

WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES DECEMBER 2023

The cases listed below will be heard in the Supreme Court Hearing Room, 231 East, State Capitol. The cases listed below originated in the following counties:

Waukesha

Door

TUESDAY, December 19, 2023

9:45 a.m.	2022AP13	Amazon Logistics, Inc. v. Labor and Industry Review Commission, et al.
11:00 a.m.	2021AP1589	Sojenhomer LLC v. Village of Egg Harbor

Note: The synopses provided are not complete analyses of the issues presented. The Supreme Court calendar may change between the time you receive it and when a case is heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at (608) 266-1880. If your news organization is interested in providing any type of camera coverage of Supreme Court oral argument, you must contact the Public Information Office of the Wisconsin Court System at communications@wicourts.gov.

WISCONSIN SUPREME COURT

December 19, 2023

9:45 a.m.

2022AP13

Amazon Logistics, Inc. v. Labor and Industry Review Commission, et al.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison) that reversed the Waukesha County Circuit Court order, Judge Michael O. Bohren, presiding, and affirmed the determination of the Labor and Industry Review Commission.

This case concerns the employment status of 1,000 individual "delivery partners" Amazon Logistics (Amazon) contracted with to provide delivery services through a smartphone application. Similar to GrubHub or Uber drivers, these individuals used Amazon's "Flex" smartphone app to select "blocks" of packages that the individuals would pick up from one of Amazon's distribution centers in Milwaukee and deliver for a set fee, using their personal vehicles. The case also concerns application of Wisconsin's independent-contractor test to the emerging "gig economy" where individuals often use their personal vehicles and smartphones to perform services for multiple companies in different industries and service sectors using web applications as opposed to traditional independent contractors who provide a set, discrete service. Wisconsin's independent-contractor test lists nine factors that are used to support classifying an individual as an independent contractor. Proof of at least six of the nine factors is required to support a determination of independent-contractor status. See Wis. Stat. § 108.02(12)(bm)2.

Following an audit of Amazon's Flex program during the years 2016 through 2018, the Department of Workforce Development (the Department) concluded that Amazon inappropriately classified these individual delivery partners as independent contractors rather than employees. The Department ordered Amazon to pay over \$200,000 in delinquent unemployment insurance taxes with related penalties and interest.

Amazon appealed the Department's audit determination. The Department held an evidentiary hearing before an administrative law judge, who concluded that the Department properly classified the delivery partners as employees pursuant to Wis. Stat. § 108.02(12). Amazon appealed to the Labor and Industry Review Commission (LIRC) and LIRC concluded that Amazon demonstrated only one of the nine factors for independent-contractor status and therefore failed to meet its burden to prove its delivery partners were not employees under § 108.02(12). Amazon sought judicial review with the Waukesha County circuit court. The circuit court reversed LIRC's determination, concluding that Amazon established that its delivery partners met all nine factors of the independent-contractor test.

LIRC and the Department appealed to the court of appeals. The court of appeals reversed the circuit court's decision. The court of appeals concluded that Amazon established only five of the nine factors under the independent contractor test, thereby affirming LIRC's determination. Amazon filed a petition for review with the Wisconsin Supreme Court and this court accepted the case for review.

The issues for this court to decide are:

1. Whether the Court of Appeals erred in construing three distinct statutory conditions for determining independent-contract status under Wis. Stat. §

108.02(12)(bm)2 to collapse into one in the context of gig workers in the modern economy.

2. Whether the Court of Appeals erred in deferring to LIRC's legal conclusions about whether evidence was admissible and sufficient to satisfy Amazon Logistics' burden of proof.

3. Whether the Court of Appeals erred in holding that Amazon Logistics was required to present evidence about each of the 1,000-plus workers at issue during the single-day hearing set for its appeal of the underlying unemployment benefits determination.

WISCONSIN SUPREME COURT

December 19, 2023

11:00 a.m.

2021AP1589 Sojenhomer LLC v. Village of Egg Harbor

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau) that reversed the Door County Circuit Court order, Judge David L. Weber presiding, that had granted the Village of Egg Harbor's motion for summary judgment.

Sojenhomer LLC owns a parcel of real property in the Village of Egg Harbor located where County Highway G and State Highway 42 converge. Sojenhomer's property is home to the Shipwrecked Brew Pub and Restaurant. Beginning in about 2015, the Village began discussing safety improvements to Highway G which largely focused on installing a sidewalk. The Village retained the services of an engineering firm to determine what improvements could be made to Highway G and Highway 42. The engineering firm summarized several deficiencies with Highway G that were "safety issues."

The Village, in conjunction with the engineering firm, developed a plan to address these deficiencies. The plan proposed that Highway G be "urbanized with [a] storm sewer," that parking be limited to one side of the road, that a sidewalk be constructed on the east side of the road—the side on which Sojenhomer's property sits—and that decorative street lighting be installed on both sides of the road. The Village eventually reached an agreement with Door County to share some of the costs of the proposed project on Highway G. The County had planned to mill and resurface Highway G in 2018 or 2019, but decided to delay those improvements to coincide with the Village's reconstruction of the road. The Village subsequently issued a relocation order pursuant to Wis. Stat. § 32.05, authorizing the Village to acquire certain real estate to complete the proposed improvements.

In February 2020, the Village sent Sojenhomer a "written offer [of \$19,500] to purchase fee title to 0.009 acres of additional right of way and a temporary limited easement of 0.071 acres of [Sojenhomer's property]." The offer explained that the land was "needed for [the] Village[s] . . . right of way reconstruction of [Highway G]." In response, Sojenhomer obtained an appraisal of the Village's proposed acquisition and temporary limited easement; the appraisal valued Sojenhomer's loss at \$57,500. The Village, in turn, served Sojenhomer with a jurisdictional offer for \$38,500, nearly double the amount of money originally offered, but Sojenhomer rejected that offer.

In August 2020, Sojenhomer filed this lawsuit in Door County circuit court, seeking to enjoin the Village from acquiring the desired portion of Sojenhomer's property through condemnation. Sojenhomer alleged that the Village was seeking to condemn its property to construct a sidewalk on the east side of Highway G. Sojenhomer further alleged that "[t]he Village's condemnation of [its] property is only necessary to construct a sidewalk," and, therefore, the Village's condemnation "is in violation of Wis. Stat. § 32.015."

The parties filed cross-motions for summary judgment, and the circuit court granted the Village's motion. The court stated that "if [a sidewalk] is [a pedestrian way], then the Village may not obtain the Sojenhomer property by eminent domain because there's really no question that the area that they took from Sojenhomer was used for a sidewalk." The court nevertheless concluded

that "a sidewalk is not a pedestrian way," and, therefore, Wis. Stat. § 32.015 did not prohibit the Village from condemning Sojenhomer's property.

Sojenhomer appealed to the court of appeals, successfully. The court of appeals reversed the circuit court's order and remanded for further proceedings. In sum, the court of appeals held that the Village used the power of condemnation to acquire Sojenhomer's property to establish a pedestrian way in violation of Wis. Stat. §§ 32.015 and 61.34(3)(b), and summary judgment should have therefore been granted in Sojenhomer's favor.

The Village petitioned the Wisconsin Supreme Court to review the court of appeals' decision, and this court granted the petition.

The issue before this court is:

Do the recently enacted prohibitions on condemnation for "pedestrian ways" set forth in Wis. Stat. § 32.015 and Wis. Stat. § 61.34(3)(b), prohibit Wisconsin municipalities from exercising their condemnation powers pursuant to Wis. Stat. § 61.34(3)(a), to widen and reconstruct a road when a sidewalk will be located within the right-of-way?