

The Washington Supreme Court is arguably the most powerful governing body in the state. The nine justices wield enormous influence on just about every issue affecting Washington citizens. Despite this consequential clout, not much scrutiny is given to the justices and their decisions.

The LRC has committed itself to an ongoing, biennial 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.

Justice Jim Johnson

This year was marked by the early retirement of Justice Jim Johnson. Justice Johnson's ten-year tenure on the Supreme Court was distinguished by his commitment to uphold the constitution and limit the expansion of tort liability. During the past decade, Justice Johnson earned an 84% Lifetime Judicial Liability Score. His leadership and service will be missed.

Lifetime Judicial Liability Score

1.	Barbara Madsen	66%
2.	Susan Owens	48%
3.	Mary E. Fairhurst	43%
	Sheryl Gordon McCloud	43%
4.	Charles Johnson	37%
5.	Charlie K. Wiggins	22%
6.	Debra L. Stephens	3%
7.	Steven C. Gonzales	0%

**Because Justice Yu only participated in one case, she is listed with a 2014 score, but not yet in the Lifetime Score*

2014 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>	2014 score
Mary E. Fairhurst	3	14	18%
Steven C. Gonzales	0	14	0%
Charles W. Johnson	9	9	50%
Barbara Madsen, Chief Justice	11	7	61%
Sheryl Gordon McCloud	3	4	43%
Susan Owens	8	9	47%
Debra L. Stephens	0	17	0%
Charlie K. Wiggins	3	12	20%
Mary I. Yu	1	0	100%

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

2014 Judicial Scorecard

Case	LRC position	Supported result Current sitting justices only	Opposed result Current sitting justices only
Medical liability			
<p><i>McDevitt v. Harborview Med. Ctr.</i> 179 Wn.2d 59 (2013)</p> <p>Limits liability by upholding the constitutionality of the requirement of 90 days advance notice to sue a governmental entity for medical professional liability.</p>	Support	<p>Justice Fairhurst Justice Madsen Justice Owens Justice Wiggins</p>	<p>Justice Gonzales Justice Johnson Justice Stephens</p>
<p><i>Gomez v. Sauerwein</i> 180 Wn.2d 610 (2014)</p> <p>Limits liability by prohibiting application of informed consent doctrine in cases of misdiagnosis, preventing the imposition of liability for both negligence and failure to inform for the same misconduct.</p>	Support	<p>Justice Johnson Justice Madsen Justice McCloud Justice Owens</p>	<p>Justice Fairhurst Justice Gonzalez Justice Stephens Justice Wiggins</p>
<p><i>Youngs v. PeaceHealth</i> 179 Wn.2d 645 (2014)</p> <p>Limits liability by allowing corporate defense counsel to have privileged ex parte conversations about the allegedly negligent care with non-party treating physicians whose alleged negligence is the basis for a claim against their corporate employers.</p>	Support	<p>Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Wiggins</p>	<p>Justice Fairhurst Justice Gonzalez Justice Stephens</p>
<p><i>Youngs v. PeaceHealth</i> 179 Wn.2d 645 (2014)</p> <p>Expands liability by denying corporate defense counsel access to information about the corporate defendant's quality improvement investigation.</p>	Oppose	<p>Justice Fairhurst Justice Gonzales Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins</p>	
Employer liability			
<p><i>AFOA v. Port of Seattle</i> 176 Wn.2d 460 (2013)</p> <p>Expands liability by holding that employers can be held to a higher liability standard than was contractually agreed upon in cases of premises liability claims brought by employees.</p>	Oppose	<p>Justice Fairhurst Justice Gonzalez Justice Owens Justice Stephens Justice Wiggins</p>	<p>Justice Johnson Justice Madsen</p>
<p><i>Piel v. City of Federal Way</i> 177 Wn.2d 604 (2013)</p> <p>Expands liability by making it much harder for an employer to obtain a summary judgment on the tort of wrongful discharge in violation of public policy.</p>	Oppose	<p>Justice Gonzalez Justice Johnson Justice Stephens</p>	<p>Justice Madsen</p>
<p><i>Anfinson v. FedEx Ground Package System, Inc.</i> 174 Wn.2d 851 (2012)</p> <p>Expands liability by imposing a broader test for determining whether a worker is an employee; providing coverage to workers who would not have previously been considered employees.</p>	Oppose	<p>Justice Fairhurst Justice Gonzalez Justice Madsen Justice Owens Justice Stephens</p>	<p>Justice Johnson</p>

Case	LRC position	Supported result <small>Current sitting justices only</small>	Opposed result <small>Current sitting justices only</small>
Employer liability continued			
<p><i>Washington State Nurses Ass'n v. Sacred Heart Medical Center</i> 175 Wn.2d 822 (2012)</p> <p>Expands liability by requiring employers to pay overtime for missed breaks rather than regular pay when the break time worked puts the employee into overtime. The overtime pay is required regardless of whether the employee actually stayed at work past the end of their shift.</p>	Oppose	Justice Fairhurst Justice Gonzalez Justice Johnson Justice Madsen Justice Owens Justice Stephens Justice Wiggins	
<p><i>Kumar v. Gate Gourmet Inc.</i> 180 Wn.2d 481 (2014)</p> <p>Expands liability by creating a duty, which did not previously exist, for employers to reasonably accommodate employees' religious practices under Washington's Law Against Discrimination.</p>	Oppose	Justice Fairhurst Justice Gonzalez Justice McCloud Justice Stephens Justice Wiggins	Justice Johnson Justice Madsen Justice Owens
<p><i>Walston v. Boeing</i> ____ Wn.2d ____ (2014)</p> <p>Limits liability by declining to broaden the "deliberate injury" exception to Workers' Compensation immunity. The Court held the deliberate injury exception did not apply to an employer who allowed an employee to be exposed to a toxic substance. Although the employer knew that exposure to the substance in question created a risk of injury, knowledge of that risk did not satisfy the exception's requirement that an employer be "certain" that actual injury will occur.</p>	Support	Justice Fairhurst Justice Johnson Justice Madsen Justice Owens	Justice Gonzales Justice McCloud Justice Stephens Justice Wiggins
Insurance liability			
<p><i>State of Washington Department of Transportation v. James River Insurance Co.</i> 176 Wn.2d 390 (2013)</p> <p>Expands liability by eliminating the option of binding arbitration in insurance coverage disputes.</p>	Oppose	Justice Fairhurst Justice Gonzalez Justice Johnson Justice Madsen Justice Owens Justice Stephens Justice Wiggins	
<p><i>Cedell v. Farmers Insurance Co. of Washington</i> 176 Wn.2d 686 (2013)</p> <p>Expands liability by holding that in a first-party bad faith claim against an insurer, access to the claims file throughout discovery is necessary to discover facts to support the bad faith claim. Furthermore, the communications between the insurer and the attorney are not privileged with respect to the insured.</p>	Oppose	Justice Fairhurst Justice Johnson Justice Stephens Justice Wiggins	Justice Madsen Justice Owens
<p><i>Stewart Title Guaranty Co. v. Sterling Savings Bank</i> 178 Wn.2d 561 (2013)</p> <p>Expands liability by requiring that an insurer hire or pay an attorney in order to have a viable malpractice claim, leaving insurers who are third-party recipients of such services liable for the attorney's mistakes.</p>	Oppose	Justice Fairhurst Justice Gonzalez Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Stephens Justice Wiggins	

Case	LRC position	Supported result <small>Current sitting justices only</small>	Opposed result <small>Current sitting justices only</small>
Construction liability			
<p><i>Donatelli v. D.R. Strong Consulting Engineers Inc.</i> 179 Wn.2d 84 (2013)</p> <p>Expands liability by holding that the independent duty doctrine does not bar a property owner’s negligent misrepresentation claim against an engineer when the engineer’s duty to avoid negligent misrepresentations arose independently of the contract.</p>	Oppose	Justice Fairhurst Justice Gonzales Justice Owens Justice Stephens	Justice Johnson Justice Madsen Justice Wiggins
<p><i>Camicia v. Howard S. Wright Construction Co.</i> 179 Wn.2d 684 (2014)</p> <p>Expands liability by making it more difficult to establish recreational use immunity.</p>	Oppose	Justice Fairhurst Justice Johnson Justice Owens Justice Stephens Justice Wiggins	Justice Madsen
General liability			
<p><i>Johnston-Forbes v. Matsunaga</i> ___ Wn.2d ___ (2014)</p> <p>Limits liability by allowing “expert” testimony based on practical experience rather than licenses.</p>	Support	Justice Fairhurst Justice Johnson Justice Madsen Justice McCloud Justice Owens Justice Yu	
Product liability			
<p><i>Macias v. Saberhagen Holdings, Inc.</i> 175 Wn.2d 402 (2012)</p> <p>Expands liability by allowing a plaintiff to bring a products liability action against a manufacturer of protective equipment for failure to warn of potential asbestos exposure even though the equipment was not the source of asbestos. The Court held the plaintiff, who was exposed to asbestos when cleaning out respirator filters, could bring a failure to warn action against the respirator manufacturer because the product was designed for protection from hazardous substances like asbestos and the plaintiff used the product as intended.</p>	Oppose	Justice Madsen Justice Fairhurst Justice Stephens Justice Wiggins	Justice Johnson Justice Owens
Government liability			
<p><i>Munich v. Skagit Emergency Communication Center</i> 175 Wn.2d 871 (2012)</p> <p>Expands liability by creating a duty of care when an emergency dispatcher makes an assurance of action to a distressed caller, regardless of whether it is false or unfulfilled.</p>	Oppose	Justice Fairhurst Justice Gonzalez Justice Johnson Justice Madsen Justice Owens Justice Stephens Justice Wiggins	