

A photograph of a marble floor with a circular pattern in the center, leading to a glass door with a wooden frame. The floor is made of large, light-colored marble tiles. The door is partially open, showing a glimpse of the interior.

# 2006 SCORECARD AND GUIDE TO THE WASHINGTON SUPREME COURT

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# Association of Washington Business 2006 Judicial Scorecard and Guide to the Washington Supreme Court

By Kristopher I. Tefft, AWB General Counsel

This year, the Association of Washington Business, in coalition with the impressive group of industry associations reflected on our cover, presents the 2006 Judicial Scorecard and Guide to the Washington Supreme Court, the second in our series of biennial publications designed to educate our members and the general public about the decisions of Washington's Supreme Court and how those decisions affect the business community. This edition builds upon our 2004 publication and compares decision-making trends in several different areas of law that, together, help form a picture of the legal culture that impacts the sustainability of Washington's job providers. As in 2004, we hope this publication helps clarify the importance of our judicial branch and assists in the difficult task of evaluating and endorsing candidates seeking election or re-election to the Washington Supreme Court.

## How the Supreme Court Works

The Washington Supreme Court is the court of last resort on issues of state law, and virtually every law, case or controversy of major statewide importance ends up before it. A co-equal branch of our state government, on par with the legislative and the executive branches, the nine-member Washington Supreme Court decides issues on a case-by-case basis, hearing only the matters brought before it. The cases decided by the court are briefed and argued by legal professionals, and although the proceedings of the Washington Supreme Court have been televised on the cable channel TVW for many years, its work often remains obscure to the general public.

The jurisdiction of the Washington Supreme Court to hear cases is, with few exceptions, entirely discretionary, which means the members of the court only hear cases which they themselves decide to hear. Matters come to the court primarily by a petition for review from a decision of the Washington Court of Appeals, an intermediate appellate court separated into three divisions across the state. A handful of cases come to the court each year directly from decisions of the state's trial courts by a process called direct review. Whether by petition for review or direct review, the court, for the most part, only accepts cases for review when there is a significant issue of law in dispute and the resolution of that issue will be of broad importance to the general public.

Once a case is docketed before the Washington Supreme Court, the parties submit legal briefs in an effort to persuade the justices to support their view of the case. Frequently, because of the public importance of the matters before the court, individuals and groups with an interest in the outcome of a case will submit *amicus curiae* ("friend of the court") briefs attempting to bring their unique perspective before of the court. AWB, like many of its coalition partners in the business community, frequently files *amicus curiae* briefs before the Washington Supreme Court, either urging the court to accept review of a particular case or resolve a case before it in a way that will have a positive influence on our state's business climate.

The court hears oral argument in all of the cases before it, and, after argument, meets in private conference to decide the outcome of

the case. At these conferences, justices take writing assignments—either a majority opinion or a dissenting opinion—and attempt to capture the decision of the majority and minority justices on a matter. After numerous drafts and redrafts, and with the research and writing assistance of law clerks, the decision of the court is published, always on Thursday, first in person at the court and to the parties, then on the court's Web site ([www.courts.wa.gov](http://www.courts.wa.gov)), and then on the online legal research sites and the hardcover Washington Reports 2nd case books. It takes an average of nine months between argument and publication of the court's decision, although very important cases can be decided within a matter of weeks, and some difficult cases may take well over a year to be resolved.

## The Court's Importance to Business

Over and over again, job providers across the state tell us that all they seek in the laws and regulations that govern them are stability, consistency, predictability, clarity and rationality. Individuals and groups that make up the business community in Washington spend considerable time and resources before the legislative and executive branches of state government advocating for precisely those values in the laws passed by the Legislature and rules put into force by state agencies.

It has become increasingly evident, however, that the Washington Supreme Court has an equal, if not pivotal, role to play in preserving these core legal values that sustain our competitive business climate. Many of the hardest-fought legislative battles of the past few years have been in response to, or in anticipation of, a decision of the Washington Supreme Court interpreting a statute, rule or ballot measure. When the court embarks on an unexpected or novel interpretation of a statute, sometimes at odds with the plain language or legislative intent behind the statute, business owners lose the ability to rely on the stability of the law. This is directly true when such cases are in the critical areas under consideration in this publication. Likewise, when the court issues interpretations that defend the law as it is written and understood, with appropriate deference to the other co-equal branches of government, it performs its constitutional role in helping to secure the legal conditions necessary for private enterprise to flourish.

Either way, it is clear that the state's business community cannot ignore the workings and decisions of the Washington Supreme Court.

## A Justice's Most Important Trait

In a word, philosophy. The breadth of influence the Washington Supreme Court has on the business community means it is important for AWB members to care about what kind of judges are on the bench. Although justices are traditionally reticent and bound by rules and precedent about what they can and can't say outside of court, it is important to ascertain, to some extent, the judicial philosophy of justices and candidates to the high court. Justices, like legislators and agency officials, bring a background of experiences and philosophies to their position, and can be expected to perform their duties in light of those beliefs.

Does the justice or candidate favor giving deference to the acts of the Legislature as a co-equal branch of government? Or does the justice believe it is appropriate to permit personal views to guide their decisions, even in the face of precedent or prior interpretation of the law? Does the justice have any bias that prevents him or her from giving a fair hearing to business interests when these conflict with sympathetic injured persons or employees?

### Scorecard Philosophy

No assessment can answer these questions definitively, and the scorecard that follows is no different. Yet differences do exist among the sitting justices of the Washington Supreme Court, three of whom are generally up for election in a given cycle. The purpose of this guide is to highlight some of the trends in judgments among the current justices.

We have selected 36 cases between mid-2004 and April 2006, with ratings made in each issue area, as well as an overall rating as to whether the justice's record is pro-business or not pro-business, taking into account how many of the selected cases the individual justice participated in. In each issue area, as well as in the overall participation rate and pro-business score, we compare this year's 2006 percentage to the pro-business percentage attained by each justice in our 2004 Scorecard.

### Trends from 2004 to 2006

In 2004, five justices had a pro-business score of greater than 50 percent, while three justices had a pro-business score of 50 percent or less, with Justice Mary Fairhurst going unrated because of her relatively recent election to the bench. In 2006, by contrast, case participation rates are uniformly up, but five justices have dipped below the 50 percent mark, while four justices are above it. Justice Richard Sanders made the highest climb, from 63 percent in his re-election year of 2004 to 75 percent in 2006. By contrast, Justice Barbara Madsen had the most precipitous drop from a high of 68 percent in her re-election year of 2004 to 49 percent in 2006. Justice Jim Johnson, who joined the court after his November 2004 election, participated in the fewest cases under review (47 percent) but had the highest pro-business score of all justices at 82 percent.

The specific issue area where justices' scores changed the most dramatically from 2004 to 2006 was in general business issues, which is a combination of regulatory, governmental accountability, initiative and referendum, and political process cases of interest to the business community. In the hotly contested issue of workers' compensation, justices' scores improved dramatically in 2006, although only three cases were available for evaluation. In the area of torts and general liability, by contrast, justices' scores were mostly low with four justices at zero and two justices at 33 percent, although, again, only three cases were available for evaluation. Scores in employment law, land use/environmental, and tax/fiscal policy remained mostly stable from 2004 to 2006.

Raw numbers alone cannot reveal a justice's judicial philosophy, but trends are frequently evident. We hope this publication assists you in the critical task of evaluating the work of the Washington Supreme Court, educating yourself and others about the court, and voting for the justices or justice candidates whom you believe share a judicial philosophy consistent with your own.

### Selection Criteria

- Cases were chosen through the AWB committee process. Input was provided by AWB's Legal Affairs Committee and issue committees within its Governmental Affairs Council. These committees are composed of attorneys and non-attorney representatives from the more than 5,500 businesses that make up AWB's membership and include leading experts on the issues most important to Washington businesses.
- Decisions have a significant impact on Washington businesses. The cases selected for inclusion in the record 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 and a negative effect on 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. Seven of the nine sitting justices have served since at least 2000. In our 2004 Scorecard, to account for maximum case participation, we evaluated cases from 2000-2004. This year, we have evaluated cases that came out between the publication of our 2004 Scorecard and April 2006.
- Cases are divided into six business issue categories. Each case is listed within one of six categories of business issues. The categories are: Employment, environment and land use, tax and fiscal policy, workers' compensation, 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.

### Scoring

- Justices were evaluated in comparison to the pro-business position.
- Justices were not scored for a case if they did not participate in a decision.
- 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 largest 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. If no authorship is noted, it is because the author of a majority or dissenting opinion is no longer on the court and the current sitting justices who concurred or dissented in those opinions are listed as concurring or dissenting.
- Justices receive an overall pro-business score based upon their rulings in the seven combined issue categories.

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### About the Author

*Kristopher I. Tefft serves as AWB's general counsel and directs the association's legal practice before the Washington Supreme Court, as well as the AWB's evaluation and endorsement of candidates to the Supreme Court. Tefft was educated at Seattle University, Georgetown University and Notre Dame Law School, and began his legal career as a clerk to Justice Richard B. Sanders. He can be reached at [KrisT@awb.org](mailto:KrisT@awb.org).*

## Case Participation

Of the 36 cases selected for review, the following percentages indicate the participation rate of the nine justices. Justices' pro-business scores are calculated based only upon cases in which they participated.

	<u>2004</u>	<u>2006</u>
Chief Justice Alexander	100%	97%
Justice Chambers	70%	100%
Justice Charles Johnson	98%	100%
Justice Owens	68%	100%
Justice Sanders	98%	100%
Justice Bridge	92%	97%
Justice Madsen	98%	97%
Justice Fairhurst	20%	92%
Justice Jim Johnson	NA	47%

## Pro-Business Scores

	<u>2004</u>	<u>2006</u>
Chief Justice Alexander	59%	54%
Justice Charles Johnson	50%	42%
Justice Madsen	68%	49%
Justice Sanders	63%	75%
Justice Bridge	66%	51%
Justice Chambers	33%	47%
Justice Owens	55%	47%
Justice Fairhurst	NA	45%
Justice Jim Johnson	NA	82%



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## MEET THE WASHINGTON SUPREME COURT

**Members of the Washington Supreme Court: (from left) Justice Richard Sanders, Justice Mary Fairhurst, Justice Charles Johnson, Justice Thomas Chambers, Chief Justice Gerry Alexander, Justice Susan Owens, Justice Barbara Madsen, Justice Jim Johnson, Justice Bobbe Bridge.**

- Chief Justice Gerry Alexander was elected to the Washington Supreme Court in 1994 and re-elected in 2000. He seeks re-election to a third term this fall.
- Associate Chief Justice Charles Johnson was elected in 1990 and re-elected in 1996 and 2002. He is the longest-serving member of the court.
- Justice Barbara Madsen was elected to the court in 1992 and re-elected in 1998 and 2004.
- Justice Richard Sanders was elected to the court by special election in 1995 and re-elected in 1998 and 2004.
- Justice Bobbe Bridge was appointed by Gov. Gary Locke in 1999, retained her seat in a special election in 2000, and was re-elected to a full term in 2002.
- Justice Tom Chambers was elected to the court in 2000 and seeks re-election to a second term this fall.
- Justice Susan Owens was elected to the court in 2000 and seeks re-election to a second term this fall.
- Justice Mary Fairhurst was elected to the court in 2002.
- Justice Jim Johnson was elected to the court in 2004.

## EMPLOYMENT LAW (6 Cases)

Case Name	Alexander	C. Johnson	Madsen	Sanders	J. Johnson	Bridge	Chambers	Owens	Fairhurst
Labriola v. Pollard Group	-	-	-	-	NP	-	-	-	-
Zuver v. Airtouch	+	+	+	+	NP	+	+	+	+
Christensen v. Grant County	+	+	+	-	NP	+	-	+	+
Antonius v. King County	-	-	-	-	NP	-	-	-	-
Korslund v. Dyncorp Tri-Cities	+	+	+	-	+	+	-	+	+
Berrocal v. Fernandez	-	-	+	+	+	+	-	+	-
<b>2004 Pro-Business Percentage:</b>	<b>57%</b>	<b>36%</b>	<b>64%</b>	<b>64%</b>	<b>NA</b>	<b>62%</b>	<b>13%</b>	<b>63%</b>	<b>NA</b>
<b>2006 Pro-Business Percentage:</b>	<b>50%</b>	<b>50%</b>	<b>67%</b>	<b>33%</b>	<b>100%</b>	<b>67%</b>	<b>17%</b>	<b>67%</b>	<b>50%</b>

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

### Labriola v. Pollard Group, 152 Wn.2d 828 (2004)

In *Labriola*, the court concluded that in order for an employer to enter into a valid non-compete agreement with an employee after the date of hire, there must be independent consideration in addition to continued employment to support the agreement.

**AWB disagrees with this decision.**

Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred

### Zuver v. Airtouch Communications Inc., 153 Wn.2d 293 (2004)

In *Zuver*, the court concluded that an employer could validly enter into an agreement with an employee to submit employment disputes to arbitration, provided that the terms of arbitration were not one-sided or unconscionable. AWB submitted an *amicus curiae* brief in this case.

**AWB agrees with this decision.**

Justice Bridge Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred in Part and Dissented in Part  
Justice Sanders Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred

### Christensen v. Grant County Hospital District No. 1, 152 Wn.2d 299 (2004)

In *Christensen*, the court concluded that a unionized paramedic who lost retaliatory discharge claims before the Public Employment Relations Commission could not later sue the employer in court for the very same claims.

**AWB agrees with this decision.**

Justice Madsen Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Bridge Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Sanders Wrote Dissent  
Justice Chambers Dissented

### Antonius v. King County, 153 Wn.2d 256 (2004)

In *Antonius*, the court concluded that case law under the federal Civil Rights Act applied to a claim for sex discrimination based on a hostile work environment under the Washington Law Against Discrimination, allowing the plaintiff to sue for actions that occurred longer than the three-year statute of limitations would have allowed.

**AWB disagrees with this decision.**

Justice Madsen Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Bridge Concurred  
Justice Charles Johnson Concurred  
Justice Sanders Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred

### Korslund v. Dyncorp Tri-Cities Services Inc., 156 Wn.2d 168 (2005)

In *Korslund*, the court concluded that an employee who goes on medical leave, but does not quit or resign from a job, cannot sue for constructive discharge in violation of public policy for alleged retaliatory actions.

**AWB agrees with this decision.**

Justice Madsen Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Bridge Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Jim Johnson Concurred  
Justice Chambers Dissented in Part  
Justice Sanders Dissented in Part

### Berrocal v. Fernandez, 155 Wn.2d 585 (2005)

In *Berrocal*, the court concluded that employees required to sleep and reside full-time at their place of employment were properly excluded from coverage under state Minimum Wage Act provisions.

**AWB agrees with this decision.**

Justice Owens Wrote Opinion  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Jim Johnson Concurred  
Justice Charles Johnson Dissented  
Chief Justice Alexander Dissented  
Justice Chambers Dissented  
Justice Fairhurst Dissented



## ENVIRONMENT AND LAND USE (13 Cases)

Case Name	Alexander	C. Johnson	Madsen	Sanders	J. Johnson	Bridge	Chambers	Owens	Fairhurst
Dickgieser v. Dept. of Natural Resources	+	+	+	+	NP	+	+	+	+
Quadrant v. Growth Mgmt. Hearings Board	+	+	+	+	+	+	+	+	+
James v. Kitsap County	+	-	-	+	NP	-	+	-	-
United States v. Hoffman	+	+	+	+	+	+	+	+	+
Grundy v. Thurston County	-	-	-	+	NP	-	-	-	-
Viking Properties v. Holm	+	+	+	+	+	+	+	+	+
Habitat Watch v. Skagit County	+	+	+	+	NP	+	-	+	+
Ferry County v. Friends of Ferry County	-	-	-	+	+	-	-	-	-
Holmes Harbor Sewer District v. Holmes Harbor Home Building LLC	+	+	+	+	+	+	+	+	+
City of Olympia v. Drebeck	NP	-	-	+	+	-	+	-	-
Chevron v. Growth Mgmt. Hearings Board	-	-	-	-	-	-	-	-	-
Central Puget Sound Transit Auth. v. Miller	-	-	-	+	+	-	+	-	-
HTK Management v. Seattle Monorail	-	-	-	+	+	-	-	-	-
<b>2004 Pro-Business Percentage:</b>	<b>50%</b>	<b>54%</b>	<b>57%</b>	<b>100%</b>	<b>NA</b>	<b>82%</b>	<b>56%</b>	<b>44%</b>	<b>NA</b>
<b>2006 Pro-Business Percentage:</b>	<b>58%</b>	<b>46%</b>	<b>46%</b>	<b>92%</b>	<b>89%</b>	<b>46%</b>	<b>62%</b>	<b>46%</b>	<b>46%</b>

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

### Dickgieser v. Department of Natural Resources, 153 Wn.2d 530 (2005)

In *Dickgieser*, the court concluded that damage to property caused by logging on adjacent state forest lands was a public use requiring compensation, and that it was a triable question whether damage was reasonably necessary to log the land.

**AWB agrees with this decision.**

Justice Madsen Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Sanders Concurred  
 Justice Bridge Concurred  
 Justice Chambers Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred

### Quadrant Corp. v. State Growth Management Hearings Bd., 154 Wn.2d 224 (2005)

In *Quadrant*, the court concluded that deference to local planning actions under the Growth Management Act supersedes deference granted to administrative bodies and quasi-judicial boards in general, and that under this deferential standard of review the county's issuance of various project permits was proper.

**AWB agrees with this decision.**

Justice Madsen Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Sanders Concurred  
 Justice Bridge Concurred  
 Justice Chambers Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred  
 Justice Jim Johnson Concurred

### James v. Kitsap County, 154 Wn.2d 574 (2005)

In *James*, the court concluded that property owners could not obtain a refund of impact fees imposed by the county during the time in which the county was out of compliance with the Growth Management Act, because impact fees are land-use decisions under the Land Use Petition Act, and the owners failed to comply with LUPA procedures.

**AWB disagrees with this decision.**

Justice C. Johnson Wrote Opinion  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Sanders Wrote Dissent  
Chief Justice Alexander Dissented  
Justice Chambers Dissented

### United States v. Hoffman, 154 Wn.2d 730 (2005)

In *Hoffman*, the court concluded that various provisions of Initiative 297 concerning the disposition and transfer of nuclear waste at the Hanford Nuclear Reservation should be interpreted such that the initiative expands the current regulatory system relating to radioactive waste in Washington, making it more likely that the initiative would be preempted by federal laws. AWB filed an *amicus curiae* brief in this case.

**AWB agrees with this decision.**

Justice Owens Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Chambers Concurred  
Justice Fairhurst Concurred  
Justice Jim Johnson Concurred

### Grundy v. Thurston County, 155 Wn.2d 1 (2005)

In *Grundy*, the court concluded that the common enemy doctrine does not apply to seawater pushed over a seawall by weather events and therefore does not preclude a property owner's private nuisance suit against a neighbor for constructing a seawall, despite the property owner's failure to submit a timely challenge to the issuance of the permit allowing seawall construction.

**AWB disagrees with this decision.**

Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
(in result only)  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
in Part and Dissented in Part  
Justice Sanders Wrote Dissent

### Viking Properties Inc. v. Holm, 155 Wn.2d 112 (2005)

In *Viking*, the court concluded that restrictive covenants governing certain parcels that restricted density on the land to less than that otherwise required by the Growth Management Act were valid and did not violate public policy as contained in the GMA.

**AWB agrees with this decision.**

Justice Jim Johnson Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred

### Habitat Watch v. Skagit County, 155 Wn.2d 397 (2005)

In *Habitat Watch*, the court concluded that the environmental group's challenge to a special use permit for construction of a golf course was barred because the group failed to comply with the strict time limits of the Land Use Petition Act.

**AWB agrees with this decision.**

Justice Fairhurst Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Owens Concurred  
Justice Chambers Concurred in Part  
Justice Sanders Concurred  
in Part and Dissented in Part

### Ferry County v. Concerned Friends of Ferry County, 155 Wn.2d 824 (2005)

In *Ferry County*, the court concluded that the county failed to use "best available science" methods in designating species as endangered, threatened or sensitive in the county's Critical Areas Ordinance, despite the lack of good data supporting species designations specific to the county.

**AWB disagrees with this decision.**

Justice Fairhurst Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Owens concurred  
Justice Chambers Concurred  
Justice Jim Johnson Wrote Dissent  
Justice Sanders Dissented

### Holmes Harbor Sewer District v. Holmes Harbor Home Building LLC, 155 Wn.2d 858 (2005)

In *Holmes Harbor*, the court concluded that a local sewer district was not authorized to impose monthly charges against unimproved lots that were not connected to the sewer system.

**AWB agrees with this decision.**

Justice C. Johnson Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Jim Johnson Concurred

### City of Olympia v. Drebeck, \_\_\_ Wn.2d \_\_\_ (Jan. 19, 2006)

In *Drebeck*, the court concluded that the City of Olympia's transportation impact fee ordinance was appropriate despite the fact that it imposed impact fees based upon city-wide traffic patterns rather than an individualized, site-specific analysis of traffic impacts.

**AWB disagrees with this decision.**

Justice Owens Wrote Opinion  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Fairhurst Concurred  
Justice Jim Johnson Wrote Dissent  
Justice Sanders Dissented  
Justice Chambers Dissented

## Chevron v. Central Puget Sound Growth Management Hearings Board, 156 Wn.2d 131 (2005)

In *Chevron*, the court concluded that Chevron's due process rights were not violated when two local governments designated Chevron's property for future annexation but did not provide individualized notice of the action to Chevron. AWB wrote an *amicus curiae* brief in this case.

**AWB disagrees with this decision.**

Justice C. Johnson Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Madsen Concurred  
 Justice Sanders Concurred  
 Justice Bridge Concurred  
 Justice Chambers Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred  
 Justice Jim Johnson Concurred

## Central Puget Sound Regional Transit Auth. v. Miller, \_\_\_ Wn.2d \_\_\_ (Feb. 16, 2006)

In *Miller*, the court concluded that the necessity of public use for eminent domain purposes was a legislative, rather than judicial, determination and entitled to substantial deference. The court also concluded that a public agency's notice of using eminent domain on its Web site, rather than specifically to the property owner, was adequate notice of the action.

**AWB disagrees with this decision.**

Justice Fairhurst Wrote Opinion  
 Justice Charles Johnson Concurred  
 Justice Madsen Concurred  
 Justice Bridge Concurred  
 Justice Owens Concurred  
 Chief Justice Alexander Wrote Dissent (as to notice issue only)  
 Justice Jim Johnson Wrote Dissent  
 Justice Sanders Dissented  
 Justice Chambers Dissented

## HTK Management LLC v. Seattle Monorail Authority, 155 Wn.2d 612 (2005)

In *HTK Management*, the court concluded that the Seattle Monorail Authority is authorized to exercise eminent domain over private property and that it was necessary to condemn a property owner's entire parcel of land to construct, maintain and operate a monorail station, despite fact that excess condemned land was to be resold to private developers at a profit to the public agency.

**AWB disagrees with this decision.**

Justice Madsen Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Bridge Concurred  
 Justice Chambers Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred  
 Justice Jim Johnson Wrote Dissent  
 Justice Sanders Dissented

## TAX AND FISCAL (4 Cases)

Case Name	Alexander	C. Johnson	Madsen	Sanders	J. Johnson	Bridge	Chambers	Owens	Fairhurst
AgriLink Foods v. Department of Revenue	+	+	+	+	NP	+	+	+	NP
Estate of Hemphill v. Department of Revenue	+	+	+	+	NP	+	+	+	NP
AWB v. Department of Revenue	-	-	-	-	-	-	-	-	NP
Advanced Silicon Materials v. Grant County	+	-	-	+	+	NP	+	-	-
<b>2004 Pro-Business Percentage:</b>	<b>88%</b>	<b>63%</b>	<b>75%</b>	<b>88%</b>	<b>NA</b>	<b>71%</b>	<b>75%</b>	<b>75%</b>	<b>NA</b>
<b>2006 Pro-Business Percentage:</b>	<b>75%</b>	<b>50%</b>	<b>50%</b>	<b>75%</b>	<b>50%</b>	<b>67%</b>	<b>75%</b>	<b>50%</b>	<b>0%</b>

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

### **Agrilink Foods Inc. v. Department of Revenue, 153 Wn.2d 392 (2005)**

In *Agrilink*, the court concluded that an ambiguous taxing statute should be construed in favor of the taxpayer and therefore that Agrilink qualified for a lower B&O tax rate for its manufacturing activities. AWB filed an *amicus curiae* brief urging the statutory interpretation adopted by the court.

**AWB agrees with this decision.**

Justice Owens Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred

### **Estate of Hemphill v. Department of Revenue, 153 Wn.2d 544 (2005)**

In *Hemphill*, the court concluded that the Department of Revenue exceeded its authority in collecting a state death tax beyond that allowed by federal law.

**AWB agrees with this decision.**

Justice C. Johnson Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred

### **Assoc. of Washington Business v. Department of Revenue, 155 Wn.2d 430 (2005)**

In *Association of Washington Business*, the court concluded that the Department of Revenue had statutory authority under the 1995 Regulatory Reform Act to promulgate interpretive regulations explaining sections of the tax code despite the department's erroneous representations that such regulations have the force and effect of law, which the lower court found misled the public.

**AWB disagrees with this decision.**

Justice Sanders Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Jim Johnson Concurred

### **Advanced Silicon Materials LLC v. Grant County, 156 Wn.2d 84 (2005)**

In *Advanced Silicon Materials*, the court concluded that Grant County could collect property taxes in excess of the fair market value of parcels because of the cyclical nature of its revaluation scheme occurring once every four years.

**AWB disagrees with this decision.**

Justice Fairhurst Wrote Opinion  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Owens Concurred  
Justice Jim Johnson Wrote Dissent  
Chief Justice Alexander Dissented  
Justice Sanders Dissented  
Justice Chambers Dissented

## WORKERS' COMPENSATION (3 Cases)

Case Name	Alexander	C. Johnson	Madsen	Sanders	J. Johnson	Bridge	Chambers	Owens	Fairhurst
Vallandigham v. Clover Park School Dist.	+	+	+	-	NP	+	-	+	+
Gallo v. L&I	+	+	+	+	NP	+	+	+	+
Gorman v. Garlock	+	+	+	+	+	+	+	+	+
2004 Pro-Business Percentage:	43%	29%	57%	14%	43%	57%	20%	60%	NA
2006 Pro-Business Percentage:	100%	100%	100%	67%	100%	100%	67%	100%	100%

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

### Vallandigham v. Clover Park School District, 153 Wn.2d (2005)

In *Vallandigham*, the court concluded that the statute allowing employees to sue employers outside of workers' compensation for injuries that are deliberately intended did not apply to allegations that the school district deliberately intended injury of a special education teacher by placing her in a classroom with a dangerous student.

**AWB agrees with this decision.**

Justice Bridge Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Madsen Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred  
 Justice Sanders Wrote Dissent  
 Justice Chambers Dissented

### Gallo v. Department of Labor and Industries, 155 Wn.2d 470 (2005)

In *Gallo*, the court concluded that the definition of "wages" for the purposes of time-loss benefits under workers' compensation does not include the cash value of fringe benefits beyond health and dental benefits and those similarly critical to basic health and survival and applicable at the time of injury. AWB submitted an *amicus curiae* brief in this case.

**AWB agrees with this decision.**

Justice Madsen Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Sanders Concurred  
 Justice Bridge Concurred  
 Justice Chambers Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred

### Gorman v. Garlock Inc., 155 Wn.2d 198 (2005)

In *Gorman*, the court concluded that maritime employees and their estates asserting workers' compensation claims for injuries and disease arising from asbestos exposure were not covered under workers' compensation because they were covered under the federal Longshoreman's Act.

**AWB agrees with this decision.**

Chief Justice Alexander Wrote Opinion  
 Justice Charles Johnson Concurred  
 Justice Madsen Concurred  
 Justice Sanders Concurred  
 Justice Bridge Concurred  
 Justice Chambers Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred  
 Justice Jim Johnson Concurred

## TORTS (Insurance, General Liability) (3 Cases)

Case Name	Alexander	C. Johnson	Madsen	Sanders	J. Johnson	Bridge	Chambers	Owens	Fairhurst
Mulcahy v. Farmers Insurance Co.	-	-	-	-	NP	-	-	-	-
Barrett v. Lucky Seven Saloon	-	-	+	+	NP	+	-	-	-
Joyce v. Department of Corrections	-	-	-	+	NP	+	-	-	+
2004 Pro-Business Percentage:	58%	50%	75%	36%	NA	58%	9%	55%	NA
2006 Pro-Business Percentage:	0%	0%	33%	67%	NA	67%	0%	0%	33%

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

### Mulcahy v. Farmers Insurance Co., 152 Wn.2d 92 (2004)

In *Mulcahy*, the court concluded that an insurance company could face trial for bad faith for denying a claim, despite reliance on a reasonable interpretation of the law on a legal issue of first impression in Washington, namely, an insurer's obligations under Canada's compulsory automobile insurance law for an accident occurring in Canada.

**AWB disagrees with this decision.**

Justice Chambers Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Madsen Concurred  
 Justice Sanders Concurred  
 Justice Bridge Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred

### Barrett v. Lucky Seven Saloon Inc., 152 Wn.2d 259 (2004)

In *Barrett*, the court concluded that the standard for vicarious liability for an establishment serving alcohol is broader than the "obviously intoxicated" standard and should be based on a subjective "apparently intoxicated" standard, thus broadening vicarious liability.

**AWB disagrees with this decision.**

Justice Owens Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Chambers Concurred  
 Justice Fairhurst Concurred  
 Justice Bridge Concurred in Part and Dissented in Part  
 Justice Sanders Dissented  
 Justice Madsen Dissented

### Joyce v. State Department of Corrections, 155 Wn.2d 306 (2005)

In *Joyce*, the court concluded that the state of Washington could be held liable for a death from an automobile accident allegedly arising from the negligent supervision of an offender under community supervision for assault and possession of stolen property, greatly expanding the potential liability of the state for supervision of offenders.

**AWB disagrees with this decision.**

Justice Chambers Wrote Opinion  
 Chief Justice Alexander Concurred  
 Justice Charles Johnson Concurred  
 Justice Madsen Concurred  
 Justice Owens Concurred  
 Justice Fairhurst Concurred in Part and Dissented in Part  
 Justice Sanders Concurred in Part and Dissented in Part  
 Justice Bridge Concurred in Part and Dissented in Part

## GENERAL BUSINESS (7 Cases)

Case Name	Alexander	C. Johnson	Madsen	Sanders	J. Johnson	Bridge	Chambers	Owens	Fairhurst
<i>Yousoufian v. Sims</i>	-	-	NP	+	NP	-	-	-	-
<i>Washington State Grange v. Locke</i>	-	-	-	+	NP	-	-	-	-
<i>Kitsap County v. Mattress Outlet/Gould</i>	+	-	-	+	NP	-	+	+	-
<i>Rufer v. Abbot Labs</i>	-	-	-	-	-	-	-	-	-
<i>Washington State Farm Bureau v. Reed</i>	-	-	-	+	+	-	+	-	-
<i>Coppernoll v. Reed</i>	+	+	+	+	+	+	+	+	+
<i>State ex rel. PDC v. WEA</i>	+	-	-	+	NP	-	-	-	+
<b>2004 Pro-Business Percentage:</b>	<b>67%</b>	<b>83%</b>	<b>100%</b>	<b>50%</b>	<b>NA</b>	<b>67%</b>	<b>50%</b>	<b>40%</b>	<b>NA</b>
<b>2006 Pro-Business Percentage:</b>	<b>43%</b>	<b>14%</b>	<b>17%</b>	<b>86%</b>	<b>67%</b>	<b>14%</b>	<b>43%</b>	<b>29%</b>	<b>29%</b>

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

### **Yousoufian v. Sims, 152 Wn.2d 421 (2004)**

In *Yousoufian*, the court concluded that under the Public Disclosure Act, the amount of fines that can be levied against a governmental agency for bad faith withholding of documents is limited in that fines do not apply per record withheld, but rather, apply per request the government does not comply with.

**AWB disagrees with this decision.**

Chief Justice Alexander Wrote Opinion  
Justice Charles Johnson Concurred  
Justice Bridge Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Chambers Concurred in Part and Dissented in Part  
Justice Sanders Wrote Dissent in Part

### **Washington State Grange v. Locke, 153 Wn.2d 475 (2005)**

In *Grange*, the court concluded that the governor properly vetoed legislation allowing for “top-two” style primary election, thus putting in place a “Montana-style” primary despite the fact the resulting bill after veto apparently contained a subject not in the title of the bill.

**AWB disagrees with this decision.**

Justice Bridge Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Sanders Wrote Dissent

### **Kitsap County v. Mattress Outlet/Gould, 153 Wn.2d 506 (2005)**

In *Mattress Outlet*, the court concluded that ordinances prohibiting certain signage methods for advertising by small businesses violated the business’ free speech rights because they were unconstitutionally vague and overbroad.

**AWB agrees with this decision.**

Justice Sanders Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Chief Justice Alexander Concurred  
Justice Madsen Wrote Dissent  
Justice Charles Johnson Dissented  
Justice Bridge Dissented  
Justice Fairhurst Dissented

### Rufer v. Abbot Laboratories, 154 Wn.2d 530 (2005)

In *Rufer*, the court concluded that the proper standard for sealing confidential, proprietary corporate information produced during discovery and part of a court case but not used at trial is a “compelling interest” standard in sealing the documents rather than a “good cause shown” standard.

**AWB disagrees with this decision.**

Justice Fairhurst Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Jim Johnson Concurred

### Washington State Farm Bureau v. Reed, 154 Wn.2d 668 (2005)

In *Washington State Farm Bureau*, the court concluded that the Legislature properly used an emergency clause to exempt from referendum power a bill temporarily abrogating the requirement that any legislative action to raise state revenue be passed by a two-thirds vote of each house. AWB filed an *amicus curiae* brief in this case.

**AWB disagrees with this decision.**

Justice C. Johnson Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred  
Justice Sanders Wrote Dissent  
Justice Jim Johnson Wrote Dissent

### Coppernoll v. Reed, 155 Wn.2d 290 (2005)

In *Coppernoll*, the court concluded that Initiative 330 (regarding medical malpractice reform) could properly go to the ballot and was within the scope of the right of initiative.

**AWB agrees with this decision.**

Justice Jim Johnson Wrote Opinion  
Chief Justice Alexander Concurred  
Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Sanders Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Fairhurst Concurred

### State ex rel. Public Disclosure Commission v. Washington Education Association, \_\_\_ Wn.2d \_\_\_ (March 16, 2006)

In *Washington Education Association*, the court concluded that the provision of Initiative 134 requiring an opt-in provision under which non-members of a union must affirmatively authorize union’s use of non-members’ agency shop fees for political purposes violates the First Amendment by burdening the union’s free speech rights.

**AWB disagrees with this decision.**

Justice Charles Johnson Concurred  
Justice Madsen Concurred  
Justice Bridge Concurred  
Justice Chambers Concurred  
Justice Owens Concurred  
Justice Sanders Wrote Dissent  
Chief Justice Alexander Dissented  
Justice Fairhurst Dissented



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