

While much attention is focused on elected officials who represent voters in Olympia and Washington, D.C., not much is known about the nine elected justices of the Washington state Supreme Court. They are arguably the most powerful governing body in the state of Washington, but go largely unnoticed.

The members of the LRC are committed to ending lawsuit abuse. Much of this effort is focused on the Legislature but because nearly all significant liability legislation eventually lands in the hands of the Supreme Court, their rulings cannot be overlooked.

Every other year, the LRC Judicial Scorecard shines a bright light on the liability decisions of the Supreme Court and the effects they have on the citizenry of the state. This sixth installment provides a stark analysis of the Court.

Lifetime Judicial Liability Score

1.	Jim Johnson	89%
2.	Barbara Madsen	66%
3.	Mary E. Fairhurst	51%
4.	Susan Owens	49%
5.	Charles W. Johnson	35%
6.	Charlie Wiggins	33%
8.	Tom Chambers	9%
9.	Debra Stephens	5%

2012 Judicial Liability Score

Justice	Results supported by the LRC <i>Current sitting justices only</i>	Results opposed by the LRC <i>Current sitting justices only</i>	2012 score
Tom Chambers	0	14	0 %
Mary E. Fairhurst	7	6	54%
Charles W. Johnson	3	11	21%
Jim Johnson	13	1	93%
Barbara Madsen, Chief Justice	12	2	86%
Susan Owens	5	9	36%
Debra Stephens	1	13	7 %
Charlie Wiggins	1	2	33%

Note: Justice Steven Gonzales was appointed to the Court in January 2012 and did not participate in any of the cases evaluated on this Scorecard.

Our mission:

- To limit expansion of tort liability
- To reduce lawsuit defense costs
- To speed resolution of lawsuits
- To improve fairness & certainty of civil justice system

2012 Judicial Scorecard

Case	LRC position	Supported result Current sitting justices only	Opposed result Current sitting justices only
General liability			
<p><i>Broom v. Morgan Stanley DW, Inc.</i> 169 Wn.2d 231 (2010)</p> <p>Expands liability by undermining the finality and efficiency of arbitration agreements. The Court held arbitrations are not "actions" subject to state statutes of limitations, thus limiting arbitrators' power to interpret applicable arbitration codes.</p>	Oppose	Justice Chambers Justice Johnson, C. Justice Stephens	Justice Fairhurst Justice Johnson, J. Justice Madsen Justice Owens
<p><i>Schnall v. AT & T Wireless Servs. Inc.</i> 171 Wn.2d 260 (2011)</p> <p>Limits liability by holding that Washington's Consumer Protection Act is limited to Washington state residents and may not be the basis for a national class action.</p>	Support	Justice Fairhurst Justice Johnson, C. Justice Johnson, J. Justice Madsen	Justice Chambers Justice Owens Justice Stephens
<p><i>Eastwood v. Horse Harbor Found., Inc.</i> 170 Wn.2d 380 (2010)</p> <p>Expands liability by adopting the independent duty doctrine for duties arising independently of a contract in lieu of the economic loss rule. The Court held the rule against tort recovery for economic loss for injury in a contractual relationship does not preclude tort recovery to a lessor for a lessee's waste where the lessee had a duty independent of the lease contract not to cause waste.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Johnson, J. Justice Madsen Justice Owens Justice Stephens	
Product liability			
<p><i>Burton v. Twin Commander Aircraft LLC</i> 171 Wn.2d 204 (2011)</p> <p>Limits liability by broadening the definition of "manufacturer" under the General Aviation Revitalization Act (GARA) and extending protection under GARA's statute of repose. The Court declined to allow a "fraud exemption" to the statute of repose and required material fact as to whether the defendant "knowingly" misrepresented or withheld information from the Federal Aviation Administration.</p>	Support	Justice Fairhurst Justice Johnson, C. Justice Johnson, J. Justice Madsen Justice Owens	Justice Chambers Justice Stephens
Medical liability			
<p><i>Waples v. Yi</i> 169 Wn.2d 152 (2010)</p> <p>Expands liability by ruling as unconstitutional a requirement that plaintiffs file a 90-day notice prior to bringing a malpractice suit against a health care provider. The requirement was part of a bi-partisan reform package supported by both plaintiff's and defendant's groups.</p>	Oppose	Justice Chambers Justice Johnson, C. Justice Owens Justice Stephens	Justice Fairhurst Justice Johnson, J. Justice Madsen
<p><i>Mohr v. Grantham</i> 172 Wn.2d 844 (2011)</p> <p>Expands liability in medical-liability cases by allowing a plaintiff to prevail on a claim that the negligence reduce the chance of a better outcome even when the plaintiff cannot prove the negligence caused the harm. This case eliminates the need to prove traditional proximate cause in medical negligence cases, and it is unique. It is not the law in any other kind of professional negligence case.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Stephens Justice Owens Justice Wiggins	Justice Johnson, J. Justice Madsen
<p><i>Smith v. Orthopedics Int'l., Ltd., P.S.</i> 170 Wn.2d 659 (2010)</p> <p>Limits liability by holding that an improper ex parte communication that violated physician-patient privilege did not warrant a new trial because the violation did not alter the treating physician's trial testimony and did not prejudice the plaintiff.</p>	Support	Justice Johnson, J. Justice Fairhurst Justice Madsen Justice Owens	Justice Chambers Justice Johnson, C. Justice Stephens

Case	LRC position	Supported result Current sitting justices only	Opposed result Current sitting justices only
Government liability			
<p><i>Rahman v. State</i> 170 Wn.2d 810 (2011)</p> <p>Expands liability by holding that a state employee's violation of an explicit workplace rule prohibiting use of state vehicles to transport persons not on state business does not necessarily render his conduct outside the scope of his employment, thus making the state vicariously liable for injury to the third-party caused by the employee's negligence.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Owens Justice Stephens	Justice Johnson, J. Justice Madsen
Employment law			
<p><i>Kitsap Cnty. Deputy Sheriff's Guild v. Kitsap Cnty.</i> 167 Wn.2d 428 (2009)</p> <p>Expands liability by adopting a public policy exception to enforcing arbitration decisions. The Court enforced an arbitrator's award that directed reinstatement of a deputy sheriff who had been expressly found untruthful in an internal investigation.</p>	Oppose	Justice Chambers Justice Johnson, C. Justice Madsen Justice Owens Justice Stephens	Justice Johnson, J.
<p><i>Roe v. TeleTech Customer Care Mgt. LLC</i> 171 Wn.2d 736 (2011)</p> <p>Limits liability by holding that Washington's Medical Use of Marijuana Act does not provide a private cause of action in favor of employees terminated for use of medical marijuana, nor does it violate a clear mandate of public policy.</p>	Support	Justice Fairhurst Justice Johnson, C. Justice Johnson, J. Justice Madsen Justice Owens Justice Stephens Justice Wiggins	Justice Chambers
<p><i>Cudney v. ALSCO, Inc.</i> 172 Wn.2d 524 (2011)</p> <p>Limits liability by maintaining public policy wrongful discharge as a narrow exception to at-will employment. The Court held employees may not bring an action for public policy wrongful discharge for reporting manager's alleged drunk driving because there are currently adequate laws to protect the public from intoxicated drivers.</p>	Support	Justice Fairhurst Justice Johnson, J. Justice Madsen Justice Owens	Justice Chambers Justice Johnson, C. Justice Stephens
Construction liability			
<p><i>Affiliated FM Ins. Co. v. LTK Consulting Services, Inc.</i> 170 Wn.2d 442 (2010)</p> <p>Expands liability by imposing a duty of reasonable care on professional engineering service providers that is independent of contractual obligations. The Court held the economic loss doctrine did not bar recovery for breach of this duty, and the provider was liable for the safety risks of property damage where the provider did not recommend changes to a train's electrical grounding system.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Owens Justice Stephens	Justice Johnson, J. Justice Madsen



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Insurance law			
<p><i>Moeller v. Farmers Ins. Co. of Washington</i> 173 Wn.2d 264 (2011)</p> <p>Expands liability beyond the standards applied in most other states with respect to auto insurance claims for the “diminished value” of a damaged and repaired car following an accident. Most states limit the value of a claim to the amount required to “repair or replace” the damaged vehicle. The Court allowed for additional damages, beyond the cost of repairs, to compensate the policyholder for the diminished value of a repaired vehicle.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Owens Justice Stephens	Justice Johnson, J. Justice Madsen
<p><i>Matsyuk v. State Farm Fire & Cas. Co.</i> 173 Wn.2d 643 (2012)</p> <p>Expands liability by requiring an insurer to pay a pro rata share of the plaintiff’s attorneys fees under the equitable fee sharing rule if the insurer is to recover an offset against personal injury protection (PIP) policy payouts when the plaintiff recovers under both PIP and liability policies.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Owens Justice Stephens Justice Wiggins	Justice Johnson, J. Justice Madsen

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