



Supreme Court of Wisconsin

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FOR IMMEDIATE RELEASE

Wisconsin Supreme Court accepts 8 new cases

Madison, Wis. (Aug. 28, 2018) – The Wisconsin Supreme Court has voted to accept eight new cases. The case numbers, issues, and counties of origin are listed below. A more detailed synopsis of each case will be released before the oral argument is heard in coming months. More information about cases before the Wisconsin Supreme Court or the Court of Appeals can be found on the Wisconsin Supreme Court and Court of Appeals Access [website](#). Published Court of Appeals opinions can be found [here](#). And the status of cases pending in the Supreme Court can be found [here](#).

2016AP2296 Maple Grove Country Club Inc. v. Maple Grove Estates Sanitary District

Supreme Court case type: Petition for Review

Court of Appeals: Dist. IV

Circuit Court: La Crosse County, Judge Elliott M. Levine, affirmed

Long caption: Maple Grove Country Club Incorporated, Plaintiff-Appellant, County of La Crosse, Involuntary-Plaintiff, v. Maple Grove Estates Sanitary District, Defendant-Respondent.

Issues presented:

- Did the Maple Grove Estates Sanitary District waive the right to assert the notice of claim statute 893.80(1d), Wis. Stats., as an affirmative defense when it failed to plead it in its answer?
- Did the Maple Grove Country Club, Inc., satisfy the requirements of the notice of claim statute, sec. 893.80(1d)?

2016AP2380

Susan L. Baldwin v. Milwaukee County

Supreme Court case type: Petition for Review

Court of Appeals: Dist. I [Dist. IV judges]

Circuit Court: Milwaukee County, Judge Timothy G. Dugan, affirmed in part; reversed in part and cause remanded with directions

Long caption: Susan L. Baldwin and Leverett F. Baldwin, Plaintiffs-Appellants, v. Milwaukee County and Employees' Retirement System of the County of Milwaukee, Defendants-Respondents.

Issues presented by the petitioners:

Employees' Retirement System of the County of Milwaukee:

Whether the Pension Board is prohibited from correcting pension mistakes, looking backward or for the future, after the passage of one year.

Milwaukee County:

Whether the Employees' Retirement System of the County of Milwaukee may correct an error in a pension benefit calculation, which Susan Baldwin does not dispute, by ceasing the payment of the errant, unearned benefits and reducing the benefits further to repay the trust for the total amount of the overpaid, unearned benefits, when the error was discovered more than one year after the benefit payments began.

2017AP344 Yasmeen Daniel v. Armslist, LLC et al.

Supreme Court case type: Petition for Review

Court of Appeals: Dist. I [Dist. IV judges]

Circuit Court: Milwaukee County, Judge Glenn H. Yamahiro, reversed and cause remanded

Long caption: Yasmeen Daniel, Individually, and as Special Administrator of the Estate of Zina Daniel Haughton, Plaintiff-Appellant, Travelers Indemnity Company of Connecticut, as Subrogee for Jalisco's LLC, Intervening Plaintiff, v. Armslist, LLC, an Oklahoma Limited Liability Company, Brian Mancini and Jonathan Gibbon, Defendants-Respondents, Broc Elmore, ABC Insurance Co., the fictitious name for an unknown insurance company, DEF Insurance Co., the fictitious name for an unknown insurance company and Estate of Radcliffe Haughton, by his Special Administrator Jennifer Valenti, Defendants, Progressive Universal Insurance Company, Intervening Defendant.

Issue presented: Whether the federal Communications Decency Act of 1996 permits liability to be imposed against Armslist under Wisconsin law based on an alleged breach of duties arising from the publication of a third-party seller's information.

2017AP1468 Waukesha County v. S.L.L.

Supreme Court case type: Petition for Review

Court of Appeals: Dist. II

Circuit Court: Waukesha County, Judge William Domina, dismissed

Long caption: In the matter of the mental commitment of S.L.L.: Waukesha County, Petitioner-Respondent, v. S.L.L., Respondent-Appellant

Issues presented:

1. Whether this appeal is moot.
2. Whether a circuit court has personal jurisdiction over the subject of a Chapter 51 petition for commitment and involuntary medication where the county fails to serve the subject of petition.
3. Whether, as a matter of law, a circuit court may enter a default judgment against the subject of a Chapter 51 commitment proceeding.
4. Whether a circuit court order for commitment and medication under Chapter 51 is supported by sufficient evidence and violates due process where it rests upon the reports of "examining physicians" who never examined the subject individual and did not testify at the commitment hearing.

2017AP170

J. Steven Tikalsky v. Susan Friedman

Supreme Court case type: Petition for Review

Court of Appeals: Dist. II

Circuit Court: Waukesha County, Judge Maria S. Lazar, reversed and cause remanded

Long caption: J. Steven Tikalsky, Plaintiff-Appellant, v. Susan Friedman a/k/a Susan Tikalsky, James Tikalsky and Amended and Restated Donald and Betty Lou Tikalsky Revocable Trust, Defendants, Terry Stevens, Defendant-Respondent-Petitioner

Issues presented:

- Is a constructive trust a cause of action or a remedy and, if a remedy, how is the remedy to be pled by a plaintiff?
- Can a constructive trust be imposed against a wholly innocent party against whom no cause of action for liability is pled?

Justice Annette Kingsland Ziegler dissenting, joined by Chief Justice Patience Drake Roggensack and Justice Michael J. Gableman

2018AP1346-CQ

United States of America v. Dennis Franklin

Supreme Court case type: CQ (certified question from the U.S. 7th Circuit Court of Appeals)

Long caption: United States of America, Plaintiff-Appellee, v. Dennis Franklin and Shane Sahm, Defendants-Appellants.

Issue presented: Whether the different location subsections of the Wisconsin burglary statute, Wis. Stat. § 943.10(lm)(a)-(f), identify alternative elements of burglary, one of which a jury must unanimously find beyond a reasonable doubt to convict, or whether they identify alternative means of committing burglary, for which a unanimous finding beyond a reasonable doubt is not necessary to convict.

2016AP1837 Rural Mutual Insurance Company v. Lester Buildings, LLC

Supreme Court case type: Petition for Review

Court of Appeals: Dist. IV

Circuit Court: Dane County, Judge Maryann Sumi and Judge Valerie Bailey Rihn, affirmed

Long caption: Rural Mutual Insurance Company, Plaintiff-Appellant, v. Lester Buildings, LLC and The Phoenix Insurance Company, Defendants-Third-Party Plaintiffs-Respondents, West Bend Mutual Insurance Company, Defendant-Respondent, Jim Herman, Inc., Defendant-Co-Appellant, v. Van Wyks, Inc., Third-Party Defendant-Respondent.

Issues presented:

- Can a contractor use a subrogation waiver to force the dismissal of tort claims contrary to Wis. Stat. § 895.447, which voids any provision in a construction contract eliminating or limiting tort liability?
- Can a contractor use a subrogation waiver to prospectively release it from liability for its own reckless conduct when Wisconsin law prohibits the same release in exculpatory contracts?

Supreme Court case type: Petition for Review

Court of Appeals: Dist. III

Circuit Court: Ashland County, Judge Robert E. Eaton, affirmed

Long caption: David W. Paynter and Kathryn M. Paynter, Plaintiffs-Appellants, v. ProAssurance Wisconsin Insurance Company, James A. Hamp and American Physicians Assurance Corporation, Defendants-Respondents, Continental Casualty Company, Wisconsin Injured Patients and Families Compensation Fund, Keith A. Henry and Blue Cross Blue Shield of Michigan, Defendants.

Issues presented:

1. Guertin v. Harbour Assurance Co. of Bermuda, Ltd., 141 Wis. 2d 622, 415 N.W.2d 831 (1987), defined a “foreign cause of action,” as used in Wis. Stat. § 893.07, Wisconsin’s borrowing statute, as a claim for injuries sustained outside of Wisconsin. However, neither § 893.07 nor Guertin specifies whether § 893.07 applies where injuries are sustained, in part, in Wisconsin. See Faigin v. Doubleday Dell Pub. Group, Inc., 98 F.3d 268, 270-272 (7th Cir. 1996). Neither sets forth criteria for determining whether § 893.07 applies in multi-state claims.
Id.
 - a. Because § 893.07 does not address how to treat claims arising in multiple states, because Wisconsin courts have an interest in redressing claims arising here, and because of the all-or-nothing consequences of declaring all causes of action arising in multiple states “foreign,” should this court adopt the Seventh Circuit’s decision in Faigin and declare that § 893.07 does not apply to claims arising, at least in part, in Wisconsin?
 - b. Given Guertin’s holding, should an injury-in-fact test or the nature of the cause of action determine whether § 893.07 applies to a particular cause of action?
 - c. Although Guertin declared that § 893.07 does not apply to actions if injury occurred in Wisconsin, does that rule continue to apply if injury also occurred in another state?
2. Where Dr. Hamp failed to diagnose Mr. Paynter’s cancer, which continued to grow until it was removed, and the Paynters, who lived on the border of Wisconsin and Michigan, were frequently in Wisconsin, did a question of fact exist regarding whether Mr. Paynter’s cause of action arose, at least in part, in Wisconsin?
3. Was Dr. Hamp’s failure to inform Mr. Paynter of available treatment options, constituting a harm to Mr. Paynter’s rights, an injury in Wisconsin such that § 893.07 did not apply?
4. ProAssurance told Dr. Hamp it planned to exclude “any medical professional health care services he provided in the State of Michigan.” Its policy precluded coverage for “liability” arising from “professional services” rendered “in the State of Michigan and/or outside the State of Wisconsin.” Did ProAssurance cover Dr. Hamp’s negligence 1) in reviewing or failing to review the pathology report in Wisconsin and 2) calling Mr. Paynter from Wisconsin and incorrectly advising that his tumor was benign?