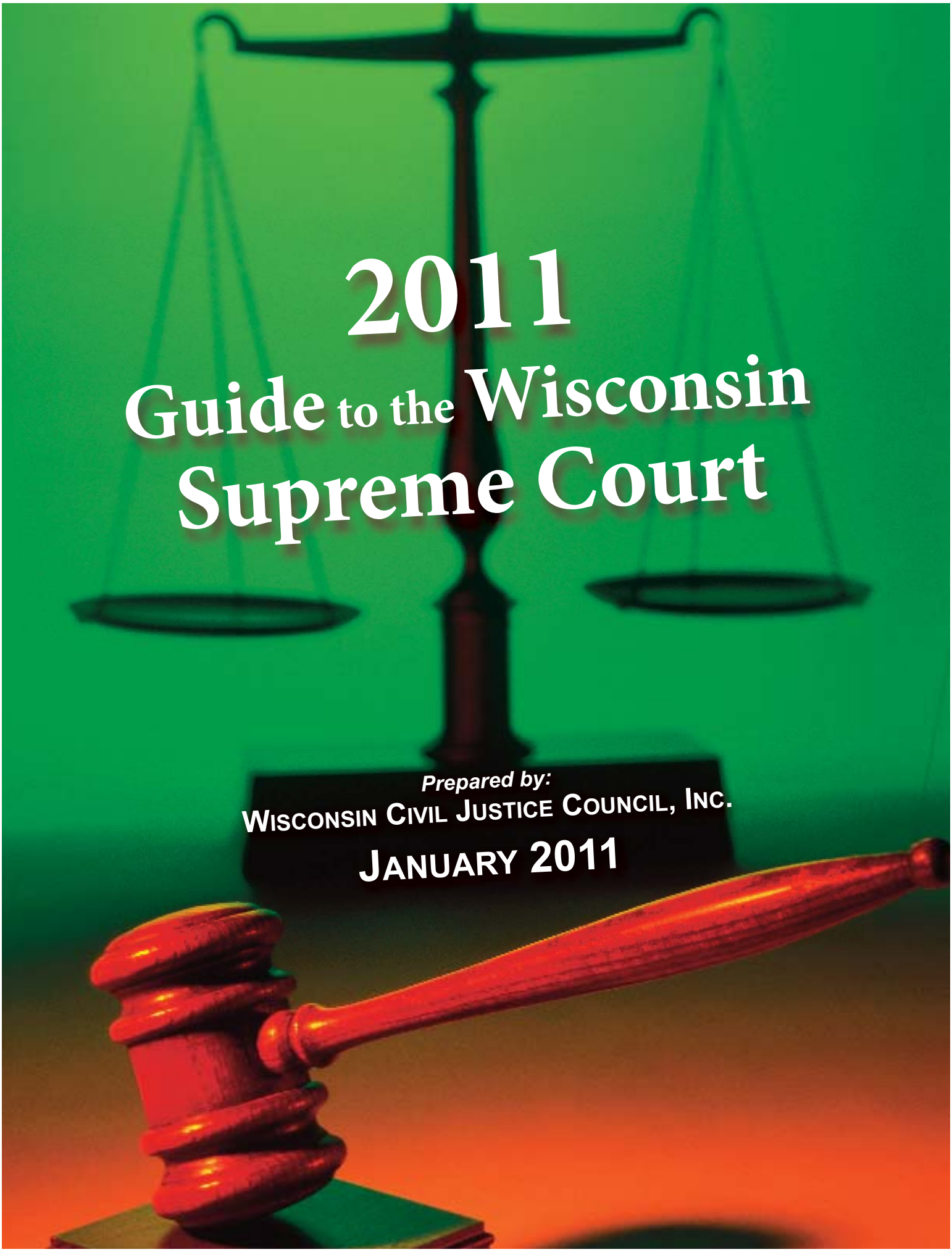

2011 Guide to the Wisconsin Supreme Court

Prepared by:

WISCONSIN CIVIL JUSTICE COUNCIL, INC.

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Promoting Fairness and Equity in Wisconsin's Civil Justice System

2011 Guide to the Wisconsin Supreme Court

By Andrew Cook and Jim Hough
The Hamilton Consulting Group, LLC

January 2011

The Wisconsin Civil Justice Council, Inc. (WCJC) was formed in early 2009 to represent Wisconsin business interests on civil litigation issues before the Legislature and courts. Our goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work.

The Wisconsin Civil Justice Council Board is proud to present its first biennial Judicial Evaluation of the Wisconsin Supreme Court. The purpose of the Judicial Evaluation is to educate WCJC's members and the public by providing a summary of the most important decisions issued by the Court which have had an effect on Wisconsin business interests.

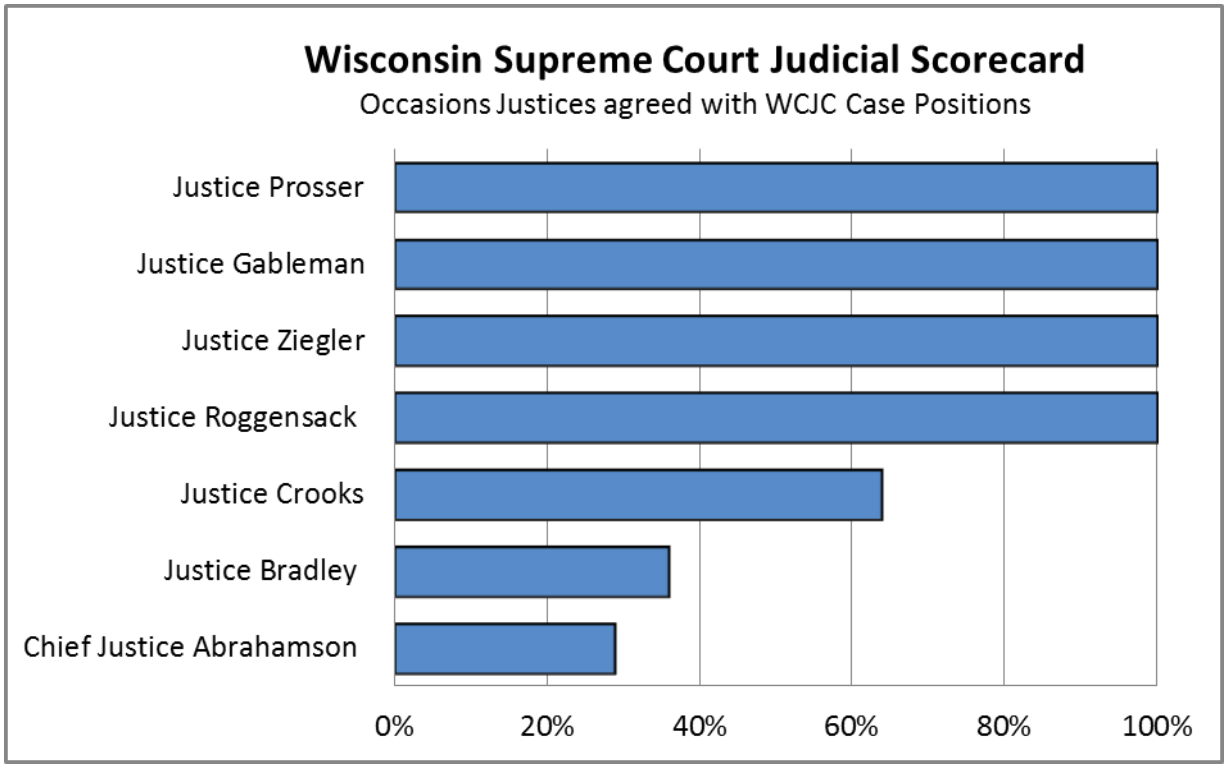
Officers and Board Members

Executive Summary

Virtually every business, medical provider, or insurer is directly or indirectly affected by decisions issued by the Wisconsin Supreme Court. Most groups spend considerable time and resources before the legislative and executive branches. While those two branches of government significantly affect the business community, a Court's decision can have an equally negative or positive impact. The Supreme Court has the ultimate power to interpret or strike down laws or regulations enacted by the legislature or promulgated by state agencies.

Yet, very little information exists for the public when it comes to analyzing the Supreme Court. In order to provide a better understanding of the Court and the decisions rendered by the Justices, the Wisconsin Civil Justice Council is proud to introduce its first Judicial Evaluation.

The Judicial Evaluation includes a brief history of the Court, information about the Justices, how the Court decides which cases to hear, and an analysis of the most important decisions from 2008 through 2010. The graph below illustrates how the Justices voted in cases directly affecting WCJC organizations and their members.



To learn more about the Wisconsin Civil Justice Council, see the website at www.wisciviljusticecouncil.org.

Below are central holdings by the Court in each case selected for the Judicial Evaluation:

2008-09 Term

Torts (Product Liability)

***Horst v. Deere & Co.*, 2009 WI 75 (July 14, 2009)**
In *Horst*, the court ruled that the manufacturer of a riding lawnmower is not strictly liable for the injury of a person when the operator disengaged the safety device. (*WCJC agrees with this decision.*)

> **How the Justices voted:** Justice Gableman wrote the opinion, Justice Crooks, Prosser, & Roggensack concurred; Justice Bradley wrote dissent, Abrahamson joined dissent. (Justice Ziegler did not participate.)

***Godoy v. E.I. DuPont*, 2009 WI 78 (July 14, 2009)**
In *Godoy*, the court held that the circuit court correctly concluded that the plaintiff's complaint failed to state a claim of defective design of white lead carbonate pigment ultimately used in paint and coatings. (*WCJC agrees with this decision*.)

> **How the Justices voted:** Justice Bradley wrote the opinion, Chief Justice Abrahamson and Justices Crooks, Prosser, Ziegler, and Gableman concurred. (Justice Roggensack did not participate.)

***Blunt v. Medtronic, Inc.*, 2009 WI 16 (Feb. 17, 2009)**
In *Blunt*, the court held that state tort claims of negligence and strict liability against a manufacturer of defibrillators were preempted by federal law. (*WCJC agrees with this decision*.)

> **How the Justices voted:** Justice Roggensack wrote the opinion, Justices Crooks, Prosser, Ziegler, & Gableman concurred; Justice Bradley wrote separate concurrence, joined by Chief Justice Abrahamson.

Family Leave or Medical Leave Act

***Harvot v. Solo Cup Co. & Solo Cup Operating Co.*, 2009 WI 85 (July 17, 2009)**
In *Harvot*, the court ruled that the Wisconsin Family or Medical Leave Act (WFMLA) does not grant a right to jury civil trial in an action to recover damages. (*WCJC agrees with this decision*.)

> **How the Justices voted:** Justice Prosser wrote the opinion, Justices Crooks, Roggensack, Ziegler & Gableman concurred; Justice Bradley wrote the dissent, joined by Chief Justice Abrahamson.

Lemon Law (Excessive Damages)

***Tammi v. Porsche Cars North America, Inc.*, 2009 WI 83 (July 17, 2009)**
In *Tammi*, the court ruled that a consumer who brings a claim under Wisconsin's Lemon Law, who then decides to purchase the defective vehicle, is not entitled to recover the amount the purchase price. (*WCJC agrees with this decision*.)

> **How the Justices voted:** Justice Prosser wrote the opinion, Chief Justice Abrahamson and Justices Crooks, Roggensack, Ziegler, Bradley & Gableman concurred.

Statutory Construction

***Milwaukee Journal Sentinel v. Dept. of Administration*, 2009 WI 79 (July 15, 2009)**
In *Milwaukee Journal Sentinel*, the court ruled that a ratification by the Wisconsin Legislature of a collective bargaining agreement, which sought to amend the Public Records Law by exempting public employees represented by unions, was insufficient without introducing separate legislation to effect a change in that law. (*WCJC agrees with this decision*.)

> **How the Justices voted**: Justice Roggensack wrote the opinion, Justices Crooks, Bradley, Prosser, Ziegler, & Gableman concurred; Chief Justice Abrahamson wrote dissent.

***Estate of Robert V. Genrich v. OHIC Insurance Co.*, 2009 WI 67 (July 7, 2009)**
In *Genrich*, the court concluded that the time limit for a wrongful death action caused by medical malpractice is counted from the date of the deceased person's injury rather than the date of the death. (*WCJC agrees with this decision*.)

> **How the Justices voted:** Justice Roggensack wrote the opinion, Justices Prosser, Ziegler, & Gableman concurred; Justice Crooks wrote dissent, joined by Chief Abrahamson & Justice Bradley.

2009-10 Term

Constitutional Law

***Wisconsin Medical Society, Inc., et al., v. Morgan*, 2010 WI 94 (July 20, 2010)**
In *Wisconsin Medical Society*, the court ruled that health care providers have a protectable property interest in the Injured Patients and Families Compensation Fund. (*WCJC agrees with this decision*.)

> **How the Justices voted:** Justice Prosser wrote the opinion, Justices Roggensack, Ziegler, Crooks, & Gableman concurred; Chief Justice Abrahamson wrote dissent, joined by Justice Bradley.

***In the Matter of Judicial Disciplinary Proceeding Against the Honorable Michael J. Gableman; Wisconsin Judicial Commission v. The Honorable Michael J. Gableman*, 2010 WI 62; 2010 WI 61 (June 30, 2010)**
In *Gableman*, the Wisconsin Supreme Court deadlocked 3-3 on deciding whether to uphold a three-judge Judicial Conduct Panel's decision to dismiss a complaint against Justice Michael Gableman regarding alleged violations of the Code of Judicial Conduct.

> **How the Justices voted**: WCJC agrees with the decision issued by Justices Prosser, Roggensack, & Ziegler; WCJC disagrees with decision issued by Chief Justice Abrahamson & Justices Bradley & Crooks.

Torts (Liability of Independent Contractors)

***Tatera v. FMC Corp., et al.*, 2010 WI 90 (July 20, 2010)**
In *Tatera*, the court ruled that a principal employer is not liable in tort for injuries sustained by an independent contractor's employee while he or she is performing the contracted work. (*WCJC agrees with this decision*.)

How the Justices voted: Justice Ziegler wrote the opinion, Justices Prosser, Roggensack, & Gableman concurred; Justice Crooks wrote the dissent, joined by Justice Bradley & Chief Justice Abrahamson.

Worker's Compensation (Retroactive Application of Laws)

***Society Ins. et al. v. Labor & Industry Review Comm'n, et al*, 2010 WI 68 (March 9 2010)**

In *Society Insurance*, the court concluded that a law enacted to retroactively shift the burden of payment of an employee's benefits and treatment expense under the state's worker's compensation law to the insurer after the statute of limitations had run violated the United States Constitution and Wisconsin Constitution. (*WCJC agrees with this decision*.)

How the Justices voted: Justice Roggensack wrote the opinion, Justices Prosser, Ziegler, & Gableman concurred; Justice Crooks wrote dissent, joined by Chief Justice Abrahamson & Justice Bradley.

Civil Procedure (Default Judgments)

***Miller v. Hanover Ins. Co.*, 2010 WI 75 (July 13, 2010)**

In *Miller*, the court reversed a default judgment against Zurich Insurance after it failed to respond to an amended complaint and summons alleging that it was liable for underinsured insurance motorist coverage for an insured involved in a car accident. (*WCJC agrees with this decision*.)

How the Justices voted: Justice Roggensack wrote the opinion, Chief Justice Abrahamson and Justices Bradley, Crooks, Prosser, Ziegler, & Gableman concurred.

Statutory Construction

***Mercycare Insurance Co. et al. v. Wisconsin Commissioner of Insurance*, 2010 WI 87 (July 16, 2010)**

In *Mercycare*, the court concluded that Wisconsin law does not permit an insurer to exclude generally covered maternity services for surrogate mothers. In reaching its decision, the court applied due weight deference to the Wisconsin Commissioner of Insurance's decision. (*WCJC agrees with the court's decision regarding the level of deference applied*.)

How the Justices voted: Justice Bradley wrote the opinion, Chief Justice Abrahamson & Justices Crooks, Prosser, Roggensack, Ziegler, & Gableman concurred.

General Business

***In the matter of amendment of the Code of Judicial Conduct's rules on recusal; In the matter of amendment of Wis. Stat. § 757.19*, 2010 WI 73 (July 7, 2010)**

The League of Women Voters (League) filed a rule petition (08-16) with the Wisconsin Supreme Court seeking to amend the Wisconsin Code of Judicial Conduct (Code). If adopted, the League's petition would have forced any justice or judge receiving $1,000 from a party, or from an attorney, or law firm representing a party in a case, to rescue himself or herself from hearing the case. (*WCJC agrees with this decision.*)

How the Justices voted: Justice Prosser wrote the opinion, Justices Roggensack, Ziegler, & Gableman concurred; Justice Bradley wrote the dissent, joined by Chief Justice Abrahamson & Justice Crooks.

Introduction

For the first time the Wisconsin Civil Justice Council (WCJC) presents its biennial Judicial Evaluation of the Wisconsin Supreme Court. The purpose of the Judicial Evaluation is to educate WCJC's members and the public by providing a summary of the most important decisions issued by the Court which have had an effect on Wisconsin business interests.

About Wisconsin Civil Justice Council
WCJC is a broad coalition of organizations interested in civil liability issues. WCJC's mission is to achieve fairness and equity and reduce costs in Wisconsin's civil justice system. To learn more about WCJC, visit the website at http://www.wisciviljusticecouncil.org.

How the Wisconsin Supreme Court Works
The Supreme Court, consisting of seven sitting justices, has appellate jurisdiction over all Wisconsin courts and has discretion to determine which appeals it will hear. The Court may also hear original actions – cases that have not been heard in a lower court, and review is based on criteria described in the Wisconsin Statutes.

Once the Court accepts a case, attorneys representing the parties submit written briefs seeking to persuade the Justices of their positions on the legal issues involved. Both sides may also present oral arguments, which provide the Justices an opportunity to ask specific questions about the case.

People or entities who are not actual parties to a case before the Supreme Court, but who are or will be affected by the Court's decision, may seek permission to submit amicus curiae ("friend of the court") briefs presenting their unique interests.

The Justices meet in a private conference to decide the outcome of the case. Immediately after the Court reaches its tentative decision, the case is assigned to a Justice for preparation of the Court's opinion. Any Justice not assigned to author the opinion may choose to write a concurring or dissenting opinion. Once the decisions are drafted, the Court issues its decision. The Wisconsin Supreme Court's decisions can be downloaded and read on the Court's website (www.wicourts.gov). The Court's term begins in September and runs through June, with decisions issued usually through the end of July.

To read an in-depth discussion of how the Court operates, visit the Court's website (http://www.wicourts.gov/sc/IOPSC.pdf).

Wisconsin Supreme Court Members

- **Chief Justice Shirley Abrahamson** was appointed to the Supreme Court by Gov. Patrick Lucey in 1976 and has won election to the Court in 1979 and re-election in 1989, 1999, and 2009. Since August 1, 1996 she has been Chief Justice, and in that capacity serves as the administrative leader of the Wisconsin Court System.
- **Justice Ann Walsh Bradley** was elected in 1995 and re-elected in 2005. Justice Bradley is up for re-election in 2015.
- **Justice N. Patrick Crooks** was elected in 1996 and re-elected in 2006. Justice Crooks is up for re-election in 2016.
- **Justice David T. Prosser, Jr.** was appointed by Gov. Tommy Thompson in 1998, and elected to a 10-year term in 2001. Justice Prosser is up for re-election in 2011.
- **Justice Patience Roggensack** was elected in 2003. Justice Roggensack is up for re-election in 2013.
- **Justice Annette Kingsland Ziegler** was elected in 2007. Justice Ziegler is up for re-election in 2017.
- **Justice Michael Gableman** was elected in 2008. Justice Gableman is up for re-election in 2018.

Importance to WCJC Members
Virtually every business, medical provider, or insurer is directly or indirectly affected by decisions issued by the Wisconsin Supreme Court. Most groups spend considerable time and resources before the legislative and executive branches. While those two branches of government significantly affect the business community, a Court's decision can have an equally negative or positive impact. The Supreme Court has the ultimate power to interpret or strike down laws or regulations enacted by the legislature or promulgated by state agencies.

Wisconsin Supreme Court: Trends and Future Prospects

Trends from 2004 to 2007
The Wisconsin Supreme Court gained national notoriety during the 2004-05 Term for a number of controversial decisions that negatively affected Wisconsin's civil justice system.

In 2004, former Justice Diane Sykes left the bench after her appointment to the United States Court of Appeals, Seventh Circuit by President George W. Bush. Governor Jim Doyle filled Judge Sykes' vacant seat with the appointment of Milwaukee County Circuit Court Judge Louis Butler, who previously ran against Judge Sykes for the Wisconsin Supreme Court and lost.

With the shift in power, the court began issuing controversial decisions that significantly impacted Wisconsin's law. Scholars and pundits noted the court's new judicial philosophy and penchant to overturn existing case law and create new judicial doctrines.

Joseph Kearney, Dean of Marquette University Law School, explained that "[b]y any measure, this was an extraordinary year at the Wisconsin Supreme Court. From tort law to criminal law, the court was willing to depart from what had seemed to be settled approaches."[1]

In a widely circulated speech, Judge Sykes said the importance of the court's decisions could not be overstated. Analyzing the court's more prominent decisions, Judge Sykes said, "[c]onsidered individually, each [decision] represents a significant change in the law, worthy of close analytical attention from the bench, bar, and legal scholars."[2] According to Judge Sykes, the court's decisions marked "a dramatic shift in the court's jurisprudence, departing from some familiar and long-accepted principles that normally operate as constraints on the court's use of its power…"[3]

Based on the Court's controversial decisions, Wisconsin's liability ranking under the U.S. Chamber Institute for Legal Reform's annual report dropped seven places in 2005, from 10th to 17th. The next year, Wisconsin's ranking dropped even further, from 17th to 24th.

Two cases in particular exemplified the Wisconsin Supreme Court's sudden anti-business, pro-plaintiff jurisprudential philosophy: *Ferdon v. Wisconsin Patients Compensation Fund*[4] and *Thomas v. Mallett*.[5]

In *Ferdon*, the Court rewrote the test for evaluating challenges to state statutes under the Wisconsin Constitution by striking down the statutory limit on noneconomic damages in medical malpractice cases.

In *Thomas*, the Court eliminated the individual causation requirement for tort liability in lawsuits against manufacturers of lead-pigment by expanding the "risk contribution" theory, which places liability on all manufacturers when the specific manufacturer cannot be identified.

Donald Gifford, the former University of Maryland Law School Dean, noted that the *Thomas* decision pioneered "new ground in tort

[1] David Ziemer, *Crooks emerges as court's key swing vote*, Wisconsin Law Journal, August 24, 2005.

[2] Diane S. Sykes, *Reflection on the Wisconsin Supreme Court*, 89 Marq. L. Rev. 723 (2006).
[3] *Id*.
[4] 205 WI 125, 284 Wis.2d 573, 702 N.W.2d 440.
[5] 2005 WI 129, 285 Wis.2d 236, 701 N.W.2d 523.

causation" by "dramatically expanding the boundaries of market share liability."[6]

In an article titled "Alabama North," The Wall Street Journal called the *Thomas* decision "the first of its kind in the country" establishing dangerous precedent by dispensing with the "traditional legal standard for torts – which is to establish actual connections between wrongdoing and injury – and [replacing] it with a chain of speculation and conjecture…"[7]

In just a few years, Wisconsin's once respected Supreme Court had become anti-business and decidedly on the side of the plaintiff's bar.

The Court's More Recent Trend (2008 to present)
In 2007, Justice Annette Ziegler was elected to the Supreme Court to replace retiring conservative Justice Jon Wilcox. In 2008, Justice Michael J. Gableman defeated sitting Justice Louis Butler. With the election of Justices Ziegler and Gableman, the balance of the Supreme Court shifted to a more conservative, pro-business bench.

The Future of the Supreme Court
In April 2011, Wisconsin voters will go to the ballot box to choose whether to reelect Justice David T. Prosser, Jr., or elect one of his challengers: public defender, Marla J. Stephens, assistant attorney general, JoAnne Kloppenburg, or Madison attorney, Joel Winnig. Justice Prosser has a proven track record of being pro-business and is known for his deliberate, well-reasoned decisions.

Based on the experiences and track records of each of Justice Prosser's opponents, this election will determine whether the Court remains pro-business, or whether it reverts to issuing decisions benefitting the plaintiff's bar.

[6] Donald G. Gifford, *The Death of Causation: Mass Products Torts' Incomplete Incorporation of Social Welfare Principles*, 41 Wake Forest L. Rev. 943 (2006).
[7] "Alabama North," *Wall Street Journal*, Aug. 9, 2005.

Judicial Evaluation

Case Selection Criteria for Evaluation
Cases were chosen through the Wisconsin Civil Justice Council Appellate Program process. Input on case selection was provided by attorney and non-attorney representatives from the 17 business associations that make up the WCJC, as well as other experts on the issues most important to Wisconsin businesses. Representatives of the associations in turn received feedback from their members.

The decisions selected for the Judicial Evaluation had to have a significant impact, either positive or negative, on Wisconsin businesses. Decisions are labeled as, "WCJC agrees with this decision," if they are pro-business, or "WCJC disagrees with this decision," if they are not considered pro-business. In general, decisions with a positive impact on one type of business and a negative impact on another business were excluded.

The cases selected were decided the past two terms: 2008-09 and 2009-10. The terms begin in September and end in July.

2008-09 Term

Torts (Product Liability)

***Horst v. Deere & Co.*, 2009 WI 75 (July 14, 2009)**
In *Horst*, the court ruled that the manufacturer of a riding lawnmower is not strictly liable for the injury of a person when the operator disengaged the safety device. In reaching its decision, the court applied the "consumer contemplation test" rather than a "bystander contemplation test," as advocated by the plaintiff's attorney. According to the court, "while bystanders may recover when injured by an unreasonably dangerous product, the determination of whether the product is unreasonably dangerous is based on the expectations of the ordinary consumer."

The case involves a horrific set of facts. The owner of a riding lawn mower severely injured his two-year-old son after backing over the child with the mower blades moving. The riding lawn mower came equipped with a no-mow-in-reverse safety feature that stops the engine and the mower blades when the operator begins driving the mower in reverse.

However, the owner disengaged the safety device, which allowed the mower blades to continue as the mower drove in reverse. The owner lost sight of his son and accidentally ran over the child's feet causing significant injuries. The family sued Deere & Company, bringing negligence and strict products liability claims.

The court concluded that the lower court applied the proper standard and rejected the plaintiff's attempt to provide a new standard based on the expectations of the bystander.

The court reasoned that a separate bystander test would "create different levels of duty for strict products liability purposes, blurring the line between negligence and strict products liability." The court further explained that the "manufacturers would owe a certain level of duty to the user or consumer, and a different, likely higher level of duty to a bystander."

The court also noted that other remedies are still available to plaintiffs in the similar cases, such as a negligence claim. However, the trial court found in this case that the father's negligence contributed to the child's injury, not the manufacturer's product.

Justices Michael Gableman, David Prosser, and Patience Roggensack wrote a separate concurring opinion calling on the court to adopt a new test when determining whether a product is unreasonably dangerous in design defect products liability cases.

The three justices argue that Wisconsin should move away from the "consumer expectation test" under the Restatement of Torts (Second), and instead adopt the newer "reasonable alternative design" test under the Restatement of Torts (Third).

The dissent, authored by Justice Ann Walsh Bradley and Chief Justice Shirley Abrahamson, argued that the lower court incorrectly applied the correct legal standard.

According to the dissent, the correct question was not whether the product posed a danger to the father riding on the lawn mower, but rather whether it posed a danger to the young child.

The dissent also criticized the concurring opinion calling on the court to adopt the newer "reasonable alternative design" test under the Restatement of Torts (Third).

Horst v. Deere & Co. (WCJC agrees with the decision)	
Justice Michael Gableman	**Wrote Opinion**
Justice N. Patrick Crooks	Concurred
Justice David Prosser	Concurred
Justice Patience Roggensack	Concurred
Justice Ann Walsh Bradley	**Wrote Dissent**
Chief Justice Shirley Abrahamson	Dissented
Justice Annette Ziegler	Did not Participate

***Godoy v. E.I. DuPont*, 2009 WI 78 (July 14, 2009)**

In *Godoy*, the court held that the circuit court correctly concluded that the plaintiff's complaint failed to state a claim of defective design of white lead carbonate pigment ultimately used in paint and coatings.

The ruling upheld the dismissal of design defect claims in a suit alleging that certain manufacturers are liable under theories of strict (product) liability and negligence.

The decision includes an overview of product liability law in Wisconsin and a determination of the product at issue in this case. The court

concluded that "lead" is an essential element of white "lead" carbonate pigment and without "lead" it would be something else.

The court distinguished among three categories of product defects: 1) manufacturing defects; 2) design defects; and, 3) defects on a failure to adequately warn.

The court discussed the "risk contribution" theory applied to white lead carbonate pigment in the Thomas case — but — distinguished this case from Thomas explaining that this case is about defective design whereas Thomas was based on failure to warn claims.

There are three concurring opinions that address the "consumer expectation test" followed in Wisconsin and based on the Restatement of Torts (2nd) and the "alternative design test" based on the Restatement of Torts (3rd) and followed in the vast majority of states.

Godoy v. E.I. DuPont (WCJC agrees with the decision)	
Justice Ann Walsh Bradley	**Wrote Opinion**
Justice N. Patrick Crooks	Concurred
Justice David Prosser	Concurred
Justice Annette Ziegler	Concurred
Justice Michael Gableman	Concurred
Chief Justice Shirley Abrahamson	Concurred
Justice Patience Roggensack	Did not Participate

[*Blunt v. Medtronic, Inc.*, 2009 WI 16 (Feb. 17, 2009)]

In *Blunt*, the court held that state tort claims of negligence and strict liability against a manufacturer of defibrillators were preempted by federal law.

The plaintiff in this case, Joseph Blunt, sued Medtronic, Inc, a manufacturer of the Marquis 7230 implantable cardioverter defibrillator, which was approved under the Food and Drug Administration's premarket approval process (21 U.S.C. § 360e). Blunt was implanted with an original Marquis 7230 defibrillator in 2004. However, due to shorting problems with the defibrillator, Blunt's doctors removed the device. After his second surgery, Blunt sued Medtronic for negligence and strict liability.

Medtronic sought to dismiss the claims arguing that the state tort claims were preempted by federal law. To decide whether Blunt's state tort claims were preempted by federal law, it had to answer three questions:

- Whether the Marquis 7230 defibrillator met the federal "requirement" specific to the device when it received premarket approval by the FDA.
- Whether Blunt's common law claims of negligence and strict liability constitute state requirements that are "different from, or in addition to," the federal requirement.
- Whether the preemption analysis of *Riegel v. Medtronic, Inc.* __ U.S.___, 128 S.Ct. 999 (2008) applies to claims against the Marquis 7230 defibrillator, even though supplemental premarket approval was given to a later defibrillator.

The court answered all three questions in the affirmative and therefore concluded that Blunt's state common law claims were preempted by the federal law.

Justice Ann Walsh Bradley and Chief Justice Shirley Abrahamson wrote concurring opinion criticizing the U.S. Supreme Court's decision in *Riegel v. Medtronic.*

According to the concurring opinion, "[w]ith one stroke of a pen, [the U.S. Supreme Court] has diminished the states' traditional authority over the development of the common law and substituted instead mandatory adherence to a regulatory standard that may be substandard."

Blunt v. Medtronic, Inc (WCJC agrees with this decision)	
Justice Patience Roggensack	**Wrote Opinion**
Justice N. Patrick Crooks	Concurred
Justice David Prosser	Concurred
Justice Annette Ziegler	Concurred
Justice Michael Gableman	Concurred
Justice Ann Walsh Bradley	Wrote separate concurrence
Chief Justice Shirley Abrahamson	Joined separate concurrence

Family Leave or Medical Leave Act

***Harvot v. Solo Cup Co. & Solo Cup Operating Co.*, 2009 WI 85 (July 17, 2009)**
In *Harvot*, the court ruled that the Wisconsin Family or Medical Leave Act (WFMLA) does not grant a right to jury civil trial in an action to recover damages.

The case began when a former Solo Cup Company (Solo Cup) employee (Harvot) sued the company after she was terminated. Solo Cup terminated Harvot due to the amount of work she missed. Harvot filed a complaint with the Equal Rights Division of the Wisconsin Department of Workforce Development (DWD) alleging a violation of the WFMLA.

Harvot, a stock handler in the shipping department, developed a back condition while working for the company. In her complaint Harvot alleged that Solo Cup violated the WFMLA by denying her leave request for three days that she missed work due to her injury. The DWD administrative judge ruled that Solo Cup discriminated against Harvot by denying her medical leave for the three absences.

Harvot then filed suit in Winnebago County Circuit Court, seeking a private right of action against Solo Cup to recover damages caused by the violation of the WFMLA. In her complaint, Harvot demanded her damages claim be heard by a jury. However, the circuit court granted Solo Cup's motion to strike Harvot's demand for a jury trial. The circuit court's decision was appealed to the court of appeals, which certified two questions to the Wisconsin Supreme Court:

1. Whether the WFMLA confers an implied statutory right to a jury trial in a civil action for damages?
2. In the alternative, whether the Wisconsin State Constitution confers the right to a jury trial in a WFMLA action for damages?

The court answered both questions, "No."

According to court, because the WFMLA does not expressly provide for a jury trial, the lower court properly denied her request. The court noted: "when a statute is silent with regard to the right to a jury trial, no jury trial is required unless the right is preserved by Article I, Section 5 of the Wisconsin Constitution." The court further noted that finding an implied statutory right to trial by jury would "open a can of worms."

Moving to the second question, the court once again found that no right to a civil jury is conferred under Article I, Section 5 of the Wisconsin State Constitution.

In order to answer this question, the court explained that it would have to determine whether there was a similar cause of action in 1848, when the Wisconsin Constitution was ratified. If, indeed, there was essentially a counterpart law in 1848 similar to the modern MFMLA, then there would be a right to a jury under the Wisconsin State Constitution.

After analyzing the modern law and the law in 1848, the court determined that there was not "any cause of action existing in 1848 as an essential counterpart, with a similar purpose, to a suit for damages for a violation of the WFMLA."

The court stated that "it would be hard to imagine that Harvot's civil action for damages under the WFMLA 'existed, was known, or was recognized at common law . . . in 1848' when we consider that the creation of the WFMLA was a response to the change in composition of the modern-day work force."

Harvot v. Solo Cup Co. (WCJC agrees with this decision)	
Justice David Prosser	**Wrote Opinion**
Justice N. Patrick Crooks	Concurred
Justice Patience Roggensack	Concurred
Justice Annette Ziegler	Concurred
Justice Michael Gableman	Concurred
Justice Ann Walsh Bradley	**Wrote Dissent**
Chief Justice Abrahamson	Dissented

Lemon Law (Excessive Damages)

***Tammi v. Porsche Cars North America, Inc.*, 2009 WI 83 (July 17, 2009)**

In *Tammi*, the court ruled that a consumer who brings a claim under Wisconsin's Lemon Law, who then decides to purchase the defective vehicle, is not entitled to recover the amount the purchase price.

The plaintiff, Bruce Tammi, leased a Porsche 911Turbo Coupe. Tammi had problems with the rear spoiler and the radio. He then took the vehicle for repairs at least eight times, but these attempts to correct the problems were unsuccessful.

Tammi filed a notice under Wisconsin's Lemon Law to Porsche, and the case proceeded to the federal district court. While the case was pending, Tammi exercised his option to purchase the vehicle. According to Tammi, he had fixed the spoiler problem and felt that the vehicle was worth more than the lease buyout amount.

The federal district court ruled that Tammi was entitled to reimbursement for his lease payments ($57,458) and the purchase price he paid for the vehicle ($75,621.88). In addition, pursuant to Wisconsin's Lemon Law, the court doubled the pecuniary loss for a total of $266,159.76, plus costs.

The court also allowed Tammi to keep the vehicle. Moreover, the federal district court refused to reduce the damages award based on Tammi's reasonable use of the vehicle prior to his Lemon Law complaint.

The case was appealed to the U.S. Court of Appeals for the Seventh Circuit, which certified two issues to the Wisconsin Supreme Court:

1. When a consumer, after making a Lemon Law demand, exercises an option to purchase the vehicle, is the consumer then entitled to recover the amount of the purchase price?
2. Whether a damage award under the Lemon Law should be reduced for reasonable use of the vehicle?

Under the first question, the Wisconsin Supreme Court reversed the federal district court's decision. The court ruled that any consumer who brings a Lemon Law claim is not entitled to recover the entire amount of the purchase price if he or he exercises the option to purchase vehicle.

According to the court, because a person who leases a vehicle is not required to purchase the vehicle, the consumer is only allowed to receive the amount of the entire lease payments, plus any sales tax and collateral costs.

The Wisconsin Supreme Court also reversed the federal district court under the second question. According to the court, damages should be reduced by the reasonable use of the vehicle.

Tammi v. Porsche Cars North America (WCJC agrees with this decision)	
Justice David Prosser	**Wrote Opinion**
Justice N. Patrick Crooks	Concurred
Justice Patience Roggensack	Concurred
Justice Annette Ziegler	Concurred
Justice Michael Gableman	Concurred
Chief Justice Shirley Abrahamson	Concurred
Justice Ann Walsh Bradley	Concurred

Statutory Construction

***Milwaukee Journal Sentinel v. Dept. of Administration*, 2009 WI 79 (July 15, 2009)**
In *Milwaukee Journal Sentinel*, the court ruled that a ratification by the Wisconsin Legislature of a collective bargaining agreement, which sought to amend the Public Records Law by exempting public employees represented by unions, was insufficient without introducing separate legislation to effect a change in that law.

The case began when newspaper reporters filed public records requests under the Wisconsin Public Records Law. The Department of Administration (DOA) and Department of Natural Resources disclosed some of the names, but refused to release the names of employees represented by the Wisconsin State Employees Union (WSEU). The stage agencies cited to a provision in the state's collective bargaining agreement with WSEU which stated that state agencies were not to release any information about employees covered under the agreement.

The court ruled that in order to amend the Public Records Law through ratification of the collective bargaining unit, the Legislature was required to introduce separate legislation.

Because the Legislature failed to introduce legislation amending the Public Records Law to exempt certain state employees from being subject to that law, the collective bargaining agreement was insufficient to satisfy Article IV, Section 17(2) of the Wisconsin Constitution.

Milwaukee Journal Sentinel v. DOA (WCJC agrees with this decision)	
Justice Patience Roggensack	**Wrote Opinion**
Justice N. Patrick Crooks	Concurred
Justice Ann Walsh Bradley	Concurred
Justice Annette Ziegler	Concurred
Justice Michael Gableman	Concurred
Justice David Prosser	Concurred
Chief Justice Shirley Abrahamson	**Wrote Dissent**

***Estate of Robert V. Genrich v. OHIC Insurance Co.*, 2009 WI 67 (July 7, 2009)**
In *Genrich*, the court concluded that the time limit for a wrongful death action caused by medical malpractice is counted from the date of the deceased person's injury rather than the date of the death.

Robert Genrich had surgery performed to have an ulcer repaired. A surgical sponge was mistakenly left in his abdominal cavity. A second surgery was performed to remove the sponge but unfortunately Genrich did not recover and eventually died from an infection.

Genrich's estate and his wife filed suit against the doctors and the insurance company. The estate sued for negligence and Genrich's wife sued for wrongful death, also based on medical negligence. The insurance company moved for summary judgment arguing that both the estate's and the spouse's claims were barred by the medical negligence statute of limitations, Wis. Stat. § 893.55(1m)(a).

The first issue was whether the estate's medical negligence was time barred under the statute of limitations. Citing Wisconsin's medical negligence statute of limitations (Wis. Stat. § 893.55(1m)), the court ruled that Genrich's estate failed to file the lawsuit within the

applicable statute of limitations, which is three years from the date of the injury.

In this case, the date of the injury was when the sponge was left inside Genrich's body. Because the lawsuit was filed more than three years from that date, the court ruled that the estate's negligence claim was time-barred. All of the justices agreed that this claim was barred by the statute of limitations.

The second issue was whether the wrongful death lawsuit filed by Genrich's wife should also have been dismissed for failing to file within the applicable statute of limitations. This is where the court diverged.

The majority ruled that the wrongful death lawsuit based on medical malpractice was also time-barred using under the same statute of limitations (Wis. Stat. § 893.55(1m)(a)).

The court ruled that wife's wrongful death claim similarly arose out of medical malpractice and therefore was governed by the same statute of limitations as the estate's negligence claim. Under this statute, the wife's claim for damages due to wrongful death accrued on the same date that the estate's claim accrued: the date of Genrich's injury.

The three dissenting Justices disagreed and argued that the time limit for a wrongful death action caused by medical malpractice should be counted from the date of the person died rather than the date of the deceased person's injury.

Estate of Genrich v. OHIC Insurance Co. (WCJC agrees with this decision)	
Justice Patience Roggensack	**Wrote Opinion**
Justice David Prosser	Concurred
Justice Michael Gableman	Concurred
Justice Annette Ziegler	Concurred
Justice N. Patrick Crooks	**Wrote Dissent**
Chief Justice Shirley Abrahamson	Dissented
Justice Ann Walsh Bradley	Dissented

2009-10 Term

Constitutional Law

***Wisconsin Medical Society, Inc., et al., v. Morgan*, 2010 WI 94 (July 20, 2010)**

In *Wisconsin Medical Society*, the court ruled that health care providers have a protectable property interest in the Injured Patients and Families Compensation Fund (fund).

This case involved a $200 million transfer from the Fund to the Medical Assistance Trust Fund by the Wisconsin Legislature in the 2007-09 biennial budget bill as a way to help balance the state budget.

The Wisconsin Medical Society (Medical Society) sued the state claiming that the transfer was an unconstitutional taking of private property without just compensation. The trial court dismissed the lawsuit ruling that the Medical Society lacked a property interest in the Fund. The case was appealed to the Wisconsin Supreme Court. The court granted review to address two issues:

- Whether the Medical Society (health care providers) had a protectable property interest in the Injured Patients and Families Compensation Fund.
- Whether the statute retroactively repudiating the government's contractual obligation is unconstitutional?

The court ruled that because health care providers are specifically named as beneficiaries of the trust they have equitable title to the assets of the Fund. Specifically, the Court ruled that:

- Health care providers have a right to the security and integrity of the Fund;
- Health care providers have a right to realize the Fund's investment earnings to moderate, and even lower, their assessments; and

- Health care providers and proper claimants have rights to have excess judgments paid to the proper claimants.

Therefore, because the health care providers have protected property interests in the Fund, the 2007 budget bill (Wis. Act. 20) provision transferring $200 million from the Fund was an unconstitutional taking.

Wisconsin Medical Society v. Morgan (WCJC agrees with this decision)	
Justice David Prosser	**Wrote Opinion**
Justice Patience Roggensack	Concurred
Justice Michael Gableman	Concurred
Justice Annette Ziegler	Concurred
Justice N. Patrick Crooks	Concurred
Chief Justice Abrahamson	**Wrote Dissent**
Justice Ann Walsh Bradley	Dissented

In the Matter of Judicial Disciplinary Proceeding Against the Honorable Michael J. Gableman; Wisconsin Judicial Commission v. The Honorable Michael J. Gableman, **2010 WI 62; 2010 WI 61 (June 30, 2010)**

In *Gableman*, the Wisconsin Supreme Court deadlocked 3-3 on deciding whether to uphold a three-judge Judicial Conduct Panel's decision to dismiss a complaint against Justice Michael Gableman regarding alleged violations of the Code of Judicial Conduct.

A complaint was filed by the Wisconsin Judicial Commission against Justice Gableman over a campaign advertisement ran by his campaign against his opponent, Justice Louis Butler. The complaint alleged that the advertisement directly implied and was intended to convey the message that action or conduct of Louis Butler enabled or resulted in the release of Reuben Mitchell and Mitchell's subsequent commission of criminal molestation.

Justices Prosser, Roggensack, and Ziegler issued their own separate opinion (2010 WI 62) upholding the Panel's decision recommending dismissal of the case.

The Justices ruled that the Wisconsin Judicial Commission failed to establish, by evidence that is clear, satisfactory and convincing, that Justice Gableman violated the Code of Judicial Conduct. In addition, the three Justices ruled that the First Amendment's guarantee of free speech protects campaign speech and therefore prohibited the government from disciplining Justice Gableman's advertisement.

Chief Justice Abrahamson, and Justices Bradley and Crooks issued their own decision (2010 WI 61). The three Justices opened their decision sharply criticizing the other three Justices for issuing a separate opinion with a separate citation (which they characterized as a "complete break from our usual practice").

The three Justices argued that Justice Gableman's advertisement violated the Code of Judicial Conduct, and that the First Amendment does not "protect knowingly made false statements."

Justice Gableman did not participate in the case.

Judicial Disciplinary Proceeding Against the Hon. Michael J. Gableman (WCJC agrees with the decision issued by Justices Prosser, Roggensack, and Ziegler (2010 WI 62))	
Justice David Prosser	**Wrote Opinion**
Justice Roggensack	Concurred
Justice Annette Ziegler	Concurred
Justice N. Patrick Crooks	**Wrote Dissent**
Chief Justice Abrahamson	Dissented
Justice Ann Walsh Bradley	Dissented
Justice Michael Gableman	Did not participate.

Torts (Liability of Independent Contractors)

***Tatera v. FMC Corp., et al.*, 2010 WI 90 (July 20, 2010)**

In *Tatera*, the court ruled that a principal employer is not liable in tort for injuries sustained by an independent contractor's employee while he or she is performing the contracted work.

This case involved a lawsuit filed by Vicki Tatera and the Estate of Walter Tatera, her late husband. Walter Tatera died in 2004 from malignant mesothelioma, a rare form of cancer. Tatera worked for a company, B&M, that machined asbestos-containing friction disks to achieve a desired size and shape. B&M performed this work for FMC Corp., which owned a Milwaukee-based company (Stearns Electric Company) that manufactured industrial electric brakes. Stearns Electric Company (owned by FMC Corp.) did not instruct B&M on how to machine the friction disks, but instead provided B&M a drawing illustrating the desired result. The facts were also undisputed that Stearns purchased the friction disks from several different manufacturers.

After Tatera's death, a lawsuit was filed against FMC Corp. and several defendants alleging negligence and strict liability. As to the negligence claim, the lawsuit alleged that FMC Corp.: 1) had a duty to exercise reasonable care for the safety of Walter and those who worked with or were exposed to the asbestos-containing products, or 2) should have known that exposure would cause disease or death.

The trial court granted summary judgment to FMC Corp. on both the negligence and strict liability claims. The court of appeals upheld the lower court's decision regarding the strict liability claim, but reversed the portion of the decision dismissing the negligence claim against FMC Corp.

The Wisconsin Supreme Court reversed the court of appeals' decision regarding the negligence claim and ruled that FMC Corp. was not liable in tort. The court ruled that under *Wagner v. Continental Casualty Co*., a principal employer is not liable in tort for injuries sustained by an independent contractor's employee while he or she is performing the contracted work.

The court noted that there are two exceptions to this rule. After analyzing the facts to the two exceptions, the court upheld the court of appeals' decision finding that FMC Corp. was not strictly liable.

Tatera v. FMC Corp. (WCJC agrees with this decision)	
Justice Annette Ziegler	**Wrote Opinion**
Justice Patience Roggensack	Concurred
Justice David Prosser	Concurred
Justice Michael Gableman	Concurred
Chief Justice Abrahamson	**Wrote Dissent**
Justice N. Patrick Crooks	Dissented
Justice Ann Walsh Bradley	Dissented

Worker's Compensation (Retroactive Application of Laws)

***Society Ins. et al. v. Labor & Industry Review Comm'n, et al*, 2010 WI 68 (March 9 2010)**

In *Society Insurance*, the court concluded that a law enacted to retroactively shift the burden of payment of an employee's benefits and treatment expense under the state's worker's compensation law to the insurer after the statute of limitations had run violated the United States Constitution and Wisconsin Constitution.

In *Society Insurance*, an employee sustained a work related injury to his right leg which required amputation below the knee. The insurer, Society Insurance, paid worker's compensation benefits to the employee through 1990.

Under the law in effect at the time of the employee's injury, Society Insurance's liability to pay the employee's benefits or treatment expenses expired in June 2002 based on the 12-year statute of limitations. Therefore, any subsequent payments would have been paid from the Work Injury Supplemental Benefit Fund.

The Wisconsin Legislature subsequently amended the worker's compensation law by shifting the burden of payment of an employee's benefits or treatment expense for traumatic injuries becoming due after the 12 year statute of limitation from the Fund to the insurer or employer.

In February 2004, after the 12-year statute of limitations had run, the employee filed a claim for additional medical expenses with Society Insurance.

Based on the new law suspending the 12-year statute of limitations, the Labor & Industry Review Commission ruled that Society Insurance was required to pay for the employee's medical expenses.

Society Insurance appealed the decision in circuit court. The circuit court ruled that the retroactive application of the law shifting the burden of medical expenses to Society Insurance is unconstitutional for two reasons:

1. It violated Society Insurance's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 1 of the Wisconsin Constitution; and
2. It substantially impaired Society Insurance's contractual obligation in violation of Article I, Section 10 of the United States Constitution and Article I, Section 12 of the Wisconsin Constitution.

In a 4-3 decision, the Wisconsin Supreme Court affirmed the lower court and ruled the new law unconstitutional.

Society Ins. v. Labor & Industry Review Comm'n (WCJC agrees with this decision)	
Justice Patience Roggensack	**Wrote Opinion**
Justice Annette Ziegler	Concurred
Justice David Prosser	Concurred
Justice Michael Gableman	Concurred
Justice N. Patrick Crooks	**Wrote Dissent**
Chief Justice Abrahamson	Dissented
Justice Ann Walsh Bradley	Dissented

Civil Procedure (Default Judgments)

***Miller v. Hanover Ins. Co.*, 2010 WI 75 (July 13, 2010)**

In *Miller*, the court reversed a default judgment against Zurich Insurance after it failed to respond to an amended complaint and summons alleging that it was liable for underinsured insurance motorist coverage for an insured involved in a car accident.

In reaching its decision, the Supreme Court ruled that lower courts must consider five factors when deciding whether it should grant relief from a judgment.

Applying the five factors to this case, the Supreme Court concluded that Zurich met its burden of proving that extraordinary circumstances existed justifying vacating the default judgment.

As the court noted, this case involved "lengthy and complicated" facts. However, the central issue involved a default judgment for $2 million entered against Zurich Insurance after it failed to reply to an amended complaint and summons.

Zurich originally appeared in the original subrogated worker's compensation claim, but a company clerk overlooked the amended complaint alleging the underinsured motorist claim. Upon catching its error, Zurich promptly answered the complaint and denied the coverage.
However, the circuit court entered the default judgment and rejected Zurich's request for an extension of time or relief from judgement due to excusable neglect.

In reaching its decision, the court ruled that prior case law "unambiguously established that a circuit court is to consider the five interest of justice factors in determining whether extraordinary circumstances are present under Wis. Stat. § 806.07(1)(h) such that relief from a judgment, including default judgment, is appropriate."

The court further explained that " a finding of excusable neglect is not required under the extraordinary circumstances test to obtain relief from a default judgment [under the statute]."

Applying the five "interest of justice factors" to the facts in this case, the Supreme Court vacated the lower court's default judgment.

Miller v. Hanover Ins. Co. (WCJC agrees with this decision)	
Justice Patience Roggensack	**Wrote Opinion**
Chief Justice Abrahamson	Concurred
Justice David Prosser	Concurred
Justice Michael Gableman	Concurred
Justice N. Patrick Crooks	Concurred
Justice Annette Ziegler	Concurred
Justice Ann Walsh Bradley	Concurred

Statutory Construction

***Mercycare Insurance Co. et al. v. Wisconsin Commissioner of Insurance*, 2010 WI 87 (July 16, 2010)**
In *Mercycare*, the court concluded that Wisconsin law does not permit an insurer to exclude generally covered maternity services for surrogate mothers. In reaching its decision, the court applied due weight deference to the Wisconsin Commissioner of Insurance's decision.

WCJC filed an amicus brief in the case solely on the issue of the proper standard of review when reviewing an agency decision. WCJC advocated that "great weight deference" – the highest level of deference – is not the general rule when reviewing an agency decision. Rather, WCJC argued in its amicus brief that when an agency has never previously interpreted a statute at issue in the case, the court should accord the agency's decision no deference.

The court agreed with WCJC's analysis and explained that three levels of deference are accorded to agency decisions:

1. No deference – when the issue is of first impression and when the agency has no experience or expertise in deciding the legal issue presented, or when the agency's position on the issue has been so inconsistent as to provide no real guidance.
2. Due weight deference – when the agency has some experience in an area but has not developed the expertise that places it in a better position than the court to make judgments regarding the interpretation of the statute.
3. Great weight deference – when four requirements are met:
    - The agency is charged by the legislature with the duty of administering the statute.
    - The agency's interpretation is one of long standing.

- The agency employed its expertise or specialized knowledge in forming its interpretation.
- The agency's interpretation will provide uniformity and consistency in the application of the statute.

In this case, the court determined the Commissioner of Insurance was to be accorded the middle level of deference, due weight deference. In applying this standard, the court upheld the agency's decision ruling that the insurance policy at issue did not permit the insurer to exclude the maternity services for surrogate mothers.

Mercycare Ins. Co. v. Wisconsin Commissioner of Insurance (WCJC agreed with the court's decision regarding the level of deference applied)	
Justice Ann Walsh Bradley	**Wrote Opinion**
Chief Justice Abrahamson	Concurred
Justice David Prosser	Concurred
Justice Michael Gableman	Concurred
Justice N. Patrick Crooks	Concurred
Justice Annette Ziegler	Concurred
Justice Patience roggensack	Concurred

General Business

In the matter of amendment of the Code of Judicial Conduct's rules on recusal; In the matter of amendment of Wis. Stat. § 757.19, 2010 WI 73 (July 7, 2010)

The League of Women Voters (League) filed a rule petition (08-16) with the Wisconsin Supreme Court seeking to amend the Wisconsin Code of Judicial Conduct (Code). If adopted, the League's petition would have forced any justice or judge receiving $1,000 from a party, or from an attorney, or law firm representing a party in a case, to rescue himself or herself from hearing the case.

In response, the Wisconsin Realtors Association (Realtors) and Wisconsin Manufacturers & Commerce (WMC) filed separate rule petitions.

The Realtors' petition (08-25) requested the court to amend the Code to provide that a judge or justice should not be required to recuse himself or herself in case "based solely on any endorsement or the judge's campaign committee receipt of a lawful campaign contribution…from an individual or entity involved in the proceeding."

WMC's petition (09-10) requested the court to amend the Code to provide that a judge or justice should not be required to recuse himself or herself in a proceeding if one of the parties sponsored an independent expenditure or issue advocacy.

The court denied the League's petition and adopted the Realtors and WMC's petitions.

In the matter of amendment of the Code of Judicial Conduct's rules on recusal *(WCJC agrees with this decision)*	
Justice David Prosser	**Wrote Opinion**
Justice Patience Roggensack	Concurred
Justice Annette Ziegler	Concurred
Justice Michael Gableman	Concurred
Justice Ann Walsh Bradley	**Wrote Dissent**
Chief Justice Abrahamson	Dissented
Justice N. Patrick Crooks	Dissented

Appendix

2008-2009 Cases

Plastics Engineering Co. v. Liberty Mutual Ins. Co., 2009 WI 13 (Jan. 29, 2009).

Jonathan Lisowski v. Hastings Mutual Insurance Company, 2009 WI 11 (Jan. 28, 2009).

Brittany L. Noffke v. Kevin Bakke, 2009 WI 10 (Jan. 27, 2009).

Nelly De La Trinidad v. Capitol Indemnity Corporation, 2009 WI 8 (Jan. 23, 2009).

County of Dane v. L.I.R.C., 2009 WI 9 (Jan. 23, 2009).

Albert Loth v. City of Milwaukee, 2008 WI 129 (Dec. 30, 2008).

D.L. Anderson's Lakeside Leisure Co., Inc. v. Donald Anderson, 2008 WI 126 (Dec. 2, 2008)

Froedtert Memorial Lutheran Hospital v. National States Insurance Company, 2009 WI 33 (May 13, 2009).

Edward U. Notz v. Everett Smith Group, Ltd., 2009 WI 30 (April 29, 2009).

Apple Valley Gardens Assoc., Inc. v. Gloria MacHutta, 2009 WI 28 (March 27, 2009).

Heritage Farms, Inc. v. Markel Insurance Company, 2009 WI 27 (March 26, 2009).

Joseph Blunt, Sr. v. Medtronic, Inc., 2009 WI 16 (Feb. 17, 2009).

Douglas Osborn v. Harold Dennison, 2009 WI 72 (July 9, 2009).

Glen D. Hocking v. City of Dodgeville, 2009 WI 70 (July 9, 2009).

Kenneth J. Behrendt v. Gulf Underwriters Insurance Co., 2009 WI 71 (March 3, 2009).

Estate of Robert v. Genrich v. OHIC Insurance Company, 2009 WI 67 (Feb. 3, 2009).

Tywanda F. Luckett v. Aaron C. Bodner, M.D., 2009 WI 68 (Jan. 7, 2009).

Michael S. Polsky v. Daniel E. Virnich, 2009 WI 66 (Jan. 7, 2009).

Baldwin-Woodville Area School Dist. v. West Central Education Assoc., 2009 WI 51 (June 17, 2009).

Kenosha Professional Firefighters v. City of Kenosha, 2009 WI 52 (June 17, 2009).

PRN Associates LLC v. DOA, 2009 WI 53, (June 17, 2009).

Ho-Chunk Nation v. DOR, 2009 WI 48 (June 16, 2009).

Ira B. Robins v. Patrick J. Madden, 2009 WI 46 (June 11, 2009).

Rudy Nedvidek v. Judith L. Kuipers, 2009 WI 44 (June 10, 2009).

Henry J. Krier v. Donald N. Vilione, 2009 WI 45 (June 10, 2009).

Richard Bubb v. William Brusky, MD, 2009 WI 91 (July 24, 2009).

Coulee Catholic Schools v. LIRC, 2009 WI 88 (July 21, 2009).

Milton J. Christensen v. Michel J. Sullivan, 2009 WI 87 (July 21, 2009).

Bruce A. Tammi v. Porsche Cars North America, Inc., 2009 WI 83 (July 17, 2009).

Kelly J Harvot v. Solo Cup Company, 2009 WI 85 (July 17, 2009).

Harold Umansky v. ABC Insurance Co., 2009 WI 82 (July 17, 2009).

City of Milwaukee Post No. 2874 v. Redevelopment Authority of the City of Milwaukee, 2009 WI 84 (July 17, 2009).

Robert Zellner v. Daryl Herrick, 2009 WI 80 (July 15, 2009).

Milwaukee Journal Sentinel v. DOA, 2009 WI 79 (July 15, 2009).
American Family Mutual Ins. Co. v. David Golke, 2009 81 (July 15, 2009).
Christine L. Tensfeldt v. F. William Haberman, 2009 WI 77 (July 14, 2009).
Star Direct, Inc. v. Eugene Dal Pra, 2009 WI 76 (July 14, 2009).
Kara Horst v. Deere & Company, 2009 WI 75 (July 14, 2009).
Rueben Baez Godoy v. E.I. du Pont de Nemours and Company, 2009 WI 78 (July 14, 2009).
The Farmers Automobile Insurance Association v. Union Pacific Railway Company, 2009 WI 73 (July 10, 2009).
Gregory G. Phelps v. Physicians Insurance Company of Wisconsin, Inc., 2009 WI 74 (July 10, 2009).

2009-2010 Cases

Estate of James F. Sheppard v. Jessica Schleis, 2010 WI 32 (May 4, 2010).
Racine County v. Oracular Milwaukee, Inc., 2010 WI 25 (April 2, 2010).
Mark J. Solowicz v. Forward Geneva National, 2010 WI 20 (March 24, 2010).
Volvo Trucks North America v. Wausau Truck Center, Inc. 2010 WI 15 (March 11, 2010).
Sheboygan County DH & HS v. William L., 2010 WI 55 (June 29, 2010).
Sheboygan County DH & HS v. Tanya M. B., 2010 WI 55 (June 29, 2010).
William N. Ehlinger v. Jon A. Hauser, 2010 WI 54 (June 25, 2010).
Francis Groshek v. Michael G. Trewin, 2010 WI 51 (June 24, 2010).
Johnson Controls, Inc. v. London Market, 2010 WI 52 (June 24, 2010).
Denice Brunton v. Nuvell Credit Corporation, 2010 WI 50 (June 24, 2010).
Roehl Transport, Inc. v. Liberty Mutual Insurance Company, 2010 WI 49 (June 22, 2010).
The Saddle Ridge Corp. v. Board of Review for Town of Pacific, 2010 WI 47 (June 18, 2010)
Ash Park, LLC v. Alexander & Bishop, Ltd , 2010 WI 44 (June 3, 2010).
James Zarder v. Acuity, A Mutual Insurance Company, 2010 WI 35 (May 14, 2010).
Milwaukee Symphony Orchestra v. DOR, 2010 WI 33 (May 5, 2010).
Kevin Blum, Jr. v. 1st Auto & Casualty Ins. Co., 2010 WI 78 (July 14, 2010).
Vearl Miller v. The Hanover Insurance Co., 2010 WI 75 (July 13, 2010).
ADMANCO, Inc. v. 700 STANTON DRIVE, LLC, 2010 WI 76 (July 13, 2010).
Bank Mutual v. S.J. Boyer Construction, Inc., 2010 WI 74 (July 9, 2010).
Society Insurance v. LIRC, 2010 WI 68 (July 8, 2008).
Estate of Robert C. Parker v. Beverly Enterprises, Inc., 2010 WI 71 (July 8, 2010).
Maryland Arms Limited Partnership v. Cari M. Connell, 2010 WI 64 (July 7, 2010).
Robert D. Konneker v. Robert S. Romano, 2010 WI 65 (July 7, 2010).
Wisconsin Judicial Commission v. Michael J. Gableman, 2010 WI 61 (July 6, 2010).
Glen D. Hocking v. City of Dodgeville, 2010 WI 59 (July 2, 2010).
E-L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District, 2010 WI 58 (July 2, 2010).

Michael Pries V. Raymond McMillon, 2010 WI 63 (July 2, 2010).

William C. McConkey v. J.B. Van Hollen, 2010 WI 57 (June 30, 2010).

Wisconsin Judicial Commission v. John A. Zodrow, 2010 WI 107 (Aug. 26, 2010).

Dawn M. Sands v. Menard, Inc., 2010 WI 96 (July 21, 2010).

Borek Cranberry Marsh v. Jackson County, 2010 WI 95 (July 21, 2010).

Wisconsin Medical Society v. Michael L. Morgan, 2010 WI 94 (July 20, 2010).

Barbara C. Grygiel v. Monches Fish & Game Club, Inc., 2010 WI 93 (July 20, 2010).

Walter Tatera v. FMC Corporation, 2010 WI 90 (July 20, 2010).

Mercycare Ins. Co. v. Wisconsin Commissioner of Insurance, 2010 WI 87 (July 16, 2010).

Karen Schill v. Wisconsin Rapids School District, 2010 WI 86 (July 16, 2010).

In re matter of amendment of the Code of Judicial Conduct's rule on recusal; In the matter of amendment of Wis. Stat. § 757.19, 2010 WI 73 (July 7, 2010).