SUMMARY
This article reviews six significant Wisconsin federal court decisions from 2023 interpreting Wisconsin law. The decisions touch on a variety of subjects: personal jurisdiction, legal causation, bad faith, claim preclusion, contractual liability limitations, and exclusive remedies.

BY DANIEL A. MANNA

Significant Recent Wisconsin Federal Court Decisions

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 six significant Wisconsin federal court decisions interpreting Wisconsin law in 2023.

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 six recent federal decisions[1] interpreting and applying Wisconsin statutes and common law relating to, among other issues, personal jurisdiction, legal causation, bad faith, claim preclusion, contractual liability limitations, and exclusive remedies.

Personal Jurisdiction, Causation, Aiding and Abetting & Conspiracy

The Seventh Circuit Court of Appeals addressed a host of issues under Wisconsin law in *Webber v. Armslist LLC*,[2] an appeal of two cases in which the plaintiffs alleged an online firearms marketplace was liable in tort for deaths involving firearms sold on the website.

The court began by resolving an internal district court split regarding personal jurisdiction over the individual owner of the limited liability company (LLC) that operated the website. One district judge concluded the court lacked personal jurisdiction because there was no indication the owner or the LLC, both based in Pennsylvania, specifically targeted Wisconsin.

Another district judge found that Wisconsin's long-arm statute conferred jurisdiction because the owner engaged in "[s]olicitation or service activities … within this state[.]"[3] After noting that Wisconsin law permits personal jurisdiction over a corporate officer if the corporation's contacts with the state "existed by virtue of the officer's control," the Seventh Circuit held that the plaintiffs' allegations did not meet this standard.[4]

The plaintiffs alleged the owner designed the website so it could be accessed in Wisconsin, but "failed to plead that in designing the website, [the owner] anticipated receiving a financial benefit from users in Wisconsin because he made the decision to solicit business" there.[5] The plaintiffs therefore did not allege an act or omission within the state or solicitation or service activities by the owner "that would bring him within the grasp of Wisconsin's long-arm statute."[6]

The court began its substantive analysis of the plaintiffs' negligence claims, summarizing Wisconsin negligence law with a focus on causation, noting that "[l]egal cause under Wisconsin law has two components: cause-in-fact and public policy factors."[7]

After listing the six public policy factors Wisconsin courts consider when deciding whether to limit liability, the court highlighted two aspects of Wisconsin case law that would inform its analysis: 1) when conducting the public policy analysis, Wisconsin courts "tread carefully when it comes to subject matters that are 'highly regulated by the legislature'"; and 2) although the better practice often is to submit the case to the jury before conducting the public policy analysis, the analysis may be appropriate before trial "where the policy questions are fully presented and the facts are easily ascertainable."[8]

The court observed that many of the plaintiffs' negligence allegations tracked three categories of statutory requirements imposed on firearms dealers under Wisconsin's handgun sales statute and related regulations.[9]

Because Armslist was not a firearms dealer, the court held that it would "directly contravene the Wisconsin's legislature's judgments" to permit tort liability against Armslist for failure to abide by requirements imposed only on dealers.[10] To the extent the plaintiffs' negligence claims were based upon such allegations, those claims failed as a matter of law.

The court next identified three categories of negligence allegations that were not in tension with Wisconsin's handgun statute or regulations: Armslist failed to 1) properly monitor and address high-volume sellers, 2) enable users to flag illegal activity, and 3) provide information regarding applicable firearms laws.[11]

Having explained that cause-in-fact "requir[es] an unbroken sequence of events connecting the negligent act and the injury,"[12] the court found that the high-volume seller claim failed "due to a break in the chain of causation." The plaintiff asserting the claim failed to plead any facts to show that the buyer was prohibited from purchasing firearms or that different procedures at Armslist would have prevented him from buying a gun.[13] The court further found that the other two categories of allegations failed to adequately plead causation because the plaintiffs failed to plausibly plead that the deaths would not have occurred but for Armslist's alleged omissions.[14]

The court concluded its negligence analysis with a discussion of two public policy factors: whether recovery is "too wholly out of proportion to the culpability of the negligent tort-feasor" and whether allowing recovery would "enter a field that has no sensible or just stopping point."[15] It held that the "disproportionate liability" factor precluded liability on all allegations within the three categories of conduct regulated by statute, since even the private seller involved in the transaction had no such obligations. This would "place liability on an actor one step removed from [the seller], and circumvent legislative judgment."[16]

The court similarly concluded the "no sensible stopping point" factor precluded liability for conduct regulated by statute, both because expanding liability counter to legislative enactments is problematic and because allowing liability would eliminate the distinction between firearms dealers and exempt entities.[17]

Based upon its conclusion that the plaintiffs had failed to state a negligence claim, the court summarily disposed of the plaintiffs' public nuisance, wrongful death, survivorship, and loss of consortium claims because each required a showing of negligence to succeed.[18] This left two remaining, non-derivative claims: aiding and abetting and civil conspiracy.

A person is liable for aiding and abetting a tort if the person 1) undertakes conduct that as a matter of objective fact aids another in the commission of an unlawful act and 2) consciously desires or intends that the conduct will yield such assistance.[19]

The district court dismissed this claim for failure to sufficiently allege intent, and the Seventh Circuit agreed. Allegations that Armslist made design and content choices "which made the transfer of firearms to the criminal market an inevitable and major part of the commerce on Armslist.com" were "[a]t most … consistent with both an intent to aid and abet and mere presence." Finding that Armslist's actions were more likely explained by the latter, the Seventh Circuit affirmed dismissal because "the failure to prevent unlawful conduct is alone insufficient to state a claim for aiding and abetting."[20]

Turning finally to the civil conspiracy claim, the court noted that "there must be intentional participation" in the conspiracy for liability to exist and "mere knowledge, acquiescence or approval of a plan, without cooperation or agreement to cooperate, is not enough[.]"[21]

The court concluded that the plaintiffs pled facts consistent with cooperation in furtherance of an unlawful purpose, but that were also compatible with (and more readily explained by) "mere acquiescence." Because "an obvious alternative explanation for Armslist LLC's conduct is that it designed its website to permit private sales consistent with Wisconsin law," the plaintiffs "failed to move their complaints over the line from conceivable to plausible."[22]

Insurance – Bad Faith

In *Daniels v. United Healthcare Services Inc.*,[23] the Seventh Circuit was asked to decide whether Wisconsin law permits a bad faith claim against a third-party claims administrator with no contractual relationship with the insured.

The Danielses sued United HealthCare, claims administrator for the South Milwaukee School District's self-funded plan, after United HealthCare denied coverage for continued treatment after the Danielses' daughter (also a plaintiff) had a mental health emergency.[24]

The district court dismissed the Danielses' breach of contract and bad faith claims because the Danielses were not in privity with United HealthCare, then dismissed a statutory interest claim on the basis that the statute only applies to insurers.

On appeal, the Danielses argued that Wisconsin law permitted bad faith claims against third-party claims administrators under the Wisconsin Supreme Court's 1984 decision in *Lueck v. Aetna Life Insurance Co.*,[25] even though that decision had been reversed

Daniel A. Manna, Columbia 2008, is a partner at Gass Turek LLC, Milwaukee, focusing in complex commercial litigation. Access the digital article at www.wisbar.org.wl.
manna@gassturek.com.

Top 6 Recent Wisconsin Federal Court Decisions

Tort Law

1 Personal Jurisdiction and Negligence
Webber v. Armslist LLC

Issues: 1) Did the Wisconsin court have personal jurisdiction over the individual owner of a limited liability company that operated a website? 2) Could an online firearms marketplace be held liable in a personal-injury suit based on negligence, aiding and abetting, and civil conspiracy claims for listing guns that were used to kill individuals?

Holdings: 1) The court did not have personal jurisdiction over the individual because the plaintiffs did not allege any act or omission within Wisconsin or solicitation or service activities by the individual that would bring the individual within Wisconsin's long-arm statute. 2) Breaks in the chain of causation, public policy factors, and insufficient pleading precluded subjecting the online firearms marketplace to liability.

Insurance Law

2 Bad Faith
Daniels v. United Healthcare Services Inc.

Issue: Does Wisconsin law permit a bad faith claim against a third-party claims administrator with whom the insured did not have a contractual relationship?

Holding: The plaintiffs' bad faith claim against the third party is not tenable under either Wisconsin insurance-law cases or Wisconsin worker's compensation law.

Constitutional Law

3 Civil Procedure
Adams Outdoor Advertising Limited Partnership v. City of Madison

Issue: Was a First Amendment challenge to a municipal ordinance precluded by a stipulated judgment the parties entered after an earlier lawsuit?

Holding: Claim preclusion applied despite the fact that the earlier lawsuit focused on takings and inverse-condemnation causes of action rather than on the First Amendment and despite changes in First Amendment law since the earlier lawsuit was filed.

Insurance Law

4 Judicial Review
Meier v. Wadena Insurance Co.

Issue: Could an insured defeat the result of a contractual appraisal process by filing suit in federal court and asserting breach of contract and bad faith claims against the insurer?

Holdings: The breach of contract claim failed because the insured did not allege that the insurer failed to adhere to its obligations under the policy, and because there was no breach, there could be no bad faith. There were no other bases to invalidate the appraisal award.

Contract Law

5 Liability Limitations
Dental Health Products Inc. v. Sunshine Cleaning General Services Inc.

Issue: Was a cleaning-services company that failed to provide products because of pandemic-related supply chain issues liable for the plaintiff customer's lost profits?

Holding: Two contractual provisions – a liability limitation and a force majeure clause – precluded the plaintiff's claim for lost profits.

6 Exclusive Remedies
Cox v. Medical College of Wisconsin Inc.
Issue: Were the plaintiff physicians' defamation and other tort claims against their former employer and other medical professionals barred by exclusive remedy provisions under Wisconsin law?

Holding: One state-law claim was subject to the medical malpractice statute's exclusive remedy provision but the other state-law claims were not barred by that provision or by Wisconsin's Worker's Compensation Act. **WL**

by the U.S. Supreme Court on other grounds and ignored by the Wisconsin Supreme Court in the intervening years. The Danielses also argued Wisconsin worker's compensation jurisprudence supported their bad faith claim.

First addressing *Lueck*, the Seventh Circuit surveyed Wisconsin bad faith case law and found that aside from *Lueck*, every Wisconsin Supreme Court decision addressing first- and third-party bad faith claims limited such claims to parties in privity with the defendant, often emphasizing the importance of that relationship.

The court further concluded that *Lueck* does not represent current Wisconsin law, having been cited only twice since its reversal (once in dissent and once merely acknowledging the reversal), and never in the last 30 years.[26] After reviewing cases in which the Wisconsin Supreme Court "examined the tort of bad faith ... in painstaking detail" and finding *Lueck* completely absent from this "museum of Wisconsin bad faith law," the Seventh Circuit declined "to resurrect *Lueck* as controlling law."[27]

The court next analyzed whether Wisconsin worker's compensation law supports bad faith claims against third-party claims administrators. The

Danielses argued that the Wisconsin Supreme Court's decision in *Aslakson v. Gallagher Bassett Services*[28] showed their bad faith claim should survive because that case permitted a bad faith claim to proceed against a third-party claims administrator hired by the Wisconsin Uninsured Employers Fund.

The Seventh Circuit disagreed, citing the Wisconsin Supreme Court's reasoning in earlier cases that the worker's compensation context is different because under the statutory scheme, "the injured employee and the insurance carrier occupy relative positions which are analogous to the [standard contractual] insurer-insured relationship[.]"[29]

This context, plus the distinctive factual circumstances present in *Aslakson* (including the Fund's sovereign immunity), led the Seventh Circuit to conclude that the reasoning in *Aslakson* was not transferrable to other contexts and did not salvage the Danielses' bad faith claim against United HealthCare.[30]

Claim Preclusion

The Seventh Circuit discussed Wisconsin claim preclusion law in the context of a First Amendment challenge in *Adams Outdoor Advertising Limited Partnership v. City of Madison*.[31] Adams owned and operated numerous billboards in the city of Madison, which has a sign-control ordinance that comprehensively regulates billboards.

Litigation between Adams or its predecessor and the city had been ebbing and flowing for decades before Adams filed a First Amendment challenge to the ordinance just before the city passed an amendment in 2017. In addition to arguing that the suit failed on its merits, the city argued that a 1993 stipulated judgment in a state court lawsuit attacking the ordinance precluded Adams's challenge. The district court agreed, ruling that the 1993 judgment precluded the suit in all respects except one: Adams's challenge to a ban on digital displays was not precluded because the ban did not exist in 1993.

The Seventh Circuit began its de novo review by applying Wisconsin preclusion law, noting "we apply the preclusion law of the state that rendered the judgment."[32] The court listed the three elements of a claim preclusion defense: 1) an identity of the parties or their privies in the prior and present lawsuits, 2) a final judgment on the merits in the prior action, and 3) an identity of the causes of action in the two suits.[33]

Only the third element was in dispute. On this element, Wisconsin follows the "transactional approach," under which "all claims arising out of one transaction or factual situation are treated as being part of a single cause of action and they are required to be litigated together."[34]

Adams argued the third element was not satisfied because the earlier lawsuit focused mostly on takings and inverse-condemnation causes of action seeking compensation for or relocation of billboards. The Seventh Circuit rejected this argument because 1) it did not matter whether Adams actually litigated a First Amendment challenge, only that it could have; and 2) Adams did plead First Amendment and equal-protection claims in the earlier lawsuit.[35]

Adams also argued that claim preclusion did not apply because Wisconsin recognizes an exception for declaratory judgments, and the earlier lawsuit sought a declaratory judgment that the city had taken property and the ordinance was unconstitutional. This argument failed because the declaratory-judgment exception "operates only if the plaintiff seeks solely declaratory relief in the first proceeding" and the prior lawsuit requested injunctive relief in the form of an order requiring inverse-condemnation proceedings.[36]

Finally, Adams argued it would be manifestly unfair to apply claim preclusion because First Amendment law had changed dramatically since the earlier lawsuit was filed. The court rejected this argument as well, explaining that 1) the premise was wrong because billboard law had not changed much; and 2) unlike issue preclusion, there is no "fairness" element to claim preclusion under Wisconsin law.[37] The court further explained that "exceptions to the doctrine of claim preclusion are rare" and the Wisconsin Supreme Court has not recognized an exception based upon an intervening change in the law, nor would it likely do so if given the opportunity.[38]

Insurance – Judicial Review of Contractual Appraisal Award

In *Meier v. Wadena Insurance Co.*,[39] the U.S. District Court for the Eastern District of Wisconsin discussed the limited role courts play in reviewing contractual appraisal awards under Wisconsin law. The case arose after a fire damaged the Hartland Inn and its owner, Meier, filed an insurance claim under her policy with Wadena Insurance Co.

The policy required Wadena to pay the "actual cash value" of the property up to a limit. The policy also provided for an appraisal process if the parties disagreed on the amount of loss, which Meier invoked after Wadena declined to pay the coverage limit.[40]

Meier filed suit before the appraisal process was complete, asserting breach of contract and bad faith claims and asking for a declaration that use of the "broad evidence rule" is illegal under Wisconsin law. Under the broad evidence rule, parties are entitled to introduce evidence of every fact and circumstance that would logically tend to the formation of a correct estimate of the loss.[41] Meier argued that use of the rule was improper because it allowed Wadena to consider evidence other than the cost of replacement less depreciation, such as the property's assessed value, sales approach value, and other value calculations.

Meier's first suit was dismissed as premature, with the court also declaring that Wisconsin law "neither prohibits nor requires" use of the broad evidence rule.[42] The appraisal process

proceeded, with each party choosing an appraiser and the appraisers selecting a third appraiser as an umpire. The appraisers disagreed as to the value and submitted their opinions to the umpire, who settled on an amount to which Wadena's appraiser agreed.

Meier's appraiser disagreed with the other two appraisers' use of the broad evidence rule and refused to sign off on the umpire's appraised amount.[43] Meier again filed suit, asserting the same two claims on the theory that use of the broad evidence rule to determine actual cash value is impermissible under Wisconsin law.

The district court dismissed Meier's claims, characterizing them as "an improper effort to sidestep the binding appraisal process required by the Wadena policy."[44] Quoting extensively from the Wisconsin Supreme Court's decision in *Farmers Automobile Insurance Association v. Union Pacific Railroad Co.*,[45] the district court explained that appraisal awards are "presumptively valid" and courts have a duty to enforce the parties' agreement and "only limited power to review appraisal awards." It was not the court's job "to determine whether the third party experts accurately valued the item," but rather to determine "whether the third party experts understood and carried out the contractually assigned task."[46]

Applying these principles to Meier's breach of contract claim, the court held that she failed to plausibly allege that Wadena failed to adhere to its obligations under the policy. Meier's argument that Wadena, through its appraiser and the umpire, breached the contract by applying the broad evidence rule, was "untenable" because Wadena did what the policy required.[47] The contract "did not obligate Wadena to police the panel," nor did it prohibit use of the broad evidence rule.[48] Because Meier agreed to submit disputes over actual cash value into a binding appraisal process and Wadena complied with that process, the court dismissed her breach of contract claim. That dismissal also compelled dismissal of her bad faith claim, which required a breach by the insurer.[49]

The court concluded by addressing whether, irrespective of Meier's causes of action, there was a basis to invalidate the appraisal award. The presumption of validity can be overcome by "a showing of fraud, bad faith, a material mistake, or a lack of understanding or completion of the contractually assigned task."[50] Meier argued for the last exception, claiming Wadena's appraiser and the umpire misunderstood their contractually assigned task to determine Hartland Inn's actual cash value. The court disagreed, noting that "actual cash value is exactly what the appraisal award purports to calculate."[51] Likening different methods of calculating actual cash value to different methods of calculating body fat, the court explained that in such situations, mathematical certainty is unattainable and different methodologies are not necessarily "wrong." Again quoting *Farmers*, the district court noted that "[u]ltimately, the greater danger in reviewing appraisal awards is not an unjust award, but litigants second-guessing an award obtained as a result of a process to which they agreed."[52]

Contract Law – Liability Limitations

Faced with a COVID-related contract dispute in *Dental Health Products Inc. v. Sunshine Cleaning General Services Inc.*,[53] the Eastern District analyzed the scope and enforceability of a contractual limitation on consequential damages, as well as the issue of force majeure applicability.

Dental Health Products (DHP) sued Sunshine Cleaning after Sunshine failed to provide medical gloves under the parties' contract due to pandemic-related supply chain issues at Sunshine's supplier, Global Group Funding.[54] DHP sought over $17 million in lost profits allegedly caused by Sunshine's failure to deliver.

Sunshine moved for summary judgment on the grounds that 1) the contract's liability limitation precluded DHP's sole damages claim (lost profits), and 2) the force majeure clause excused Sunshine's breach. The first argument was based upon a clause stating that neither party would be liable for "incidental, indirect, special, or

consequential damages[.]"[55] DHP countered that its lost profits were direct, rather than consequential, damages and even if they were consequential, the liability limitation was unenforceable.

Citing the definition of consequential damages in the Uniform Commercial Code[56] and the Wisconsin Supreme Court's characterization of lost profits as "consequential economic loss" in *Daanen & Janssen Inc. v. Cedarapids Inc.*,[57] the district court held that DHP's lost profits were consequential damages subject to the contractual liability limitation.

The court distinguished the case from *Reid Hospital & Health Care Services Inc. v. Conifer Revenue Cycle Solutions LLC*,[58] in which the Seventh Circuit described the definition of consequential damages as "elusive, ambiguous, and equivocal," and explained that the distinction between direct and consequential damages "is not absolute, but relative."[59]

Although *Reid* involved a nearly identical damages exclusion, it was decided under Indiana law and dealt with a contract for billing and revenue collection, not sale of goods. The Seventh Circuit remanded for further record development because under such a contract lost revenue could be the direct result of a breach.[60]

The district court also rejected DHP's two unenforceability arguments, holding that the liability limitation neither frustrated the essential purpose of the contract nor met the standard for unconscionability. Remedy limitations do not cause the contract to fail of its essential purpose so long as they "provide at least a fair quantum of remedy for breach of obligations."[61]

The court held DHP had that fair quantum because it could seek a full refund of the purchase price (which it obtained) and recovery of the difference between the market price at the time of delivery and the contract price. The court further found the liability limitation was the product of negotiation between sophisticated parties represented by counsel, so there was "no reason to reject the parties' allocation of risk" and therefore no basis for a finding of unconscionability.[62]

The court concluded by finding that the *force majeure* clause in the parties' contract also justified judgment in favor of Sunshine. The plain language of the clause, which excused performance for both "inability to obtain supplies" and "pandemic," freed Sunshine from liability.[63] The court found this language to be unambiguous, but noted in dicta that even if it were ambiguous Sunshine would still prevail because the contract would be interpreted against DHP as the principal drafter.[64]

Exclusive Statutory Remedies – Worker's Compensation & Medical Malpractice

In *Cox v. Medical College of Wisconsin Inc.*,[65] the Eastern District analyzed, among numerous other issues of state and federal law, whether the exclusive remedy provisions in Wisconsin's Worker's Compensation Act and medical malpractice statute precluded two physicians' defamation and other tort claims against their former employer and other medical professionals.

The plaintiff physicians alleged that they were falsely accused of child abuse after seeking treatment for an accidental injury to an infant they were caring for as "pre-adoptive parents."[66] Despite opinions from various physicians that the infant's injuries did not suggest child abuse, the accusation and an alleged misdiagnosis from a nurse practitioner led to various negative consequences for the plaintiffs, including termination of the adoption process, criminal charges against one of the plaintiffs, and child protective services (CPS) involvement with the plaintiffs' two other children.[67]

The plaintiffs asserted Wisconsin-law claims for civil conspiracy, defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and tortious interference against their employer, a related hospital, other medical practitioners, and employees of CPS.

Before addressing the merits of these claims, the court evaluated whether the correct conditions existed for the Worker's Compensation Act to be "the exclusive remedy against the employer [or] any other employee of the same employer[.]"[68]

In order for the exclusive remedy provision to apply, a plaintiff must have been "performing services growing out of and incidental to his employment at the time of injury," and the court agreed with the plaintiffs that this condition was not met.[69] The court found that although the injuries occurred in the plaintiffs' place of work, they were not acting within the scope of their employment as physicians, were not "on the clock," and "had no duty to be at the hospital at that time."[70] The WCA therefore did not bar the plaintiffs' state-law claims.

The court similarly concluded that all but one of the plaintiffs' state-law claims survived a challenge under Wisconsin's medical malpractice statute.[71] The statute provides that "any patient or the patient's representative having a claim … [or] a derivative claim for injury or death on account of malpractice is subject to this chapter," meaning it "constitutes the exclusive procedure and remedy for medical malpractice in Wisconsin."[72]

The Wisconsin Supreme Court has held that the statute applies only to negligent medical acts,[73] so the district court limited its discussion to negligent infliction of emotional distress (NIED) (all other state-law claims alleged intentional conduct). Relying primarily on the Wisconsin Supreme Court's opinion in *Phelps v. Physicians Insurance Co. of Wisconsin Inc.*,[74] the district court explained that the medical malpractice statute allows only "the claims of patients and the derivative claims of specified relatives," and because the plaintiffs' direct NIED claim was neither,

it "is not recognized by Wisconsin law."[75]

The court later addressed whether tortious interference with an adoption agreement is a cognizable claim under Wisconsin law, an issue for which the court found no analogous case.[76] Noting that Wisconsin's recognition of the tort is based upon the adoption of Restatement (Second) of Torts § 766, the court found that since there is only one type of contract explicitly excepted from that section (a contract to marry), under the principle of *expressio unius est exclusion alterius*, there was no reason to conclude the claim cannot be raised in the adoption context.[77] **WL**

ENDNOTES

[1]Cases chosen were argued during the 2022 September Term, following the calendar of the U.S. Court of Appeals for the Seventh Circuit. "In the Seventh Circuit the court regularly hears cases from early in September until the middle of June. This 10-month period comprises the September Term of the court. It is divided into the September, January and April Sessions. On rare occasions emergency matters and death penalty appeals are heard while the court is in recess." *Practitioner's Handbook for Appeals to the U.S. Court of Appeals for the Seventh Circuit* (2020 Edition).

[2]70 F.4th 945 (7th Cir. 2023).

[3]Wis. Stat. § 801.05(4)(a).

[4]*Webber*, 70 F.4th at 954.

[5]*Id.*

[6]*Id.*

[7]*Id.* at 958.

[8]*Id.* at 959.

[9]*Id.* at 959-61.

[10]*Id.* at 961. While this resembles a finding that non-dealers have no duty to abide by statutory requirements imposed on dealers, the court reached this conclusion within its public policy analysis, which is "inexorably tied to legal cause in Wisconsin[.]" *Id.* at 958 (quoting *Fandrey v. American Fam. Mut. Ins. Co.*, 2004 WI 62, ¶ 15, 272 Wis. 2d 46, 680 N.W.2d 345).

[11]*Id.* at 962.

[12]*Id.* (quoting *Hoida Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶ 46 n.19, 291 Wis. 2d 283, 717 N.W.2d 17).

[13]*Id.* at 963.

[14]*Id.*

[15]*Id.* at 958, 964.

[16]*Id.* at 964 (citing *Stephenson v. Universal Metrics Inc.*, 2002 WI 30, 251 Wis. 2d 171, 641 N.W.2d 158).

[17]*Id.* at 965.

[18]*Id.*

[19]*Id.* at 966 (quoting *Tensfeldt v. Haberman*, 2009 WI 77, ¶ 26 n.12, 319 Wis. 2d 329, 768 N.W.2d 641).

[20]*Id.*

[21]*Id.* at 967 (quoting *Coopman v. State Farm Fire & Cas. Co.*, 179 Wis. 2d 548, 557, 508 N.W.2d 610 (Ct. App. 1993)).

[22]*Id.*

[23]___F.4th ___, No. 22-2210, 2023 WL 4556762, at *1 (7th Cir. July 17, 2023).

[24]*Id.* at *1.

[25]116 Wis. 2d 559, 342 N.W.2d 699 (1984).

[26]*Daniels*, 2023 WL 4556762, at *7.

[27]*Id.*

[28]2007 WI 39, 300 Wis. 2d 92, 729 N.W.2d 712.

[29]*Daniels*, 2023 WL 4556762, at *9-*10.

[30]*Id.* at *10. The court also affirmed dismissal of the Danielses' statutory interest claim because the statute did not apply to United HealthCare and dismissal of a punitive damages "claim" because punitive damages are a remedy, not a cause of action. *Id.* (citing *Brown v. Maxey*, 124 Wis. 2d 426, 431, 369 N.W.2d 677 (1985) ("We stress that punitive damages are in the nature of a remedy and should not be confused with the concept of a cause of action.")).

[31]56 F.4th 1111 (7th Cir. 2023).

[32]*Id.* at 1117.

[33]*Id.* (citing *Teske v. Wilson Mut. Ins. Co.*, 2019 WI 62, ¶ 25, 387 Wis. 2d 213, 928 N.W.2d 555).

[34]*Id.* (citing *Teske*, 2019 WI 62, ¶ 31, 387 Wis. 2d 213, and the Restatement (Second) of Judgments § 24 (1982)).

[35]*Id.*

[36]*Id.* at 1118 (quoting *Stericycle Inc. v. City of Delavan*, 120 F.3d 657, 659 (7th Cir. 1997) (applying Wisconsin preclusion law)).

[37]*Id.* (citing *Kruckenberg v. Harvey*, 2005 WI 43, ¶ 52, 279 Wis. 2d 520, 694 N.W.2d 879 ("Fairness is an element in the doctrine of issue preclusion, but this court has not adopted fairness as a factor in the doctrine of claim preclusion.")).

[38]*Id.*

[39]___ F. Supp. 3d ___, No. 23-cv-0158-bhl, 2023 WL 3821346 (E.D. Wis. June 5, 2023).

[40]*Id.* at *1-*2.

[41]*Id.* at *1 (citing *Thorne v. Member Select Ins. Co.*, 882 F.3d 642, 646 (7th Cir. 2018)); *see also Doelger & Kirsten Inc. v. National Union Fire Ins. Co.*, 42 Wis. 2d 518, 167 N.W.2d 198, 200 (1969) (adopting this statement of the rule in Wisconsin).

[42]*Id.* at *2 (quoting *Meier v. Wadena Ins. Co.*, No. 20-cv-1025-bhl, 2021 WL 3679614, at *3 (E.D. Wis. Aug. 19, 2021)).

[43]*Id.*

[44]*Id.* at *3.

[45]2009 WI 73, 319 Wis. 2d 52, 768 N.W.2d 596.

[46]*Meier*, 2023 WL 3821346, at *3.

[47]*Id.* at *4.

[48]*Id.* at *4-*5.

[49]*Id.* at *5 (citing *Brethorst v. Allstate Prop. & Cas. Ins. Co.*, 2011 WI 41, 334 Wis. 2d 23, 798 N.W.2d 467).

[50]*Id.* (citing *Farmers*, 2009 WI 73, ¶ 44, 319 Wis. 2d 52).

[51]*Id.*

[52]*Id.* (quoting *Farmers*, 2009 WI 73, ¶ 45, 319 Wis. 2d 52).

[53]___ F. Supp. 3d. ___, No. 21-C-1358, 2023 WL 2163495 (E.D. Wis. Feb. 22, 2023).

[54]*Id.* at *1-*2. DHP named Global as a defendant alongside Sunshine, but Global had previously been dismissed for lack of personal jurisdiction.

[55]*Id.* at *4.

[56]Wis. Stat. § 402.715(2).

[57]216 Wis. 2d 395, 401, 573 N.W.2d 842 (1998).

[58]8 F.4th 642 (7th Cir. 2021).

[59]*Id.* at 648.

[60]*Id.* at 649.

[61]*Dental Health*, 2023 WL 2163495, at *5 (quoting *Southern Fin. Grp. LLC v. McFarland State Bank*, 763 F.3d 735, 739 (7th Cir. 2014) (discussing Wisconsin law)).

[62]*Id.* at *6.

[63]*Id.* at *7.

[64]*Id.* (quoting *Seitzinger v. Community Health Network*, 2004 WI 28, ¶ 22, 270 Wis. 2d 1, 676 N.W.2d 426).

[65]___ F. Supp. 3d ___, No. 22-CV-553-JPS-JPS, 2023 WL 199216 (E.D. Wis. Jan. 17, 2023).

[66]The term "pre-adoptive parents" refers to "a period prior to formal, official adoption, required by Wisconsin law." *Id.* at *1.

[67]*Id.* at *1-*7.

[68]*Id* at *34; Wis. Stat. § 102.03(2).

[69]*Cox*, 2023 WL 199216, at *35.

[70]*Id.* (citing *Jenson v. Employers Mut. Cas. Co.*, 161 Wis. 2d 253, 270-71, 468 N.W.2d 1 (1991)).

[71]Wis. Stat. ch. 655.

[72]*Id.* at *36 (quoting *Andruss v. Divine Savior Healthcare Inc.*, 2022 WI 27, ¶ 26, 401 Wis. 2d 368, 973 N.W.2d 435).

[73]*McEvoy v. Group Health Co-op. of Eau Claire*, 213 Wis. 2d 507, 530, 570 N.W.2d 397 (1997).

[74]2009 WI 74, 319 Wis. 2d 1, 768 N.W.2d 615.

[75]*Cox*, 2023 WL 199216, at *36-*37 (internal quotation omitted).

[76]*Id.* at *40.

[77]*Id.* at *41. **WL**