



# Fixing Wisconsin's Dysfunctional Supreme Court Elections

A Single, 16-Year Term Could Minimize the Influence of Campaign Cash

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Billy Corriher July 2013



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**COVER PHOTO**

Sue Gatterman, seated second from left, Barbara Schrank and Fred Schrank, fingers crossed, supporters for Wisconsin Supreme Court candidate JoAnne Kloppenburg, all watch election results in the supreme court race between Kloppenburg and incumbent David Prosser in Madison, Wednesday, April 6, 2011.

AP PHOTO/ANDY MANIS

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# Introduction and summary

Judicial elections have changed dramatically in the past two decades as the amount of money spent to elect judges has skyrocketed.<sup>1</sup> Special interests and political parties have poured money into supporting their favored candidates for state supreme courts. In recent years the Wisconsin Supreme Court has offered perhaps the most dramatic illustration of what happens with courts suffering from too much politics.

In our system of government, judges interpret and apply laws to situations involving two or more parties. State supreme court justices are the final interpreters of state constitutions, which means that the judiciary is responsible for holding state legislatures and governors accountable if they violate state constitutions. In the Federalist Papers, Alexander Hamilton explained that judicial independence is crucial to ensuring that legislators do not enact laws that are popular but unconstitutional.<sup>2</sup> If the judiciary is subject to the same political pressures as legislators, however, then it cannot serve its vital role as a check on the political branches of government.

Elections also offer the opportunity for litigants and attorneys to influence the judges hearing their cases through campaign contributions or independent spending in judicial campaigns. The resulting conflicts of interest can be more harmful than attempts to curry favors with legislators because the decisions of judges, unlike those of legislators, can impact a single individual or corporation.

These concerns have become more urgent in Wisconsin, where the amount of money spent in high court elections has risen sharply in recent years, starting with a \$3 million race in 2007.<sup>3</sup> In the 2008 and 2009 high court races, candidates raised around \$1.7 million and more than \$800,000, respectively.<sup>4</sup> Independent spending, however, far exceeded the direct campaign contributions in both elections.

Fair-courts advocates estimate that one independent spender, Wisconsin Manufacturers & Commerce, the state's chapter of the U.S. Chamber of Commerce, spent more than \$2 million in high court races in 2007 and 2008.<sup>5</sup> The group criticized the court for some of its rulings in product liability and personal-

injury cases.<sup>6</sup> In the 2008 race, 90 percent of the money spent on ads came in the form of independent spending that was ostensibly unaffiliated with the candidates, and these independently funded ads were overwhelmingly negative.<sup>7</sup>

Independent spending grew even more in 2011, with at least \$3.5 million spent on television ads.<sup>8</sup> The re-election campaign of conservative Wisconsin Supreme Court Justice David Prosser was supported by more than \$2 million from conservative groups and big-business groups.<sup>9</sup> Nearly half of this money came from a secretive group affiliated with Americans for Prosperity, the conservative group backed by billionaires Charles and David Koch<sup>10</sup> that ran misleading attack ads against Justice Prosser's opponent, then-Assistant Attorney General JoAnne Kloppenburg. The election occurred while the court was considering a legal challenge to Gov. Scott Walker's (R-WI) anti-collective bargaining bill, which would have negatively impacted Wisconsin labor unions. Groups affiliated with the labor unions supported Justice Prosser's opponent with more than \$1 million in ad spending.<sup>11</sup> One of the groups supporting Kloppenburg, the Greater Wisconsin Committee, ran an ad accusing Justice Prosser of failing to prosecute a priest who sexually abused children when he was a prosecutor in 1978.<sup>12</sup>

These bitter political battles led to a sharply divided bench as consensus became scarce. The schism in the high court grew even wider as the state was torn apart by the fight over Gov. Walker's anti-collective bargaining bill. As the court was deliberating a challenge to the bill, Justice Prosser was accused of choking a fellow jurist.<sup>13</sup> Justice Prosser also called Chief Justice Shirley S. Abrahamson of the Wisconsin Supreme Court a "total bitch," adding that he would "destroy" her in a "war."<sup>14</sup>

The Wisconsin high court has now split sharply into liberal and conservative factions, even though the office of supreme court justice is ostensibly nonpartisan. Before this politicization, the court enjoyed a record of many unanimous decisions. It has gotten so bad that the court has even stalemated over ethics decisions involving its infighting and the physical altercation involving Justices Prosser and Bradley. A 2011 poll found that only one-third of Wisconsinites had confidence in their high court.<sup>15</sup>

The State Bar of Wisconsin appointed a task force to study the problems surrounding Wisconsin's high court elections. On July 1, 2013, the task force proposed a constitutional amendment to elect the justices to a "single, 16-year term" beginning in August.<sup>16</sup> The report argues that such a system would "improve public perception of our judicial system and ... promote collegiality." The proposed constitutional



amendment would prevent anyone from being elected to the high court more than once, but it would allow the current justices to run for another term.<sup>17</sup>

The task force argues that limiting justices to one long term would remove political pressure from their jobs. Once on the bench, the justices would never again have to solicit campaign cash or “seek support and approval from individuals and groups with identifiable political perspectives and economic agendas.”<sup>18</sup> An amendment to the state constitution requires approval by two consecutive terms of the legislature, followed by approval by citizens in a referendum.<sup>19</sup>

If the amendment wins approval, Wisconsin would become the only state that limits elected justices to a single term, although three states appoint justices for life or until a mandatory retirement age.<sup>20</sup> The 16-year term would become the longest term for any elected judge in the country. The only other states with comparable terms are New York, which holds retention elections for its high court judges every 14 years, and West Virginia, which currently has the longest term—12 years—for high court seats filled through contested elections.<sup>21</sup>

This proposal is a big change, and it may seem drastic, but the reputation of Wisconsin’s high court is in tatters. The court has become just another political branch of government—with all of the baggage that politicians bring to their jobs. Special interests spend overwhelming sums of money on political ads for candidates whom they think will rule in their favor. The court now functions like a bitterly divided political body, issuing more divided rulings with clear liberal and conservative factions.

The proposed constitutional amendment could address these problems because the justices would never again have to run for re-election once they are on the bench. Some have raised concerns, however, that spending per election will increase because special interests will have fewer chances to influence the composition of the court. Although this concern merits further study, Wisconsin needs to think big in terms of reforming its judicial elections, and this proposed constitutional amendment could be just what it needs.

## Collegiality falls apart

The political pressures weighing on the court reached a breaking point in 2011, as the justices were considering a legal challenge to Gov. Walker’s bill to limit the collective bargaining rights of public employees. The bill was the subject of an epic battle, as conservative legislators and big business fought liberal legislators, unions, and pro-labor protestors.<sup>22</sup> Gov. Walker’s legislation had been challenged by unions, which argued that the bill violated the state’s open-meetings law that requires 24-hour notice of legislative meetings.<sup>23</sup> Even though legislators posted a notice less than two hours before a meeting on the bill, conservatives on the high court rushed through a 4-3 opinion that rejected the legal challenge to the bill just days after hearing oral arguments.<sup>24</sup>

On the evening of June 13, 2011, the day before the court released its opinion, the slim conservative majority wanted to immediately issue the opinion or a press release anticipating the opinion.<sup>25</sup> But Chief Justice Abrahamson was still writing her dissent, in which she questioned the need for such a speedy resolution of the appeal.<sup>26</sup> Justice Prosser and the other conservative justices went to Justice Ann Walsh Bradley’s office, where the chief justice was discussing the dissent with her colleague.<sup>27</sup> After Chief Justice Abrahamson told them that her dissent would not be ready that day and that a press release would not be issued, Justice Prosser told her he had “lost faith in her leadership.”<sup>28</sup>

Justice Bradley then approached Justice Prosser and demanded that he leave her office. Justice Bradley said, “[Justice Prosser’s] response was to grab my neck, wrapping both hands around it in a full circle.”<sup>29</sup> Although Justice Prosser told police investigating the incident that he could not recall how many fingers he had around her neck, the justice admitted that his hands could feel “the warmth in Justice Bradley’s neck.”<sup>30</sup>

Not surprisingly, the justices who witnessed the assault could not agree on what happened. Justice Prosser claimed that Justice Bradley rushed at him with her fists raised and that he touched her neck while assuming a defensive posture.<sup>31</sup>

Justice Gableman, a fellow conservative, claimed that Justice Prosser's hands were "never ... around [Justice Bradley's] neck at any point."<sup>32</sup> Conservative Justice Patience Roggensack agreed<sup>33</sup> and told Justice Bradley, "You often goad other justices by pushing and pushing in conference in a way that is simply rude and completely nonproductive."<sup>34</sup> Justice Roggensack told her that Justice Prosser "is not a man who attacks others without provocation."<sup>35</sup>



The physical confrontation notwithstanding, why did Justice Prosser feel so compelled to have the court act quickly in affirming Gov. Walker's anti-collective bargaining bill? Before being appointed to the court in 1998, Justice Prosser served as a Republican legislator in the Wisconsin General Assembly for 18 years, rising to the rank of minority leader and assembly speaker.<sup>36</sup> Perhaps Justice Prosser's past life as a Republican politician is not truly in the past.

In the run-up to the spring 2013 high court election, Justice Bradley released new details about the incident that suggest that Justice Prosser's actions were part of a pattern of inappropriate behavior. She said that "one year and four months before" the incident, she met with court administrators to discuss concerns "that Justice Prosser may endanger my physical safety" through a potential "escalation in violence."<sup>37</sup> Justice Bradley claimed that Justice Prosser appeared "increasingly agitated" in the months leading up to the incident.<sup>38</sup> She said that Chief Justice Abrahamson and herself still lock themselves inside their offices "when working alone because of concerns for our physical safety due to Justice Prosser's behavior."<sup>39</sup>

Months before the "chokehold" incident, Justice Prosser admitted that he referred to the court's chief justice as a "total bitch" and threatened to "destroy her."<sup>40</sup> Justice Prosser said that he made these threats after learning that the chief justice was supporting his opponent in the upcoming election.<sup>41</sup> Justice Roggensack and

In this June 6, 2011, file photo Wisconsin Supreme Court Justices David T. Prosser, Jr. and Ann Walsh Bradley consider oral arguments during a hearing on the state's budget bill at the Wisconsin State Capitol in Madison. A prosecutor said Thursday, Aug. 25, 2011, that Justice Prosser won't face criminal charges over allegations he choked Bradley. Justice Bradley accused Prosser of choking her in June as the justices deliberated on a legal challenge to GOP Gov. Scott Walker's contentious collective bargaining law.

AP PHOTO/JOHN HART, POOL, FILE



Justice Prosser claimed that his colleagues sometimes “goad” Justice Prosser into making such threatening statements.<sup>42</sup>

At the time of the “choking” altercation, tensions also ran high over an ethics investigation. In 2008 Justice Gableman was accused of running an ad with misleading statements about his political opponent, liberal Justice Louis Butler.<sup>43</sup> Justice Gableman was criticized for the racial undertones of the ad in question.<sup>44</sup> (Justice Butler is the first and only African American justice on the Wisconsin high court.) The Wisconsin Judicial Commission found that Justice Gableman engaged in misconduct.<sup>45</sup> Justice Gableman was also accused of violating ethics rules by accepting free legal services from a law firm that had a case pending before the court in an effort to defend himself against the ethics charges regarding the ad.<sup>46</sup> Justice Prosser was brought up on ethics charges for the chokehold incident. Because the Wisconsin Supreme Court is the only body that can enforce judicial ethics rules for the justices and the court is deadlocked along party lines, the justices faced no sanctions for the ethics rules violations found by the Wisconsin Judicial Commission.<sup>47</sup>

## Consensus falls apart

Justice Bradley has said that the court’s “hyper-partisanship” is a direct result of the increasing campaign cash in its elections.<sup>48</sup> In a 2012 panel discussion, Justice Bradley spoke of the consequences when “political parties ... and special interest groups put the high courts in the various states really in the crossfire of the battle that’s being fought between those special interest groups.” She said that the justices sometimes feel they are “pawns in a chessboard.”<sup>49</sup> The sharp increase in campaign spending was driven by money from special interests that want the court to rule a certain way, particularly in tort, or personal-injury, cases.<sup>50</sup> Money from trial lawyers and labor unions funded the political efforts of liberal judges, who ruled more often for plaintiffs and unions. Big business poured money into the campaigns of conservative judges who would rule more often for corporate defendants in tort cases.<sup>51</sup> As a result, the court has broken into clear liberal and conservative factions in recent years.

Justice Gableman has publicly stated that “the acrimonious climate on the court creeps into our work.”<sup>52</sup> According to Justice Gableman, however, the infighting stems from poor leadership. Justice Gableman has harshly criticized Chief Justice Abrahamson’s leadership and said that changes to the chief-justice selection process would give the person selected to be chief justice an “incentive ... to conduct him or herself in a collegial manner.”<sup>53</sup> He has said that the chief justice’s dissenting opinions are “possibly more damaging to the court than anything else”<sup>54</sup> and described recent dissents as “attacks challenging the intelligence, capability and even the good faith” of the majority.<sup>55</sup>

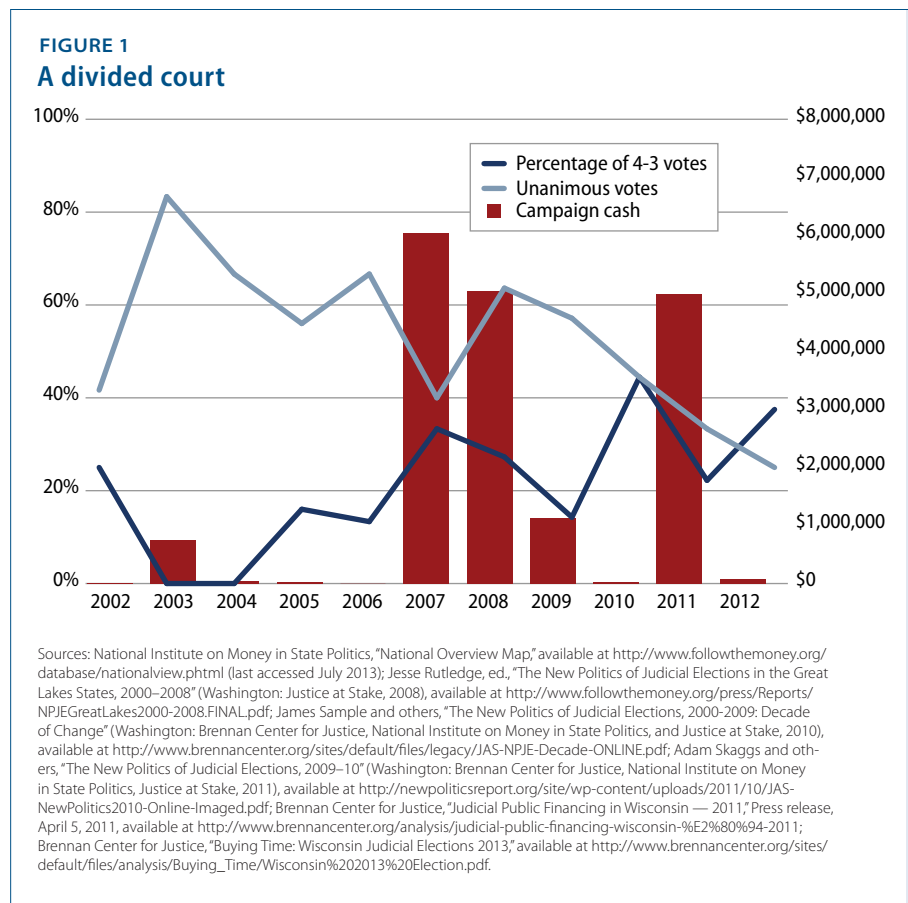
A Center for American Progress analysis of the court’s rulings shows that as money has poured into Wisconsin Supreme Court races, the percentage of unanimous cases has declined sharply. A May 2013 CAP report looked at rulings in tort cases by the state supreme courts that have seen the most money in recent years, and the appendix to this report applies the same methodology to the Wisconsin Supreme Court. CAP focused on tort cases because, even though unions assumed

a larger role in recent high court elections, Wisconsin's judicial campaigns have historically been dominated by money from trial lawyers who oppose limits on personal-injury lawsuits and by corporate interests that support limiting liability for negligence. The Wisconsin Supreme Court has become yet another front in the political battle over tort reform and tort liability in general, and this political battle has moved into the chambers of the high court.<sup>56</sup>

CAP examined 145 tort cases that the court decided between 2002 and 2012. (see Table 1 below) In 2003 the percentage of unanimous opinions peaked at more than 83 percent, but by 2007, the year of the first multimillion-dollar election, the figure had dipped to 40 percent. The percentage rebounded some in 2008, only to fall sharply after that. The percentage of unanimous opinions in tort cases reached a low of 25 percent in 2012. As the campaign cash poured in over 10 years, the percentage of unanimous decisions fell from 83 percent to just 25 percent.

Just as the number of unanimous decisions has fallen, the percentage of closely divided rulings in tort cases has generally risen. The court had no 4-3 rulings in 2003 or 2004, but the number rose until 2007, when it reached 33 percent. The percentage dipped to 14 percent in 2009, only to rise again to 44 percent in 2010. Despite some variability, the trend of an increase in closely divided rulings is clear.

Alan Ball, a professor of history at Marquette University in Milwaukee, Wisconsin, assembled data on all of the court's rulings, not just in tort cases, from 2004 to



2012, and his data show a similar drop in the number of unanimous opinions in 2008 and 2009.<sup>57</sup> Ball's data, however, show a more gradual decline in unanimous rulings from 2004 to 2012, followed by an uptick in unanimous rulings in 2011 and 2012.<sup>58</sup> This suggests the decrease in the number of unanimous opinions is more pronounced in tort cases than in other cases.

# Campaign cash: The source of division

Special interests that want the justices to rule a certain way can give unlimited, anonymous contributions to independent spending groups, which in turn spend money to elect Wisconsin Supreme Court candidates. Plaintiffs' trial lawyers, as a rule, support candidates who tend to rule for plaintiffs in tort cases.<sup>59</sup> Big-business groups such as Wisconsin Manufacturers & Commerce attack candidates backed by trial lawyers and spend money to elect judges who tend to rule for defendants in tort cases.<sup>60</sup> The increase in money from these interest groups and the justices' increasing need to access this money to keep their jobs are correlated with the emergence of clear conservative and liberal factions on the court.

Caught in a political battle between two factions with a financial interest in the outcome, the Wisconsin Supreme Court justices began to align into two ideological camps in tort cases.<sup>61</sup> As a consequence, the court now functions more like a political body than it did just 10 years ago, as borne out by the CAP analysis. Members of the court are now more like legislators—receiving campaign cash from special interests that want them to vote a certain way and making decisions in a partisan fashion.

Corporate interest groups did not like the court's rulings in tort cases when the liberal justices had a majority on the court, so they set out to change the court.<sup>62</sup> The corporate interests are currently winning the political battle over the court<sup>63</sup> and have succeeded in electing a slim majority of justices who vote to limit liability in tort cases.<sup>64</sup>

The data in the accompanying appendix show that corporate defendants had a high success rate—73 percent—in tort cases in 2004, but that figure dropped sharply to 20 percent in 2005 after the conservative justices lost a brief one-vote majority. In 2008, when Justice Gableman defeated Justice Butler—the liberal justice who authored the lead-paint decision reviled by Wisconsin Manufacturers & Commerce<sup>65</sup>—the pro-defendant justices regained a majority.<sup>66</sup> Fair-courts advocates reported that Wisconsin Manufacturers & Commerce spent \$1.6 million on ads in the 2008 high court race, and 80 percent of those ads were attacks on Justice Butler that focused on criminal justice issues.<sup>67</sup>

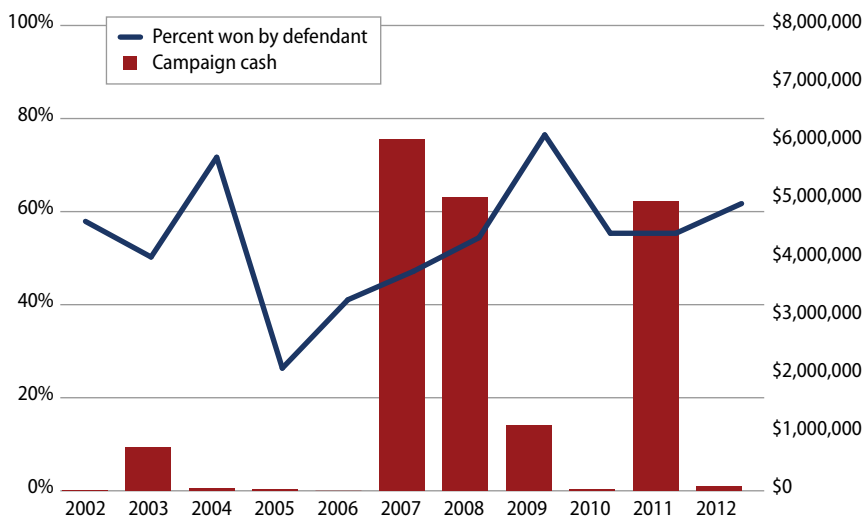


Justice Gableman recently criticized the liberal majority that preceded him for engaging in “judicial activism,” and he concluded that, “Nothing has done more to tarnish the image of our court than the rulings by the liberal activist majority between 2004 and 2008.”<sup>68</sup> He has gone on record criticizing several of the liberal majority’s rulings in tort cases. Justice Gableman also said that the law—during the time the liberal justices were the majority—became unpredictable and “transient as the shifting winds.”<sup>69</sup> So Justice Gableman and the new conservative majority presumably set out to make the law more predictable. After Justice Gableman took his seat on the bench, corporate defendants won an astonishing 79 percent of the high court’s tort cases in 2009.

Big business has spent more money than trial lawyers or liberal groups in recent years to maintain a majority of its favored justices on the court. The Wisconsin Civil Justice Council, a corporate-funded group that advocates limited tort liability, ranked the current justices by whether its funders agree with the justices’ votes in certain cases, mostly tort cases.<sup>70</sup> The four conservative justices’ votes lined up with the preferences of the council’s members in 80 percent or more of the cases.<sup>71</sup> These justices ruled consistently in favor of hospitals and insurers and against injured plaintiffs.<sup>72</sup>

Justice Gableman has described the four-justice majority’s approach as “a judicially conservative course that focuses on applying the law rather than molding it to fit our own personal agendas and desires.” He claims the majority has restored “predictability and stability” in Wisconsin law.

**FIGURE 2**  
**More wins for corporate defendants in Wisconsin Supreme Court tort cases**



Sources: National Institute on Money in State Politics, “National Overview Map,” available at <http://www.followthemoney.org/database/nationalview.phtml> (last accessed July 2013); Jesse Rutledge, ed., “The New Politics of Judicial Elections in the Great Lakes States, 2000–2008” (Washington: Justice at Stake, 2008), available at <http://www.followthemoney.org/press/Reports/NPJEGreatLakes2000-2008.FINAL.pdf>; James Sample and others, “The New Politics of Judicial Elections, 2000–2009: Decade of Change” (Washington: Brennan Center for Justice, National Institute on Money in State Politics, and Justice at Stake, 2010), available at <http://www.brennancenter.org/sites/default/files/legacy/JAS-NPJE-Decade-ONLINE.pdf>; Adam Skaggs and others, “The New Politics of Judicial Elections, 2009–10” (Washington: Brennan Center for Justice, National Institute on Money in State Politics, Justice at Stake, 2011), available at <http://newpoliticsreport.org/site/wp-content/uploads/2011/10/JAS-NewPolitics2010-Online-Imaged.pdf>; Brennan Center for Justice, “Judicial Public Financing in Wisconsin — 2011,” Press release, April 5, 2011, available at <http://www.brennancenter.org/analysis/judicial-public-financing-wisconsin-%E2%80%94-2011>; Brennan Center for Justice, “Buying Time: Wisconsin Judicial Elections 2013,” available at [http://www.brennancenter.org/sites/default/files/analysis/Buying\\_Time/Wisconsin%202013%20Election.pdf](http://www.brennancenter.org/sites/default/files/analysis/Buying_Time/Wisconsin%202013%20Election.pdf); See the appendix.

Corporate interest groups have spent millions on judicial elections to tilt the scales of justice against injured plaintiffs and in favor of corporate defendants. A May 2013 CAP report titled “No Justice for the Injured,” found patterns similar to the one above in the six state supreme courts that have seen the largest influx of campaign cash. In those states, corporate defendants had a 70 percent success rate in tort cases from 2002 to 2012, rising to 76 percent in 2011 and 2012.<sup>73</sup> In Texas, the high court ruled against injured plaintiffs in 83 percent of the cases studied. The CAP report warned:

*Before big business declared war on the right to a jury trial, an individual who was injured by a defectively designed product or an unsafe workplace could look to state courts for justice. An individual who was maimed by the negligence of a hospital or a parent whose child was made ill by a nearby industry plant spewing a toxic substance could rely on the courts to hold the wrongdoer accountable. With unlimited corporate money pouring into judicial races, this principle is less true with each passing election.<sup>74</sup>*

If the stories of profanity and physical confrontations among the justices were not enough, the numbers compiled by CAP show that the Wisconsin Supreme Court is undeniably broken. It functions much more like a political body than it did before the multimillion-dollar elections began. After political pressure from both sides of the tort-liability debate, the court now rules more often for corporate defendants, issues fewer unanimous opinions, and decides more cases along party lines. Reformers, as well as the court itself, have explored several possibilities to address the court’s dysfunction.

# Fixing what's broken: Keeping politics out of the courtroom

Whether the problem is the lack of unity or the influence of campaign cash, it is clear that something must be done about the politicization of the court. Justice Bradley believes the schism on the court is due to pressure resulting from multimillion-dollar campaigns,<sup>75</sup> while Justice Prosser blames personal re-election pressures and political factions on the bench.<sup>76</sup> Either way one approaches this problem, the proposed constitutional amendment to limit the justices to a single 16-year term could help.

Media reports described one of the goals of the proposal as “stemming the flow of money into judicial elections.”<sup>77</sup> This money often pours into judicial campaigns from attorneys and those who frequently litigate before the high court. Once a judge is on the bench, he or she must continue raising money from the same interested parties in order to keep being re-elected.

The State Bar of Wisconsin task force claims that under its proposal, the justices would no longer be “political candidates ... required to seek support and approval from individuals and groups with identifiable political perspectives and economic interests.”<sup>78</sup> The task force notes that the justices could not be “attacked” by allegations that their decisions are “motivated by concerns for re-election.”<sup>79</sup> What’s more, according to the task force, its proposal would reduce “the frequency of often politically charged and costly elections.”<sup>80</sup>

Many studies have shown a correlation between campaign contributions and a court or judge’s rulings. A 2009 study by Joanna Shepherd-Bailey, a professor at Emory Law School, for example, concluded that campaign contributions “influence state supreme court rulings.”<sup>81</sup> But Shepherd found fewer correlations between campaign contributions and rulings for judges who are facing retirement. Shepherd’s study found “no systematic relationship” between campaign cash and outcomes for judges who are not facing another election.<sup>82</sup> Another study by Shepherd examined the effect of political pressure on state supreme court rulings in civil and criminal cases and found that “judges in their last term ... respond less to political forces than do other judges.”<sup>83</sup>

These findings suggest that limiting justices to one term could address many of the problems associated with judicial elections. Even if retiring judges owe their political careers to campaign donors, they feel no pressure to rule in favor of those campaign donors when they do not have to face re-election.

Chief Justice Maureen O'Connor of the Ohio Supreme Court, which has seen a similar spike in campaign cash, recently asked voters to consider several options for reforming judicial elections, including a doubling of the justices' terms from 6 years to 12 years.<sup>84</sup> The chief justice quotes a task force, which concluded that "increased term lengths would promote 'judicial independence while ensuring continued accountability to the public.'"<sup>85</sup>

In a 2011 poll by Justice at Stake, a nonpartisan campaign to keep courts fair and impartial, 88 percent of Wisconsinites surveyed were "at least somewhat concerned that campaign spending and the deteriorating tenor of judicial elections are tarnishing the reputation of the Wisconsin Supreme Court."<sup>86</sup> If justices were limited to a single term, they would never again have to worry about whether their votes in a particular case will offend interest groups that spend money on attack ads. The justices could focus on the facts and the law in the case before them without being concerned about how their votes could impact their ability to raise money or win re-election.

The state chapter of the U.S. Chamber of Commerce has not taken an official position on the proposed reform, but Kurt Bauer, president and CEO of Wisconsin Manufacturers & Commerce, said that he does not "think money has been a problem" in recent elections.<sup>87</sup> "Democracy isn't supposed to be easy," said Bauer.<sup>88</sup>

The current form of democracy for Wisconsin judicial elections makes it easy for corporate special interests such as Wisconsin Manufacturers & Commerce to influence the composition of the state supreme court. Since 2000 turnout for these races has only once exceeded 25 percent.<sup>89</sup> Because voter interest is not as high, political ads can exert substantial influence over voters. Corporate-funded groups have spent millions of dollars on high court election ads in recent years. Groups such as Wisconsin Manufacturers & Commerce can accept large contributions from their corporate benefactors and use that money to elect pro-corporate justices to the court. The corporate community's efforts have been successful. A recent op-ed notes, "Conservatives have now won six of the past seven contested races for Wisconsin's highest court."<sup>90</sup>

Under the task force’s proposed amendment, special interests would still have the opportunity to recruit and fund the campaigns of candidates that they prefer. But once on the bench, those special interests can never again influence the judge by targeting him or her with attack ads or by an implied threat to withhold financial support in a re-election campaign.

If the influence of campaign donors on sitting justices recedes, would the court see some relief to the hyper-partisanship that Justice Bradley attributes to expensive elections? If a justice has to run for re-election and needs a lot of money to do so, then the justice must feel some pressure to rule in a way that pleases potential campaign donors. Given the court’s increasingly clear partisan divide, that justice must feel some pressure to have a voting record that aligns with the preferences of potential campaign donors. Without the pressure to be perceived by donors as clearly on one “team” or another, Wisconsinites could see their high court once again issuing more unanimous opinions. The court could once again find consensus.

Although the amendment would allow the current justices to seek another term, the proposed system would eventually reduce the personal toll that politics takes on the justices. The task force says it would “reduce the potential” for attack ads during high court campaigns.<sup>91</sup> One former high court justice said that limiting the use of campaign ads that distort the justices’ records would help restore the court’s reputation.<sup>92</sup>

The task force also seems to think that its proposal would help the justices avoid verbally and physically attacking one another. It claims the amendment would promote “collegiality ... by eliminating the potential that justices will publicly or privately oppose a colleague’s re-election.”<sup>93</sup> According to the task force, it is this risk—not Justice Prosser’s behavior—which is “the most powerful force interfering with collegiality.”<sup>94</sup>

Election-year politics do seem to have complicated the relationship among the justices. According to Justice Gableman, three members of the four-justice majority “took the unprecedented step of publicly endorsing Chief Justice Abrahamson’s opponent” in 1999 because of “deep” discord and “a lack of effective leadership” on the court.<sup>95</sup> He notes that the election followed a battle over a proposal to limit the administrative authority of the chief justice.<sup>96</sup>

Justice Prosser admits that he made his threatening comments to Chief Justice Abrahamson while he was in the midst of his own re-election battle.<sup>97</sup> He had accused



the chief justice of aligning with his political opponent.<sup>98</sup> Justice Prosser’s justification implies that his extremely inappropriate threats and profanity would never have happened if not for the pressure he was under during his re-election campaign.

To the extent that the task force is giving credence to Justice Prosser’s justifications, it may be enabling his abusive behavior. Justice Bradley stated, “In offices and on factory floors throughout this country, the perpetrators of workplace abuse and their enablers often try to minimize the abusive conduct. Then they blame others for it.”<sup>99</sup>

Appellate judges are appointed or elected to make complicated and controversial decisions. The job requires them to deliberate these issues with colleagues with whom they may disagree. They make group decisions. A court cannot function if disagreements lead a jurist to erupt into “violent temper tantrums”—as Justice Bradley described Justice Prosser’s behavior.<sup>100</sup>

Justice Bradley noted that “having a coworker grab the neck of another in anger is not acceptable behavior in any work environment.”<sup>101</sup> Justice Prosser seems to have some issues with anger and impulse control, and he seems prone to blaming others for his violent outbursts. It seems that these problems with Justice Prosser’s behavior, more than political pressure, are to blame for the court’s lack of collegiality. A proposed constitutional amendment cannot mend a judge’s troubled psyche.



Justice David Prosser, speaks to supporters at the Seven Seas Restaurant Tuesday April 5, 2011 in Waukesha Wis. as he takes on Assistant Attorney General JoAnne Kloppenburg for the Wisconsin Supreme Court seat.

AP PHOTO/DARREN HAUCK

# Conclusion

The State Bar of Wisconsin task force considered a variety of potential changes to the state's high court races, and it concluded that a single 16-year term was the “best, most feasible alternative.”<sup>102</sup> Limiting the justices to a single term would certainly alleviate the political pressure they feel while on the bench. It may lead to less hyper-partisanship, as justices would no longer feel pressure to please the donors who could potentially fund their re-election campaigns.

The justices could focus on interpreting the law without fear of the political consequences. As in the federal system, where justices are appointed for life, judges on the state high court would be largely independent from political concerns once on the bench. Special interests would still spend money to shape the composition of the court, but they would have much fewer opportunities to do so.

Some have raised concerns that the relative infrequency of elections will actually cause more money to flood each high court election. Mike McCabe, executive director of the Wisconsin Democracy Campaign, warned that whenever a seat on the court opens up, the “interest groups are going to be anxious to influence that election, because it's the one shot they'll have at influencing who sits in that seat for 16 years.”<sup>103</sup>

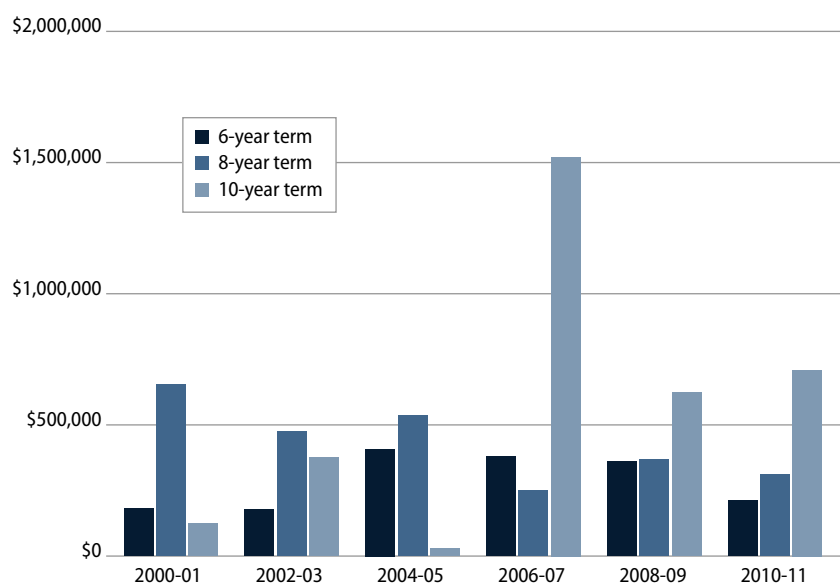
These concerns could be valid, but Wisconsin already has relatively long judicial terms—10 years. Data on direct campaign contributions from the National Institute on Money in State Politics suggest that term length could have some correlation with how much money candidates raise in each election.<sup>104</sup> States with 10-year terms saw more campaign contributions in several recent election cycles, though these figures do not include independent spending.<sup>105</sup>

Partisan races for 10-year terms saw even more money than those for 12-year terms, although if the figures included independent spending, then the only state with a 12-year term, West Virginia, would have led the money race in the period from 2004 to 2005.<sup>106</sup> Elections for six-year partisan terms were more expensive

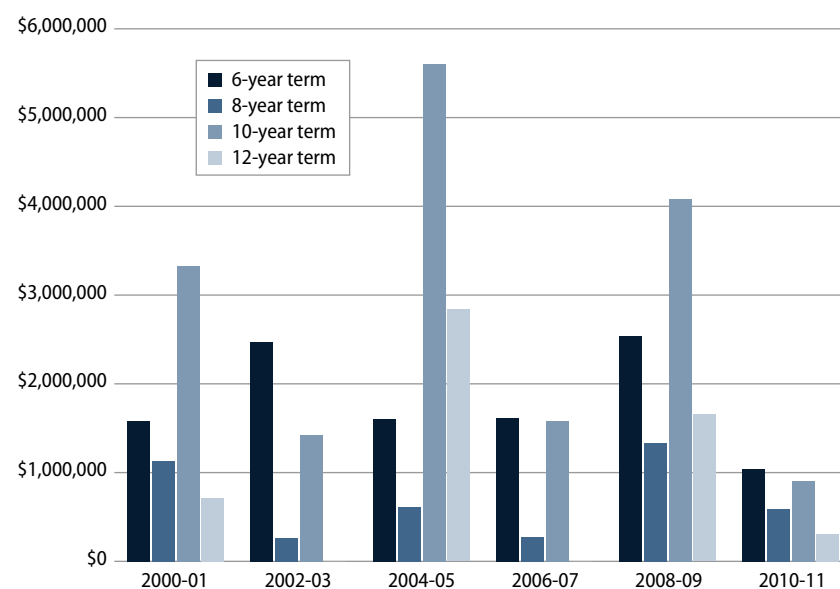
in earlier elections, but those state supreme courts—in Alabama, Texas, and Ohio—are now firmly in the hands of Republican justices after years of multimillion-dollar elections.<sup>107</sup> Moreover, some of the states with six-year terms—for both partisan and nonpartisan offices—have seen millions of dollars in independent spending in recent elections,<sup>108</sup> which could explain the slower growth in direct campaign contributions in those states. Many factors determine how much money is spent in judicial races, and the influence of term length on the amount of money raised needs further study.

In a letter to the editor, one Wisconsinite warned that elections could produce a justice who is a “dud” for a term of 16 years.<sup>109</sup> But as the 2012 gubernatorial election showed, Wisconsin voters are not afraid to call for a recall election of their elected representatives when given an opportunity to do so.<sup>110</sup> Moreover, a dud, no matter the length of time, is always a risk when electing judges.

**FIGURE 3**  
Average campaign cash per election in nonpartisan, contested races



**FIGURE 4**  
Average campaign cash per election in partisan, contested races



Sources: National Institute on Money in State Politics, “National Overview Map,” available at <http://www.followthemoney.org/database/nationalview.phtml> (last accessed July 2013); American Judicature Society, “Methods of Judicial Selection,” available at [http://www.judicialselection.us/judicial\\_selection/methods/selection\\_of\\_judges.cfm?state](http://www.judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state) (last accessed July 2013).

On the other hand, in merit-selection systems, a panel composes a list of potential candidates based solely on their qualifications, and the governor chooses a nominee from the list.<sup>111</sup> The justices often are required to face the electorate in “retention elections,” in which the voters decide whether to keep them on the bench.<sup>112</sup> Unlike contested elections, these systems minimize politicization and the influence of campaign cash.<sup>113</sup>

The State Bar of Wisconsin task force also discussed political opposition to merit-selection plans. Some Republican legislators opposed a merit-selection proposal introduced in 2011.<sup>114</sup> Justice Gableman warned Wisconsinites that some reformers would “strip us” of our “constitutional right to elect our judges.” He warned, “They believe ... that they know better than we do.”<sup>115</sup>

The task force also noted the “significant difficulty of creating a constitutional framework ... that does not favor, or seem to favor, one party over the other.”<sup>116</sup> The final proposal was, in the task force’s words, “politically neutral.”<sup>117</sup> Justice Gableman implied that a merit-selection commission, which is made up of unelected, independent experts, is actually “a small group of politicians.” These criticisms of merit selection are largely unfounded. Merit-selection systems can be structured to ensure nonpartisanship and transparency.<sup>118</sup> And concerns that merit selection inherently favors the selection of liberal judges are largely unsubstantiated.<sup>119</sup> The task force notes that some will “oppose any changes” to the current system.<sup>120</sup>

Wisconsin Democracy Campaign Executive Director McCabe also argues that the amendment proposal fails to deal with the “root causes of the problem,” and he recommends broader campaign finance reform measures.<sup>121</sup> The task force noted such suggestions but said, “Changes should be as limited as possible to accomplish the desired change ... Precise and limited textual change promotes clarity and avoids unintended consequences.”<sup>122</sup>

Moreover, the proposed change would require a constitutional amendment, which entails a majority vote in two consecutive legislative sessions and approval by a majority of voters.<sup>123</sup> The task force concluded that its proposal was most likely to “earn the broad, bipartisan and public support necessary,” given the “deeply polarized political climate” in the state.<sup>124</sup> This polarization also makes other judicial election reforms unlikely.

In 2007 the entire Wisconsin Supreme Court asked the legislature to provide public financing, given the risk that “the public may inaccurately perceive a justice as

beholden to individuals or groups that contribute to his or her campaign.”<sup>125</sup> The legislature passed a bill to fund the program in 2009. Although both candidates running for the high court bench in 2011 participated in the program, independent spending overwhelmed the amount raised through public financing, and the Republican legislature voted to defund the program.<sup>126</sup> The same thing is currently happening in North Carolina,<sup>127</sup> even though a recent study found that candidates participating in the state’s public financing program were less responsive to their campaign donors than candidates who ran before the creation of the program.<sup>128</sup>

In its report, the task force noted that some reforms are “simply constitutionally prohibited.”<sup>129</sup> The task force may be referring to a 2011 U.S. Supreme Court case that ruled unconstitutional a system of “matching funds” for publicly financed candidates.<sup>130</sup> In that case, Arizona offered candidates for certain offices public funds for campaigning if they agreed to spending and contribution limits.<sup>131</sup> The Arizona system offered additional matching funds for publicly financed candidates whenever their opponents spent more than the public financing subsidy, but the U.S. Supreme Court described these matching funds as an unconstitutional “penalty” on the political opponent’s speech.<sup>132</sup>

This prohibition on traditional matching funds makes it harder for publicly financed candidates to compete, but some jurisdictions are experimenting with other ways to provide publicly financed candidates with the flexibility they need to remain competitive. In New York, for example, the state legislature is considering a small donor-matching system in which each dollar of donations under \$175 would be matched with \$6 from the public financing system.<sup>133</sup> This type of system offers flexibility without the constitutional concerns raised by traditional matching funds.<sup>134</sup>

Chief Justice Abrahamson, the target of most of Justice Prosser’s outbursts until Justice Bradley was allegedly assaulted, argues that limited, 16-year terms would not keep money out of high court elections.<sup>135</sup> Instead, she recommends tougher rules on when the justices must recuse themselves from cases involving campaign contributors.<sup>136</sup> The four conservative members of the court, however, moved in the opposite direction in 2010 and adopted the lax recusal standard urged by Wisconsin Manufacturers & Commerce.<sup>137</sup> An August 2012 CAP report noted:

*The court voted—along ideological lines—to weaken its recusal rule and adopt the standard suggested by the Wisconsin Realtors Association and Wisconsin’s Manufacturers and Commerce, a group which donated nearly a million dollars*



*to support Prosser's reelection in 2011. The new rule states that campaign donations can never be the sole basis for recusal. In dissent, Justice Bradley expressed alarm that judges' campaigns can now ask parties before the court for campaign contributions. "Judges must be perceived as beyond price," Bradley stated. She criticized the majority for adopting "word-for-word the script of special interests that may want to sway the results of future judicial campaigns." The court seems intent on making it easier for big money to influence the judiciary, at the expense of litigants without vast resources.*<sup>138</sup>

Chief Justice Abrahamson argues that the legislature should override the court's decision and implement a rule requiring the justices to recuse themselves in cases involving campaign donors.<sup>139</sup> Some state legislatures have responded to the growing conflicts of interest in judicial campaigns by passing stricter recusal rules. Much of the money spent in Wisconsin high court races, however, now comes from independent groups,<sup>140</sup> and this could pose a challenge for rules requiring recusal for campaign donations.

Justice Gableman has claimed that a mandatory recusal rule would "perpetuate" the division and "hostility ... that has plagued the court."<sup>141</sup> Similar to U.S. Supreme Court Chief Justice John Roberts' dissent in a 2009 U.S. Supreme Court case involving campaign cash and judicial recusal,<sup>142</sup> Justice Gableman seems to think that rules preventing judges from deciding cases involving campaign contributors will send a message to the public that judges cannot be trusted to act ethically.<sup>143</sup> He argues that a tougher recusal rule "will do nothing to improve the relationships on the court."<sup>144</sup> Instead, Justice Gableman's advice to his colleagues is to stop "airing in public every disagreement concerning internal matters."<sup>145</sup>

The fact that something must be done in Wisconsin could not be clearer. The physical violence among the justices turned the court into a laughingstock. What's more, the court is failing to police itself on ethics issues, and it has adopted the recusal rule urged by a big-business group that has spent millions to influence the composition of the court. Neither the court nor the legislature has addressed the root causes of the deep division on the court. How does Wisconsin depoliticize its high court? The task force's proposal is a good way to start that conversation.

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**Billy Corriher** is the Associate Director of Research for Legal Progress at the Center for American Progress, where his work focuses on the influence of political campaign cash on state courts. Corriher joined the Center after serving as a weekly blogger for the *Harvard Law & Policy Review* blog Notice and Comment, with a focus on federal appellate court cases and other legal/policy matters. He has also written op-eds and blog posts for the American Constitution Society and the Bill of Rights Defense Committee. Corriher received his bachelor's degree in political science from the University of North Carolina at Chapel Hill. He received a law degree and a master's degree in business from Georgia State University, graduating with honors in 2009. He is a member of the State Bar of Georgia.

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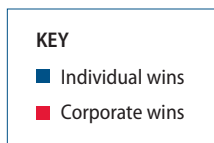
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- 138 Billy Corriher, "Big Business Taking over State Supreme Courts" (Washington: Center for American Progress, 2012), available at <http://www.americanprogress.org/wp-content/uploads/2012/08/StateCourtsReport.pdf>.
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- 141 Justice Gableman, "Disorder in the Court," p. 4.
- 142 Dissenting in *Caperton v. Massey Coal*, Chief Justice Roberts said the majority's decision to overrule a recusal decision based on campaign cash would "inevitably lead to an increase in allegations that judges are biased, however groundless those charges may be. The end result will do far more to erode public confidence in judicial impartiality than an isolated failure to recuse in a particular case." *Caperton v. Massey Coal*, 556 U.S. 868, 891 (2009) (Roberts, C.J., dissenting).
- 143 Justice Gableman described the tougher recusal rule proposed by the liberal justices as a "proposal that effectively tells the justices (and the public), 'We have no faith in you to behave ethically in the execution of your job.'" Justice Gableman, "Disorder in the Court," p. 4.
- 144 Ibid.
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# Appendix

To illustrate the impact of judicial campaign contributions on tort cases, the Center for American Progress examined rulings in tort cases from the Wisconsin Supreme Court over an 11-year period from 2002 to 2012. The dataset includes all cases in the Lexis-Nexis database labeled as “tort” cases in which the lawsuit was filed by an individual or individuals against a business, health care provider, or another private organization. The data exclude cases decided without an opinion, cases dismissed for a lack of appellate jurisdiction, and cases involving workers’ compensation, family law, property disputes, corporate law, probate, criminal law, and legal or judicial ethics. The data do not include cases on remand from the U.S. Supreme Court and cases reheard in light of case law handed down while the appeal was pending. In those circumstances, justices often vote to apply precedent even though they disagree with the underlying decision. Listed in chronological order by year and within individual years in the order in which they appeared in the Lexis-Nexis database, the cases in which the court sided with the plaintiff are in blue, and the cases decided for the defendant are in red.

The dataset includes a total of 145 cases. The courts ruled in favor of corporate defendants in slightly more than half of the cases. The success rate for corporate defendants dipped to 20 percent in 2005 then increased sharply to peak at 79 percent in 2009. Of the 40 cases studied from 2009 through 2012, the court ruled in favor of corporate defendants 63 percent of the time.



***Frost v. Whitbeck*, 654 N.W.2d 225:** The plaintiff sued her cousin and his insurer after the cousin’s dog bit the plaintiff’s daughter. In a 4-3 vote, the court ruled the cousin was not a “relative” as defined by the insurance policy.

***Schultz v. Natwick*, 653 N.W.2d 266:** After a 13-year-old girl died while having her appendix removed, her family sued her health care providers. The court unanimously ruled unconstitutional a bill that retroactively raised the cap on certain noneconomic damages in wrongful death actions.

***Putnam v. Time Warner Cable of Southeastern Wis. P’Ship*, 649 N.W.2d 626:** Customers sued a cable company over disputed late fees. In a 5-2 opinion, the court held that plaintiffs could not sue over fees that they did not dispute at the time the fees were issued.

***Bammert v. Don’s Super Valu*, 646 N.W.2d 365:** An employee sued her employer after she was fired, allegedly in retaliation for her police-officer husband’s role in arresting the manager’s wife for driving under the influence. In a 4-3 vote, the court ruled the suit was barred by the employment-at-will doctrine.

***Ocasio v. Froedtert Mem’l Lutheran Hosp.*, 646 N.W.2d 381:** A patient sued a hospital, alleging that a nurse injured her when injecting her with Benadryl.

In a 5-2 vote, the court ruled the plaintiff’s filing of a lawsuit during the statutory mediation period did not require dismissal of the suit.

***Burg v. Cincinnati Cas. Ins. Co.*, 645 N.W.2d 880:** The plaintiff wrecked his snowmobile and was injured after the defendant left his snowmobile parked in his path. In a 4-3 vote, the court ruled the defendant was not negligent.

***Stehlik v. Rhoads*, 645 N.W.2d 889:** The plaintiff sued ATV owners after they served him alcohol and allowed him to ride their ATV without a helmet, leading to injuries when he wrecked the ATV. In a 6-1 vote, the court held that the defendants could not be held liable.

***Yocherer v. Farmers Ins. Exch.*, 643 N.W.2d 457:** An insured was injured by another driver, settled with the driver, and then sought uninsured motorist, or UIM, benefits from her insurer. The court unanimously ruled the statute of limitations began to run when the claim against the driver was settled.

***Martin v. Am. Family Mut. Ins. Co.*, 643 N.W.2d 452:** An injured passenger sued the defendant, his insurer, and the defendant’s son over a claim filed when the defendant’s son wrecked the insured’s truck. The court unanimously ruled the son’s insurance policy did not cover the accident.

*Jones v. Secura Ins. Co.*, 638 N.W.2d 575: The insured sought benefits for damages to their home. The court

unanimously ruled that the suit was not barred by the statute of limitations.

2003

*Anderson v. Am. Family Mut. Ins. Co.*, 671 N.W.2d 651: Parents sued the defendant after she purchased a bottle of vodka for her teenage son and the plaintiff's son drank some of it and died of alcohol poisoning. The court unanimously ruled that the defendant could be held liable.

*Paulson v. Allstate Ins. Co.*, 665 N.W.2d 744: An insured driver sued her insurer after it settled with a negligent driver's insurer and refused to pay the insured the difference between the settlement and the cost of repairs. The court unanimously ruled that the plaintiff was not entitled to the difference.

*Hubbard v. Messer*, 673 N.W.2d 676: An employee sued his employer for failing to pay his wages for months. The court unanimously ruled the employee could not sue once the wages were fully paid.

*Finnegan v. Wis. Patients Comp. Fund*, 666 N.W.2d 797: Parents filed a medical-malpractice suit after their infant son died. They sought damages as bystanders, alleging that a doctor's failure to act on their infant son's lab results caused emotional distress. In a 5-2 vote, the court ruled the parents could not recover as bystanders.

*Storm v. Legion Ins. Co.*, 665 N.W.2d 353: A patient sued a mental-health care provider for medical malpractice, alleging that "false memories" of abuse emerged during hypnosis and caused the plaintiff to develop a multiple personality disorder. The court unanimously ruled the suit was not barred by the statute of limitations.

*Fox v. Catholic Knights Ins. Soc'y*, 665 N.W.2d 181: A child sued his father's life insurer for refusing to pay a claim because the father died before a blood test was performed, as required by the policy. The court unanimously ruled that the policy was not in effect.

*Teague v. Lake Superior Tribe of Chippewa Indians*, 665 N.W.2d 899: A former casino employee sued his employer after he was fired. In a 5-2 vote, the court ruled that a court must defer to a tribal court's ruling for the employer because it was entered first.

*Hofflander v. St. Catherine's Hosp., Inc.*, 664 N.W.2d 545: A patient sued a psychiatric hospital after she fell from a third-story window during an escape attempt and sustained severe injuries. The

court unanimously ruled the patient's negligence claim could proceed.

***Mullen v. Walczak*, 664 N.W.2d 76:** An insured sued his insurer for UIM coverage after witnessing his wife's death and continuing to suffer damages after the benefits were exhausted. The court unanimously ruled for the insurer.

***Hoffmann v. Wis. Elec. Power Co.*, 664 N.W.2d 55:** Farmers sued a power company, alleging that stray voltage from power lines was harming their cows. The court unanimously upheld a verdict for the farmers.

***Alvarado v. Sersch*, 662 N.W.2d 350:** An employee sued her employer after

she lost a hand while unknowingly using fireworks to light a stove. In a 4-2 vote, the court ruled that the suit could proceed.

***Schmitz v. Firststar Bank Milwaukee*, 658 N.W.2d 442:** A client sued his bank, alleging that it signed checks in his name without his consent. The court unanimously ruled that the suit could proceed.

***Deminsky v. Arlington Plastics Mach.*, 657 N.W.2d 411:** An injured employee settled with his employer and sought indemnity from the employer's insurer. The court unanimously ruled that the suit could proceed.

2004

***Baumeister v. Automated Prods., Inc.*, 690 N.W.2d 1:** Construction workers sued an architect, alleging that his failure to instruct them led to their injuries. The court unanimously ruled the architect could not be held liable.

***Kolupar v. Wilde Pontiac Cadillac, Inc.*, 683 N.W.2d 58:** A car buyer won a lawsuit against the dealer but disputed the assessment of court costs. In a 5-2 vote, the court upheld the lower court's assessment.

***Van Lare v. Vogt, Inc.*, 683 N.W.2d 46:** Homebuyers sued the builders for the

costs of removing building materials during that were buried during construction of a driveway. The court unanimously ruled to throw out the claim.

***Wenke v. Gehl Co.*, 682 N.W.2d 405:** The plaintiff was injured by a hay baler in Iowa and sued the manufacturer. In a 6-1 decision, the court ruled the suit was barred by the Iowa statute of repose.

***Smaxwell v. Bayard*, 682 N.W.2d 923:** A mother sued a landlord after her tenant's dog bit her child. In a 5-2 vote, the court ruled the landlord was not liable.

***Maurin v. Hall*, 682 N.W.2d 866:** Parents sued their child’s doctor after he failed to diagnose diabetes and their daughter died days later. The court unanimously ruled unconstitutional a cap on damages for wrongful-death cases applied.

***Megal v. Green Bay Area Visitor & Convention Bureau*, 682 N.W.2d 857:** A patron sued the owner of an arena after she slipped on water at an ice show. The court unanimously ruled that her negligence claim could proceed.

***Haase v. Badger Mining Corp.*, 682 N.W.2d 389:** An employee who had silicosis from asbestos exposure sued the manufacturer. The court unanimously ruled that the defendant was not strictly liable because the product was not dangerous until the plaintiff’s employer refined it.

***Garcia v. Mazda Motor of Am., Inc.*, 682 N.W.2d 365:** A car buyer sued the dealer under a state lemon law. The court unanimously ruled that the plaintiff had satisfied the requirement of the lemon law to first offer to exchange the vehicle for another.

***Kerl v. Rasmussen*, 682 N.W.2d 328:** Plaintiffs sued an employer after its employee left work without permission and killed their family members. The court unanimously ruled the employer was not liable.

***Cole v. Hubanks*, 681 N.W.2d 147:** A police officer sued dog owners and their insurer after the dog bit her. In a 6-1 vote, the court ruled the owners could be held liable.

***Weber v. White*, 681 N.W.2d 137:** An injured driver sued the other driver involved in the accident and won. The court unanimously ruled that the plaintiff offered enough evidence to justify an award for future medical expenses.

***Fandrey v. Am. Family Mut. Ins. Co.*, 680 N.W.2d 345:** The plaintiff sued her friend after she was bit by the friend’s dog after she entered her home without permission to drop off Christmas cookies. The court unanimously ruled the defendant was not liable.

***Tietsworth v. Harley-Davidson, Inc.*, 677 N.W.2d 233:** Motorcycle owners filed a class-action suit against the manufacturer. In a 6-1 vote, the court ruled the defendant could not be liable for fraud based on a failure to disclose information.

***Glenn v. Plante*, 676 N.W.2d 413:** A patient sued her health care provider for allegedly advising an unnecessary hysterectomy. The court unanimously ruled the patient’s doctor could not be compelled to provide expert testimony.

***Haferman v. St. Clare Healthcare***

***Found., Inc.*, 707 N.W.2d 853:** A minor sued the doctors who delivered him, alleging that he was deprived of oxygen during his birth, causing cerebral palsy. In a 4-3 vote, the court ruled the suit was not time barred.

***Kontowicz v. Am. Std. Ins. Co.*, 714**

**N.W.2d 105:** Injured claimants intervened in a lawsuit. In a 6-1 vote, the court ruled the claimants could recover interest on the judgment awarded.

***Lagerstrom v. Myrtle Werth Hospital-Mayo Health Sys.*, 700 N.W.2d 201:**

The family of a patient sued a hospital after a doctor at the hospital inserted a feeding tube into the patient's lung and the patient later died. In a 4-3 vote, the court ruled for the plaintiffs.

***Ferdon v. Wis. Patients Comp. Fund*,**

**701 N.W.2d 440:** A minor sued a doctor, alleging that the doctor was negligent in delivering him, causing paralysis in one arm. In a 4-3 vote, the court ruled unconstitutional a cap on noneconomic damages.

***Doe 67C v. Archdiocese of Milwaukee*,**

**700 N.W.2d 180:** The plaintiff sued a church for alleged sexual abuse by a priest. The court unanimously ruled the church could not be held liable because there was no proof it knew of the abuse.

***Preston v. Meriter Hosp., Inc.*, 700**

**N.W.2d 158:** Parents sued the hospital that delivered their very premature baby, claiming it failed to try to save the baby's life because the family had no health insurance. In a 5-2 vote, the court ruled for the family.

***Olstad v. Microsoft Corp.*, 700 N.W.2d**

**139:** Plaintiffs filed a class-action suit against the software giant, alleging that it controlled a monopoly for operating-system software. The court unanimously ruled for the plaintiffs.

***Carney-Hayes v. Northwest Wis. Home***

**Care, Inc.**, 699 N.W.2d 524: A patient dependent on a ventilator sued her nurse for allegedly injuring her by improperly performing CPR. The court unanimously ruled for the plaintiff.

***Grams v. Milk Prods., Inc.*, 699 N.W.2d**

**167:** Cow sellers filed tort claims against the buyers. In a 4-2 vote, the court ruled the plaintiffs' remedies were limited to contract claims.

***Johnson v. Rogers Mem'l Hosp., Inc.*,**

**700 N.W.2d 27:** Parents sued their adult child's therapists, alleging that they had implanted false memories of abuse. In a 4-2 vote, the court ruled for the plaintiffs, holding that the child's doctor-patient confidentiality remained in effect.



***Linden v. Cascade Stone Co.*, 699 N.W.2d 189:** The plaintiffs sued contractors, alleging faulty workmanship on their home. In a 4-3 vote, the court threw out the plaintiffs' claims.

***Hatleberg v. Norwest Bank Wis.*, 700 N.W.2d 15:** Clients sued a bank for setting up a trust in a manner that did not avoid the estate tax. The court unanimously ruled that the bank could be held liable.

***Hannemann v. Boyson*, 698 N.W.2d 714:** A patient sued his chiropractor, alleging that the chiropractor negligently adjusted his spine, leading to a stroke. In a 6-1 vote, the court ruled that the defendant could be liable for failing to obtain informed consent for the treatment.

***Sukala v. Heritage Mut. Ins. Co.*, 698 N.W.2d 610:** Insured sued their insurer for UIM benefits. The court unanimously ruled for the insurers.

***Phelps v. Physicians Ins. Co. of Wis., Inc.*, 698 N.W.2d 643:** Parents sued a hospital and a first-year resident after their child died of asphyxiation during birth. In a 5-2 vote, the court ruled for the plaintiffs, finding that a cap on damages did not apply.

***Steiner v. Wis. Am. Mut. Ins. Co.*, 697 N.W.2d 452:** Plaintiffs sued defendants after they were injured by falling into a well on the defendants' property. In a

5-2 vote, the court ruled the defendants could be held liable.

***Walberg v. St. Francis Home, Inc.*, 697 N.W.2d 36:** A patient's estate sued a nursing home. The court unanimously ruled the claim was not time barred.

***Peterson v. Volkswagen of Am., Inc.*, 697 N.W.2d 61:** A lessee sued an automaker. The court unanimously ruled the plaintiff qualified as a "consumer" under federal law.

***Everson v. Lorenz*, 695 N.W.2d 298:** Plaintiffs sued the insureds after the insureds sold them a home in a floodplain. In a 5-2 vote, the court ruled the damages were not covered by the insurance policy.

***Strenke v. Hogner*, 694 N.W.2d 296:** Plaintiffs sued a driver who injured them while severely intoxicated. The court unanimously ruled that punitive damages were justified.

***Wischer v. Mitsubishi Heavy Indus. Am., Inc.*, 694 N.W.2d 320:** The family of a construction worker killed on the job sued a contractor. In a 5-1 vote, the court ruled to reinstate a punitive-damages award.

***Hess v. Fernandez*, 692 N.W.2d 655:** A patient and her family sued her psychiatrist for false diagnoses. In a 6-1 vote, the court threw out the plaintiffs' request for attorney's fees.

***Petta v. ABC Ins. Co.*, 692 N.W.2d 639:**

The insured's family recovered money damages from a negligent driver and then sued their insurer. The court unanimously ruled that the insurer could not seek reimbursement from the lawsuit damages to cover the cost of the family's claims.

***Pierce v. Physicians Ins. Co. of Wis., Inc.*, 692 N.W.2d 558:**

A mother sued her hospital after her baby was stillborn because the umbilical cord wrapped around the baby's neck. The court

unanimously ruled the mother could pursue a claim for emotional distress.

***Mayberry v. Volkswagen of Am., Inc.*, 692 N.W.2d 226:**

A car buyer sued a car-maker. The court unanimously ruled to allow the car buyer's claims to proceed to trial.

***Atkins v. Swimwest Family Fitness Ctr.*, 691 N.W.2d 334:**

A family sued a swimming facility after their son drowned. The court unanimously ruled for the plaintiffs.

2006

***Lassa v. Rongstad*, 718 N.W.2d 673:** The plaintiff sued the defendants for defamation. In a 3-1 vote, the court held that the settlement's inclusion of sanctions for discovery was appropriate.

***Butler v. Advanced Drainage Sys.*, 717 N.W.2d 760:**

Homeowners sued contractors and engineers after their homes flooded. In a 4-3 vote, the court held that the defendants were not liable.

***Hanson v. Am. Family Mut. Ins. Co.*, 716 N.W.2d 866:**

An injured driver sued the other driver and his insurer. In a 6-1 vote, the court ruled for the plaintiffs.

***Sonday v. Dave Kohel Agency, Inc.*, 718 N.W.2d 631:**

Home sellers sued their broker for a decision on whether he would receive a commission on the

home. In a 6-1 vote, the court ruled the defendant was entitled to a commission for negotiating the city's purchase of the home through condemnation.

***Bartholomew v. Wis. Patients Comp. Fund*, 717 N.W.2d 216:**

A patient's family sued a hospital after the patient had a heart attack, became bedridden, and died five years later. In a 4-3 vote, the court ruled that not all of the plaintiffs' claims were covered by a cap on non-economic damages.

***Teschendorf v. State Farm Ins. Cos.*, 717 N.W.2d 258:**

A deceased employee's workers' compensation benefits were returned to the state, and his UIM insurer sought to offset his claims by the amount paid to the state. The court unanimously ruled against the insurer.

***Welin v. Am. Family Mut. Ins. Co.*, 717 N.W.2d 690:** An injured driver sued her UIM insurer for refusing to pay her claim. The court unanimously ruled for the plaintiff.

***Zastrow v. Journal Communs., Inc.*, 718 N.W.2d 51:** Employees sued the owners of their corporate employer. The court unanimously ruled that their claims were time barred.

***Mair v. Trollhaugen Ski Resort*, 715 N.W.2d 598:** A patron sued a ski resort when she slipped, fell, and was injured exiting a bathroom stall. The court unanimously ruled to dismiss the claim.

***Drinkwater v. Am. Family Mut. Ins. Co.*, 714 N.W.2d 568:** An insured sued his insurers. In a 6-1 vote, the court ruled the insurer was not entitled to subrogate the claims paid because the plaintiff had not been “made whole.”

***Richards v. First Union Sec., Inc.*, 714 N.W.2d 913:** An investor sued a corporation. The court unanimously ruled not to reopen a default judgment against the corporation.

***Mueller v. McMillan Warner Ins. Co.*, 714 N.W.2d 183:** An injured guest sued her hosts after they waited six hours after her injury to call 911. The court

unanimously ruled the hosts were not immune under the “Good Samaritan” law.

***Vieau v. Am. Family Mut. Ins. Co.*, 712 N.W.2d 661:** The plaintiff filed a UIM claim with his mother’s insurer. The court unanimously ruled the son was not a “relative” covered by the insurance policy.

***Rebernick v. Wausau Gen. Ins. Co.*, 711 N.W.2d 621:** Insureds sued their insurer after they were injured by an underinsured driver. The court unanimously ruled the insurers were not liable for failing to inform the insureds of the availability of UIM coverage.

***Rocker v. USAA Cas. Ins. Co.*, 711 N.W.2d 634:** An injured employee sued his employer and its insurer after a coworker hit him with a car. The court unanimously ruled for the plaintiff.

***LaCount v. General Cas. Co.*, 709 N.W.2d 418:** Injured drivers sued their insurer. The court unanimously ruled against the insurer.

***Kontowicz v. Am. Std. Ins. Co.*, 714 N.W.2d 105:** An insured sought benefits from the insurer. In a 5-1 vote, the court ruled the insurer had to pay interest on delayed payments.

***Gumz v. N. States Power Co.*, 742 N.W.2d 271:** Farmers sued a power company, alleging that stray voltage harmed their cows. In a 4-3 vote, the court ruled for the farmers.

***Schmidt v. N. States Power Co.*, 742 N.W.2d 294:** Farmers sued a power company, alleging that stray voltage harmed their cows. The court unanimously ruled for the farmers.

***Meyers v. Bayer AG*, 735 N.W.2d 448:** Consumers filed a class-action suit against drug makers, alleging a monopoly to prevent the sale of generic prescription drugs. In a 4-3 vote, the court ruled for the consumers.

***Kolupar v. Wilde Pontiac Cadillac, Inc.*, 735 N.W.2d 93:** A car buyer sued a used car dealer. In a 5-2 vote, the court ruled for the car buyer.

***John Doe 1 v. Archdiocese of Milwaukee*, 734 N.W.2d 827:** The plaintiffs sued a church, alleging that they were sexually abused as children. In a 5-2 vote, the court ruled that all of their claims were time barred.

***Marotz v. Hallman*, 734 N.W.2d 411:** An insured was the passenger in a car struck by an underinsured driver, and he sued his UIM insurer over his claim. In a 4-3 vote, the court ruled for the insurer.

***Lornson v. Siddiqui*, 735 N.W.2d 55:** The family of a patient who died of a hernia sued health care providers for failing to diagnose the hernia. In a 4-3 vote, the court ruled against the family.

***DeHart v. Wis. Mut. Ins. Co.*, 734 N.W.2d 394:** An insured was run off the road by an unknown driver and sued her UIM insurer. In a 4-3 vote, the court ruled the plaintiff could not recover because the accident did not qualify as a “hit and run.”

***Rouse v. Theda Clark Med. Ctr.*, 735 N.W.2d 30:** The plaintiff was hurt and burned in an accident, treated by the defendant, and later sued the hospital for medical malpractice. In a 4-1 vote, the court ruled for the hospital.

***Russ v. Russ*, 734 N.W.2d 874:** A mother sued her son, alleging that he converted her funds to his funds through his power of attorney. The court unanimously ruled for the defendant.

***Leitinger v. DBart, Inc.*, 736 N.W.2d 1:** An injured worker sued construction companies for injuries sustained at a work site. In a 5-2 vote, the court ruled for the worker.

***Wickenhauser v. Lehtinen*, 734 N.W.2d 855:** Debtors sued their creditor for fraud after suing to rescind a contract that resulted from the fraud. The court unanimously ruled for the plaintiffs.

***Avery v. Diedrich*, 734 N.W.2d 159:**

Insureds sued their broker and insurer for failing to offer to procure additional insurance. The court unanimously ruled to throw out the claim.

***Aslakson v. Gallagher Bassett Servs.*, 729 N.W.2d 712:**

An injured worker sued his employer's workers' compensation insurer for bad faith. In a 6-1 vote, the court ruled for the worker.

2008

***Hornback v. Archdiocese of Milwaukee*, 752 N.W.2d 862:**

Former students sued a church for sexual abuse they allegedly endured at the church's school. The court unanimously ruled the church was not liable for negligence.

***Rechsteiner v. Hazelden*, 753 N.W.2d 496:**

A doctor was treated for alcohol abuse and sued the treating clinic for defamation. The court unanimously ruled for the defendant.

***Hefty v. Strickhouser*, 752 N.W.2d 820:**

A farmer sued a nutritionist whom he hired to treat his cows. In a 6-1 vote, the court allowed the plaintiff's claim to proceed.

***Estate of Sustache v. Am. Family Mut. Ins. Co.*, 751 N.W.2d 845:**

Parents sued the defendants after their son punched the plaintiffs' son and killed him. The court unanimously ruled the defendants' insurer was not liable for the damages.

***Wambolt v. West Bend Mut. Ins. Co.*, 728 N.W.2d 670:**

The plaintiffs sued their insurers over UIM claims. The court unanimously ruled for the plaintiffs.

***Tyler v. RiverBank*, 728 N.W.2d 686:**

A client sued the bank, alleging unauthorized withdrawals. The court unanimously ruled for the plaintiff.

***Liebovich v. Minn. Ins. Co.*, 751 N.W.2d 764:**

An insured sued his home insurer for refusing to defend him against allegations that he broke a covenant on his land. The court unanimously ruled that the insurer had a duty to defend the insured.

***Below v. Norton*, 751 N.W.2d 351:**

Homebuyers sued the sellers, alleging that they lied about a defect in the home. In a 4-3 vote, the court ruled for the sellers.

***Rao v. WMA Sec., Inc.*, 752 N.W.2d 220:**

A client sued an investment company's employees, alleging that they had stolen his funds. In a 5-2 vote, the court ruled for the plaintiff.

***Storms v. Action Wis. Inc.*, 750 N.W.2d 739:**

A pastor sued the defendant for defamation after it criticized him for making an anti-gay speech. In a 4-3 vote, the court ruled the plaintiff's

attorney was liable for court costs for filing a frivolous suit.

***Richards v. Badger Mut. Ins. Co.*, 749 N.W.2d 581:** The family of a driver killed by a drunk driver sued the passengers who purchased beer consumed by the drunk driver. In a 4-3 vote, the court ruled the defendants were not liable.

***Summers v. Touchpoint Health Plan, Inc.*, 749 N.W.2d 182:** Parents sued their health insurer after it refused to pay for their son's treatment for a brain tumor because the insurer deemed it "experimental." In a 3-2 vote, the court ruled for the insureds.

***Novell v. Migliaccio*, 749 N.W.2d 544:** Homebuyers sued the sellers after they discovered mold in their home. The court unanimously ruled for the plaintiffs.

2009

***Pawlowski v. Am. Family Mut. Ins. Co.*, 777 N.W.2d 67:** The plaintiff sued the owners of a home in which the plaintiff was bit by a dog. The court unanimously ruled the owners were not liable because the owner of the dog exercised control over the dog.

***Bubb v. Brusky*, 768 N.W.2d 903:** A patient sued his doctors, alleging that they failed to diagnose a minor stroke and that this failure caused a major heart attack days later. The court unani-

***Eichenseer v. Madison-Dane County Tavern League, Inc.*, 748 N.W.2d 154:** Consumers sued a group of taverns, alleging price fixing. In a 3-1 vote, the court ruled for the defendants.

***Stone v. Acuity*, 747 N.W.2d 149:** An insured sued her insurer to recover damages under an umbrella policy. The court unanimously ruled that the insurer was liable for failing to notify the insured of the availability of UIM coverage.

***Nichols v. Progressive N. Ins. Co.*, 746 N.W.2d 220:** Injured drivers sued the owners of a home where the underage driver who struck and injured them drank alcohol before the accident. The court unanimously ruled the defendants were not liable.

mously ruled to reinstate the patient's informed-consent claim.

***Umansky v. ABC Ins. Co.*, 769 N.W.2d 1:** Parents sued a university official after their son fell to his death while working as a cameraman at the university's sports arena. In a 4-3 vote, the court ruled the official could be held liable.

***Tammi v. Porsche Cars N. Am., Inc.*, 768 N.W.2d 783:** A consumer sued a car dealership under the state lemon law.



The court unanimously ruled for the dealership.

***Harvot v. Solo Cup Co., 768 N.W.2d***

**176:** An employee filed suit against her employer for allegedly violating the state Family and Medical Leave Act. In a 5-2 vote, the court ruled for the employer.

***Horst v. Deere & Co., 769 N.W.2d 536:***

Parents sued the maker of a lawn mower on behalf of their toddler, whose feet were severed by the mower, alleging that the mower was defective. In a 4-2 vote, the court ruled for the defendant.

***Godoy v. E.I. du Pont de Nemours & Co., 768 N.W.2d 674:*** A child sued the maker of lead-based paint, alleging that its product was defective. The court unanimously ruled for the defendant.

***Phelps v. Physicians Ins. Co. of Wis., Inc., 768 N.W.2d 615:*** Parents sued their doctor after one twin died during birth. In a 5-2 vote, the court threw out the father's claim as a bystander.

***Behrendt v. Gulf Underwriters Ins. Co., 768 N.W.2d 568:*** An employee sued his employer after he was injured in a gas-tank explosion. The court unanimously ruled for the employer.

***Luckett v. Bodner, 769 N.W.2d 504:***

A patient's family sued the patient's doctors, alleging that medical malpractice caused brain damage and death. In a 6-1 vote, the court ruled for the plaintiffs, allowing them to withdraw statements they had made.

***Estate of Genrich v. OHIC Ins. Co., 769***

***N.W.2d 481:*** A patient's family sued his doctors after they left a sponge inside him during surgery, allegedly causing a fatal infection. In a 4-3 vote, the court threw out the family's wrongful death claim as time barred.

***Blunt v. Medtronic, Inc., 760 N.W.2d***

**396:** A patient sued the maker of a heart defibrillator, alleging a design defect. The court unanimously ruled for the corporation.

***Lisowski v. Hastings Mut. Ins. Co., 759***

***N.W.2d 754:*** A son sued his father's insurer for UIM benefits. In a 5-2 vote, the court threw out the plaintiff's claim.

***Noffke v. Bakke, 760 N.W.2d 156:*** An injured cheerleader sued her spotter, coach, and school. The court unanimously ruled for the defendants.

2010

***Tews v. NHI, LLC*, 793 N.W.2d 860:** The plaintiff sued a power company after he was electrocuted by a transformer. In a 4-3 vote, the court ruled the plaintiff's claim was not time barred.

***Sands v. Menard*, 787 N.W.2d 384:** An attorney sued her employer and obtained an arbitration decision requiring damages for sex discrimination and reinstatement. In a 4-3 vote, the court ruled for the defendant and concluded it did not have to rehire the plaintiff.

***Tatera v. FMC Corp.*, 786 N.W.2d 810:** The widow of a worker who died of asbestos-related cancer sued a general contractor for whom her husband had worked as an independent contractor. In a 4-3 vote, the court granted summary judgment to the defendant.

***Blum v. 1st Auto & Cas. Ins. Co.*, 786 N.W.2d 78:** The plaintiff was injured when he jumped onto the hood of a friend's truck, which was uninsured, and he sought UIM coverage from his insurer. In a 4-3 vote, the court ruled for the insurer.

***Miller v. Hanover Ins. Co.*, 785 N.W.2d 493:** An insured sued his insurer after he was injured on the job. The court unanimously ruled for the insurer.

***Leavitt v. Beverly Enters.*, 784 N.W.2d 683:** A patient's family sued the patient's nursing home for negligence. The court unanimously ruled for the plaintiff.

***Brunton v. Nuvel Credit Corp.*, 785 N.W.2d 302:** A debtor sued her creditor for unfair collection practices. In a 6-1 vote, the court ruled for the defendants.

***Zarder v. Humana Ins. Co.*, 782 N.W.2d 682:** A child and his parents sued his insurer for UIM benefits after he was struck by a car that left the scene. The court unanimously ruled for the plaintiffs.

***Solowicz v. Forward Geneva Nat'l, LLC*, 780 N.W.2d 111:** Condo owners sued the developers to get them to relinquish control over the properties. The court unanimously ruled for the plaintiffs.

2011

***Casper v. Am. Int'l S. Ins. Co.*, 800 N.W.2d 880:** The minivan of a family vacationing in Wisconsin was struck by a truck driver under the influence of

several drugs, and the severely injured family members sued the driver, his employer, and its CEO. The court unanimously ruled that the defendant's insur-

ance policy applied to the accident, but in a 5-2 vote, the court ruled the CEO could not be held personally liable.

***Kilian v. Mercedes-Benz United States, LLC*, 799 N.W.2d 815:** A consumer sued a finance company under the state lemon law when it continued seeking payment on a car loan after the consumer returned it to the dealer. The court unanimously ruled the finance company could be sued under the lemon law.

***Steffens v. BlueCross BlueShield*, 804 N.W.2d 196:** An insured sued his employer's insurer, which sought reimbursement for a surgery that was needed because of a degenerative condition, not a work-related accident. In a 5-2 vote, the court ruled for the defendant.

***Rasmussen v. GMC*, 803 N.W.2d 623:** Consumers filed a class-action suit against carmakers, alleging that they engaged in a scheme to keep lower-priced Canadian imports out of the state. The court unanimously ruled that it lacked jurisdiction over a Japanese carmaker.

***Brethorst v. Allstate Prop. & Cas. Ins. Co.*, 798 N.W.2d 467:** The insureds sued their insurer for UIM benefits for

injuries sustained when a highly intoxicated, uninsured driver struck their vehicle. The court unanimously ruled for the plaintiffs.

***Siebert v. Wis. Am. Mut. Ins. Co.*, 797 N.W.2d 484:** The plaintiff sued the insurer after he was injured in a car owned by the insured and driven by the intoxicated boyfriend of the insured's daughter. In a 4-3 vote, the court granted summary judgment to the insurer.

***Fischer v. Steffen*, 797 N.W.2d 501:** The plaintiffs sued an insurer and its insured, and they sought payment for a subrogation claim. In a 5-2 vote, the court ruled for the insurer.

***Day v. Allstate Indem. Co.*, 798 N.W.2d 199:** A child's mother sued a home insurer after her child had a seizure and drowned in a bathtub in the insured's home. In a 4-3 vote, the court ruled for the plaintiff.

***Werner v. Hendree*, 795 N.W.2d 423:** An elderly woman sued a thief who attacked her and stole her safe after seeing her home in the course of his employment, and she sought to hold the thief's supervisor liable. In a 5-2 vote, the court ruled for the plaintiff.

***Gister v. Am. Family Mut. Ins. Co.*, 818 N.W.2d 880:** Plaintiffs settled with the insurer of a driver who ran a stop sign and injured them, and their hospital filed a lien on the settlement funds. In a 4-3 vote, the court ruled for the hospital.

***Wadzinski v. Auto-Owners Ins. Co.*, 818 N.W.2d 819:** A widow sued the insurer of her husband's employer for UIM benefits after he was killed by an uninsured motorist. In a 4-3 vote, the court ruled for the insurer.

***Weborg v. Jenny*, 816 N.W.2d 191:** A deceased patient's family sued the doctors for failing to diagnose a hardening of the arteries. In a 5-2 vote, the court ruled for the defendants.

***Marquez v. Mercedes-Benz United States, LLC*, 815 N.W.2d 314:** A car buyer sued the carmaker under the state lemon law. In a 6-1 vote, the court ruled for the consumer.

***Jandre v. Wis. Injured Patients & Families Comp. Fund*, 813 N.W.2d 627:** A patient sued his doctor after he had a stroke, alleging that she failed to inform

him of a diagnostic test to detect a decrease in blood supply. In a 4-3 vote, the court ruled for the plaintiff.

***Johnson v. Cintas Corp. No. 2*, 811 N.W.2d 756:** An injured employee sued his employer but only named its parent company in his complaint. In a 4-2 vote, the court ruled for the defendant.

***Orlowski v. State Farm Mut. Auto. Ins. Co.*, 810 N.W.2d 775:** An injured driver sued her UIM insurer after she was injured by an underinsured driver. The court unanimously ruled for the plaintiff.

***Hirschhorn v. Auto-Owners Ins. Co.*, 809 N.W.2d 529:** The plaintiffs sued their home insurer after it denied a claim for damage resulting from bat guano. In a 5-2 vote, the court ruled for the defendant.

***Olson v. Farrar*, 809 N.W.2d 1:** The plaintiff sued the insurer and the insured after the insured damaged his trailer home while pulling it with his tractor. The court unanimously ruled for the insurer.

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