

The background of the cover features a pair of scales of justice in the upper half and a wooden gavel in the lower half. The scales are dark and centered, with two pans hanging from a horizontal beam. The gavel is positioned diagonally from the bottom left towards the center. The entire scene is set against a green-to-orange gradient background.

# 2011

## Guide to the Wisconsin Supreme Court

*Prepared by:*  
**WISCONSIN CIVIL JUSTICE COUNCIL, INC.**  
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# WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

## 2011 Guide to the Wisconsin Supreme Court

*By Andrew Cook and Jim Hough  
The Hamilton Consulting Group, LLC*

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The Wisconsin Civil Justice Council, Inc. (WCJC) was formed in early 2009 to represent Wisconsin business interests on civil litigation issues before the Legislature and courts. Our goal is to achieve fairness and equity, reduce costs, and enhance Wisconsin's image as a place to live and work.

The Wisconsin Civil Justice Council Board is proud to present its first biennial Judicial Evaluation of the Wisconsin Supreme Court. The purpose of the Judicial Evaluation is to educate WCJC's members and the public by providing a summary of the most important decisions issued by the Court which have had an effect on Wisconsin business interests.

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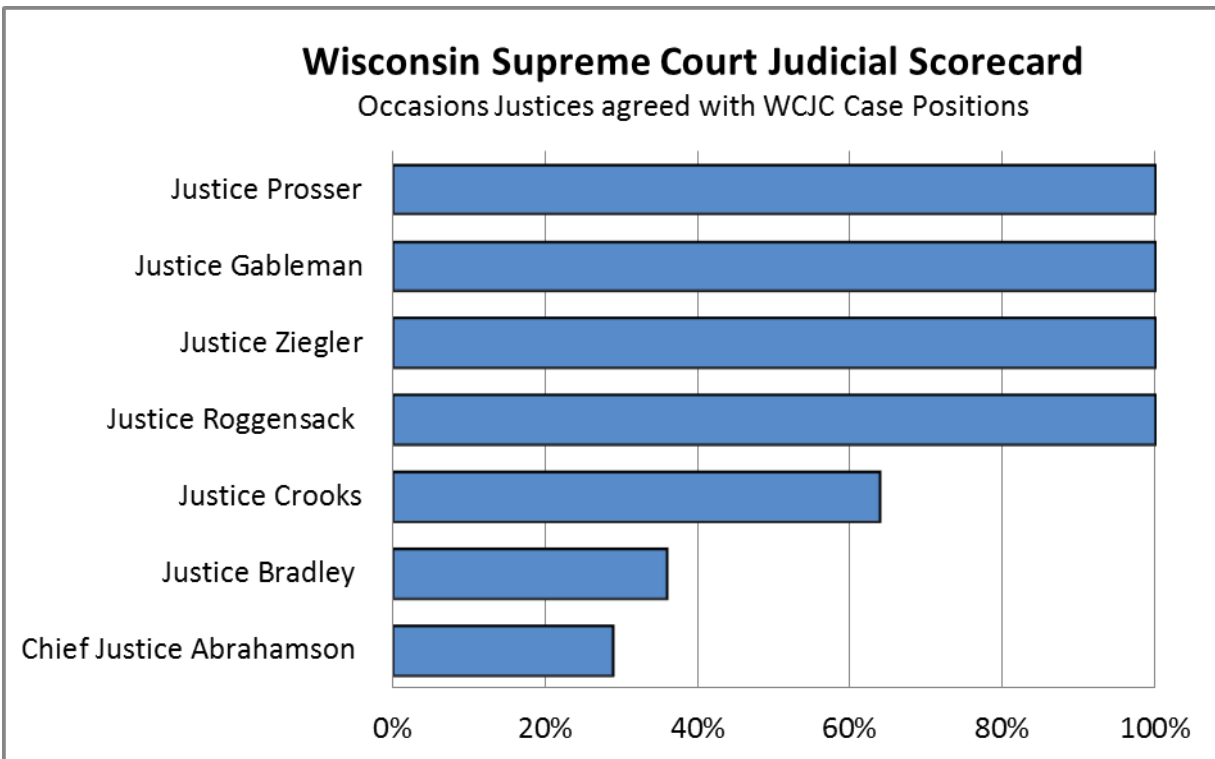
Edward Lump  
*Wisconsin Restaurant Association*

## Executive Summary

Virtually every business, medical provider, or insurer is directly or indirectly affected by decisions issued by the Wisconsin Supreme Court. Most groups spend considerable time and resources before the legislative and executive branches. While those two branches of government significantly affect the business community, a Court's decision can have an equally negative or positive impact. The Supreme Court has the ultimate power to interpret or strike down laws or regulations enacted by the legislature or promulgated by state agencies.

Yet, very little information exists for the public when it comes to analyzing the Supreme Court. In order to provide a better understanding of the Court and the decisions rendered by the Justices, the Wisconsin Civil Justice Council is proud to introduce its first Judicial Evaluation.

The Judicial Evaluation includes a brief history of the Court, information about the Justices, how the Court decides which cases to hear, and an analysis of the most important decisions from 2008 through 2010. The graph below illustrates how the Justices voted in cases directly affecting WCJC organizations and their members.



To learn more about the Wisconsin Civil Justice Council, see the website at [www.wisciviljusticecouncil.org](http://www.wisciviljusticecouncil.org).

Below are central holdings by the Court in each case selected for the Judicial Evaluation:

## 2008-09 Term

### Torts (Product Liability)

#### [Horst v. Deere & Co., 2009 WI 75 \(July 14, 2009\)](#)

In *Horst*, the court ruled that the manufacturer of a riding lawnmower is not strictly liable for the injury of a person when the operator disengaged the safety device. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Gableman wrote the opinion, Justice Crooks, Prosser, & Roggensack concurred; Justice Bradley wrote dissent, Abrahamson joined dissent. (Justice Ziegler did not participate.)

#### [Godoy v. E.I. DuPont, 2009 WI 78 \(July 14, 2009\)](#)

In *Godoy*, the court held that the circuit court correctly concluded that the plaintiff's complaint failed to state a claim of defective design of white lead carbonate pigment ultimately used in paint and coatings. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Bradley wrote the opinion, Chief Justice Abrahamson and Justices Crooks, Prosser, Ziegler, and Gableman concurred. (Justice Roggensack did not participate.)

#### [Blunt v. Medtronic, Inc., 2009 WI 16 \(Feb. 17, 2009\)](#)

In *Blunt*, the court held that state tort claims of negligence and strict liability against a manufacturer of defibrillators were preempted by federal law. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Roggensack wrote the opinion, Justices Crooks, Prosser, Ziegler, & Gableman concurred; Justice Bradley wrote separate concurrence, joined by Chief Justice Abrahamson.

### Family Leave or Medical Leave Act

#### [Harvot v. Solo Cup Co. & Solo Cup Operating Co., 2009 WI 85 \(July 17, 2009\)](#)

In *Harvot*, the court ruled that the Wisconsin Family or Medical Leave Act (WFMLA) does not grant a right to jury civil trial in an action to recover damages. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Prosser wrote the opinion, Justices Crooks, Roggensack, Ziegler & Gableman concurred; Justice Bradley wrote the dissent, joined by Chief Justice Abrahamson.

### Lemon Law (Excessive Damages)

#### [Tammi v. Porsche Cars North America, Inc., 2009 WI 83 \(July 17, 2009\)](#)

In *Tammi*, the court ruled that a consumer who brings a claim under Wisconsin's Lemon Law, who then decides to purchase the defective vehicle, is not entitled to recover the amount the purchase price. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Prosser wrote the opinion, Chief Justice Abrahamson and Justices Crooks, Roggensack, Ziegler, Bradley & Gableman concurred.

## Statutory Construction

### [Milwaukee Journal Sentinel v. Dept. of Administration, 2009 WI 79 \(July 15, 2009\)](#)

In *Milwaukee Journal Sentinel*, the court ruled that a ratification by the Wisconsin Legislature of a collective bargaining agreement, which sought to amend the Public Records Law by exempting public employees represented by unions, was insufficient without introducing separate legislation to effect a change in that law. (WCJC agrees with this decision.)

**How the Justices voted:** Justice Roggensack wrote the opinion, Justices Crooks, Bradley, Prosser, Ziegler, & Gableman concurred; Chief Justice Abrahamson wrote dissent.

### [Estate of Robert V. Genrich v. OHIC Insurance Co., 2009 WI 67 \(July 7, 2009\)](#)

In *Genrich*, the court concluded that the time limit for a wrongful death action caused by medical malpractice is counted from the date of the deceased person's injury rather than the date of the death. (WCJC agrees with this decision.)

**How the Justices voted:** Justice Roggensack wrote the opinion, Justices Prosser, Ziegler, & Gableman concurred; Justice Crooks wrote dissent, joined by Chief Abrahamson & Justice Bradley.

## 2009-10 Term

## Constitutional Law

### [Wisconsin Medical Society, Inc., et al., v. Morgan, 2010 WI 94 \(July 20, 2010\)](#)

In *Wisconsin Medical Society*, the court ruled that health care providers have a protectable property interest in the Injured Patients and Families Compensation Fund. (WCJC agrees with this decision.)

**How the Justices voted:** Justice Prosser wrote the opinion, Justices Roggensack, Ziegler, Crooks, & Gableman concurred; Chief Justice Abrahamson wrote dissent, joined by Justice Bradley.

### *In the Matter of Judicial Disciplinary Proceeding Against the Honorable Michael J. Gableman; Wisconsin Judicial Commission v. The Honorable Michael J. Gableman, 2010 WI 62; 2010 WI 61 (June 30, 2010)*

In *Gableman*, the Wisconsin Supreme Court deadlocked 3-3 on deciding whether to uphold a three-judge Judicial Conduct Panel's decision to dismiss a complaint against Justice Michael Gableman regarding alleged violations of the Code of Judicial Conduct.

**How the Justices voted:** WCJC agrees with the decision issued by Justices Prosser, Roggensack, & Ziegler; WCJC disagrees with decision issued by Chief Justice Abrahamson & Justices Bradley & Crooks.

## Torts (Liability of Independent Contractors)

### [Tatera v. FMC Corp., et al., 2010 WI 90 \(July 20, 2010\)](#)

In *Tatera*, the court ruled that a principal employer is not liable in tort for injuries sustained by an independent contractor's employee while he or she is performing the contracted work. (WCJC agrees with this decision.)

**How the Justices voted:** Justice Ziegler wrote the opinion, Justices Prosser, Roggensack, & Gableman concurred; Justice Crooks wrote the dissent, joined by Justice Bradley & Chief Justice Abrahamson.

## **Worker's Compensation (Retroactive Application of Laws)**

### **[Society Ins. et al. v. Labor & Industry Review Comm'n, et al, 2010 WI 68 \(March 9 2010\)](#)**

In *Society Insurance*, the court concluded that a law enacted to retroactively shift the burden of payment of an employee's benefits and treatment expense under the state's worker's compensation law to the insurer after the statute of limitations had run violated the United States Constitution and Wisconsin Constitution. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Roggensack wrote the opinion, Justices Prosser, Ziegler, & Gableman concurred; Justice Crooks wrote dissent, joined by Chief Justice Abrahamson & Justice Bradley.

## **Civil Procedure (Default Judgments)**

### **[Miller v. Hanover Ins. Co., 2010 WI 75 \(July 13, 2010\)](#)**

In *Miller*, the court reversed a default judgment against Zurich Insurance after it failed to respond to an amended complaint and summons alleging that it was liable for underinsured insurance motorist coverage for an insured involved in a car accident. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Roggensack wrote the opinion, Chief Justice Abrahamson and Justices Bradley, Crooks, Prosser, Ziegler, & Gableman concurred.

## **Statutory Construction**

### **[Mercycare Insurance Co. et al. v. Wisconsin Commissioner of Insurance, 2010 WI 87 \(July 16, 2010\)](#)**

In *Mercycare*, the court concluded that Wisconsin law does not permit an insurer to exclude generally covered maternity services for surrogate mothers. In reaching its decision, the court applied due weight deference to the Wisconsin Commissioner of Insurance's decision. (*WCJC agrees with the court's decision regarding the level of deference applied.*)

**How the Justices voted:** Justice Bradley wrote the opinion, Chief Justice Abrahamson & Justices Crooks, Prosser, Roggensack, Ziegler, & Gableman concurred.

## **General Business**

### **[In the matter of amendment of the Code of Judicial Conduct's rules on recusal; In the matter of amendment of Wis. Stat. § 757.19, 2010 WI 73 \(July 7, 2010\)](#)**

The League of Women Voters (League) filed a rule petition ([08-16](#)) with the Wisconsin Supreme Court seeking to amend the Wisconsin Code of Judicial Conduct (Code). If adopted, the League's petition would have forced any justice or judge receiving \$1,000 from a party, or from an attorney, or law firm representing a party in a case, to rescue himself or herself from hearing the case. (*WCJC agrees with this decision.*)

**How the Justices voted:** Justice Prosser wrote the opinion, Justices Roggensack, Ziegler, & Gableman concurred; Justice Bradley wrote the dissent, joined by Chief Justice Abrahamson & Justice Crooks.