowledge was the same for strict liability and negligence.

On remand, the district court declined to reconsider its ruling that public knowledge in the 1990s and early 2000s freed the defendants of a duty to warn. The district court then turned to the question of how that ruling, in light of the Seventh Circuit's decision, affected the remaining plaintiffs' claims. After first concluding the federal law-of-the-case doctrine required dismissal of all negligence and strict-liability claims of plaintiffs named in the cases in which the court made its initial ruling that there was no duty to warn,[13] the district court addressed whether issue preclusion dictated the same result for plaintiffs arguably not bound by law of the case. Because it was sitting in diversity, the district court analyzed the issue-preclusion question under Wisconsin law.[14]

The district court discussed Wisconsin's two-step analysis in issue-preclusion situations. The court explained that when a party seeks to apply issue preclusion against a person who was not a formal party to the prior action, the first step requires the court to determine whether the issue was actually litigated and determined by a valid judgment, whether the determination was essential to the judgment, and whether the person was in privity with or had sufficient identity of interest with a party to the previous action such that applying issue preclusion would comport with due process.[15]

The district court said that each of these requirements was satisfied. The district court predicted that the Wisconsin Supreme Court would hold that the plaintiffs in question, who shared the same counsel and litigation strategy, had sufficient identity of interest for issue preclusion to comport with due process.[16] This prediction was based in part on the supreme court's agreement with the Wisconsin Court of Appeals' ruling in *Jensen v. Milwaukee County Mutual Insurance Co.*,[17] which applied issue preclusion to sequential auto accident litigation in which the second plaintiff was the first plaintiff's wife.

Addressing the second step in the process, the court enumerated the five nonexclusive factors Wisconsin courts evaluate to determine if application of issue preclusion would be fundamentally fair: 1) availability of review, 2) whether an issue is a question of law involving two distinct claims or intervening contextual shifts in the law, 3) whether the quality of the proceedings warrants relitigation, 4) whether burdens of persuasion shifted between proceedings, and 5) whether matters of public policy or individual circumstances make application of issue preclusion fundamentally unfair.[18]

Of these five factors, the court found that only the first "nominally favor[ed]" the plaintiffs because they could not force the prior

plaintiffs to appeal the adverse summary-judgment ruling.[19] Given that all plaintiffs had the same counsel and were "engaged in coordinated litigation," however, the court had no doubt that if any plaintiff determined there were grounds for appeal, the prior plaintiffs would file an appeal.

The court then found that all other factors favored the defense, noting in relation to the fifth factor that the prior plaintiffs had every opportunity to adduce evidence sufficient to defeat summary judgment and the court had put all plaintiffs on notice that decisions on common questions of law or fact would have preclusive effect across all related cases.[20] Applying issue preclusion was thus fundamentally fair, and the district court ordered entry of summary judgment in the defendants' favor on the plaintiffs' failure-to-warn claims.[21]

Defamation – Judicial Proceedings Privilege

Financial Fiduciaries LLC v. Gannett Co.[22] involved a defamation claim against a newspaper publisher for reporting on judicial proceedings in which trust beneficiaries successfully removed a trustee for violation of fiduciary duties. The trustee claimed the newspaper article falsely stated and implied numerous facts, including that the trustee committed criminal acts of fraud, theft, or embezzlement. The Western District court found that the trustee failed to state a claim as to all but one allegedly defamatory statement: an implication of elder abuse derived from the inclusion of a related hyperlink in the online version of the story. The district court later entered judgment also dismissing this part of the trustee's claim, finding the implication to be substantially true.

Among other issues, the Seventh Circuit analyzed whether 1) the article implied that the trustee committed criminal acts, 2) Wisconsin's judicial-proceedings privilege insulated the publisher from liability, and 3) the implication that elder abuse had occurred was substantially true. The court laid the foundation of its analysis by relating the Wisconsin common-law requirements that "a defamation plaintiff must show that the defendant (1) published (2) a false, (3) defamatory, and (4) unprivileged statement … [that] need not be a direct affirmation, but may also be an implication."[23] Noting that the trustee bore the burden of proof on the issue of falsity, the court found that the trustee's allegations of implied criminality fell short. The article stated that the trustee was *accused* of wrongful acts and prefaced its discussion with qualifying clauses that identified allegations as such, leading the court to find the statements in the article to be substantially true.[24]

The court then turned to the judicial-proceedings privilege, which traces its statutory roots to the 19th century. Now codified as Wis. Stat. section 895.05(1), the privilege shelters a publisher from libel actions based on "a true and fair report of any judicial … proceeding … or of any public statement, speech, argument or debate in the course of such proceeding." The parties disputed whether the privilege applies to reporting of unproven allegations.

The trustee relied on a statement in *Ilsley v. Sentinel Co.*,[25] a 1907 Wisconsin Supreme Court case interpreting the 1898 version of the privilege statute, for the proposition that the public has no right to know "that A charges B with unworthy or criminal conduct," which is "mere gossip or scandal." The Seventh Circuit rejected this quotation as out of context, noting that *Ilsley* later clarified that the public has a right to know what the courts do, which "cannot be intelligibly reported without stating the charges and issues upon which the court's action is based."[26]

The Seventh Circuit found that *Ilsley* permits newspapers to summarize proceedings and report on allegations in the pleadings, so long as the reporting declares them for what they are: accusations subject to judicial review. Based on its reading of *Ilsley*, the court held that the article about the trust proceedings fell "comfortably within the judicial-proceedings privilege" because the publisher "was careful to describe the allegations as such, not as facts, and the article provided [the trustee's] own views throughout."[27]

The Seventh Circuit concluded its discussion of the merits by turning from analysis of historical jurisprudence to the contemporary question of whether a hyperlink in the sidebar of an online article can support a defamation claim. The Seventh Circuit agreed with the district court that, even if hyperlinked content implied the trustee committed elder abuse, the plaintiff could not meet the burden of proving falsity.[28]

The Seventh Circuit also found that an alternative basis for affirming summary judgment was that the implication of elder abuse was not reasonably drawn from the words of the article. The court observed that "related" hyperlinks are common and "[r]eaders understand that the connection between the content of a webpage and 'related' hyperlinks is attenuated."[29]

Worker's Compensation Act – Subsequent Injury

The Eastern District court examined employer liability for pathogen exposure in *Estate of de Ruiz v. ConAgra Foods Packaged Foods LLC*.[30] An employee of ConAgra Foods allegedly contracted COVID-19 while working and later transmitted the virus to his wife at home, leading to her death. The employee and the estate asserted wrongful death and survival claims against ConAgra, which moved to dismiss the claims as barred by Wisconsin's Worker's Compensation Act, Wis. Stat. chapter 102.[31]

Turning first to the employee's wrongful death claim, the district court found that the Act's exclusive-remedy provision applied because the allegations in the complaint "present an unbroken causal chain from [the employee]'s workplace injury to the damages he allegedly suffered because of his wife's death."[32] Each of the statutory conditions was present,[33] so it was irrelevant that the employee's alleged damages related to the death of a person who was not an employee of ConAgra Foods.

In contrast, the district court found that the Act's exclusivity conditions did not apply to the estate's survival action because the decedent was not a ConAgra employee. Wisconsin courts have long held that the exclusive-remedy provision is not limited to

claims by employees. The Wisconsin Supreme Court has held that when a nonemployee party incurs damages deriving from a workplace injury, such as for loss of society and companionship, the Act bars claims to recover such damages.[34] The district court explained, however, that no Wisconsin case has answered the legal question in this case: whether the Act "bars a tort action against an employer for a non-employee's injury that derives in fact from, but does not depend on, an employee's workplace injury."[35]

After discussing case law from other jurisdictions, the district court concluded that Wisconsin courts would likely adopt the position that the Act bars a nonemployee's claims only when the injury is "completely dependent upon the employee's injuries." The court held the Act did not bar the estate's survival action because the nonemployee spouse's death from COVID-19 was "an event caused by, but not legally or logically dependent on, [the employee]'s infection."[36]

ConAgra also argued that the survival action failed because ConAgra owed no duty of care to the nonemployee spouse. The court found that ConAgra had a duty to use reasonable care to prevent individuals from getting and spreading coronavirus but asked for additional briefing on whether Wisconsin public policy would bar recovery.[37]

Contract Law – Quasi-Contract and Fraudulent Inducement

In *Putzmeister America Inc. v. Pompaction Inc.*,[38] the Eastern District court discussed Wisconsin law on quasi-contractual causes of action and fraudulent inducement in the context of a cross-border dispute between a manufacturer of concrete pumping equipment and its former distributor. After being sued by Putzmeister for nonpayment under the parties' distribution agreement, Pompaction asserted counterclaims including "quantum meruit/unjust enrichment" and fraudulent inducement. Pompaction pleaded the former in the alternative to its breach-of-contract counterclaims, alleging it had conferred benefits for which it deserved compensation.

The fraud claim arose out of allegations that Putzmeister induced Pompaction to settle a dispute with false representations that 1) a customer had not been instructed to buy Putzmeister equipment only from Pompaction and 2) Putzmeister would keep Pompaction as a dealer. Putzmeister moved to dismiss the counterclaims.

Addressing Pompaction's "quantum meruit/unjust enrichment" counterclaim, the court first noted that quantum meruit and unjust enrichment are distinct claims having different elements of proof and measures of damages.[39] The distinction was ultimately irrelevant because under Wisconsin law "both unjust enrichment and quantum meruit are quasi-contractual theories of relief that do not apply when the parties' relationship is governed by an enforceable contract."[40] The court found that each benefit Pompaction claimed to have conferred on Putzmeister occurred in connection with an enforceable contract, and thus recovery under any quasi-contractual claim was barred.

Turning to Pompaction's fraudulent inducement claim, the court held it failed for two reasons. First, Pompaction did not allege the "who," "where," or "how" of the alleged fraud because it did not identify the individuals who made the representations nor whether the representations were oral or written. Second, Pompaction failed to allege facts showing that Putzmeister knew its statements were false when made. Pompaction alleged Putzmeister broke its promise to keep Pompaction as a dealer but not that it knew, at the time it made the representation, that it would terminate the dealership. Citing the Wisconsin Supreme Court's decision in *Hartwig v. Bitter*,[41] the district court explained that "unfulfilled promises or statements of future events cannot serve as a basis for a fraud claim." The district court thus dismissed Pompaction's fraudulent inducement claim but granted Pompaction leave to replead.[42]

Wisconsin Motor Vehicle Dealer Law

In another recent opinion addressing a dealership dispute, the Western District court evaluated dueling interpretations of Wisconsin's Motor Vehicle Dealer Law (MVDL). The plaintiff in *River States Truck & Trailer Inc. v. Daimler Vans USA LLC*[43] sold Freightliner-branded Sprinter vans manufactured by a Mercedes-Benz affiliate until the manufacturer decided to discontinue Freightliner Sprinters and sell only Mercedes-Benz-branded Sprinters. After rejecting Mercedes' offer to compensate it for the lost Freightliner business, River States requested two Mercedes-Benz Sprinter franchises. Mercedes declined the request, and River States then sued the U.S. distributors of the Freightliner and Mercedes-Benz Sprinters.

River States alleged that the defendants violated Wis. Stat. section 218.0116(1)(i) by canceling Freightliner Sprinter franchises without "just provocation" and refusing to grant Mercedes-Benz Sprinter franchises. The defendants moved for summary judgment on the ground that they had complied with the statutory requirements for market withdrawal of a motor vehicle line-make, exempting them from liability. River States argued that the line-make was Sprinter vans generally, not Freightliner Sprinters, and therefore that the defendants did not qualify for the market-withdrawal exception.

The MVDL does not define the term "line-make," so the court examined the parties' dealer agreements, analogous case law, and industry standards to decide whether the relevant line-make was Sprinters or Freightliner Sprinters. The court first found that because the parties' dealer agreements granted valid franchises under the MVDL limited to Freightliner Sprinters, Freightliner Sprinters must be the relevant line-make under the statute.[44] The court also noted that the dealer agreements did not allow River States to sell Mercedes-Benz Sprinters, whereas if the line-make were Sprinters generally, River States would have had the statutory right to sell Mercedes-Benz Sprinters. The parties' contracts thus designated Freightliner Sprinters as the line-make under the statute.

The court found support from other jurisdictions for the defendants' narrower definition of line-make; these included decisions from a federal court in Tennessee and an administrative body in Ohio specifically dismissing claims relating to Freightliner-branded Sprinters.[45] The court also cited industry evidence and definitions from other states' statutes supporting a definition of line-make based on branding rather than on vehicle characteristics.[46]

Finally, the court rejected River States' arguments that common distribution management, availability of different styles and specifications, or use of the Freightliner brand name compelled a finding that Sprinter must be the relevant line-make.[47] Based on its conclusion that the relevant line-make was Freightliner Sprinters, the court granted the defendants' motion for summary judgment.

Wisconsin Commissions Statute

In *R. L. Mlazgar Associates Inc. v. Spring City Electrical Manufacturing Co.*,[48] the Eastern District court addressed the viability of a claim pleaded under the Wisconsin statute[49] that provides a cause of action for independent sales representatives to recover commissions that their principal fails to pay (hereinafter the commissions statute). Plaintiff R.L. Mlazgar Associates, an electric-lighting-equipment seller, claimed entitlement to commissions due under a contract between its predecessor and the defendant, a lighting product manufacturer. The defendant, Spring City Electrical, moved to dismiss. Spring City Electrical argued that 1) Mlazgar lacked standing due to an anti-assignment clause in the contract, 2) the commissions statute did not apply to Mlazgar's contract-related claims, and 3) Mlazgar's quasi-contractual theories failed because of the contract.

The court first determined that Mlazgar properly alleged standing to sue under the contract because the amended complaint contained allegations supporting the theory that Spring City ratified the assignment to Mlazgar. Spring City argued that because the contract was governed by Pennsylvania law, Mlazgar's claims under the Wisconsin commissions statute failed. The court agreed regarding three commissions Mlazgar claimed were owed on sales initiated before the assignment. Because Mlazgar alleged in the amended complaint that it was entitled to these three commissions as an assignee, the court disregarded Mlazgar's inconsistent argument that it was entitled to the commissions under a separate sales contract with Spring City.

Mlazgar also alleged entitlement to three other commissions owed under a separate contract with Spring City, which contained no choice-of-law clause precluding application of the Wisconsin commissions statute. The district court found that Mlazgar's allegations as to two of these commissions were sufficient to state claims under Wis. Stat. section 134.93. Allegations relating to the third commission were insufficient to state a claim under Wis. Stat. section 134.93 because there was no allegation that a sale was completed or that Mlazgar earned a commission from it.

Finally, as in *Putzmeister*, the court dismissed the plaintiff's combined unjust enrichment and quantum meruit cause of action. The court again noted that they are distinct causes of action and that neither applies when the parties have a contract. Because Mlazgar's entitlement to payment allegedly stemmed from two contracts, the court concluded that Mlazgar failed to state a claim for either unjust enrichment or quantum meruit.[50]

Meet Our Contributors

What is one of the most challenging cases you've faced?

One of my most challenging cases was a contract dispute in which our firm represented a legally unsophisticated service provider against an adversary whose principal had no qualms about lying under oath. Separating fact from fiction was often difficult and trial seemed inevitable, but eventually our investigation and marshalling of opposing witnesses led to the lies unraveling. A favorable settlement quickly followed.

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Endnotes

1 44 F.4th 629 (7th 2022).

2 *Id.* at 632.

3 2005 WI 111, 283 Wis. 2d 555, 699 N.W.2d 205.

4 *Taizhou*, 44 F.4th at 632.

5 Id. at 633 (citing *Schreiber Foods Inc. v. Lei Wang*, 651 F.3d 678, 682 (7th Cir. 2011)).

6 *Id.*

7 *Id.* at 634

7 *Id.* at 654.

8 226 Wis. 2d 235, 593 N.W.2d 445 (1999).

9 *Taizhou*, 44 F.4th at 634.

10 588 F. Supp. 3d 890 (E.D. Wis. 2022).

11 *Id.* at 896 (citing *Strasser v. Transtech Mobile Fleet Servs. Inc.*, 2000 WI 87, ¶ 58, 236 Wis. 2d 435, 613 N.W.2d 142).

12 *Id.*

13 *Id.* at 902-05.

14 *Id.* at 905.

15 *Id.* at 905-06.

16 *Id.* at 907-08.

17 204 Wis. 2d 231, 554 N.W.2d 232 (Ct. App. 1996).

18 *Burton*,588 F. Supp. 3d at 908.

19 *Id.*

20 *Id.* at 909.

21 *Id.* at 910. The *Burton* plaintiffs filed a notice of appeal on Sept. 15, 2022.

22 46 F.4th 654 (7th Cir. 2022).

23 *Id.* at 665 (citing *Torgerson v. Journal/Sentinel Inc.*, 210 Wis. 2d 524, 534, 563 N.W.2d 472 (1997)).

24 *Id.* at 666.

25 133 Wis. 20, 113 N.W. 425 (1907).

26 *Financial Fiduciaries LLC*, 46 F.4th at 666.

27 *Id.*

28 *Id.* at 668.

29 *Id.*

30 No. 21-CV-387-SCD, 2022 WL 1448696 (E.D. Wis. May 3, 2022).

31 Wis. Stat. ch. 102.

32 *Estate of de Ruiz*, 2022 WL 1448696, at *3.

33 The five conditions for employer liability under the Act are the following: 1) The employee sustained an injury. 2) At the time of the injury, both the employer and the employee were subject to the Act. 3) At the time of the injury, the employee was performing service growing out of and incidental to the employment. 4) The injury was not intentionally self-inflicted. 5) The “accident or disease causing injury” arose out of the employment. Wis. Stat. § 102.03(1).

34 *Estate of de Ruiz*, 2022 WL 1448696, at *4 (citing *Guse v. A.O. Smith Corp.*, 260 Wis. 403, 406, 51 N.W.2d 24 (1952), and *Grede Foundries Inc. v. Price Erecting Co.*, 38 Wis. 2d 502, 505, 157 N.W.2d 559 (1968)).

35 *Id.* at *6.

36 *Id.* at *8.

37 *Id.* at *10.

38 586 F. Supp. 3d 868 (E.D. Wis. 2022).

39 *Id.* at 881. The Wisconsin Supreme Court explained the differences between the two causes of action in *Ramsey v. Ellis*, 168 Wis. 2d 779, 785, 484 N.W.2d 331 (1992): “While recovery for unjust enrichment is based upon the inequity of allowing the defendant to retain a benefit without paying for it, recovery in quantum meruit is based upon an implied contract to pay reasonable compensation for services rendered. No contract is implied in an action for unjust enrichment. Accordingly, damages in an unjust enrichment claim are measured by the benefit conferred upon the defendant, while damages in a quantum meruit claim are measured by the reasonable value of the plaintiff’s services.”

40 *Putzmeister*, 586 F. Supp. 3d at 881 (citing *Carroll v. Stryker Corp.*, 658 F.3d 675, 682 (7th Cir. 2011) (applying Wisconsin law) and *Lindquist Ford Inc. v. Middleton Motors Inc.*, 557 F.3d 469, 476 (7th Cir. 2009) (same)).

41 29 Wis. 2d 653, 656, 139 N.W.2d 644 (1966).

42 *Putzmeister*, 586 F. Supp. 3d at 883-84.

43 No. 20-cv-1089-jdp, 2022 WL 1618780 (W.D. Wis. May 23, 2022).

44 *Id.* at *4.

45 *Id.* at *6.

46 *Id.* at *7-8.

47 *Id.* at *8-9.

48 588 F. Supp. 3d 883 (E.D. Wis. 2022).

49 Wis. Stat. § 134.93.

50 *R. L. Mlazgar*, 588 F. Supp. 3d at 890.

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