

Much attention is given to the actions of the legislature, governor and even state agencies. It's ironic, however, that the Washington state Supreme Court doesn't generate as much interest with voters. This is concerning when you consider that the court has the last say on nearly every piece of meaningful legislation that is passed. These nine justices have a tremendous impact on the way you do business. They often create new law from the bench or ignore existing law, thereby creating much confusion as to what is the appropriate way to manage liability.

Every two years the Liability Reform Coalition provides an in-depth analysis of liability cases decided by the Washington state Supreme Court. The results are often alarming, and this year's installment of the Judicial Scorecard is no different, with only one justice receiving a score above 50% and four justices in the teens.

## Lifetime Judicial Liability Score

1.	Justice Madsen	64%
2.	Justice Owens	48%
3.	Justice Fairhurst	44%
4.	Justice Johnson	36%
5.	Justice McCloud	35%
6.	Justice Yu	25%
7.	Justice Wiggins	19%
8.	Justice Gonzáles	7%
9.	Justice Stephens	6%

## 2016 Judicial Scorecard Score

Justice	Results supported by the LRC <i>Current sitting justices only</i>	Results opposed by the LRC <i>Current sitting justices only</i>	2014 score
Mary E. Fairhurst	6	7	46%
Steven C. González	2	11	15%
Charles W. Johnson	3	10	23%
Barbara A. Madsen	7	6	54%
Sheryl Gordon McCloud	4	9	31%
Susan Owens	6	7	46%
Debra L. Stephens	2	10	17%
Charlie K. Wiggins	2	11	15%
Mary I. Yu	2	9	18%

# 2016 Judicial Scorecard

Case	LRC position	Supported result Current sitting justices only	Opposed result Current sitting justices only
<b>Medical liability</b>			
<p><i>Fergen v. Sestero</i> 182 Wn.2d 794 (2015)</p> <p>Limits liability by barring negligence claims against a physician who reasonably selects one of two or more alternative diagnoses or treatments, even if that reasonable decision ultimately turns out to be incorrect.</p>	<b>Support</b>	<b>Justice Fairhurst</b> <b>Justice Madsen</b> <b>Justice McCloud</b> <b>Justice Owens</b>	Justice González Justice Johnson Justice Stephens Justice Wiggins
<p><i>Grove v. PeaceHealth</i> 182 Wn.2d 136 (2014)</p> <p>Expands liability by allowing a plaintiff to prevail on a medical malpractice claim against a team of physicians without proving that an individual physician acted negligently.</p>	<b>Oppose</b>	Justice Fairhurst Justice González Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins Justice Yu	
<p><i>Keck v. Collins</i> 184 Wn.2d 358 (2015)</p> <p>Expands liability by overturning a grant of summary judgment on the basis of an affidavit which only generally discussed the doctor's failure to provide adequate care but did not provide specific facts.</p>	<b>Oppose</b>		<b>Justice Fairhurst</b> <b>Justice González</b> <b>Justice Johnson</b> <b>Justice Madsen</b> <b>Justice McCloud</b> <b>Justice Owens</b> <b>Justice Stephens</b> <b>Justice Wiggins</b> <b>Justice Yu</b>
<b>Employer liability</b>			
<p><i>Rose v. Anderson Hay &amp; Grain Co.</i> 184 Wn.2d 268 (2015)</p> <p>Expands liability by categorically allowing public policy wrongful discharge claims unless the legislature expressly precluded such a claim.</p>	<b>Oppose</b>	Justice González Justice Johnson Justice McCloud Justice Stephens Justice Wiggins Justice Yu	<b>Justice Fairhurst</b> <b>Justice Madsen</b> <b>Justice Owens</b>
<p><i>Rickman v. Premera Blue Cross</i> 184 Wn.2d 300 (2015)</p> <p><i>Becker v. Cmty. Health Sys., Inc.</i> 184 Wn.2d 252 (2015)</p> <p>Expands liability by allowing plaintiffs to claim wrongful discharge in violation of public policy even in the presence of an adequate alternative remedy.</p>	<b>Oppose</b>	Justice González Justice Johnson Justice McCloud Justice Stephens Justice Wiggins Justice Yu	<b>Justice Fairhurst</b> <b>Justice Madsen</b> <b>Justice Owens</b>

Case	LRC position	Supported result Current sitting justices only	Opposed result Current sitting justices only
<b>Employer liability continued</b>			
<p><i>Ockletree v. Franciscan Health System</i> 179 Wn.2d 769 (2014)</p> <p>Limits liability by holding a religious organization does not fall into the definition of “employer” under the anti-discrimination statutes, RCW 49.60, when engaged in religious practices.</p>	<b>Support</b>	<p><b>Justice Fairhurst</b> <b>Justice Johnson</b> <b>Justice Madsen</b> <b>Justice Owens</b></p>	<p>Justice González Justice McCloud Justice Stephens Justice Wiggins</p>
<p><i>Becerra v. Expert Janitorial, LLC.</i> 181 Wn.2d 186 (2014)</p> <p>Expands liability by allowing claims to be brought under the Minimum Wage Act against a “joint employer” that does not directly employ the employee, but exercises authority over the employee.</p>	<b>Oppose</b>	<p>Justice Fairhurst Justice González Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins Justice Yu</p>	
<p><i>LaCoursiere v. Camwest Development, Inc.</i> 181 Wn.2d 734 (2014)</p> <p>Limits the expansion of tort liability by holding that contributions taken from bonuses for a profit sharing plan do not constitute a rebate.</p>	<b>Support</b>	<p><b>Justice Fairhurst</b> <b>Justice González</b> <b>Justice Johnson</b> <b>Justice Madsen</b> <b>Justice McCloud</b> <b>Justice Owens</b> <b>Justice Stephens</b> <b>Justice Wiggins</b> <b>Justice Yu</b></p>	
<p><i>Demetrio v. Sakuma Bros. Farms, Inc.</i> 183 Wn.2d 649 (2015)</p> <p>Expands liability by holding that employers who pay workers by piece (wage is tied to production) must pay their workers at an hourly rate during mandated 10-minute breaks during work.</p>	<b>Oppose</b>	<p>Justice Fairhurst Justice González Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins Justice Yu</p>	
<b>Insurance liability</b>			
<p><i>O.S.T. v. Regence BlueShield</i> 181 Wn.2d 691 (2014)</p> <p>Expands liability by making blanket exclusions of neurodevelopmental therapies in health contracts void and unenforceable under the mental health parity act.</p>	<b>Oppose</b>	<p>Justice Fairhurst Justice González Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins Justice Yu</p>	

Case	LRC position	Supported result <small>Current sitting justices only</small>	Opposed result <small>Current sitting justices only</small>
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### Insurance liability continued

<p><i>Department of Labor and Industries of State v. Lyons Enterprises Inc.</i> 185 Wn.2d 721(2016)</p> <p>Expands liability by holding franchisees are “workers” under the Industrial Insurance Act, even if the franchisee can hire subordinates.</p>	<p><b>Oppose</b></p>	<p>Justice Fairhurst Justice González Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins Justice Yu</p>	
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### Government liability

<p><i>Wuthrich v. King County</i> 185 Wn.2d 19 (2016)</p> <p>Expands liability by holding municipalities responsible for roadway conditions outside the road surface. Overturned prior precedent holding that municipalities had no duty to address sight obstructions caused by roadside vegetation.</p>	<p><b>Oppose</b></p>	<p>Justice Fairhurst Justice González Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins Justice Yu</p>	
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### General liability

<p><i>State v. LG Elecs., Inc.</i> ___ Wn.2d ___ (2016)</p> <p>Expands liability by holding that Washington state has not consented to the statute of limitations of Washington’s Consumer Protection Act and allowing the state to bring an antitrust lawsuit against large electronics manufacturers.</p>	<p><b>Oppose</b></p>	<p>Justice Fairhurst Justice González Justice Johnson Justice Owens Justice Wiggins Justice Yu</p>	<p><b>Justice Madsen</b> <b>Justice McCloud</b></p>
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### 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