

STATE OF WISCONSIN  
SUPREME COURT

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APPEAL NO. 2009AP000728

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WISCONSIN MEDICAL SOCIETY, INC.,  
AND DAVID M. HOFFMANN, M.D.,

Plaintiffs-Appellants,

vs.

MICHAEL L. MORGAN,

Defendant-Respondent.

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Appeal From The December 19, 2008 Decision And Order From The  
Circuit Court For Dane County  
The Honorable Michael N. Nowakowski, Presiding

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**RESPONSE OF THE WISCONSIN MEDICAL SOCIETY, INC.  
AND DAVID M. HOFFMANN, M.D. TO THE WISCONSIN  
ASSOCIATION FOR JUSTICE'S AND MARK R. PATTON'S  
MOTION TO INTERVENE, OR IN THE ALTERNATIVE,  
MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

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The Wisconsin Association for Justice (“WAJ”) and Mark R. Patton (“Mr. Patton”) filed a Motion to Intervene or in the Alternative Motion for Leave to File *Amicus Curiae* Brief (“Motion”). WAJ and Mr. Patton seek to intervene or participate as *amicus curiae* on the grounds that they represent the status and interests of medical malpractice claimants. (Motion, p. 3.)

From the inception of this case and to the extent permissible within the limitations of their standing, the Wisconsin Medical Society, Inc. and David M. Hoffmann, M.D. (collectively referred to as “WMS”) have

advanced the interests of injured patients and families as well as those of health care providers. WMS and its members are dedicated to preserving patients' wellbeing. WMS has always argued that, like health care providers, injured patients and families are named beneficiaries of the Injured Patients and Families Compensation Fund (the "Fund") and have protectable property interests and contract rights in the Fund. Wis. Stat. § 655.27(6). Thus, WMS does not oppose WAJ's and Mr. Patton's participation in this case even at this late stage and agrees that the interests of injured patients and families should be considered by the Court.

WAJ's and Mr. Patton's Motion, however, was filed at an advanced stage of the proceeding. An intervener, particularly one seeking to intervene at the appellate level, should be "admitted to the proceeding as it stands, and in respect of the pending issues, but is not permitted to enlarge those issues or compel an alteration of the nature of the proceeding." *Vinson v. Washington Gas Light Co.*, 321 U.S. 489, 498 (1944). *See also Helgeland v. Wisconsin Municipalities*, 2008 WI 9, ¶ 37, 307 Wis. 2d 1, 745 N.W.2d 1 (looking to federal cases interpreting the law of intervention). If WAJ and Mr. Patton are permitted to intervene, they should be required to take the case as it stands so as not to unduly delay the proceedings. *See* Wis. Stat. § 803.09(2); *Farmland Dairies v. Comm'r of the New York State Dep't of Agric. and Markets*, 847 F.2d 1038, 1044 (2d Cir. 1988). If the Court concludes their intervention would change the status of the case, then their participation should be limited to that of *amicus curiae*.

WMS does not oppose imposition of a briefing schedule that allows WAJ and Mr. Patton time to file a brief and the current parties sufficient time to respond in advance of the April 15 oral argument if WAJ and Mr. Patton are admitted as interveners.

Dated this 24th day of March, 2010.

WHYTE HIRSCHBOECK DUDEK S.C.

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