

# Washington Business

SUPPLEMENT | SUMMER 2010  
NEWS WITH A COMPETITIVE EDGE

2010  
*Scorecard & Guide to the  
Washington Supreme Court*



## Meet the Washington Supreme Court



Front row, from left: Justice Richard Sanders, Justice Charles Johnson, Chief Justice Barbara Madsen, Justice Gerry Alexander, Justice Thomas Chambers.

Back row, from left: Justice Jim Johnson, Justice Susan Owens, Justice Mary Fairhurst, Justice Debra Stephens.

- Chief Justice Barbara Madsen was elected to the court in 1992 and re-elected in 1998 and 2004. Her colleagues unanimously elected her as the court's Chief Justice in 2009. She seeks re-election to a fourth term this fall.
- Justice Charles Johnson was elected in 1990 and re-elected in 1996, 2002 and 2008. He is the longest-serving member of the court.
- Justice Gerry Alexander, the court's former Chief Justice, was elected to the court in 1994 and re-elected in 2000 and 2006.
- Justice Richard Sanders was elected to the court by special election in 1995 and re-elected in 1998 and 2004. He seeks re-election to a third full term this fall.
- Justice Tom Chambers was elected to the court in 2000 and was re-elected in 2006.
- Justice Susan Owens was elected to the court in 2000 and was re-elected in 2006.
- Justice Mary Fairhurst was elected to the court in 2002 and re-elected in 2008.
- Justice Debra Stephens was appointed to the court by Gov. Chris Gregoire in 2007, and was confirmed in an election in 2008.

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# 2010 Judicial Scorecard and Guide to the Washington Supreme Court

KRISTOPHER I. TEFFT  
AWB GENERAL COUNSEL

The Association of Washington Business is proud to present the fourth installment of its Judicial Scorecard and Guide to the Washington Supreme Court. Designed to inform and educate our membership and the general public about the important work of the state's highest court as it relates to the business community, this year's Scorecard builds upon the evaluations set forth in our 2004, 2006 and 2008 editions.

## THE IMPORTANCE OF THE WASHINGTON SUPREME COURT TO BUSINESS

The Washington Supreme Court is the state's highest court and court of last resort in the interpretation of state laws. Of the roughly 150 cases the court hears in a given year, about half of them are civil cases, and about half of those involve new and complex legal issues of interest to Washington's business community.

Washington Supreme Court decisions, whether interpretations of laws passed by the Legislature, or interpretations of our state constitution, establish the precedent that becomes part of the law that Washington businesses must follow. In that sense, our state's legal climate becomes a prominent and often permanent thread in the fabric of our business climate, impacting competitiveness by establishing key rules by which businesses must operate.

AWB is often able to address the court with its perspective on legal issues that come before it, through the association's amicus curiae ("friend of the court") program, whereby AWB submits legal briefs in certain cases sharing the views of the business community. Many of the cases featured in this publication involve the submission of an amicus brief to the court.

It is less often, however, that AWB is able to share the day-to-day work of the court with the public and our members, from the perspective of how often AWB agrees or disagrees with the outcomes reached by the court.

That is the purpose of our Judicial Scorecard.

## UNDERSTANDING AND USING THE SCORECARD

Supreme Court Justices are not, by constitutional design, legislators. They are under an obligation to independently interpret and apply the law to a particular set of facts present in a given case without regard to personal or political beliefs. Any effort to score justices' votes, then, must recognize it is not

like scoring the votes of legislators. Our Judicial Scorecard takes into account that unique role of the court as an equal yet independent branch of government, recognizing that it is more an art than a science to highlight philosophical or practical differences between justices on important cases. The best use of the scorecard is to highlight philosophical trends that may become evident over time. [WB](#)

## WASHINGTON SUPREME COURT FACTS

The number of justices serving on the Supreme Court has varied from the original five to the present nine.

Each justice serves a six-year term, with three submitting themselves to the electorate every two years.

The governor fills vacancies that occur through resignation or death, but these appointees must gain approval of the voters at the next general election.

In 1907, the Legislature established a direct nonpartisan election system for nominating judges, replacing political party conventions. Separate nonpartisan ballots were also authorized for the November general elections, removing judges from the political party lists. Except for a brief return to partisanship in 1912, the names of candidates for the Supreme Court have subsequently appeared on nonpartisan ballots.

The Chief Justice presides at all court sessions, handles administrative responsibilities, chairs the state judicial conference and represents the court and judicial system in many public appearances.

The Supreme Court has almost total discretion in determining which cases it will hear and decide, except that death penalty cases are automatically reviewed.

Each year, the Supreme Court publishes nearly 150 final opinions, each decision representing lengthy and thorough research and consideration by all nine members of the court, working both together and individually.

The work of the court gives meaning and content to the American concept of freedom and liberty, to the preservation of our constitutional rights, and to making a reality of our ideal of "Equal Justice Under Law."

Source: *Washington Courts*—[www.courts.wa.gov](http://www.courts.wa.gov)

# Judicial Scorecard Selection Criteria

The Scorecard is compiled through a series of selection criteria for cases, using a scoring methodology. The compilation is meant to both broadly encompass the input of AWB members and arrive at a fair and accurate picture of an individual justice’s decisional patterns in important business cases.

## CASES WERE CHOSEN THROUGH THE AWB COMMITTEE PROCESS

AWB members serving on the association’s Legal Affairs Committee and issue committees within the Governmental Affairs Council also provide input. These committees are composed of attorneys and non-attorney representatives from the more than 7,000 businesses that comprise AWB’s membership. They also include leading experts on the key issues facing employers in Washington state.

## DECISIONS HAVE A SIGNIFICANT IMPACT ON WASHINGTON BUSINESSES

The cases selected for inclusion in the Scorecard must have a significant impact, either positive or negative, on the business climate in Washington. Decisions are labeled as “AWB agrees with this decision,” if they are pro-business and “AWB disagrees with this decision” if they are not considered pro-business. In general, decisions with a positive impact on one type of business at the expense of other businesses were excluded.

## CASES SPAN THE LAST TWO YEARS

The nine justices of the Washington Supreme Court serve staggered six-year terms, with three positions up for election every two years. Coinciding with this year’s election cycle, our case review spans decisions issued from 2008-2010.

## SCORING CRITERIA

Justices were evaluated in comparison with the pro-business position.

Justices were not scored for a case if they did not participate in a decision. The participation rate for the justices is indicated in a separate table.

Justices who “concurred in part and dissented in part” are scored to the extent their view from the split opinion is apparent as to the issue of concern to the business community.

Scores do not reflect the authorship of opinions. However, in the case summaries, the authorship of majority and dissenting opinions is noted, where applicable.

Justices receive an overall “pro-business” score based upon AWB’s agreement with their decisions in the six combined issue categories.

## CASES ARE DIVIDED INTO SIX ISSUE CATEGORIES; EACH CASE IS LISTED WITHIN ONE OF THE SIX

The categories are: employment law, environment and land use, tax and fiscal policy, workers’ compensation and unemployment insurance, torts (which includes insurance and general liability) and general business issues. Some cases may involve legal elements that span more than one category, but are scored only in the category in which they are listed. [AWB](#)

### CASE PARTICIPATION

Of the 27 cases selected for review, the following percentages indicate the participation rate of the nine justices.

### OVERALL PRO-BUSINESS SCORE

Scores are only calculated based upon cases in which the justices participated.

### AVERAGE

Pro-business scores averaged from 2004-2010.

Justice	CASE PARTICIPATION		OVERALL PRO-BUSINESS SCORE					Average
	2010	2008	2010	2008	2006	2004		
Chief Justice Madsen	100%	100%	41%	54%	49%	68%	53%	
Justice C. Johnson	100%	100%	67%	54%	42%	50%	53%	
Justice Alexander	96%	100%	69%	58%	53%	59%	60%	
Justice Sanders	100%	96%	67%	76%	75%	63%	70%	
Justice Chambers	100%	96%	41%	40%	47%	33%	40%	
Justice Owens	100%	100%	52%	35%	47%	55%	47%	
Justice Fairhurst	81%	100%	55%	38%	45%	NA	46%	
Justice J. Johnson	96%	96%	85%	92%	82%	NA	86%	
Justice Stephens	85%	NA	39%	NA	NA	NA	39%	

\*Average score based on cases heard 2004-2010.

# Employment Law

3 CASES

CASE NAME	Madsen	C. Johnson	Alexander	Sanders	Chambers	Owens	Fairhurst	J. Johnson	Stephens	
Briggs v. Nova Services	+	+	+	+	-	-	-	+	-	
Morgan v. Kingen	-	-	-	+	-	-	NP	+	-	
Danny v. Laidlaw Transit	+	+	-	+	-	-	-	+	NP	
PRO-BUSINESS PERCENTAGE	2010	67%	67%	33%	100%	0%	0%	0%	100%	0%
	2008	67%	67%	50%	100%	50%	50%	33%	100%	NA
	2006	67%	50%	50%	33%	17%	67%	50%	100%	NA
	2004	64%	36%	57%	64%	13%	63%	NA	NA	NA

+ AWB Supports Decision      - AWB Opposes Decision      NP: Not Participating      NA: Not Applicable

## BRIGGS V. NOVA SERVICES

166 Wn.2d 784 (2009)

In *Briggs*, the court properly declined to find a wrongful discharge in violation of public policy or in violation of employees' right to concerted activity where employer terminated employees over dispute with its executive director.


 AWB agrees with this decision.

Justice Jim Johnson wrote opinion  
Justice Alexander concurred  
Justice Charles Johnson wrote concurrence  
Chief Justice Madsen wrote concurrence  
Justice Sanders concurred  
Justice Chambers dissented  
Justice Owens wrote dissent  
Justice Fairhurst dissented  
Justice Stephens dissented

## MORGAN V. KINGEN

166 Wn.2d 526 (2009)

In *Morgan*, the court concluded that the legal inability to pay on a wage claim due to company assets frozen in bankruptcy is not a defense to the imposition of exemplary damages for willful withholding of wages.

 AWB filed an amicus curiae brief in this case and disagrees with this decision.

Justice Charles Johnson wrote opinion  
Justice Alexander concurred  
Justice Owens concurred  
Chief Justice Madsen concurred  
Justice Stephens concurred  
Justice Chambers concurred  
Justice Sanders wrote dissent  
Justice Jim Johnson dissented  
Justice Fairhurst did not participate

## DANNY V. LAIDLAW TRANSIT

165 Wn.2d 200 (2008)

In *Danny*, the court retroactively imposed liability for wrongful discharge in violation of public policy against an employer who terminated employee for absenteeism related to domestic violence.

 AWB disagrees with this decision.

Justice Owens wrote opinion  
Justice Fairhurst concurred  
Justice Alexander concurred  
Justice Chambers concurred  
Chief Justice Madsen dissented in part  
Justice Charles Johnson dissented in part  
Justice Jim Johnson wrote dissent  
Justice Sanders dissented  
Justice Stephens did not participate

# Workers' Compensation & Unemployment Insurance

5 CASES

CASE NAME	Madsen	C. Johnson	Alexander	Sanders	Chambers	Owens	Fairhurst	J. Johnson	Stephens	
Shafer v. L&I	-	-	-	-	-	-	-	-	-	
Tomlinson v. Puget Sound Freight Lines	+	+	+	+	+	+	NP	+	+	
Harry v. Buse Timber & Sales	-	-	+	-	-	-	+	+	-	
Spain v. Employment Security Dept.	-	-	-	-	-	-	-	-	-	
Verizon v. Employment Security Dept.	-	+	+	+	-	+	+	+	+	
PRO-BUSINESS PERCENTAGE	2010	20%	40%	60%	40%	20%	40%	50%	60%	40%
	2008	0%	0%	40%	80%	20%	0%	0%	75%	NA
	2006	100%	100%	100%	67%	67%	100%	100%	100%	NA
	2004	57%	29%	43%	14%	20%	60%	NA	NA	NA

+ AWB Supports Decision

- AWB Opposes Decision

NP: Not Participating

NA: Not Applicable

## SHAFER V. DEPT. OF LABOR & INDUSTRIES

166 Wn.2d 710 (2009)

In *Shafer*, the court complicated the closure of workers' compensation claims by holding that a claim is not closed until a claimant's attending physician receives a copy of the closure order.

⊖ AWB disagrees with this decision.

Justice Alexander wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

## TOMLINSON V. PUGET SOUND FREIGHT LINES, INC.

166 Wn.2d 105 (2009)

In *Tomlinson*, the court held that degenerative arthritis can be the basis of a pre-existing permanent partial disability that may offset future benefits.

⊕ AWB agrees with this decision.

Justice Chambers wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Owens concurred  
Justice Fairhurst did not participate  
Justice Jim Johnson concurred  
Justice Stephens concurred

## HARRY V. BUSE TIMBER & SALES, INC.

166 Wn.2d 1 (2009)

In *Harry*, the court held that occupational hearing loss claims are compensable according to the benefits schedule in effect of the date of the last hazardous exposure as opposed to the date of first demonstrated loss.

⊖ AWB disagrees with this decision.

Chief Justice Madsen wrote opinion  
Justice Charles Johnson concurred  
Justice Alexander dissented  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst wrote dissent  
Justice Jim Johnson dissented  
Justice Stephens concurred

## SPAIN V. EMPLOYMENT SECURITY DEPARTMENT

164 Wn.2d 252 (2008)

In *Spain*, the court held that the statutory list of limited reasons where an individual may voluntarily quit work and still qualify for unemployment insurance benefits is not exhaustive.

⊖ AWB filed an amicus curiae brief in this case and disagrees with this decision.

Justice Chambers wrote opinion  
Justice Alexander concurred  
Justice Charles Johnson concurred  
Chief Justice Madsen concurred  
Justice Sanders concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

## VERIZON V. EMPLOYMENT SECURITY DEPARTMENT

164 Wn.2d 909 (2008)

In *Verizon*, the court held employees are not entitled to unemployment insurance benefits under a company's voluntary separation program where the employer did not take the final action to terminate employees.

 AWB agrees with this decision.

Justice Owens wrote opinion  
Chief Justice Madsen dissented  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers wrote dissent  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

## Environment & Land Use

8 CASES

CASE NAME	Madsen	C. Johnson	Alexander	Sanders	Chambers	Owens	Fairhurst	J. Johnson	Stephens	
Lawson v. City of Pasco	-	-	+	+	-	-	+	+	NP	
Kelly v. Chelan County	+	+	+	+	+	+	+	+	+	
Post v. City of Tacoma	-	-	+	+	+	+	-	+	+	
Abbey Road Group v. Bonney Lake	-	-	+	+	+	-	-	+	-	
Residents Opposed to Kittitas Turbines v. EFSEC	+	+	NP	+	+	+	+	+	+	
City of Arlington v. CPSGMHB	-	+	-	+	+	+	+	+	-	
Thurston County v. WWGMHB	+	+	+	+	+	+	+	+	+	
Futurewise v. WWGMHB	+	+	-	+	-	-	-	+	NP	
PRO-BUSINESS PERCENTAGE	2010	50%	63%	71%	100%	75%	63%	63%	100%	67%
	2008	50%	75%	100%	100%	67%	33%	75%	100%	NA
	2006	46%	46%	54%	92%	62%	46%	46%	89%	NA
	2004	57%	54%	50%	100%	56%	44%	NA	NA	NA

 AWB Supports Decision

 AWB Opposes Decision

NP: Not Participating

NA: Not Applicable

## LAWSON V. CITY OF PASCO

168 Wn.2d 675 (2010)

In *Lawson*, the court declined to find a local mobile home park ordinance pre-empted by the state Mobile Home Residential Landlord Tenant Act.

 AWB disagrees with this decision.

Justice Charles Johnson wrote opinion  
Chief Justice Madsen wrote concurrence  
Justice Alexander dissented  
Justice Sanders wrote dissent  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst dissented in part  
Justice Jim Johnson dissented  
Justice Stephens did not participate

## KELLY V. CHELAN COUNTY

167 Wn.2d 867 (2010)

In *Kelly*, the court held that a developer is not required to seek a stay of a permit during the pendency of an appeal by project opponents over the permit's validity.

 AWB filed an amicus curiae brief in this case and agrees with this decision.

Justice Charles Johnson wrote opinion  
Chief Justice Madsen concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

**POST V. CITY OF TACOMA**[167 Wn.2d 300 \(2009\)](#)

In *Post*, the court held that enforcement of a city ordinance governing imposition of building code violation fees violated due process.

 AWB agrees with this decision.

Justice Jim Johnson wrote opinion  
Chief Justice Madsen wrote dissent  
Justice Charles Johnson dissented  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst dissented  
Justice Stephens concurred

**ABBEY ROAD GROUP V. CITY OF BONNEY LAKE**[167 Wn.2d 242 \(2009\)](#)

In *Abbey Road*, the court upheld a local building permit application process that complicated and frustrated the vesting of development rights.

 AWB disagrees with this decision.

Justice Charles Johnson wrote opinion  
Chief Justice Madsen wrote concurrence  
Justice Alexander dissented  
Justice Sanders wrote dissent  
Justice Chambers dissented  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson dissented  
Justice Stephens concurred

**RESIDENTS OPPOSED TO KITTITAS TURBINES V. STATE ENERGY FACILITY SITE EVALUATION COUNCIL**[165 Wn.2d 275 \(2008\)](#)

In *Residents*, the court held that EFSEC had authority to permit siting of a wind power project despite contrary local land use decision.

 AWB filed an amicus curiae brief in this case and agrees with this decision.

Justice Owens wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander did not participate  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

**CITY OF ARLINGTON V. CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD**[164 Wn.2d 768 \(2008\)](#)

In *Arlington*, the court held that an area in question was properly redesignated from agricultural to urban commercial use under the Growth Management Act.

 AWB agrees with this decision.

Justice Sanders wrote opinion  
Chief Justice Madsen dissented  
Justice Charles Johnson concurred  
Justice Alexander wrote dissent  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens dissented

**THURSTON COUNTY V. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD**[164 Wn.2d 329 \(2008\)](#)

In *Thurston County*, the court limited parties' right to challenge a county's failure to revise comprehensive plan and urban growth area designations under the Growth Management Act, and required consideration of local circumstances in setting urban and rural densities.

 AWB agrees with this decision.

Justice Fairhurst wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

**FUTUREWISE V. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD**[164 Wn.2d 242 \(2008\)](#)

In *Futurewise*, the court held that, under prior legislation, critical areas within the jurisdiction of the Shoreline Management Act are governed only by that act and not the Growth Management Act.

 AWB agrees with this decision.

Justice Jim Johnson wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander dissented  
Justice Sanders concurred  
Justice Chambers wrote dissent  
Justice Owens dissented  
Justice Fairhurst dissented  
Justice Stephens did not participate

# Tax & Fiscal

5 CASES

CASE NAME	Madsen	C. Johnson	Alexander	Sanders	Chambers	Owens	Fairhurst	J. Johnson	Stephens	
Dot Foods v. Dept. of Revenue	-	+	+	+	-	-	NP	+	-	
Homestreet, Inc. v. Dept. of Revenue	-	+	+	+	-	+	NP	+	+	
Brown v. Owen	+	+	+	+	+	+	+	+	+	
Tesoro v. Dept. of Revenue	-	+	-	+	+	-	-	+	-	
Comcast v. City of Seattle	+	+	+	+	+	+	+	+	+	
PRO-BUSINESS PERCENTAGE	2010	40%	100%	80%	100%	60%	60%	67%	100%	60%
	2008	67%	100%	33%	67%	67%	33%	33%	100%	NA
	2006	50%	50%	75%	75%	75%	50%	0%	50%	NA
	2004	75%	63%	88%	88%	75%	75%	NA	NA	NA



AWB Supports Decision



AWB Opposes Decision

NP: Not Participating

NA: Not Applicable

## DOT FOODS V. DEPT. OF REVENUE

166 Wn.2d 912 (2009)

In *Dot Foods*, the court held the taxpayer eligible for tax exemption for out-of-state sales despite contrary change in interpretation by Dept. of Revenue.

**+** AWB agrees with this decision.

Justice Charles Johnson wrote opinion  
Chief Justice Madsen dissented  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers dissented  
Justice Owens dissented  
Justice Fairhurst did not participate  
Justice Jim Johnson concurred  
Justice Stephens wrote dissent

## HOMESTREET, INC. V. DEPT. OF REVENUE

166 Wn.2d 244 (2009)

In *Homestreet*, the court upheld a taxpayer's Business & Occupation tax deduction for certain mortgage lender income.

**+** AWB agrees with this decision.

Justice Sanders wrote opinion  
Chief Justice Madsen wrote dissent  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Chambers dissented  
Justice Owens concurred  
Justice Fairhurst did not participate  
Justice Jim Johnson concurred  
Justice Stephens concurred

## BROWN V. OWEN

165 Wn.2d 706 (2009)

In *Brown*, the court dismissed an action challenging the constitutionality of Initiative 960's requirement of a two-thirds supermajority of the Legislature to raise taxes.

**+** AWB filed an amicus curiae brief in this case and agrees with this decision.

Justice Fairhurst wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

## TESORO REFINING & MARKETING, INC. V. DEPT. OF REVENUE

164 Wn.2d 310 (2008)

In *Tesoro*, the court held the state may impose the hazardous substance tax on a vapor—"refinery gas"—that is created and consumed in the process of manufacturing gasoline and never possessed by the taxpayer despite a history of contrary interpretation by the taxing authority.

**-** AWB filed an amicus curiae brief in this case and disagrees with this decision.

Justice Fairhurst wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson wrote dissent  
Justice Alexander wrote concurrence  
Justice Sanders dissented  
Justice Chambers dissented  
Justice Owens concurred  
Justice Jim Johnson dissented  
Justice Stephens concurred

**COMCAST V. CITY OF SEATTLE**

164 Wn.2d 35 (2008)

In *Comcast*, the court held the city is not entitled to tax a cable internet service provider as a telephone business when the company is providing internet service.

**+** AWB agrees with this decision.

Justice Stephens wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred

**Torts (Insurance, General Liability)**

5 CASES

CASE NAME	Madsen	C. Johnson	Alexander	Sanders	Chambers	Owens	Fairhurst	J. Johnson	Stephens	
Magana v. Hyundai Motor America	-	-	+	-	-	-	NP	+	-	
Lunsford v. Saberhagen Holdings, Inc.	-	+	+	-	+	+	+	-	NP	
Panag v. Farmers Insurance Co.	-	+	+	-	-	+	-	+	-	
Simonetta v. Viad Corp.	+	+	+	-	-	+	+	+	-	
Braaten v. Saberhagen Holdings	+	+	+	-	-	+	+	+	-	
PRO-BUSINESS PERCENTAGE	2010	40%	80%	100%	0%	20%	80%	75%	80%	0%
	2008	80%	60%	100%	50%	40%	60%	60%	100%	NA
	2006	33%	0%	0%	67%	0%	0%	33%	NA	NA
	2004	75%	50%	58%	36%	9%	55%	NA	NA	NA

**+** AWB Supports Decision

**-** AWB Opposes Decision

NP: Not Participating

NA: Not Applicable

**MAGANA V. HYUNDAI MOTOR AMERICA**

167 Wn.2d 570 (2010)

In *Magana*, the court held a default judgment depriving company of trial by jury appropriate remedy for a discovery violation in products liability action.

**-** AWB filed an amicus curiae brief in this case and disagrees with this decision.

Justice Sanders wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander dissented  
Justice Chambers concurred  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson wrote dissent  
Justice Stephens concurred

**LUNSFORD V. SABERHAGEN HOLDINGS, INC.**

166 Wn.2d 264 (2009)

In *Lunsford*, the court held that strict product liability applied retroactively to allow asbestos plaintiff's claims against manufacturer.

**-** AWB disagrees with this decision.

Justice Fairhurst wrote opinion  
Chief Justice Madsen wrote concurrence  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred

**PANAG V. FARMERS INSURANCE CO.**

166 Wn.2d 27 (2009)

In *Panag*, the court expanded liability under the Consumer Protection Act by applying remedies to plaintiffs with no consumer or business relationship with alleged actor.

**-** AWB disagrees with this decision.

Chief Justice Madsen wrote opinion  
Justice Charles Johnson wrote dissent  
Justice Alexander dissented  
Justice Sanders concurred  
Justice Chambers concurred  
Justice Owens dissented  
Justice Fairhurst concurred  
Justice Jim Johnson dissented  
Justice Stephens concurred

**SIMONETTA V. VIAD CORP.****165 Wn.2d 341 (2008)**

In *Simonetta*, the court held that manufacturers do not owe a common law duty to warn of the danger posed by a product they did not manufacture.

**+** AWB agrees with this decision.

Justice Charles Johnson wrote opinion  
Chief Justice Madsen concurred  
Justice Alexander concurred  
Justice Sanders dissented  
Justice Chambers dissented  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens wrote dissent

**BRAATEN V. SABERHAGEN HOLDINGS****165 Wn.2d 373 (2008)**

In this companion case to *Simonetta*, the court held that manufacturers do not owe a duty to warn of the danger of exposure to asbestos-containing insulation manufactured and supplied by third parties.

**+** AWB agrees with this decision.

Chief Justice Madsen wrote opinion  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders dissented  
Justice Chambers dissented  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens wrote dissent

## General Business Interest

1 CASE

	CASE NAME	Madsen	C. Johnson	Alexander	Sanders	Chambers	Owens	Fairhurst	J. Johnson	Stephens
	In re F5 Networks	–	–	–	–	–	–	–	–	–
PRO-BUSINESS PERCENTAGE	2010	0%	0%	0%	0%	0%	0%	0%	0%	0%
	2008	67%	33%	0%	33%	0%	33%	33%	67%	NA
	2006	17%	14%	43%	86%	43%	29%	29%	67%	NA
	2004	100%	83%	67%	50%	50%	40%	NA	NA	NA

**+** AWB Supports Decision

**–** AWB Opposes Decision

NP: Not Participating

NA: Not Applicable

**IN RE F5 NETWORKS****166 Wn.2d 229 (2009)**

In *F5 Networks*, the court held Washington follows Delaware's demand futility standard for shareholder derivative actions.

**–** AWB filed an amicus curiae brief in this case and disagrees with this decision.

Justice Chambers wrote opinion  
Chief Justice Madsen concurred  
Justice Charles Johnson concurred  
Justice Alexander concurred  
Justice Sanders concurred  
Justice Owens concurred  
Justice Fairhurst concurred  
Justice Jim Johnson concurred  
Justice Stephens concurred



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