

The Liability Reform Coalition’s 2008 Judicial Scorecard presents a review of liability rulings by Washington’s Supreme Court during the last biennium.

This is the fourth biennial review produced by the LRC, providing the public with an ongoing assessment of the trend in liability case rulings from our state’s highest court. The LRC, with its 70-plus member organizations, is committed to ending lawsuit abuse. The LRC’s work is carried out through fighting unnecessary liability expansion in the state legislature and by highlighting judicial decisions of the state’s high court.

The Washington Supreme Court, composed of nine elected justices, wields enormous influence over our daily lives. Despite televised court sessions and the ready availability of court decisions, Washington residents generally know little about the workings of the court system or even about the individuals who sit on the bench. The LRC’s 2008 Judicial Scorecard provides insight into the current justices’ latest decisions in liability cases. Each justice is also given a lifetime score on their liability issues, which provides the public with insight to those justices who share the LRC’s perspective on tort reform.

Lifetime Judicial Liability Score

1.	James M. Johnson	94%
2.	Barbara Madsen	63%
3.	Bobbe J. Bridge	58%
4.	Mary E. Fairhurst	53%
5.	Susan Owens	52%
6.	Gerry L. Alexander	48%
7.	Richard B. Sanders	35%
8.	Charles W. Johnson	33%
9.	Tom Chambers	13%

2008 Judicial Liability Score

Justice	Results supported by the LRC	Results opposed by the LRC	2008 score
Gerry L. Alexander, Chief Justice	8	5	67%
Bobbe J. Bridge	10	3	77%
Tom Chambers	3	10	23%
Mary E. Fairhurst	5	8	38%
Charles W. Johnson	5	8	38%
James M. Johnson	12	1	92%
Barbara Madsen	8	5	62%
Susan Owens	6	7	46%
Richard B. Sanders	7	5	58%

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

Note: Justice Debra Stephens was appointed to the Court in January 2008 and did not participate in any of the cases evaluated on this Scorecard.

LRC
Case
position
Supported result
Opposed result
Medical malpractice
Stewart-Graves v. Vaughn

162 Wash. 2d 115 (2007)

Limits liability by holding that, in emergency situations where immediate action is necessary for the protection of life, consent to medical treatment will be implied when it is impractical to obtain actual consent from a patient or his authorized representative.

Support

Justice Alexander
Justice Bridge
Justice Chambers
Justice Fairhurst
Justice Johnson, C.
Justice Johnson, J.
Justice Madsen
Justice Owens
Justice Sanders

Wynn v. Earin

181 P.3d 806 (2008)

Limits liability of health care providers by reinforcing the witness immunity rule in claims arising out of health care professionals' testimony in litigation.

Support

Justice Alexander
Justice Bridge
Justice Chambers
Justice Fairhurst
Justice Johnson, C.
Justice Johnson, J.
Justice Madsen
Justice Owens
Justice Sanders

Employment law
Bostain v. Food Express, Inc.

159 Wash. 2d 700 (2007)

Expands liability by requiring overtime compensation for interstate truck drivers to be determined based on all hours worked, whether within or outside Washington.

Oppose

Justice Alexander
 Justice Chambers
 Justice Fairhurst
 Justice Johnson, C.
 Justice Madsen

Justice Bridge
Justice Johnson, J.
Justice Owens
Justice Sanders

McClarty v. Totem Electric

157 Wash. 2d 214 (2006)

Limits liability for claims brought under the Washington Law Against Discrimination by adopting the more narrow federal definition of "disability."

Support

Justice Bridge
Justice Johnson, C.
Justice Johnson, J.
Justice Madsen
Justice Sanders

Justice Alexander
 Justice Chambers
 Justice Fairhurst
 Justice Owens

Ball Foster Glass Co. v. Giovanelli

163 Wash. 2d 133 (2008)

Expands liability by extending the meaning of "within the course of employment" for purposes of workers' compensation claims to include injuries that are unrelated to the employee's job and that occur on personal time. The court accomplishes this by adopting the "traveling employee" doctrine.

Oppose

Justice Chambers
 Justice Fairhurst
 Justice Johnson, C.
 Justice Madsen
 Justice Owens

Justice Alexander
Justice Bridge
Justice Johnson, J.
Justice Sanders

General liability
Woldson v. Woodhead

159 Wash. 2d 215 (2006)

Limits liability by holding that recoverable damages in continuing trespass cases are limited to those sustained within three years of the filing of the lawsuit; however, allows for damages incurred between filing and trial if the trespass is not abated.

Support

Justice Alexander
Justice Bridge
Justice Chambers
Justice Fairhurst
Justice Johnson, C.
Justice Johnson, J.
Justice Madsen
Justice Owens
Justice Sanders

Case	LRC		
	position	Supported result	Opposed result
General liability continued			
<p>Scott v. Cingular Wireless Co. 160 Wash. 2d 843 (2007)</p> <p>Expands liability by holding that class-action waivers found in consumer contracts are unconscionable and against public policy.</p>	Oppose	Justice Alexander Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Owens Justice Sanders	Justice Bridge Justice Johnson, J. Justice Madsen
<p>Colbert v. Moomba Sports Inc. 163 Wash. 2d 43 (2008)</p> <p>Limits liability by holding that in order for family members to recover damages for negligent infliction of emotional distress, they must have witnessed the injury-causing event or arrived shortly enough thereafter to witness the victim's suffering.</p>	Support	Justice Bridge Justice Fairhurst Justice Johnson, J. Justice Madsen Justice Owens	Justice Alexander Justice Chambers Justice Johnson, C.
Insurance law			
<p>Sherry v. Fin. Indem. Co. 160 Wash. 2d 611 (2007)</p> <p>Expands liability by requiring an insured to be fully compensated for the actual damages caused by the accident, without reduction to account for the insured's own fault, before the insurer can reduce an Underinsured Motorist award by the amount of previously paid Personal Injury Protection benefits.</p>	Oppose	Justice Alexander Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Johnson, J. Justice Madsen Justice Owens Justice Sanders	
<p>Woo v. Fireman's Fund Ins. Co. 161 Wash. 2d 43 (2007)</p> <p>Expands liability by holding that an insurance company's "duty to defend" its policyholder arises when the allegations against the insured arise from acts "conceivably" within policy coverage. This includes a dentist's liability for injuries arising from an intentional practical joke he played on a patient who was also his employee. Under <i>Woo</i>, the dentist was conceivably covered under professional liability, bodily injury, and personal injury coverage provisions.</p>	Oppose	Justice Bridge Justice Chambers Justice Fairhurst Justice Owens Justice Sanders	Justice Alexander Justice Johnson, C. Justice Johnson, J. Justice Madsen
Government liability			
<p>Osborn v. Mason County 157 Wash. 2d 18 (2006)</p> <p>Limits liability by holding that a local government agency that complies with notice and registration requirements when a sex offender establishes residence in the jurisdiction has no duty to take further steps to warn residents of his presence despite a promise to do so if that promise was not relied on by the victim.</p>	Support	Justice Alexander Justice Bridge Justice Fairhurst Justice Johnson, J. Justice Madsen Justice Owens Justice Sanders	Justice Chambers Justice Johnson, C.



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LRC Executive Director

Liability Reform Coalition
2033 6th Avenue
Suite 1100
Seattle, WA 98121
425-868-2698
425-868-8427 fax
www.walrc.org

Case	LRC position	Supported result	Opposed result
Construction liability			
<p><i>Davis v. Baugh Indus. Contractors, Inc</i> 159 Wash. 2d 413 (2007)</p> <p>Expands liability by abandoning the completion and acceptance doctrine, which is a long-held Washington law. Under the completion and acceptance doctrine, once a contractor completes work on the project and the owner accepts the work, the contractor is no longer liable for injuries to third parties caused by the construction.</p>	Oppose	Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Madsen Justice Owens Justice Sanders	Justice Alexander Justice Bridge Justice Johnson, J.
<p><i>1000 Virginia Limited Partnership v. Vertecs Corporation</i> 158 Wash.2d 566 (2006)</p> <p>Expands liability by reinstating the discovery rule for determining the date of accrual in breach of contract claims arising from latent construction defects. Until this decision, many believed that the Legislature had abolished the discovery rule in the construction defects context in 2002.</p>	Oppose	Justice Bridge Justice Chambers Justice Fairhurst Justice Johnson, C. Justice Madsen Justice Owens Justice Sanders	Justice Alexander Justice Johnson, J.

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COMMITTED TO ENDING LAWSUIT ABUSE.