

LRC

Liability Reform Coalition Special Report

2004 Judicial Scorecard

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.

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 alarming 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.

It is critical for voters to know more about the nine Supreme Court Justices and their influence on the law. Here you will find the LRC's 2004 Judicial Scorecard which will shed light on the court and its members. We hope you find this report interesting and useful.

Judicial Liability Score

Justice	Results supported by the LRC	Results opposed by the LRC	LRC 2004 Score
Gerry L. Alexander, Chief Justice	6	7	46%
Bobbe J. Bridge	7	6	54%
Tom Chambers	0	13	0%
Mary E. Fairhurst	3	4	43%
Faith Ireland **	1	12	8%
Charles W. Johnson	9	4	69%
Barbara Madsen *	11	2	85%
Susan Owens	8	5	62%
Richard B. Sanders *	2	9	18%

* Seat up for election in 2004

** Retiring justice, creating an open seat in 2004

Case	LRC Position	Supported Result Current Sitting Justices Only		Opposed Result Current Sitting Justices Only	
Construction Liability					
<i>Fortune View Condominium Association v. Fortune Star Development Co.</i> , 151 Wn.2d 534 (2004) Expands liability by holding that an express warranty in advertising is sufficient basis on which a contractor could base its implied indemnity claim.	The LRC opposes this decision	Justice Alexander Justice Bridge Justice Chambers	Justices Fairhurst Justice Ireland Justice Owens	Justice Johnson	Justice Madsen
Employment Law					
<i>Ford v. Trendwest Resorts, Inc.</i> , 146 Wn.2d 146 (2002) Limits liability by holding that lost future earnings are not recoverable for breach of an agreement to hire for employment at will.	The LRC supports this decision	Justice Alexander Justice Bridge Justice Johnson	Justice Madsen Justice Owens	Justice Chambers Justice Ireland	Justice Sanders
<i>Robel v. Roundup Corp.</i> , 148 Wn. 2d 35 (2002) Expands liability by holding that Washington's anti-discrimination statute supports a cause of action by an employee's disability-based hostile work environment claim and that an employer may be vicariously liable for an intentional tort committed by one employee against another.	The LRC opposes this decision	Justice Alexander Justice Chambers Justice Ireland	Justice Johnson Justice Owens	Justice Bridge Justice Madsen	Justice Sanders
General Liability					
<i>Kloepfel v. Bokor</i> , 149 Wn.2d 192 (2003) Expands liability by holding that a plaintiff alleging emotional distress is not required to provide objective symptoms and a medical diagnosis.	The LRC opposes this decision	Justice Alexander Justice Bridge Justice Chambers Justice Fairhurst Justice Ireland	Justice Johnson Justice Madsen Justice Owens Justice Sanders		
<i>Lawyers Title Insurance Corp. v. Baik</i> , 147 Wn.2d 536 (2002) Expands liability by holding that a plaintiff has a cause of action for negligent misrepresentation where he justifiably relies on a negligently formed or communicated opinion rendered by a professional for a fee.	The LRC opposes this decision	Justice Alexander Justice Bridge Justice Chambers	Justice Ireland Justice Owens	Justice Johnson Justice Madsen	Justice Sanders

Case	LRC Position	Supported Result Current Sitting Justices Only		Opposed Result Current Sitting Justices Only	
General Liability <i>continued</i>					
<i>Otani v. Broudy</i> , __ Wn.2d __ (2004) Limits liability by not allowing a decedent's estate to recover damages for post-death loss of enjoyment of life.	The LRC supports this decision	Justice Alexander Justice Bridge Justice Fairhurst	Justice Johnson Justice Madsen Justice Owens	Justice Chambers Justice Ireland	Justice Sanders
<i>Philippides v. Bernard</i> , 151 Wn.2d 376 (2004) Limits liability by holding that under Washington's wrongful death statute, parents may not sue for wrongful death of an adult child unless they were financially dependent on the child.	The LRC supports this decision	Justice Alexander Justice Bridge Justice Fairhurst Justice Ireland	Justice Johnson Justice Madsen Justice Owens	Justice Chambers	Justice Sanders
<i>Tegman v. Accident & Medical Investigations, Inc.</i> , 150 Wn.2d 102 (2003) Limits liability by holding that defendants found negligent may not be held jointly liable for damages caused by defendants found to have committed intentional acts.	The LRC supports this decision	Justice Alexander Justice Bridge	Justice Madsen Justice Owens	Justice Chambers Justice Ireland	Justice Johnson Justice Sanders
Government Liability					
<i>Keller v. City of Spokane</i> , 146 Wn.2d 237 (2002) Expands liability by broadening the scope of a municipality's duty of care in designing and maintaining its roads	The LRC opposes this decision	Justice Alexander Justice Bridge Justice Chambers	Justice Ireland Justice Sanders	Justice Johnson Justice Madsen	Justice Owens
<i>Medina v. Public Utility District No. 1 of Benton County</i> , 147 Wn.2d 303 (2002) Limits liability by upholding the constitutionality and strict application of a statute that requires a plaintiff to file a claim against the government 60 days before filing a lawsuit.	The LRC supports this decision	Justice Bridge Justice Johnson	Justice Madsen Justice Owens	Justice Alexander Justice Chambers	Justice Ireland Justice Sanders
Insurance					
<i>American Continental Insurance Co. v. Steen</i> , 151 Wn.2d 512 (2004) Expands liability by holding that an agreement to cancel a claims-made liability insurance policy was a prohibited retroactive annulment after an occurrence for which the insured might be liable, even though the insurer had no knowledge of the claim when canceling the policy.	The LRC opposes this decision	Justice Alexander Justice Chambers Justice Ireland	Justice Johnson Justice Madsen Justice Sanders	Justice Bridge Justice Fairhurst	Justice Owens
<i>American States Insurance Co. v. Symes of Silverdale, Inc.</i> , 150 Wn.2d 462 (2003) Expands liability by holding that a bankruptcy trustee may recover under the debtor's property insurance policy for damage caused by a fire intentionally set by the debtor after filing a bankruptcy petition. The Court further permitted the trustee to pursue a bad faith claim against the insurer for denying coverage.	The LRC opposes this decision	Justice Bridge Justice Chambers Justice Fairhurst	Justice Ireland Justice Sanders	Justice Alexander Justice Johnson	Justice Madsen Justice Owens
<i>Hamm v. State Farm Mutual Automobile Insurance Co.</i> , 151 Wn.2d 303 (2004) Expands liability by requiring that, in order for an insurance carrier to take a personal injury protection reimbursement offset, the carrier must pay a pro rata share of the legal expenses incurred by the insured to arbitrate an uninsured motorist claim.	The LRC opposes this decision	Justice Bridge Justice Chambers Justice Fairhurst	Justice Ireland Justice Owens	Justice Alexander Justice Johnson	Justice Madsen

LRC Members

Aetna
American Council of Engineering Companies / WA
American Insurance Association
American Institute of Architects / WA Council
Altria Management Services
American Insurance Association
Architects & Engineers Legislative Council
Associated Builders and Contractors
Associated General Contractors of Washington
Association of Washington Business
Association of Washington Health Care Plans
AstraZeneca Pharmaceutical
Aventis Pharmaceutical
Avista Corporation
Building Industry Association of Washington
Boeing Employees Credit Union
Burlington Northern Santa Fe
Capital One
Catholic Community Services
Community Health Plans of Washington
Contractors Bonding and Insurance Company
Everett Clinic
Farmers Insurance
First Choice Health Plans
Georgia-Pacific

GlaxoSmithKline
Greater Seattle Chamber of Commerce
Green Diamond Resource Company
Group Health Cooperative
Independent Insurance Agents & Brokers of WA
Johnson & Johnson
Molina Healthcare of Washington
MultiCare Health System
Mutual of Enumclaw
National Association of Independent Insurers
National Federation of Independent Business / WA Northwest
Physicians Network
Novartis Pharmaceuticals
PacifiCare
PEMCO Financial Services
Pfizer
Pharmaceutical Researchers & Manufacturers of America
Physicians Insurance
Port Blakely Companies
PREMERA Blue Cross
Providence Health System
Puget Sound Educational Service District
Puget Sound Energy
Regence
SAFECO Corporation
State Farm Insurance Company
Swedish Hospital

Telebyte NW Internet Services
The Boeing Company
The Doctors Company
Washington Association of REALTORS
Washington Assn of Housing & Services for the Aging
Washington Cities Insurance Authority
Washington Credit Union League
Washington Food Industry
Washington Governmental Entities Pool
Washington Health Care Association
Washington State Hospital Association
Washington Operators Association (McDonald's)
Washington Osteopathic Medical Association
Washington Restaurant Association
Washington Retail Association
Washington Roundtable
Washington Rural Health Association
Washington Society of Certified Public Accountants
Washington State Hospital Association
Washington State Medical Association
Washington State Pharmacy Association
Washington State Society of Anesthesiologists
Washington State Veterinary Medical Association
Weyerhaeuser Company
Wyeth Pharmaceuticals
Yakima Valley Memorial Hospital