

Judicial Scorecard

The Washington Supreme Court is one of the most powerful bodies in Washington, with the decisions of its nine elected justices often upending the will of the state legislature, the governor and state agencies. The justices' influence can be felt in everything from the last say-so on initiative ballot titles to death penalty reviews.

The Court's clout is magnified because most voters do not understand the range of influence these nine elected officials hold over the way business is conducted in Washington. Its review of civil justice matters, including liability cases,

repeatedly circumvents the intent of other elected officials who have put the issues through exhaustive and public legislative review. Despite the greater impact of the justices' decisions on daily life, voters ironically give the justices' political views far less scrutiny than that of their local representatives.

The LRC has committed itself to an ongoing review of some of the more significant liability rulings of the Court, assessing those rulings in light of the LRC's mission to curb lawsuit abuse. This is our first published report. We hope you find it interesting and thought provoking.

Judicial Liability Score

* Seat up for election in 2002
 ** Retiring justice, creating an open seat in 2002

Justice	Positions consistent with the LRC	Positions inconsistent with the LRC	LRC Score
Gerry L. Alexander, Chief Justice	11	18	38%
Bobbe J. Bridge *	5	14	26%
Tom Chambers	1	9	10%
Faith Ireland	1	17	6%
Charles W. Johnson *	5	29	15%
Barbara A. Madsen	16	17	48%
Susan Owens	3	7	30%
Richard B. Sanders	9	19	32%
Charles Z. Smith **	10	23	30%

Case	LRC Position	Supported Result Current Sitting Justices Only	Opposed Result Current Sitting Justices Only
Construction Defect			
<i>Lakeview Boulevard Condominium Assoc. v. Apartment Sales Corp.</i> , 144 Wn.2d 570 (2001) Limits construction defect liability for builders and architects by holding that the six-year statute of repose on construction defect claims does not violate the U.S. and Washington constitutions. This decision will limit stale claims against construction professionals.	The LRC supports the result	Justice Alexander Justice Chambers Justice Ireland Justice Johnson	Justice Madsen Justice Owens Justice Sanders Justice Smith
Employment Law			
<i>Brown v. Scott Paper Worldwide</i> , 143 Wn.2d 349 (2001) Expands employer liability by holding that supervisors along with their employers can be held liable for their discriminatory acts.	The LRC opposes the result	Justice Alexander Justice Bridge Justice Ireland Justice Johnson	Justice Madsen Justice Sanders Justice Smith
<i>Bulman v. Safeway, Inc.</i> , 144 Wash.2d 335 (2001) Limits employer liability by holding an employee could not rely on a personnel policy that he or she had never seen, even though the policy may have created an "atmosphere" of job security.	The LRC supports the result	Justice Alexander Justice Bridge	Justice Madsen Justice Johnson Justice Sanders Justice Smith
<i>Drinkwitz v. Alliant Techsystems, Inc.</i> , 140 Wn.2d 291 (2000) Expands employer liability by concluding Washington state would not follow federal regulations promulgated under the Fair Labor Standards Act. Employers are no longer allowed to rely on federal wage and hour law in absence of state law.	The LRC opposes the result	Justice Bridge Justice Ireland	Justice Madsen Justice Alexander Justice Johnson Justice Sanders Justice Smith
<i>Gardner v. Loomis Armored, Inc.</i> 128 Wn.2d 931 (1996) Expands employer liability by lawfully allowing an employee to violate an employer's strict personnel policy in the name of public policy.	The LRC opposes the result	Justice Alexander Justice Johnson	Justice Smith Justice Madsen
<i>Roberts v. Dudley</i> , 140 Wash.2d 58 (2000) Expands employer liability by holding that employees of small employers could bring an action for wrongful discharge in violation of public policy even when their employers are not covered by the statute establishing that policy.	The LRC opposes the result	Justice Alexander Justice Ireland Justice Johnson	Justice Sanders Justice Smith Justice Madsen

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Employment Law					
<i>Sedlacek v. Hillis</i> , 145 Wn.2d 379 (2001) Limits tort and employer liability in a claim for wrongful discharge in violation of public policy by holding that protection under the Washington Law Against Discrimination does not extend to associates or relatives of disabled persons.	The LRC supports the result	Justice Alexander Justice Bridge Justice Madsen	Justice Owens Justice Smith	Justice Chambers Justice Ireland	Justice Johnson Justice Sanders
<i>Snyder v. Medical Service Corporation</i> , 145 Wn.2d 233 (2001) Limits an employer's liability for constructive discharge, handicap discrimination, tort of outrage, and negligent infliction of emotional distress.	The LRC supports the result	Justice Bridge Justice Madsen	Justice Sanders Justice Smith	Justice Alexander Justice Ireland	Justice Johnson
<i>Wingert v. Yellow Freight</i> , 146 Wn.2d ___ (2002) Expands employer liability by upholding a private right of action to enforce a Department of Labor and Industries rest break regulation, which was different than the applicable provision of the collective bargaining agreement.	The LRC opposes the result	Justice Bridge Justice Chambers Justice Ireland	Justice Madsen Justice Owens Justice Smith	Justice Alexander Justice Johnson	Justice Sanders
General Liability					
<i>Doe v. Gonzaga University</i> , 143 Wn.2d 687 (2001) Expands liability for defamation by holding that intracorporate communications (communications between employees of the same corporation) are not absolutely protected. Prior to this decision, communications between such employees were protected as though the corporation were talking to itself and not "publishing" statements as required for defamation. Note: The result was overturned by the United States Supreme Court on June 20, 2002 at 536 ___ (2002).	The LRC opposes the result	Justice Alexander Justice Bridge Justice Chambers Justice Ireland	Justice Johnson Justice Owens Justice Sanders Justice Smith		
<i>Kim v. Budget Rent A Car Systems, Inc.</i> , 143 Wn. 2d 190 (2001) Limits liability to third parties by stating that the rental car company was not liable to an injured motorist because they failed to prevent their car from being stolen and used in a vehicular assault. The Court applied existing law that states that a private person does not have a duty to protect others from the criminal acts of someone else.	The LRC supports the result	Justice Alexander Justice Bridge Justice Johnson	Justice Madsen Justice Sanders Justice Smith		
<i>Ravenscroft v. Washington Water Power Co.</i> , 136 Wn.2d 911 (1999) Expands the liability of a private landowner by narrowing the immunity provided to landowners under the recreational use statute - a statute intended to encourage landowners to open their property for recreational purposes.	The LRC opposes the result	Justice Alexander Justice Johnson	Justice Sanders Justice Smith	Justice Madsen	
Government Liability					
<i>Hertog v. City of Seattle</i> , 138 Wn.2d 265 (1999) Expands governmental liability by holding that municipal probation officers, county pretrial release employees who have supervisory authority, and their employing agencies have a duty to protect others from reasonably foreseeable harm resulting from the dangerous propensities of probationers and pretrial offenders under their supervision.	The LRC opposes the result	Justice Johnson Justice Madsen	Justice Sanders Justice Smith	Justice Alexander (dissented as to the liability of pretrial supervision)	
<i>McKinney v. State of Washington</i> , 134 Wn.2d 388 (1998) Expands governmental liability by holding that the state could be liable to adoptive parents who claim damages for being given insufficient information about an adoptive child who exhibits problem behaviors after adoption.	The LRC opposes the result	Justice Alexander Justice Johnson Justice Madsen	Justice Sanders Justice Smith		
Industrial Insurance Law					
<i>Meyer v. Burger King Corporation</i> , 144 Wash.2d 160 (2001) Expands employer liability by weakening the Industrial Insurance Act, allowing more claims to be filed against an employer.	The LRC opposes the result	Justice Alexander Justice Bridge Justice Chambers Justice Ireland Justice Johnson	Justice Madsen Justice Owens Justice Sanders Justice Smith		
Insurance					
<i>Fluke Corporation v. Hartford Accident and Indemnity Co.</i> , 145 Wn.2d 137 (2001) Expands insurer liability by ruling that liability coverage for malicious prosecution and punitive damages does not violate public policy.	The LRC opposes this result	Justice Alexander Justice Bridge Justice Chambers Justice Ireland Justice Johnson	Justice Madsen Justice Owens Justice Sanders Justice Smith		
<i>Godfrey v. Hartford Casualty Insurance Company</i> , 142 Wn.2d 885 (2001) Limits the ability of parties to an insurance contract to specify the terms of arbitration. The Court held under Washington's Arbitration Act that the results of arbitration as to liability and damages are binding and final, and preclude subsequent trial on the same questions even if permitted in the contract.	The LRC opposes this result	Justice Alexander Justice Bridge Justice Johnson	Justice Madsen Justice Sanders Justice Smith		

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Insurance			
<p>Overton v. Consolidated Insurance Companies, 145 Wn.2d 417 (2002)</p> <p>Limits insurers' liability by holding that existing contamination of an insured's property, which is known by the insured prior to purchasing a comprehensive general liability policy and which results in liability to a third party subsequent to purchase does not trigger coverage. And, denial of coverage of liability to a third party for such contamination neither constitutes bad faith nor violates the Consumer Protection Act.</p>	The LRC supports this result	Justice Alexander Justice Madsen Justice Owens	Justice Sanders Justice Smith Justice Bridge Justice Chambers Justice Ireland Justice Johnson
<p>Winters v. State Farm Mutual Automobile Insurance Co., 144 Wn.2d 869 (2001)</p> <p>Expands liability by requiring an insurer to pay a pro rata share of the legal expenses for its insured in recovering personal injury protection benefits from an uninsured motorist.</p>	The LRC opposes this result	Justice Bridge Justice Chambers Justice Ireland Justice Johnson Justice Owens Justice Sanders	Justice Alexander Justice Madsen Justice Smith
Landlord Liability			
<p>Griffin v. West RS, 143 Wn.2d 81 (2001)</p> <p>Limits the tort liability of a landlord to his or her tenants for the criminal acts of third parties. The court reaffirmed that a landlord's negligence must be the proximate cause of the tenant's damages in order to support a claim.</p>	The LRC supports the result	Justice Alexander Justice Bridge Justice Madsen	Justice Sanders Justice Smith Justice Ireland Justice Johnson
<p>Mucsi v. Graoch Associates Limited Partnership, 144 Wn.2d 847 (2001)</p> <p>Expands the tort liability of a landlord to his or her tenants for failing to clear snow and ice from a sidewalk despite the fact the condition was known and obvious.</p>	The LRC opposes the result	Justice Alexander Justice Bridge Justice Chambers Justice Ireland Justice Johnson Justice Owens Justice Smith	Justice Madsen Justice Sanders
Medical Malpractice			
<p>Backlund v. University of Washington, 137 Wn.2d 651 (1999)</p> <p>Limits liability by concluding that what a reasonably prudent patient under similar circumstances would have done if fully informed is an objective, not a subjective, element of an informed consent claim. But allows claims for failure to obtain informed consent as separate from medical negligence claims.</p>	The LRC supports the result	Justice Johnson	Justice Alexander Justice Madsen Justice Sanders
<p>Burnet v. Spokane Ambulance, 131 Wn.2d 484 (1997)</p> <p>Expands liability by refusing to allow the trial court to limit discovery and exclude plaintiff's experts as sanctions for plaintiff's violation of the trial court's discovery guidelines. The Court felt the trial court should have considered lesser sanctions where more than a year remained before trial and the child plaintiff's injury was severe.</p>	The LRC opposes the result	Justice Alexander Justice Johnson Justice Madsen	Justice Sanders Justice Smith
<p>Carson v. Fine, 123 Wn.2d 206 (1994)</p> <p>Limits liability by concluding that the plaintiff waives physician/patient privilege by filing medical malpractice suit, that the waiver extends to all attending physicians, and by concluding that the treating physicians may testify as to both fact and opinion whether called as a defense or plaintiff's witness.</p>	The LRC supports the result	Justice Madsen Justice Smith	Justice Johnson
<p>Caughell v. Group Health, 124 Wn.2d 217 (1994)</p> <p>Expands liability by concluding the entire course of continuing negligent treatment may constitute single act of malpractice, and concluding that a claim based thereon is timely asserted if the last negligent act occurred within the limitations period.</p>	The LRC opposes the result.	Justice Johnson Justice Madsen	Justice Smith
<p>DeYoung v. Providence Medical Center, 136 Wn.2d 136 (1998)</p> <p>Expands medical malpractice by holding the eight-year statute of repose for medical malpractice cases unconstitutional. This decision will allow stale claims against physicians and other health care providers.</p>	The LRC opposes the result	Justice Johnson Justice Madsen	Justice Sanders Justice Smith Justice Alexander
<p>Erickson v. Kerr, 125 Wn.2d 183 (1994)</p> <p>Expands liability by giving plaintiff in medical malpractice/wrongful death action the right to prevent the defendant physician from testifying about his discussions with decedent during treatment.</p>	The LRC opposes the result.	Justice Johnson Justice Madsen	Justice Smith
<p>Gilbert v. Sacred Heart Medical Center, 127 Wn.2d 370 (1995)</p> <p>Expands liability by concluding that a minor's right to bring a medical malpractice action accrues at the age of majority, not when knowledge is imputed to the minor through the parents.</p>	The LRC opposes the result.	Justice Johnson Justice Madsen	Justice Smith
<p>Miller v. Jacoby, 145 Wn.2d 65 (2001)</p> <p>Expands liability by concluding that, while expert testimony is required to establish malpractice of physician who placed a drain in the patient, expert testimony is not required to establish negligence of MD & nurse who failed to remove it completely.</p>	The LRC opposes the result	Justice Alexander Justice Bridge Justice Chambers Justice Ireland Justice Johnson Justice Owens Justice Sanders Justice Smith	Justice Madsen
<p>Nielson v. Spanaway General Medical Clinic, Inc., 135 Wn.2d 255 (2000)</p> <p>Limits liability by concluding that a plaintiff who is awarded judgment for damages in a medical malpractice action in federal court does not have a state constitutional right to have a jury redetermine damages in a subsequent action in state court against a second defendant.</p>	The LRC supports the result	Justice Madsen Justice Smith	Justice Alexander Justice Johnson Justice Sanders

LRC Website: To keep up-to-date on LRC activities and information, you can visit our website at www.walrc.org.

Case	LRC Position	Supported Result Current Sitting Justices Only	Opposed Result Current Sitting Justices Only
Medical Malpractice			
<i>Reese v. Stroh</i> , 128 Wn.2d 300 (1995) Expands liability by allowing jury to hear plaintiff's expert's medical causation opinion despite lack of statistically valid studies to support the opinion.	The LRC opposes the result	Justice Johnson Justice Madsen	Justice Smith
<i>Winbun v. Moore</i> , 143 Wn.2d 206 (2001) Expands liability by concluding that plaintiff's discovery of malpractice on the part of one allegedly negligent health care provider does not necessarily trigger the operation of the one-year discovery rule limitations period as to other allegedly negligent health care providers.	The LRC opposes the result	Justice Alexander Justice Bridge Justice Ireland	Justice Johnson Justice Sanders Justice Smith Justice Madsen
Product Liability			
<i>Ruiz-Guzman v. Amvac Chemical Corp.</i> , 141 Wn.2d 493 (2000) Expands product liability in this pesticide-related case by: (1) allowing a plaintiff to argue that an alternative product, rather than the one at issue, can be used in the "risk-utility" analysis for alternative designs and; (2) by holding that a pesticide may be an unavoidably unsafe product.	The LRC opposes the result.	Justice Alexander Justice Bridge Justice Ireland	Justice Johnson Justice Madsen Justice Sanders Justice Smith Justice Sanders (dissented only as to part 2 of decision)
Real Estate Broker Liability			
<i>Svendsen v. Stock</i> , 143 Wn.2d 546 (2001) Expands the liability of real estate brokers in a case of an alleged fraudulent concealment of a defect in a home not reported on a seller's disclosure statement. The Court held the plaintiff had an independent cause of action against the broker even though brokers are specifically exempt from the Consumer Protection Act.	The LRC opposes the result	Justice Alexander Justice Bridge Justice Ireland Justice Johnson	Justice Madsen Justice Sanders Justice Smith

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 American Insurance Association
 Architects & Engineers Legislative Council
 Association of Washington Business
 Association of Washington Cities
 AstraZeneca Pharmaceutical
 Aventis
 Avista Corporation
 Building Industry Association of Washington
 BP
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 Capital One Financial Corporation
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LRC

LIABILITY REFORM COALITION

COMMITTED TO ENDING
LAWSUIT ABUSE.

Our Mission:

To limit the expansion
 of tort liability,
 to reduce the cost of
 defending lawsuits,
 to speed resolution of
 civil actions and
 to improve fairness
 and certainty in
 our civil justice system
 for everyone.

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