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Supreme Court accepts 22 new cases

Madison, Wis. (Jan. 28, 2004) – The Wisconsin Supreme Court has voted to hear 22 new cases. The case numbers, issues (provided by the Office of the Clerk of Supreme Court), and counties of origin are listed below. To read the full record, go to the Supreme Court Clerk’s Office, Suite 215, Tenney Building, 110 E. Main St., Madison. The Court of Appeals opinions in these cases, if they exist, are linked to the case name.

00-0072 [Y. Maurin, et al v. G. Hall, M.D., et al](#)

Issues: Are the caps on non-economic damages (damages that cannot easily be quantified, such as loss of companionship) in a wrongful death case constitutional? Can the plaintiffs in a medical malpractice action, where there is a death caused by medical negligence, recover non-economic damages for both medical malpractice and wrongful death? **From Washington County**

01-2649 [M.Wenke, et al v. Gehl Co.](#)

Issues: Did [Landis v. Physicians Ins. Co. of Wisconsin, Inc.](#), 2001 WI 86, 245 Wis. 2d 1, 628 W.W.2d 893, “functionally” overrule [Leverence v. United States Fidelity & Guaranty](#), 158 Wis. 2d 64, 462 N.W.2d 218 (Ct. App. 1990), which held that Wisconsin’s borrowing statute, Wis. Stat. § 893.07 has no application to a foreign state’s statute of repose? **From Washington County**

01-2710 [B. Pierce v. Physicians Ins. Co. of Wis., Inc., et al](#)

Issues: Can a mother who gave birth to a stillborn child recover “bystander” damages under [Wis. Stat. Ch. 655](#) for negligent infliction of emotional distress? **From Outagamie County**

02-0359 [DeWitt Ross & Stevens v. Galaxy Gaming & Racine Ltd. Partnership, et al](#)

Justice Jon P. Wilcox did not participate.

Issues: When the amount recovered exceeds the offer of settlement made pursuant to [Wis. Stat. § 807.01](#), is the prevailing party entitled to recover 12 percent interest pursuant to [Wis. Stat. § 807.01\(4\)](#) in addition to damages interest set forth in the contract? **From Dane County**

(more)

02-0528 [D. Lynch, et al v. Carriage Ridge, LLC, et al](#)

Justice Patience D. Roggensack did not participate.

Issues: What is the range of remedies available and what purposes must they serve after there has been a finding of “oppression” by the managing partners in a limited liability corporation (LLC) created under [Wis. Stat. Ch. 183](#)? Did the circuit court err when it determined that the managing members of the LLC oppressed the minority members by issuing a capital call? **From Dane County**

02-1273 [R. Kerl, et al v. D. Rasmussen, Inc., et al](#)

Justice Jon P. Wilcox did not participate.

Issues: What standard of “vicarious liability” should be adopted in the context of a franchise relationship? Does such standard applied to the facts situation in this case warrant summary judgment against the plaintiff? **From Dane County**

02-1681 [L. Haase v. Badger Mining Corp.](#)

Issues: Did the Court of Appeals err when it adopted Section 5 of the Restatement (Third) of Torts for strict product liability claims? Did the Court of Appeals err when it found that the manufacturer of foundry sand could not be held strictly liable for a worker’s silicosis under Section 402A because the product had undergone a substantial change? **From Winnebago County**

02-1869-CR [State v. I. Evans](#)

Justice Patience D. Roggensack did not participate.

Issues: Did the circuit court err in excluding the testimony of the defendant’s alibi witnesses and in denying his pretrial motion to exclude the inculpatory statement he allegedly gave to the police following his arrest? Did the Court of Appeals err in reinstating the defendant’s direct appeal on a claim of ineffective assistance of appellate counsel six years after the time for a direct appeal had expired and after the defendant had already pursued a postconviction motion? **From Milwaukee County**

02-1974 [Central Corp. v. Research Products Corp.](#)

Justice Jon P. Wilcox did not participate.

Issues: Were there issues of disputed material facts and inferences sufficient to preclude summary judgment as to whether there was a “community of interest” between Central Corp. and Research Products Corp. that would establish a “dealership” under [Wis. Stat. § 135.02\(3\)](#)? **From Winnebago County**

02-2260 [A. Garcia v. Mazda Motor of America, Inc., et al](#)

Issues: Does Wisconsin’s “Lemon Law” require a consumer to use only specific statutory terminology when requesting a comparable vehicle in exchange for an alleged “lemon” as set forth under [Wis. Stat. § 218.0171\(2\)\(c\)](#)? Do the terminology provisions of [Wis. Stat. § 218.0171\(2\)\(c\)](#) apply even when a consumer provides notice to a manufacturer that the statute is being invoked and the manufacturer acknowledges the notice as such? **From Waukesha County**

02-2404-CR [State v. J. Guerard](#)

Issues: Was the defendant denied his right to effective assistance of counsel when his trial counsel failed to gain admission of out-of-court statements that implicated his brother as the perpetrator of the crimes of which the defendant was convicted? **From Ozaukee County**

(more)

02-2555-CR [State v. J. Allen](#)

Issues: Was it an erroneous exercise of the circuit court's discretion when it refused to hold an evidentiary hearing on the defendant's claim of ineffective assistance of counsel where the pleadings filed by the defendant set forth specific instances of ineffectiveness, *see* [State v. Bentley](#), 201 Wis. 2d 303, 548 N.W.2d 50 (1996)? **From Milwaukee County**

02-2817 [James Cape & Sons Co. v. T. Mulcahy](#)

Issues: Pursuant to [Wis. Stat. § 66.0901\(5\)](#), under what circumstances is a construction project bidder allowed to take back its bid and receive a refund of the proposal guaranty after the bidder discovers an error in the bid after the opening of the bids, but before the awarding of the contract? **From Dane County**

02-2932 [N. Megal v. Green Bay Area Visitor & Convention Bureau, Inc., et al](#)

Issues: Can a place of business be found to have constructive notice of a foreign substance (in this case, a french fry) on a walkway creating a dangerous condition for customers and employees without proof of the actual length of time the substance was present on the walkway? Does the exception to the general constructive notice rule apply to the facts in this case? **From Brown County**

02-3208 [C. Gentili v. Bd. of the Police & Fire Commissioners of the City of Madison, et al](#)

Issues: [Does Wis. Stat. § 62.13\(5\)](#) permit or require an employee to raise constitutional claims, such as the alleged vagueness or overbreadth of administrative rules, as part of the "just cause" challenge in a review of a police and fire commission's disciplinary decision? **From Dane County**

02-3328 [Hutchinson Technology, Inc. v. LIRC, et al](#)

Issues: What is the correct standard of review for determining if an employee is disabled under Wisconsin's [Fair Employment Act](#), and what are an employer's accommodation obligations? Does the burden to establish whether the accommodation is reasonable rest with the employee or the employer? **From Eau Claire County**

02-3348-CR [State v. J. Wright](#)

Issues: Does a defendant who enters a plea of "no contest" based upon a negotiated plea agreement waive the right to challenge the legality of the trial court's acceptance of the plea? Can a judgment of conviction be amended later to reflect conviction on a lesser crime when a factual basis for a greater crime was alleged in the non-amended criminal complaint and used for accepting a "no contest" plea entered as part of a plea agreement? **From Kenosha County**

03-0098 [T. Smaxwell, et al v. M. Bayard, et al](#)

Issues: Can a landowner be held liable, on common law negligence grounds, for injuries caused on a landowner's property by a known dangerous dog not owned by the landowner? **From Manitowoc County**

03-0471 [J. Weber, et al v. A. White, et al](#)

Issues: Did the circuit court err in denying the defendants' motion to vacate the jury's award of \$5,000 for future healthcare expenses because the testimony of the plaintiff's sole witness on the issue of future healthcare needs was allegedly contradictory? **From Milwaukee County**

(more)

03-0952-CR [State v. J. Faust](#)

Issues: Under [State v. Krajewski](#), 2002 WI 97, 255 Wis. 2d 98, 648 N.W.2d 385, does a consensual breath sample given by a defendant following a lawful drunk driving arrest stop police from requiring that the defendant also provide a blood sample without first obtaining a warrant? **From Sheboygan County**

03-1493-CR [State v. T. Jadowski](#)

Issues: Is a minor sexual assault victim's intentional misrepresentation of his/her age a defense to a charge of violating [Wis. Stat. § 948.02\(2\)](#) (2001-02)? If not, does the Wisconsin statutory scheme set forth in [Wis. Stat. §§ 939.23\(6\), 939.43\(2\)](#) and [948.02\(2\)](#) deny a defendant his/her constitutional rights? **From Sheboygan County**

03-1817 [D. Harder, et al v. C. Pfitzinger, et al](#)

Issues: Did the Court of Appeals err in determining that the plaintiffs had to appeal from the final circuit court order and not from the subsequent judgment that dealt with the taxation of costs? **From Waukesha County**

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