Marquette Law Review

Volume 58
Issue 2 *1975 (Number 2)*

Article 3

Civil Procedure

Mark S. Young

TERM OF THE WISCONSIN SUPREME COURT (AUGUST, 1973 — AUGUST, 1974)

CIVIL PROCEDURE

I. PRE-TRIAL

A. Jurisdiction

Since the landmark decision of *Pennoyer v. Neff*[1] the power of state courts to extend jurisdiction to non-resident corporate defendants has been expanded considerably. The critical threshold determination of whether the particular facts and circumstances provide an adequate basis for personal jurisdiction turns on the question of whether the transaction has the necessary qualitative relationship to the forum state. In Wisconsin, such jurisdiction is acquired by satisfying the requisites under Wisconsin Statute section 262.05 and also by satisfying the constitutional requirements of due process. Wisconsin has established a method for evaluating the importance of jurisdictional contacts in relation to the due process requirements.[2] In the recent Wisconsin Supreme Court decision of *Afram v. Balfour, Maclaine, Inc.*[3] the court was presented with precisely such a jurisdictional determination.

The controversy in the *Afram* case arose from the circumstances surrounding a transaction in the silver futures market. The plaintiff-respondent Afram was a speculator in the metal exchanges and a Wisconsin resident. He maintained margin accounts with two corporations operating as commodity brokers. One account was held with the defendant-appellant Balfour, Maclaine, Inc. (hereinafter Balfour), a New York corporation with its principal place of business in New York City, and a member of the Commodity Exchange, Inc. The other account was with Maclaine, Watson & Co., Ltd. (hereinafter Watson), whose office was in London and participated in the London Metal Exchange. By reason of agreement between the two corporations, Afram was able

1. 95 U.S. 714 (1877).

2. Zerbel v. H. L. Federman & Co., 48 Wis. 2d 54, 65, 179 N.W.2d 872, 878 (1970); Nagel v. Crain Cutter Co., 50 Wis. 2d 638, 648, 184 N.W.2d 876, 881 (1971).

3. 63 Wis. 2d 702, 218 N.W.2d 288 (1974).

to use the services of Balfour to communicate to Watson for placing orders on the London exchange.

On February 5, 1969, Afram telephoned Balfour to place an order with Watson for the sale of 40,000 Troy ounces of silver at 209 pence per Troy ounce. This was completed, and the sale was set for September 5, 1969. Afram wired Balfour on June 19, 1969 to purchase enough silver, which was then 163.5 pence per Troy ounce, to cover the upcoming sale. Balfour claimed that the order on February 5 was a purchase and not a sale, and therefore refused to make this recent requested purchase. Due to this failure of Balfour to purchase at the lower price, Afram claimed he had lost $17,950 that he would have otherwise made. On July 20, 1970 Balfour was served with process in New York City. In its answer, Balfour contested the jurisdiction of the Wisconsin court over its person.

At a hearing on the issue of jurisdiction, the plaintiff based personal jurisdiction on Wisconsin's long-arm statute sections 262.05(1)(d) and 262.05(5).[4] The trial court judge found for the plaintiff and noted specifically that section 262.05(5)(a) was satisfied. Balfour appealed, and the supreme court reversed.

Preliminarily, the court stated that the trial court had erred in

4. WIS. STAT. § 262.05(1)(d) and (5) (1971) provides:

A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 262.06 under any of the following circumstances:

(1) LOCAL PRESENCE OR STATUS. In any action whether arising within or without this state, against a defendant who when the action is commenced:

. . .

(d) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, or otherwise.

. . .

(5) LOCAL SERVICES, GOODS, OR CONTRACTS. In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

(c) Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value, or

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on his order or direction; or

(e) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

assigning the burden of proof on the jurisdiction question to the defendant. The burden of proof on the jurisdiction question must always be carried by the plaintiff. However, the supreme court would not reverse on that ground because to do so would have been unfair to Balfour. Balfour had correctly raised the objection to jurisdiction throughout, and to reverse on the error of the burden of proof would not go to the merits of this objection. Therefore, the supreme court proceeded to deal directly with the issue of personal jurisdiction over the non-resident defendant.

The court found that the facts and circumstances of *Afram* were insufficient to meet any of the provisions of section 262.05 upon which the plaintiff based his claim.

The facts were disputed as to Balfour's business activities in Wisconsin. This was a result of the plaintiff's failure to assume the burden of proof, and the trial judge's failure to make findings of fact. Due to these disputed facts, and the undisputed evidence that at the time the action was commenced, Balfour had no customers in Wisconsin, the court found that Afram had failed to prove that jurisdiction could be asserted under 262.05(1)(d).

In respect to jurisdiction under 262.05(5), the court pointed to what it termed the "salient facts."

> The New York brokerage house of Balfour was not the contracting party in the disputed telephone conversation of February 5, 1969. Its only function was to relay the order to Watson, the London broker. The written confirmation of the transaction came in this case, as it routinely did, not from Balfour in New York, but from Watson in London, in a form that specified that the only parties to the agreement were Watson and Afram. Proceeds or deficits were to be paid only by those parties. The record shows that Watson sent checks in pounds sterling directly to Afram until Afram requested as a convenience that the conversion to dollars be made for him by Balfour. Although there was some evidence that in some cases the transaction in London was immediately confirmed by Balfour to Afram, there was no proof of that in this instance.[5]

Personal jurisdiction under section 262.05(5) is based upon a substantial relationship between the transaction and the forum state.[6] Thus, in the *Afram* case, because the transaction was essentially one between Afram and Watson, with Balfour merely a convenient

5. 63 Wis. 2d at 708, 218 N.W.2d at 292.
6. *Id.* at 709, 218 N.W.2d at 292.

transmittal agent, Balfour actually had no consequential relationship to the transaction. Therefore, the plaintiff had presented a situation in which as between he and the defendant there was no transaction from which his claim arose with a statutorily substantial relationship to Wisconsin.

After examining the facts, 262.05(5)(a) was not applicable because the transaction did not contemplate Balfour either performing services within Wisconsin or paying for services performed in Wisconsin. Section 262.05(5)(b) was equally inapplicable in that neither Afram nor Balfour actually performed services in Wisconsin for the other. Sections 262.05(5)(c), (d), and (e) also failed to be satisfied because no goods, documents of title, or other things of value were promised to be delivered or actually delivered to or from Wisconsin by either the plaintiff or the defendant to the other.

The importance of Afram rests upon its effect on the application of the two-step test for personal jurisdiction over a nonresident defendant. The first step is satisfaction of the long-arm statute, while the second step is satisfaction of constitutional due process requirements through the process of evaluation of jurisdictional contacts adopted in *Zerbel v. H. L. Federman & Co.*[7] and *Nagel v. Crain Cutter Co.*[8] In *Zerbel*, Wisconsin's jurisdiction was found duly exercised after satisfaction of the statute and appraisal of the jurisdictional contacts to meet due process. In *Nagel*, although the court found the statute was not satisfied, it nevertheless dealt with the question of sufficient contacts to satisfy due process requirements in support of its conclusion. The court in *Afram* held that the jurisdictional contact evaluation was totally unnecessary because the plaintiff had failed to establish jurisdiction under section 262.05.

The *Afram* court was prompted to make this statement in respect to the interplay between the long-arm statute and due process requirements:

> While we have adopted a methodology of appraising jurisdictional contacts (citation omitted) such analysis is unnecessary here. The standards set by sec. 262.05, Stats., if met, prima facie meet the constitutional demands of *Pennoyer v. Neff* (1877)(citation omitted) and *International Shoe Co. v. Washington* (1945), 326 U.S. 310, 66 Sup.Ct. 154, 90 L.Ed. 95. If the transaction has the necessary qualitative relationship to the forum as spelled out

7. 48 Wis. 2d 54, 179 N.W.2d 872 (1970).
8. 50 Wis. 2d 638, 184 N.W.2d 876 (1971).

> in the various subsections of sec. 262.05, the constitutional objection is prima facie at least surmounted. What is listed are situations or transactions in which it is not unfair or a denial of due process to extend Wisconsin's long-arm of jurisdiction to a non-resident defendant.[9]

Thus, *Aframe* further clarifies the jurisdictional test by demonstrating that the jurisdictional contacts evaluation is only necessary when section 262.05 is first satisfied, and thus, was not necessary to the disposition in *Nagel*.

In a broader sense, the *Aframe* case also provided an opportunity for the supreme court to apply the jurisdictional doctrines to a set of facts not previously presented for such a determination. "Each case arising under the statute poses a problem of statutory construction within the constitutional framework and its application to the factual background of each individual case."[10] Such opportunities are essential in jurisdictional analysis to aid in establishing the factual limit at which jurisdiction may be established. Among the "salient facts" noted by the court, Balfour's status as a mere transmittal agent, with the only mutual obligations existing between other parties, appears to be an important factor in the court's analysis within section 262.05. Thus, *Aframe*, in demonstrating a limitation on the reach of Wisconsin's long-arm statute, offers valuable guidance as to what the supreme court will consider as significant facts in determining the issue of personal jurisdiction over a non-resident defendant.

B. Parties

The difficult problem of compulsory party joinder was the subject of controversy in the recent case of *Heifetz v. Johnson*.[11] The result was a landmark decision of procedural law by the Supreme Court of Wisconsin.

Plaintiff-respondent Heifetz suffered personal injury in an automobile collision caused by the defendant-appellant's negligence. Plaintiff's insurer, Heritage Mutual Insurance Company, paid $2,000 toward plaintiff's medical expenses and in return received a "subrogation receipt and assignment." Suit was commenced against the defendant and her insurer nine days before the statute of limitations had run. Plaintiff did not join Heritage as a party

9. 63 Wis. 2d at 713, 218 N.W.2d at 294.
10. Zerbel v. H. L. Federman & Co., 48 Wis. 2d 54, 60, 179 N.W.2d 872, 875 (1970).
11. 61 Wis. 2d 111, 211 N.W.2d 834 (1973).

plaintiff or reduce his claim by the $2,000 he had already received. In a motion for summary judgment the defendant contended that Heritage was an indispensable party and that failure to join Heritage was thus ineffective to toll the running of the statue of limitations. The trial court denied the motion for summary judgment.

The supreme court chose to deal with this controversy in terms of two issues:

> (1) Did the failure of the plaintiffs to join a necessary or indispensable party within the period of limitations subject the plaintiff's cause of action to the defense of limitations of actions?
>
> (2) If the plaintiff's right of action is not barred, can the defendants raise the prior payment of $2000 by the plaintiff's insurer in mitigation of their liability?[12]

The supreme court affirmed the trial court and concluded as to the first issue that such a failure to join an indispensable party did not block the tolling of the statute of limitations. Secondly, it was held that the plaintiff could not recover the full amount of damages including the $2,000 in medical payments paid by his insurer from the defendants. The court's disposition of the issues was based on sound legal reasoning as well as solid practical considerations.

The case of *Borde v. Hake*[13] appeared to provide a legal precedent upon which the defendant Johnson could rely to support his claim that the failure to join Heritage failed to toll the running of the statute of limitations. In *Borde*, the plaintiff had failed to join its partially subrogated insurer just as in *Heifetz*. The supreme court affirmed the trial court's decision to suspend the suit for twenty days so that the indispensable insurer could be joined. The statute of limitations was not involved. However, in dicta, the court said:

> We conclude that, until such time as (the insurer) was joined, the plaintiff's cause of action brought without the joinder of a necessary party was wholly ineffectual to stop the running of the statute of limitations.[14](citation omitted)

In *Heifetz*, the court was prompted to withdraw any language in *Borde* to such an effect.

In *Patitucci v. Gerhardt*,[15] it was held that when an insured

12. *Id.* at 114, 211 N.W.2d at 836.
13. 44 Wis. 2d 22, 170 N.W.2d 768 (1969).
14. *Id.* at 31, 170 N.W.2d at 772.
15. 206 Wis. 358, 240 N.W. 385 (1932).

accepts partial payment from its insurer, the insurer is assigned pro tanto that portion of the claim, and so subrogated, the insurer becomes an indispensable party.

Thus, because Heritage's claim was barred by the statute of limitations, a classic mandatory joinder dilemma was presented. Had the failure to join a now unjoinable indispensable party created a defect such that in effect no action had been commenced, and therefore the running of the statute of limitations had extinguished the entire cause of action?

The court conceded that if failure to join an indispensable party was a jurisdictional defect, then the statute of limitations could not have been tolled. Whether such a defect goes to the jurisdiction of the court is an issue upon which the various courts do not agree.[16] However, the court in Wisconsin rejected the jurisdictional defect approach, adopting a more pragmatic view as reflected in the Minnesota case of *Doerr v. Warner*:[17]

> It is well established that, although a court may not proceed to judgment in a case in which an indispensable party is absent, the reason therefor is not that the court does not have the jurisdiction, but for the broader reason that in the exercise of due process no court, regardless of its jurisdictional structure, may adjudicate directly upon a person's rights without such person being either actually or constructively before the court.[18]

In its discussion the supreme court considered and rejected the analogy of the relationship of an injured plaintiff and his subrogated insurer to the relationship of joint owners of an interest. It is well settled that the statute of limitations is not tolled when less than all of the owners bring an action regarding an interest held jointly.[19] The court based its rejection of such an analogy on the distinction that the shares of joint owners, for example joint payees on a note, are not individually identifiable and severable from the whole, while the shares of the mutually-held interest of an injured plaintiff and the subrogated insurer may be proportionately determined and are severable. "Each actually owns separately a part of the liability of the tortfeasor. . . . Thus it is better to think of the insurer as assignee of part of the claim than to speak of the insured and the insurer as joint owners of the claim."[20]

16. 59 AM. JUR. 2d *Parties* § 260 (1971).
17. 247 Minn. 98, 76 N.W.2d 505 (1956).
18. *Id.* at 103, 104, 76 N.W.2d at 511.
19. *See* Annot., 8 A.L.R.2d 6, 31, § 11 (1949).
20. 61 Wis. 2d at 120, 211 N.W.2d at 839.

To impose the necessity of joinder of all parties in interest in this type of case would not serve the purpose of the mandatory joinder statutes in Wisconsin,[21] which is to protect the defendant from multiplicity of suits and to afford due process to the claim of the unjoined party. Since the insurer's claim in *Heifetz* was barred by the statute of limitations, the purpose of the statute could be accomplished without jeopardizing the rights of the plaintiff by destroying his claim.

The supreme court's disposition in *Heifetz* has significantly clarified Wisconsin law on the question as to the result when an interested party cannot be joined. As a matter of practical application and legal result, the Wisconsin law on the subject now operates substantially the same as the Federal Rules of Civil Procedure. Rule 19(b) sets out the methodology by which the court shall proceed in the event that an interested party cannot be joined. Application of such in *Heifetz* most certainly would have produced the same legal result. Rule 19(b) states:

> . . . [T]he court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed . . . . The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provision in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided. third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for misjoinder.[22]

The reasoning employed in the *Heifetz* case has thus reshaped the procedural doctrine regarding compulsory joinder in Wisconsin. A party must be joined if he claims a material interest in one of the rights or liabilities which may be affected by the litigation. In the event that such a party for some reason cannot be joined, the court will determine, basically through application of due process principles, whether the controversy may be adjudicated in his absence. It appears that if an unobtainable party's share of the interest is determinable and severable from the shares of those joined, he will be found dispensable. On the other hand, only those parties whose shares of an interest are so united that they may be

21. WIS. STAT. §§ 260.12 and 260.13 (1971).
22. FED. R. CIV. P. 19(b).

considered joint owners of that interest will be found indispensable parties without whom the action cannot be commenced.

The court then concluded its decision by considering the issue of the effect of the insurer's part payment, finding that such payment would operate to mitigate the defendant's liability by the amount paid. To hold otherwise would not have been consistent with the operation of the acceptance of the payment as an assignment of a part of the claim. By such an assignment, the insurer possessed its own claim which it must bring within the time prescribed by the statute of limitations. Because Heritage's claim was barred by the statute of limitations, to allow the plaintiff recovery including the amount assigned would have defeated the purpose of the statute of limitations in eliminating the insurer's claim.

A question remains as to when the procedure formulated in it will be implemented. It would appear that an important distinction affecting this determination might be drawn as to the type of insurance contract upon which the insurer's payment is based. The contract involved in *Heifetz* would be best characterized as indemnity-type insurance, and thus, it is clear that as to this type of insurance the procedure will apply. If, however, the insurance would have been of the investment contract type, it would be reasonable that the court would have decided differently on whether the payment would mitigate the defendant's liability. The supreme court in *Heifetz* makes no mention of this distinction, but such is implicit in the decision due to the reliance of the court on *Patitucci v. Gerhardt*.[23] As noted earlier, the holding in *Patitucci* that the acceptance of partial payment from an insurer operates as an assignment pro tanto of the insured's claim and makes the insurer an indispensable party formed a major basis for the *Heifetz* ruling. However, the *Patitucci* case dealt with indemnity insurance, and the court specifically stated that in the instance of investment insurance, the insurer is not subrogated and does not become a necessary party by partial payment.[24] In theory, the effect of this critical distinction between indemnity and investment insurance has a logical basis. The purpose of indemnity insurance is to place the injured in the same position he would have been in had there been no injury,[25] while investment-type insurance, for example life insurance, pays a certain amount upon the happening of a specified

23. 206 Wis. 358, 240 N.W. 385 (1932).
24. *Id.* at 361, 240 N.W. at 386.
25. R. KEETON, BASIC TEXT ON INSURANCE LAW 88 and 319 (1971).

event.[26] This latter amount bears no relation to the actual damages sustained by the insured. Although it is possible to identify this distinction without the aid of comment by the *Heifetz* court, one may nevertheless visualize problems in its application. Many policies written today contain provisions whose features share some of the attributes of both indemnity and investment insurance, such as accident and health policies. Thus, further clarification is needed before it may be accurately predicted when the *Heifetz* rule will apply.

C. *Pleadings*

During this term the supreme court dealt with some fine points of complaint pleading. In *Kruse v. Schieve*[27] the plaintiff had been injured operating machinery at her place of employment. She received workmen's compensation and then commenced a third party action against the defendant, a corporate officer. The complaint alleged that the defendant was an "employee and vice-president and as an employee and vice-president supervised the engineering and maintenance and production in the factory" and that he had been negligent "in his capacity as a coemployee and as a person in charge of production and control of the employment." The defendant demurred on the ground that the exclusive remedy provision of the Workmen's Compensation Act[28] forbids a third party action against a corporate officer for acts done as an officer. The plaintiff urged that the complaint alleged the negligent acts as arising out of the defendant's status as a coemployee. The trial court overruled the demurrer.

There is authority that a corporate officer may be sued as a coemployee for common law negligence.[29] However, the supreme court pointed out that in those cases the justices had not dealt with ". . . any general duty or responsibility owed the employer but with an affirmative act which increased the risk of injury. [In those cases] the officer's or supervisory employee's affirmative act of negligence went beyond the scope of the duty of the

26. W. VANCE, LAW OF INSURANCE § 134, at 797 (1951); *see* Kircher, *Set-Off and Subrogation in Automobile Medical Payments Coverage*, 7 FOR THE DEFENSE No. 10 (1966).

27. 61 Wis. 2d 421, 213 N.W.2d 64 (1973).

28. WIS. STAT. § 102.03(2) (1971).

29. Pitrowski v. Taylor, 55 Wis. 2d 615, 201 N.W.2d 52 (1972); Wasley v. Kosmatka, 50 Wis. 2d 738, 184 N.W.2d 821 (1971); Hoeverman v. Feldman, 220 Wis. 557, 265 N.W. 580 (1936).

employer . . . ."[30] Finding no such act on the part of the defendant, the court concluded that the plaintiff had commingled alternative theories of recovery, and that the theory based upon the defendant's capacity as an officer did not state a cause of action. Such was construed to be improper pleading and the demurrer to the complaint was necessarily sustained. "Such allegations are construed as pleading the least, rather than the greatest allegation, and are fatally defective if the least allegation does not state a cause of action."[31] Thus, the plaintiff's attempt to bring a third party action against a corporate officer for acts done as an officer through this type of pleading was unsuccessful.

Another pleading problem was presented in the recent case of *Lorenz v. Dreske*.[32] In this action to recover unpaid salary for services, the defendant demurred to the complaint on the ground that the action was barred by the two year statute of limitations section 893.21(5).[33] The plaintiff Lorenz was a doctor, and he had claimed that the action fell within the exception for professional services and therefore was not barred. The defendant argued that an allegation of "professional services" was a conclusion of law, while the plaintiff contended that it was a well-pleaded statement of ultimate fact admitted by the demurrer.

The supreme court affirmed the trial court's decision to overrule the demurrer basing its result on essentially two grounds. First, the question of professionalism was recognized as one of mixed law and fact. Because the adjective "professional" is used in a statute, it carries a legal definition from which legal consequences flow. Also present is its common descriptive usage. "Matters of mixed law and fact, the ultimate of which is, in a broad sense, a fact, may be pleaded according to their legal effect. . . . [E]very reasonable intendment must be indulged in favor of the pleading."[34] Second, the court noted that section 893.21(5) has been given a broad interpretation in respect to what constitutes professional services, and thus the court permits a greater degree of flexibility to a litigant who relies on his professional status as a

30. 61 Wis. 2d at 428, 213 N.W.2d at 67, 68.

31. *Id.* at 431, 213 N.W.2d at 69; *see* Pavalon v. Thomas Holmes Corp., 25 Wis. 2d 540, 131 N.W.2d 331 (1964).

32. 62 Wis. 2d 273, 214 N.W.2d 753 (1974).

33. WIS. STAT. § 893.21(5) (1971) ". . . Within 2 years: . . . (5) Any action to recover unpaid salary, wages or other compensation for personal services, except fees for professional services."

34. Schmidt v. Joint School Dist., 146 Wis. 635, 639, 132 N.W. 583, 584 (1911), quoted in Larson v. Lester, 259 Wis. 440 at 443, 49 N.W.2d 414 at 416 (1951).

means of avoiding a shorter statute of limitations.[35] The supreme court concluded, as had the trial court, that because it could not be determined that the services were not professional, the pleaded facts were sufficient to constitute a cause of action which was not barred by the statute of limitations.

D. Substitution of Judge

The timely request for a substitution of a new judge was the issue in controversy in *Pure Milk Products Coop. v. Nat'l Farmers Organization*.[36] The defendant filed a request for substitution of the judge after a preliminary hearing on a motion for temporary injunction but before the case was noticed for trial.[37]

The rules for a timely request are stated in the recently revised Wisconsin Statutes section 261.08(1) (1971):

> . . . The written request shall be filed on or before the first day of the term of court at which the case is triable or within 10 days after the case is noticed for trial. . . .

A strict reading of section 261.08(1) would appear to qualify the request in *Pure Milk Products Coop.* as timely under the section allowing request "within 10 days after the case is noticed for trial." The supreme court interpreted the statute to mean that a request filed after commencement of the trial was untimely.[38] The court then held that although a trial had not been technically commenced at the time of a hearing on a preliminary injunction, it was not the intent of the legislature to allow a change of judges after the hearing of a contested motion which implicates the merits and requires the judge to accept evidence which would have a bearing on the cause of action. Thus, this request was untimely.

This interpretation finds support in Wisconsin's case law[39] and in the law of other states.[40] The court also pointed out that there may be some types of preliminary proceedings after which the

35. Estate of Schroeder, 53 Wis. 2d 59, 191 N.W.2d 860 (1971); Younger v. Rosenow Paper & Supply Co., 51 Wis. 2d 619, 188 N.W.2d 507 (1971).

36. 64 Wis. 2d 241, 219 N.W.2d 564 (1974).

37. *See* WIS. STAT. § 270.115 (1971).

38. *See* Luedtke v. Luedtke, 29 Wis. 2d 567, 139 N.W.2d 553 (1966); Swineford v. Pomeroy, 16 Wis. 575 (1863).

39. In re Kuttig's Will, 260 Wis. 415, 50 N.W.2d 669 (1952); Duffy v. Hickey, 68 Wis. 380, 32 N.W. 54 (1889).

40. McClenny v. Superior Court of Los Angeles County, 36 Cal. Rptr. 459, 388 P.2d 691 (1964); Honolulu Roofing Co. v. Felix, 49 Haw. 578, 426 P.2d 298 (1967); People v. Savaiano, 10 Ill. App. 3d 666, 294 N.E.2d 740 (1973); State v. Armijo, 39 N.M. 502, 50 P.2d 852 (1935).

request would not be untimely. Proceedings where the evidence bears only on collateral matters would fall in this category. The result of *Pure Milk Products Coop.* is a sound one, but also indicates that it would be much more desirable to have a statute which states all the law it purports to state.

E. Summary Judgment

The inclusion of adverse examinations in the affidavits in support of or to refute a motion for summary judgment has become a popular practice. The circumstances in the recent decision of *Commercial Discount Corp. v. Milwaukee Western Bank*[41] appears to demonstrate that attorneys have adopted the practice not only to support their claims factually, but also to convince the court, by the sheer volume of their support data, of the merit of their claim. The supreme court in its holding in *Commercial Discount Corp.* has placed a strong restriction on this procedure.

In *Commercial Discount Corp.*, the plaintiff was suing to recover funds possessed by the defendant on the grounds that the defendant had aided and abetted a debtor of the plaintiff to divert the funds from the plaintiff's rightful claim upon a prior perfected security interest. The defendant moved for summary judgment, and the parties submitted affidavits of fact which included extensive adverse examinations. The plaintiff's examinations ran over 200 pages. The motion was denied.

In previous cases the supreme court has indicated its distaste for the practice of including voluminous adverse examinations by first stating its opinion that the practice was an imposition on the trial court as well as appellate court,[42] and later by announcing that the counsel submitting the examination ought to indicate the portions he believes most relevant. The court considering the matter may order that such specification take place.[43] The recurring problem was presented in *Commercial Discount Corp.*, and the supreme court realized stronger measures were needed. The result places the burden upon the attorney to indicate the relevant portions at the risk of having his adverse ignored.

> . . . [T]he party using such an examination shall specify which portion thereof he deems to be material and on which he relies,

41. 61 Wis. 2d 671, 214 N.W.2d 33 (1974).

42. Hyland Hall & Co. v. Madison Gas & Electric Co., 11 Wis. 2d 238, 247, 105 N.W.2d 305, 311 (1960).

43. Clark v. London & Lancashire Indemnity Co., 21 Wis. 2d 268, 275, 124 N.W.2d 29, 33 (1963).

> and failure to do so shall constitute good cause for the trial court or the Supreme Court to disregard the adverse in appraising the motion.[44]

The sanction is appropriate, and will no doubt be effective in trial courts that employ it.

II. TRIAL

A. Right to Jury Trial

The question of waiver of jury trial was presented in *Theuerkauf v. Schnellbaecher*.[45] The defendant's attorney had signed and filed a notice of readiness which had been served upon him pursuant to Wisconsin Statutes section 270.115(1) by the plaintiff's attorney. The notice stated that there was presented an issue of fact for the court. Defendant later requested a jury trial. The trial court held that the right had been waived by the signing of the notice of readiness, where it was stated that the issue of fact was to be tried to the court. The defendant claimed that such a signing and filing could not operate as a waiver, because section 270.32 did not provide for such a manner of waiver,[46] and further that in the case of *Petition of Doar*[47] the supreme court had abrogated a provision for waiver by failure to make a timely demand. The supreme court affirmed the trial court, dispelling the defendant's argument by pointing out that the decision on *Petition of Doar* rested on a failure of the waiver provision to complete its purpose of promoting judicial economy, and not because the court believed that this requirement put too high a procedural burden upon the constitutional right to a jury trial. The court also stated in support of its decision that section 270.32 does not preclude other conditions for waiver, as is illustrated by Wisconsin cases holding other conditions to be sufficient.[48] The court stated that even if the defendant's argument had been valid, the signing and filing of the notice of readiness qualified as a "written consent filed

44. 61 Wis. 2d at 678, 214 N.W.2d at 36, 37.

45. 64 Wis. 2d 79, 218 N.W.2d 295 (1974).

46. WIS. STAT. § 270.32 (1971) states: ". . . Trial by jury may be waived by the several parties to an issue of fact by failing to appear at the trial; or by written consent filed with the clerk; or by consent in open court, entered in the minutes."

47. 248 Wis. 113, 21 N.W.2d 1 (1945).

48. Leonard v. Rogan, 20 Wis. 568 (1866); McCormick v. Ketchum, 48 Wis. 643, 4 N.W. 798 (1880); Charles Baumbach Co. v. Hobkirk, 104 Wis. 488, 80 N.W. 70 (1899); Wooster v. Weyh, 194 Wis. 85, 216 N.W. 138 (1927); Gifford v. Thur, 226 Wis. 630, 276 N.W. 348 (1938).

with the clerk" under section 270.32, and therefore the defendant had waived a jury trial in that fashion.

Thus, in *Theuerkauf*, the court not only enumerated a specific set of factual circumstances by which a party may waive the right to jury trial, but they also demonstrated that the present statutes do not clearly state the law on the subject. It would appear that the approval of the proposed new Wisconsin Rules of Civil Procedure would simplify this matter considerably.[49]

B. *The Jury*

The plaintiffs in *Nolan v. Venus Ford, Inc.*[50] claimed that a prospective juror could be disqualified for cause because of his mere affiliation with an insurance company, even though that particular company was not concerned with the suit being litigated. The supreme court affirmed the trial court's denial of the plaintiff's challenges for cause, reiterating the rules regarding disqualification of jurors. The rule of law regarding challenge for cause of jurors is that the challenge may not be predicated on a ground not stated in Wisconsin Statutes section 270.16.[51] Thus, to disqualify a juror, there must be affirmative proof of partiality.[52] However, it is well settled that the impaneling of the jury is within the discretion of the trial court.[53] The supreme court has stated:

> Because it preserves the appearance as well as the reality of an impartial trial, the judge should honor challenges for cause whenever he may reasonably suspect that circumstances outside the evidence may create bias or appearance of bias.[54]

The plaintiffs had argued for the interpretation that a reasonable suspicion of bias or prejudice is all that is necessary for disqual-

49. *See* 1973 WIS. L. REV., special edition, 72, 116. The proposed new Wisconsin Rules of Civil Procedure, presently before the court on the petition of the Judicial Council for promulgation under Wisconsin Statutes section 251.18 would provide for a demand-type statute requiring a demand for jury trial at the pretrial conference; failure to do so would consitute waiver.

50. 64 Wis. 2d 215, 218 N.W.2d 507 (1974).

51. Kanzenbach v. S. C. Johnson & Son, Inc., 273 Wis. 621, 79 N.W.2d 249 (1956); Good v. Farmers Mut. Ins. Co., 265 Wis. 596, 62 N.W.2d 425 (1954); Maahs v. Schultz, 207 Wis. 624, 242 N.W. 195 (1932).

52. Kanzenbach v. S. C. Johnson & Son, Inc., 273 Wis. 621, 626, 627, 79 N.W.2d 249, 252, 253 (1956); Good v. Farmers Mut. Ins. Co., 265 Wis. 596, 598, 599, 62 N.W.2d 425, 426 (1954); Maahs v. Schultz, 207 Wis. 624, 242 N.W. 195 (1932).

53. Kanzanbach v. S. C. Johnson & Son, Inc., 273 Wis. 621, 626, 79 N.W.2d 249, 253 (1956). Grace v. Dempsey, 75 Wis. 313, 320, 321, 43 N.W. 1127, 1129 (1889).

54. Kanzenbach v. S. C. Johnson & Son, Inc., 273 Wis. 621 at 627, 79 N.W.2d 249 at 253 (1956).

ification. It is clear however, that such is merely a caution to trial courts, and that an abuse of discretion will only be found where the trial court fails to disqualify a juror who has been affirmatively proved biased or prejudiced. The denial of a challenge to jurors affiliated with the insurance industry in the absence of such proof is not an abuse of discretion.

C. Evidence and Witnesses

1. Video Taped Evidence

During the term, the supreme court took a significant step in the interest of a greater ability of the trier of fact to evaluate testimony which would otherwise be submitted in the form of written deposition. In *State ex rel. Johnson v. Circuit Court*[55] the petitioner sought a writ of prohibition to prohibit the exclusion from the evidence of videotape depositions in her cause of action for negligence. The petitioner had been treated by doctors in Minneapolis who could not testify at the trial. The court noted that the Federal Rules of Civil Procedure provide for the acceptance of videotape depositions into the evidence[56] and placed the power to do so in the discretion of the trial court until the supreme court might publish further rules. The court also advised the trial courts to act "in the interest of justice with due regard to the importance of presenting testimony of witnesses orally in open court."[57] Language such as this seems to indicate that perhaps the courts will impose a substantial burden of proof that the witnesses whose testimony has been videotaped have been diligently sought for actual testimony, and are truly unavailable. Such is analogous to the requirements in respect to the admissibility of secondary evidence where the original of a writing or recording is claimed lost or destroyed.[58]

2. Expert Witnesses

The area of expert testimony provided considerable activity for the Wisconsin Supreme Court during the recent term, and although the court was not faced with any question of first impres-

55. 61 Wis. 2d 1, 212 N.W.2d 1 (1973).

56. FED. R. CIV. P. 30(b)(4).

57. 61 Wis. 2d at 3, 212 N.W.2d at 2.

58. *See* WISCONSIN RULES OF EVIDENCE, 59 Wis. 2d R357, § 910.04; Whalen v. State Farm Mut. Auto. Ins. Co., 51 Wis. 2d 635, 187 N.W.2d 820 (1971); Harper, Drake & Ass'n. v. Jewett & Slurman, 49 Wis. 2d 330, 182 N.W.2d 551 (1971); Peterson v. Warren, 31 Wis. 2d 547, 143 N.W.2d 560 (1966).

sion and did not produce any new applications of rules, it is worth noting their decisions on this subject.

In *Johnson v. Heintz*[59] the court reversed a judgment for the plaintiff suing for damages incurred by a fall in her backyard when her knee buckled. The plaintiff had previously been involved in an automobile collision with the defendant, in which the knee was originally damaged. The reversal was based on the ground that there had been presented no expert testimony to prove that the subsequent re-injury had been caused by the prior event. The Wisconsin court has consistently held that such a matter is too sophisticated for the average juror and an intelligent evaluation is impossible without expert testimony.[60]

Two cases dealt with the qualification of an expert witness. In *Lemberger v. Koehring*,[61] a retired civil navy engineer with four years of experience in developing specifications for protective head covering was held to be an expert as to the protection available in the use of a hard hat. In the same case a neurologist was held not to possess the qualifications of an expert on the same subject.

A licensed chiropractor was held competent to testify concerning matters within the scope of chiropractic in *Green v. Rosenow*,[62] although those areas may also be such that a licensed medical doctor would be able to testify as an expert.

The decisions in *Lemberger* and *Green* are solidly based on Wisconsin Rules of Evidence section 907.02.[63] The emphasis is upon the two-step process of qualification for admissibility; that is, (1) whether the witness has knowledge, skill, experience, training or education in a particular field and (2) whether his testimony will assist the trier of fact in understanding the evidence or determinating a fact in issue. No value is placed upon the label of a profession or trade. These two decisions exemplify Wisconsin's simple and progressive attitude toward expert qualification and admissibility of expert testimony.[64]

---

59. 61 Wis. 2d 585, 213 N.W.2d 85 (1973).

60. Globe Steel Tubes Co. v. Industrial Comm., 251 Wis. 495, 29 N.W.2d 510 (1947).

61. 63 Wis. 2d 210, 216 N.W.2d 542 (1974).

62. 63 Wis. 2d 463, 217 N.W.2d 322 (1974).

63. WISCONSIN RULES OF EVIDENCE, 59 Wis. 2d R206 § 908.02:

> . . . If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise.

64. *See also* State v. Johnson, 54 Wis. 2d 561, 196 N.W.2d 717 (1972); Netzel v. State Sand & Gravel Co., 51 Wis. 2d 1, 186 N.W.2d 258 (1971).

E. D. Wesley v. New Berlin[65] presented the court with a controversy involving the bases of opinion testimony by experts. The plaintiff had offered a technical pamphlet into the evidence, but it was excluded as hearsay on the ground that it lacked foundation that its writer was recognized in his field as an expert.[66] The plaintiff then called a witness and qualified him as an expert in the field involved. The expert gave opinion testimony based on the excluded pamphlet. The defendant's objection was that the witness did not qualify as an expert on the subject if his knowledge was based on the pamphlet.

The supreme court found no merit in the defendant's objection noting that it went to the weight of the expert's opinion not to his qualifications. Section 907.03 of the Wisconsin Rules of Evidence clearly allows such testimony,[67] and the court pointed out that all expert testimony is based on hearsay and that implicit in the concept of expert witnesses is the realization that the expert is the one in the best position to accept or reject such hearsay.

D. Directed Verdict

The cases of *Samson v. Riesing*[68] and *Tombal v. Farmer's Insurance Exchange*[69] produced identical issues for the supreme court. In each case the trial court had granted a motion for directed verdict. On appeal the appellants argued that the supreme court's preference for the procedure of reserving ruling on motions for directed verdict until the jury has returned its verdict[70] is mandatory for trial courts. The supreme court emphasized that this indication was an admonishment and nothing more, and that on appeal the only issue was whether the trial court had erred in directing the verdict. Both decisions affirmed the trial court, but observed that the possibility of judicial economy may well be not worth the risk of reversal and remand for a whole new trial.

---

65. 62 Wis. 2d 668, 215 N.W.2d 657 (1974).

66. WISCONSIN RULES OF EVIDENCE, 59 Wis. 2d R253 § 907.03(18).

67. WISCONSIN RULES OF EVIDENCE, 59 Wis. 2d R208, R209 § 907.03:

> . . . The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

68. 62 Wis. 2d 698, 215 N.W.2d 662 (1974).

69. 62 Wis. 2d 64, 214 N.W.2d 291 (1974).

70. *See* Davis v. Skille, 12 Wis. 2d 482, 107 N.W.2d 458 (1961).

E. *Instructions and Verdicts*

The Wisconsin Supreme Court created a new rule relating to instructions to the jury in *Bohlman v. American Family Mutual Insurance Co.*[71] In that case the defendant moved for a new trial after the jury had returned with the verdict. One of the grounds was the failure to give requested instructions to the jury. The supreme court affirmed the trial court's denial of the motion on the ground that defendant's attorney had participated with the other attorney in chambers with the judge in drafting the instructions. He had not objected to the omission of his proposed instruction. The policy of requiring an objection at the earliest practical time to prevent waiver[72] was applied strictly in this case. Defendant's attorney's failure to state a reservation for the record operated as an implied consent to waive the objection. Participation in drafting and modifying the instructions is necessary for the rule in the *Bohlman* case to apply.

The appellant in *Naden v. Johnson*[73] claimed that the court had erred in employing the use of a special verdict limited to questions of ultimate fact instead of specific inquiries into the facts. He based his claim on the fact that this was an action for breach of contract. The court was quick to point out that the use of an ultimate fact verdict is not restricted to negligence cases[74] and that the form of the verdict is discretionary.[75] There is no reason why the positive attributes of the ultimate fact verdict may not be applied to the issues in a breach of contract action. The court noted that while more specific inquiries may have been favorable, it is not an abuse of discretion to use the ultimate fact verdict in contract actions.

III. POST-TRIAL

A. *Execution*

In the area of execution of judgments, the Wisconsin Supreme Court was presented with a case which was decided directly on procedural considerations. In *Wilson v. Craite*[76] a successful pur-

71. 61 Wis. 2d 718, 214 N.W.2d 52 (1974).

72. *See* Savina v. Wisconsin Gas Co., 36 Wis. 2d 694, 154 N.W.2d 237 (1967).

73. 61 Wis. 2d 375, 212 N.W.2d 585 (1973).

74. WIS. STAT. § 270.27 (1971).

75. Gilbert v. United States Fire Ins. Co., 49 Wis. 2d 193, 181 N.W.2d 527 (1970). Dahl v. K-Mart, 46 Wis. 2d 605, 176 N.W.2d 342 (1970).

76. 60 Wis. 2d 350, 210 N.W.2d 700 (1973).

chaser of some real property at an execution sale claimed that he had bid an excessive price and therefore refused to pay the purchase price. The judgment creditor petitioned the court to direct the purchaser to show cause why he should not be required to pay. The trial court held the price excessive and set aside the sale.

The property was located in Waukesha County and had originally belonged to the defendant-debtor Craite, against whom a judgment was rendered in Milwaukee County. The plaintiff-creditor Wilson had the judgment docketed in Waukesha County and a writ of execution was issued from a Waukesha County court. The sale followed. The purchaser argued not only that he had paid an excessive price, but also that the Waukesha County Court had no authority to issue execution because the procedures required had not been followed. The supreme court rejected the purchaser's claim grounded on excessive price, but concluded that the entire execution proceeding was void for lack of jurisdiction of the Waukesha court.

A Wisconsin Statute requires that "[t]he execution must be issued from . . . the court . . . where the judgment roll, or a certified copy thereof . . . is filed."[77] The judgment roll includes the judgment, ". . . summons, pleadings, verdicts, offers, exceptions, and all orders and papers in any way involving the merits and necessarily affecting the judgment."[78] The supreme court stated affirmatively that the provision of the statutes relating to execution of judgments and proceedings thereunder are absolutely mandatory and cited ample precedent for this policy.[79] The creditor's filing of the judgment was thus ineffective to confer jurisdiction upon the Waukesha court to issue the execution. Under section 272.07 the docketing of the judgment in Waukesha County would have subjected the debtor's lands in Waukesha County and allowed the Milwaukee court to issue execution to the sheriff in Waukesha County. Nevertheless, the proceeding was declared entirely void.

The court emphatically sets out the option for the judgment creditor in respect to property of the debtor in a county outside that which rendered the judgment. He may file a copy of the judgment in the county where the land is situated and have the court which gave judgment issue execution on it; or he may file the

77. WIS. STAT. § 272.05 (1971).

78. 60 Wis. 2d at 358, 210 N.W.2d at 704; *see* WIS. STAT. § 270.72 (1955).

79. *See* Bugbee v. Lombard, 88 Wis. 271, 60 N.W. 414 (1894); Kentzler v. Chicago, Milwaukee & St. Paul Ry., 47 Wis. 641, 3 N.W. 369 (1879).

judgment roll in the county where the land is situated and confer jurisdiction upon that county's court to issue execution. No other method is acceptable.

IV. APPEAL

A. *Parties on Appeal*

In *Coraci v. Noack*[80] the Wisconsin Supreme Court was faced with a problem of parties on appeal and section 274.12 of the Wisconsin Statutes. The court promoted its policy of seeking an orderly procedure upon appeal wherein a settlement of the entire controversy can be accomplished without successive appeals.[81] In *Coraci* the court found that a judgment creditor of a purchaser-assignor under a land contract was not an adverse respondent to the assignee who appealed from an action for strict foreclosure, in which all three of these parties were named defendants. Thus, the creditor could not make a motion for review under section 274.12(1) which requires such adversity, and was also prevented from filing a cross-appeal under section 274.12(3) and (4) because the thirty day limitation had already passed. The creditor had waived his right to review.

However, the court took note of the fact that the assignee had served all parties with a notice of appeal and that this conferred personal jurisdiction upon the court as to all the parties.[82] Therefore, the court was able to find the creditor as an additional party under section 274.12(6). The decision is consistent with Wisconsin case law as respects the court's inherent power over appellate procedure.[83]

B. *Time of Appeal*

Two cases regarding the timeliness of appeal came before the court this term. The plaintiffs in *Weiland v. Department of Transportation*[84] claimed that the defendant's appeal should be dismissed. The plaintiffs contended that section 32.05(11)(c)[85] prevented the defendant's appeal after sixty days when the pay-

80. 61 Wis. 2d 183, 212 N.W.2d 164 (1973).

81. American Wrecking Co. v. McManus, 174 Wis. 300, 181 N.W.235 (1921).

82. Turk v. H. C. Prange Co., 18 Wis. 2d 547, 119 N.W.2d 365 (1963).

83. *See* Gertz v. Milwaukee E. R. & L. Co., 153 Wis. 475, 140 N.W. 312 (1913).

84. 62 Wis. 2d 456, 215 N.W.2d 455 (1974).

85. WIS. STAT. § 32.05(11)(c) (1969): "All monies payable under this subsection shall be paid within 60 days after entry of judgment unless within such period an appeal is taken to the supreme court."

ment of the judgment was withheld. The court ruled that this line of construction was erroneous. Section 32.05(11)(c), requires that a party who desires to withhold the payment of judgment pending appeal must appeal within sixty days. After sixty days, a valid appeal may be brought but payment may also be enforced upon the judgment. Wisconsin Statute section 32.05(13) provides six months to appeal from a circuit court judgment.

In *Beloit Corp. v. Department of Industry, Labor & Human Relations*[86] the employer's appeal from an order of the ILHR Department awarding an increased death benefit on a workmen's compensation claim was held to be untimely. Wisconsin Statute section 102.25(1) provides for a thirty day period to make the appeal after service of notice of entry of judgment. On November 7, 1972, the attorney general mailed a notice of entry of judgment to the employer's attorney. On November 24, the attorney signed the admission of service card and returned it by mail to the attorney general. The attorney general received a notice of appeal on December 15, 1972. The employer's major contention was that the service of entry of judgment was not effective until November 24 when the admission of service was signed.

The court rejected the employer's argument showing that the employer's attorney was operating as the employer's agent and that service by mail is permissible. Service by mail is provided for in the statutes,[87] and it is to be complete upon mailing. The statutes also provide for the addition of five days to the time in which to appeal when service is by mail.[88] Finally the court stated that there is no requirement that the residences must be in different municipalities for service by mail to be used,[89] as contended by the employer. Hence, the employer's notice of appeal was due within thirty-five days after the notice of entry of judgment was mailed to his attorney, November 7, 1972. This notice of appeal on December 15 was eight days late.

C. *Appellate Rules of Decision*

The supreme court in *Herro, McAndrews, & Porter v. Gerhardt*[90] was presented with yet another action for the recovery of attorney's fees. In this case the court overruled its previous

86. 63 Wis. 2d 23, 216 N.W.2d 233 (1974).
87. WIS. STAT. § 269.34 (1971).
88. WIS. STAT. § 269.36 (1971).
89. Estate of Callahan, 251 Wis. 247, 29 N.W.2d 352 (1947).
90. 62 Wis. 2d 179, 214 N.W.2d 401 (1974).

statements in *Knoll v. Klatt*[91] and *Estate of Marotz*[92] and formally adopted the rule of *Touchett v. E Z Paintr Corp.*[93] The abrogated rule viewed the trial court's finding as to the value of attorney's fees as a finding of fact, which must be sustained unless clearly unreasonable and against the great weight and clear preponderance of the evidence. The court opted instead for the "independent review test" by which the supreme court on appeal will solely determine whether the fees are reasonable without regard to the trial court's finding. "The practice of law in the broad sense, both in and out of the courts, is such a necessary part of and is so inexorably connected with the exercise of the judicial power that this court should continue to exercise its supervisory control of the practice of law."[94]

MARK S. YOUNG

COMMERCIAL LAW

I. CORPORATIONS

A. Application of Wisconsin Law to Shareholders of Foreign Corporations

It is an elementary rule of law that the state of incorporation may regulate its corporation's "internal affairs," that is, matters affecting the relations of the shareholders, officers, and directors among themselves. When states other than the charter state attempt to control corporate affairs, the waters are no longer so clear. In *Joncas v. Krueger*,[1] the Wisconsin Supreme Court faced a fact situation presenting a question at the fringes of the problem of applying state law to foreign corporations. Unfortunately, the decision left the issues more clouded than before.

In *Joncas*, a Delaware corporation licensed and doing business in Wisconsin became insolvent and made a voluntary assignment for the benefit of creditors. The assets were insufficient to satisfy the wage claims of some of the corporate employees. Certain of

91. 43 Wis. 2d 265, 168 N.W.2d 555 (1969).
92. 263 Wis. 99, 56 N.W.2d 856 (1953).
93. 14 Wis. 2d 479, 111 N.W.2d 419 (1961).
94. In re Integration of Bar, 5 Wis. 2d 618, 622, 93 N.W.2d 601, 603 (1958).

1. Joncas v. Krueger, 61 Wis. 2d 529, 213 N.W.2d 1 (1973).