

November 3, 2009

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **November 3, 2009**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2006AP948	<u>Jackson v. Buchler</u> Was the petitioner denied a fair and impartial decision maker in violation of due process and equal protection of law under the Fifth and Fourteenth Amendments to the United States Constitution and Art. I, § 9 of the Wisconsin Constitution? Did the petitioner fail to exhaust his administrative remedies concerning his claim that he was unconstitutionally denied the opportunity to review a videotape, and if he has failed to exhaust his administrative remedies, may the court nonetheless decide the issues set forth in the petition for review and listed below? See Wis. Stat. § 801.02(7)(b); Wis. Admin. Code § DOC 310.05; State ex rel. Hensley v. Endicott, 2001 WI 105, 245 Wis. 2d 607, 629 N.W.2d 686; State ex rel. Smith v. McCaughtry, 222 Wis. 2d 68, 586 N.W.2d 63 (Ct. App. 1998); Santiago v. Ware, 205 Wis. 2d 295, 556 N.W.2d 356 (Ct. App.), rev. denied, 207 Wis. 2d 284, 560 N.W.2d 273 (1996). Does the obligation of governmental authorities to produce exculpatory information, as set forth in Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, apply to all or some prison disciplinary proceedings, and, in particular, to the disciplinary proceeding against the petitioner? See, e.g., Wolff v. McDonnell, 418 U.S. 539 (1974); Piggie v. Cotton, 344 F.3d 674 (7 th Cir. 2003); State ex rel. Ortega v. McCaughtry, 221 Wis. 2d 376, 585 N.W.2d 640 (Ct. App. 1998). If there is an obligation on governmental authorities to produce potentially exculpatory information, what should be the process for determining whether the information sought is exculpatory and what should be the remedy for the failure to produce it? Was the petitioner deprived of due process and equal protection of the law under the Fifth and Fourteenth Amendments to the United States Constitution and Art. I, § 9 of the Wisconsin Constitution when he was denied the right to obtain a videotape that he contends is exculpatory evidence? Was the petitioner deprived of due process and equal protection when there was insufficient evidence of his guilt, as he contends?	04/14/2009 REVW Oral Arg 12/01/2009	4 Dane	12/13/2007 Unpub

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2006AP1811-CR	<u>State v. Patrick C. Carter</u> Is a defendant who is arrested in another state on both a violation of the other state's criminal law and a Wisconsin-issued fugitive warrant based on pending criminal charges entitled to sentence credit on a concurrent sentence for the time spent in custody in the other state after arrest and before sentencing on the other state's conviction?	03/18/2008 REVW Oral Arg 10/21/2009	1 Milwaukee	12/19/2007 Pub 2007 WI App 255 743 N.W.2d 700
2007AP477	<u>William N. Ehlinger v. Jon A. Hauser and Evald Molding, Inc.</u> Does Restatement (Second) of Contracts § 204 permit the trial court to supply a term to resolve an ambiguity that has no terms omitted and is not indefinite? Do generally acceptable accounting principles (GAAP) require supporting documentation to determine book value? May the trial court seek a professional opinion without following statutory due process requirements for either referees or court appointed experts? Is the cross-petition's challenge to the use of corporate assets to pay one shareholder's litigation expenses independent of the petition's challenge to the trial court's contract interpretation and dissolution of the company of which the parties were shareholders? Was the "special magistrate" appointed by the trial court as a referee or as an expert witness?	02/10/2009 REVW Oral Arg 09/15/2009	4 Jefferson	7/24/2008 Pub 2008 WI App 123 758 N.W.2d 476
2007AP795	<u>State v. Aaron Antonio Allen</u> Where a defendant fails to raise a potential claim in response to a no-merit report, what additional showing, if any, is necessary to constitute "sufficient reason" authorizing that defendant to raise the claim in a subsequent motion under Wis. Stat. §974.06? Does requiring a defendant to respond to a no-merit report with arguable claims that were overlooked by appointed counsel and barring the defendant from ever raising any claim not so raised, conflict with the right to counsel on direct appeal?	03/18/2009 REVW	1 Milwaukee	03/25/2008 Unpub
2007AP1253	<u>Brunton v. Nuvel Credit Corp.</u> In a case arising out of a consumer credit transaction, when is a Defendant deemed to have waived a challenge of improper venue under Wis. Stat. § 431.401 – the Wisconsin Consumer Act's venue provision?	04/14/2009 REVW Oral Arg 10/13/2009	4 Dane	12/30/2008 Pub 2009 WI App 3

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2007AP1378-CR	<u>State v. Jermichael James Carroll</u> Was the trial court's finding that the defendant was not under arrest at the time a police officer searched his cell phone incorrect as a matter of law where there is no evidence the defendant was told that he was under arrest and where the only undisputed basis for arrest was two non-criminal traffic violations (speeding and driving with a suspended license) and where the defendant had been handcuffed and placed in a squad car? Where it would not be illegal to place a citizen under arrest for non-criminal traffic violations, may a police officer conduct a warrantless search of the memory of the citizen's cell phone or other personal information device as part of a search incident to arrest? If the warrantless search of the photo menu of the cell phone was invalid, was the subsequent search of the cell phone under warrant nevertheless lawful?	02/10/2009 REVW Oral Arg 09/15/2009	1 Milwaukee	10/28/2008 Pub 2008 WI App 161
2007AP1868	<u>Johnson Controls, Inc. v. London Market</u> Should a duty to defend be imported from an underlying umbrella insurance policy into an excess umbrella liability policy by language in the excess policy stating that it is subject to the same terms, definitions, exclusions and conditions as the underlying policy "except as otherwise provided"? Is the excess liability carrier's duty to defend primary in nature, such that it may be triggered even if the excess policy expressly requires exhaustion of the underlying policy as a precondition to liability and the underlying policy has not been exhausted?	04/14/2009 CERT	1 Milwaukee	---
2007AP1898-CR	<u>State v. Richard M. Fischer</u> Were the defendant's constitutional rights to a defense, a fair trial, and due process violated when exculpatory expert opinions were excluded pursuant to Wis. Stat. § 343.303? Under Wisconsin law, is the trial court empowered to keep out expert opinion evidence for "invalidity," when the evidence is relevant and the expert properly qualified?	02/10/2009 REVW Oral Arg 10/13/2009	2 Ozaukee	09/10/2008 Pub 2008 WI App 152

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2007AP2651	<u>Pawlowski v. American Family Mut. Ins. Co</u> Was the defendant a "keeper" of the dog who bit the plaintiff and therefore subject to liability under Wis. Stat. § 174.02 at the time of the plaintiff's injury where the dog's owner had control of the animal? Does public policy dictate against finding the defendant liable for the injuries inflicted by the dog where the dog was still under the control of its legal owner at the time it bit the plaintiff?	03/17/2009 REVW Oral Arg 10/13/2009	2 Winnebago	01/28/2009 Pub 2009 WI App 7
2007AP2711-CR	<u>State v. Donald J. McGuire</u> Whether the statute of limitations tolling provision of Wis. Stat. § 939.74 (1) (1966 – 69) for any time when the defendant "was not publicly a resident within the state," as applied to this case, violated either the defendant's right to equal protection and due process or the privileges and immunity clauses of the United States Constitution. Whether a 36-year delay in filing criminal charges violates a defendant's right to due process in relation to the statute of limitations. Whether reversal in the interests of justice under Wis. Stat. § 751.06 due to the delay in filing charges is an appropriate remedy.	09/10/2009 REVW Oral Arg 01/05/2010	2 Walworth	06/30/2009 Unpub
2007AP2791	<u>Admanco, Inc. v. 700 Stanton Drive, LLC</u> Is a beneficiary of a letter of credit from a bank which holds a general business security agreement on all of the debtor's property a "secured creditor" as that term is defined under Wis. Stat. § 128.25 (1) and therefore outside the purview of Wis. Stat. ch. 128? Is there a violation of the "independence principle" of Wis. Stat. § 405.103 and common law governing letters of credit in allowing an action against the beneficiary of a letter of credit arising out of the issuer's enforcement of its security interest against the debtor's estate?	09/10/2009 REVW Oral Arg 01/05/2010	2 Fond du Lac	05/27/2009 Pub 2009 WI App 57 768 N.W.2d 32

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2007AP2827-CRAC	<u>State v. Corey Kleser</u> Does Wis. Stat. § 970.032 (reverse waiver statute) require that any evidence concerning the facts of a crime be introduced only at a preliminary hearing (or in a criminal complaint if a preliminary hearing is waived)? Is expert testimony at a reverse waiver hearing by a psychologist concerning a juvenile defendant's version of the events underlying the alleged offenses inadmissible under the hearsay rules, and may a circuit court substantively rely on such testimony regarding the underlying facts? Did the circuit court err in relying on a defense psychologist's opinion regarding the circumstances of an alleged offense by a juvenile? Did the psychologist's testimony constitute an opinion regarding the truthfulness of the juvenile's statements concerning the facts of an alleged offense? May a circuit court consider the full testimony of a defense psychologist regarding a juvenile's statements concerning the facts of an alleged offense, after prohibiting the state's psychological expert witness from interviewing the juvenile defendant regarding the facts of the relevant incidents?	07/15/2009 REVW Oral Arg 11/11/2009	1 Milwaukee	04/29/2009 Pub 2009 WI App 43
2007AP2861	<u>Racine County v. Oracular Milwaukee, Inc.</u> Is expert testimony required to prove a breach of contract claim based on timely completion/delay when a contract involves complex interdependent bilateral performance? What is the proper analysis/criteria for determining whether something is considered a "profession" under Wisconsin law? Are persons providing computer software programming services relating to customized software considered "professionals" under Wisconsin law?	08/17/2009 REVW Oral Arg 01/06/2010	2 Racine	04/08/2009 Pub 2009 WI App 58 767 NW2d 280
2008AP10	<u>Solowicz v. Forward Geneva National</u> Has Wisconsin law changed so that a clear and specific restrictive covenant need not be reasonable? May a restrictive covenant governing condominiums create developer control exceeding that allowed by Wisconsin's Condominium Act? Are the restrictive covenant's terms, which have been redefined outside the restrictive covenant, ambiguous? Is a provision granting a developer unlimited control over condominiums reasonable under Wisconsin law?	04/14/2009 REVW Oral Arg 09/18/2009	2 Walworth	12/23/2008 Pub 2009 WI App 9

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2008AP52	<u>State v. Daniel Arends</u> Did the Court of Appeals correctly interpret legislative intent in adopting new language in Wis. Stat. § 980.09, "when it held that the standard for granting a discharge trial had not changed despite the legislature's selection of language new and different from the language of repealed Wis. Stat. § 980.09(2)(2003-04)"? Does Wis. Stat. § 980.09 allow a circuit court to deny a petition for discharge without a hearing if, after weighing all the information presented, it concludes that the petition has not alleged sufficient facts to support the conclusion that the petition showed a change in his condition or his dangerousness?	02/10/2009 REVV Oral Arg 09/11/2009	2 Washingtn	11/19/2008 Pub 2008 WI App 184
2008AP552-CR	<u>State of Wisconsin v. Scott Jensen</u> Do the provisions of Wis. Stat. § 971.19(12), governing transfer of venue, apply where the duties the defendant had been charged with violating in his capacity as a public officer were found in various places, including the elections and ethics statutes?	06/16/2009 REVV Oral Arg 11/10/2009	4 Dane	01/15/2009 Pub 2009 WI App 26 762 N.W.2d 833
2008AP652-CR	<u>State v. Jim H. Ringer</u> Under the court's ruling in <u>State v. DeSantis</u> , 155 Wis. 2d 774, 456 N.W.2d 600 (1990), what is the necessary threshold to show that a victim's previous rape allegations were untruthful? May a prior untruthful allegation of sexual assault be proven by extrinsic evidence under <u>State v. Rognrud</u> , 156 Wis. 2d 783, 457 N.W.2d 573 (Ct. App. 1990)? Did the State waive its right to raise the issue regarding proof by extrinsic evidence?	09/24/2009 REVV	3 Barron	07/29/2009 Unpub
2008AP658-CR	<u>State v. Michael A. Sveum</u> Does a warrantless placement of a Global Positioning System (GPS) tracking device on a vehicle and its subsequent 24-hour monitoring of the vehicle's location on public roads by police violate the Fourth Amendment to the United States Constitution? Does the Wisconsin Electronic Surveillance Control Law (Wis. Stat. §§ 968.27 - .37) require judicial approval for the police to place a GPS tracking device on a vehicle to record its travel?	10/13/2009 REVV	4 Dane	06/30/2009 Pub 2009 WI App 81 769 N.W.2d 53

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2008AP697-CR	<u>State of Wisconsin v. Dimitri Henley</u> Is the circuit court permitted to grant a new trial in the interest of justice under Wis. Stat. § 805.15(1) without time limit? If it is not so permitted, does the circuit court have inherent authority to grant this relief? If it does not, may the Court of Appeals use its power of discretionary reversal under Wis. Stat. §752.35 to reach back to the original judgment of conviction and grant the same relief? If it may not, does the Court of Appeals have inherent authority to grant such relief? If it does not, should the Supreme Court exercise its inherent authority to grant relief in this case?	02/10/2009 CERT Oral Arg 10/20/2009	4 Jefferson	---
2008AP755-CR	<u>State v. Joshua D. Conger</u> What is the trial court's scope of review when deciding whether to accept or reject a plea agreement? What factors must a trial court consider when determining whether a plea agreement is in the public interest? May a trial court take into account the view of law enforcement when considering the public's interest in a plea agreement?	08/17/2009 CERT Oral Arg 12/01/2009	2 Fond du Lac	---
2008AP787	<u>Francis Groshek v. Michael Trewin</u> May punitive damages be awarded to a plaintiff who sought and obtained equitable relief? Does an attorney owe a fiduciary duty to former clients when negotiating and entering into a transaction with them, when they are represented by independent successor counsel, and allegedly have sought out the transaction and initiated negotiations?	08/17/2009 REVW	4 Portage	03/26/2009 Unpub

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2008AP810-CR	<u>State v. Landray M. Harris</u> Do comments suggesting a circuit court considered a defendant's race at sentencing provide an independent basis for vacating a sentence? Or must defendants continue to establish that a circuit court actually relied on irrelevant or improper factors like race? If comments suggesting that a circuit court considered race at sentencing provide an independent basis for vacating sentences, what would a defendant need to prove to succeed? If comments suggesting that a circuit court considered race at sentencing provide an independent basis for vacating sentences, what standard of review would apply? If comments suggesting that a circuit court considered race at sentencing provide an independent basis for vacating sentences, must a defendant contemporaneously object to comments to preserve the right to raise the new resentencing claims?	05/13/2009 REVW Oral Arg 10/20/2009	1 Milwaukee	01/21/2009 Unpub
2008AP880-CR	<u>State v. Robert Lee Artic, Sr.</u> In the warrantless invasion of the defendant's curtilage, were the creation of claimed exigent circumstances and forced entry sufficiently attenuated from any illegality to render the defendant's consent to search valid? Should the Supreme Court adopt a per se rule barring the fruits of any search or seizure where police manufacture exigent circumstances?	02/10/2009 REVW Oral Arg 09/11/2009	1 Milwaukee	12/09/2008 Pub 2009 WI App 12
2008AP912	<u>Bank Mutual v. S.J. Boyer Construction, Inc.</u> Does a commercial mortgage holder's exercise of the right to obtain a shortened redemption period under § 846.103(2) require it to forfeit rights against a guarantor of payment because the guarantor is a "... party who is personally liable for the debts secured by the mortgage" under the statute? Can a guarantor of payment contractually waive an objection to, and consent to, a mortgage holder's election under § 846.103(2) such that all rights against the guarantor are retained?	04/14/2009 REVW Oral Arg 10/20/2009	3 Brown	12/23/2008 Pub 2009 WI App 14

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*2008AP919	<u>James Zarder, et al. v. Acuity, et al.</u> Does a policy of insurance mandate uninsured motorist coverage for an alleged "hit-and-run" accident involving an unidentified motor vehicle and an insured where there is no "run," as that term is understood in the context of Wis. Stat. § 632.32 (4)? When an insurance policy covers "hit-and-run" as part of an uninsured motorist provision and the policy does not define the term, does "run" mean to flee without stopping? Does <u>Hayne v. Progressive Northern Ins. Co.</u> , 115 Wis. 2d 68, 339 N.W.2d 588 (1983) provide a binding legal definition of "run"?	10/20/2009 REVW	2 Waukesha	03/25/2009 Pub 2009 WI App 34 316 Wis. 2d 573 765 N.W.2d 839
2008AP921	<u>E-L Enterprises, Inc. v. Milwaukee Metropolitan Sewerage District</u> Does a private landowner own the groundwater under its land such that the government's use of groundwater under neighboring land constitutes a "taking"? Is a building owner entitled to relief on a takings claim if the government's use of groundwater caused reparable foundation damage but did not deprive the owner of all economically beneficial or productive use of its property? Was the District's use of groundwater an "occupation" of E-L's property, entitling E-L to recover litigation expenses and attorney fees on an inverse condemnation claim under Wis. Stat. § 32.10? What is the applicability of the provisions regarding takings of property in the United States Constitution?	05/12/2009 REVW Oral Arg 10/21/2009	1 Milwaukee	12/23/2008 Pub 2009 WI App 15 763 NW2d 231
2008AP967-AC	<u>Schill v. Wisconsin Rapids School District</u> Are the personal e-mails of public employees that are maintained on publicly owned computers "records" under Wis. Stat. § 19.32(2) [the public records law]? Even if the personal e-mails of public employees maintained on publicly owned computers are "records" under the public records law, is the presumption favoring disclosure of public records overcome by the public interest in protecting the privacy and reputational rights of citizens?	06/16/2009 CERT Oral Arg 11/10/2009	4 Wood	---
2008AP1011-CR	<u>State v. James W. Smith</u> Does Wis. Stat. § 801.54, which requires persons convicted of non-sexual crimes to register as sex offenders, violate the substantive due process and equal protection clauses of the United States and Wisconsin constitutions?	03/18/2009 REVW Oral Arg 09/15/2009	3 Brown	12/16/2008 Pub 2009 WI App 16

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2008AP1185-CR	<u>State v. Michael James Carter</u> Did the court of appeals improperly remand to the circuit court for further proceedings on the defendant's claim that his trial counsel was ineffective for not seeking to introduce evidence that the defendant's sexual assault victim was previously assaulted by another person when the defendant failed to show exactly what counsel should have done to uncover evidence of the prior incident and that evidence of the assault would have been admissible?	07/01/2009 REVW Oral Arg 11/03/2009	1 Milwaukee	03/12/2009 Unpub
2008AP1204-CR	<u>State v. Juiquin A. Pinkard</u> Whether a warrantless search of a defendant's residence falls within the "community caretaker" exception (discussed in <u>State v. Kramer</u> , 2009 WI 14, 315 Wis.2d 414, 759 N.W.2d 598) to the guarantees against unreasonable search and seizure found in the Fourth and Fourteenth Amendments to the U.S. Constitution and Article I Section 11 of the Wisconsin Constitution.	09/11/2009 REVW Oral Arg 01/07/2010	1 Milwaukee	05/27/2009 Unpub
*2008AP1324	<u>Kevin Blum, Jr. v. 1st Auto & Casualty Ins. Co.</u> Whether an insured motorist is entitled to uninsured motorist coverage when he/she is seriously injured by a vehicle that meets the policy definition of "uninsured motor vehicle" and satisfies all of the conditions for coverage set forth in the policy, but the operator of the vehicle possesses insurance. Whether uninsured motorist coverage should be determined by the ordinary meaning of the terms and definitions set forth in an insurance policy or limited by the court's interpretation of the minimum coverage required by Wis. Stat. § 632.32 (4) (<u>See Hull v. State Farm Mutual Automobile Ins. Co.</u> , 222 Wis. 2d 627, 586 N.W.2d 863 (1998)). Whether a Court of Appeals' decision possesses precedential value after the decision is overruled by the supreme court and the court expressly declines to limit the decision to its facts (<u>See Hemerley v. American Family Mut. Ins. Co.</u> , 127 Wis. 2d 304, 379 N.W.2d 860 (Ct. App. 1985) and <u>Hull v. State Farm Mutual Automobile Ins. Co.</u> , <u>supra</u>). Whether an ambiguous insurance policy should be construed in favor of the insured or construed in favor of the drafter.	10/20/2009 REVW	4 Sauk	01/28/2009 Pub 2009 WI App 19 315 Wis. 2d 822 762 N.W.2d 819

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2008AP1385	<u>Volvo Trucks North America v. State of Wisconsin DOT</u> Did the Division of Hearings and Appeals err as a matter of law by failing to define the term "cure" found in Wis. Stat. § 218.0116(1)(i) by its common and ordinary meaning? Can activities that occurred almost one year after the cure period ended be considered part of cure under Wis. Stat. § 218.0116(1)(i)? Does a motor vehicle dealer that materially breached its dealer agreement fail to cure its material breaches as a matter of law under Wis. Stat. § 218.0116(1)(i) by continuing both during and after the cure period has ended with the same conduct that caused the material breach?	05/13/2009 REVV Oral Arg 01/07/2010	3 Marathon	01/06/2009 Unpub
2008AP1521-CR	<u>State v. Rashaad A. Imani</u> Whether a remand for a new trial or for a retrospective evidentiary hearing is the appropriate remedy following a circuit court's omission to conduct a self-representation colloquy under <u>State v. Klessig</u> , 211 Wis. 2d 194, 564 N.W.2d 716 (1997).	09/24/2009 REVV	2 Waukesha	07/29/2009 Pub 2009 WI App 98
*2008AP1546	<u>Robert D. Konneker v. Robert S. Romano, et al.</u> On a motion for summary judgment, can the circuit court find that riparian rights, including the right to install a pier, were granted by an easement, where the easement was silent as to riparian rights; where there is no evidence of the original parties' intent with regard to the scope of the easement; where there was no pier located on the easement, but there were piers located on the riparian servient estate which were used by prior easement holders; and where there is evidence that the primary use of the lake-access on which the easement lies is to enter the lake by boat? Whether Wis. Stat. §§ 30.131 and 30.133 apply, and if so, what is the impact of those statutory sections on the issues in this case; see <u>Wendt v. Blazek</u> , 2001 WI App 91, 242 Wis. 2d 722, 626 N.W.2d 78 <u>rev. denied</u> , 2001 WI 88, 246 Wis. 2d 168, 630 N.W.2d 221; <u>Ellingsworth v. Swiggum</u> , 195 Wis. 2d 142, 536 N.W.2d 112, <u>rev. denied</u> , ___ Wis. 2d ___, 537 N.W.2d 572 (1995).	10/20/2009 REVV	2 Green Lake	04/29/2009 Unpub
2008AP1684	<u>Milwaukee Symphony Orchestra v. Wisconsin Dept. of Revenue</u> Does the term "entertainment" as used in Wis. Stat. § 77.52(2)(a)2. include the admission to a symphonic event, such as performed by the Milwaukee Symphony Orchestra?	08/17/2009 REVV Oral Arg 12/02/2009	4 Dane	04/16/2009 Pub 2009 WI App 69 767 NW2d 360

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2008AP1700	<u>Maryland Arms Limited Partnership v. Cari M. Connell</u> Can a landlord and tenant contractually agree to affix liability on a tenant for any property damage that, while caused by an act of the tenant, was not caused by the tenant's negligence or improper use of the leased premises?	09/24/2009 Oral Arg 01/06/2010	1 Milwaukee	06/30/2009 Pub 2009 WI App 87 769 N.W.2d 145
2008AP1703	<u>Dawn M. Sands v. Menard, Inc.</u> Must an employer/client's right to choose its general counsel yield to an arbitration award for reinstatement when neither the employer/client nor its former employee/general counsel had requested that remedy and when the attorney-client relationship is irretrievably broken?	09/10/2009 REVW Oral Arg 01/05/2010	3 Eau Claire	05/27/2009 Pub 2009 WI App 70 767 N.W.2d 332

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*2008AP1735	<u>Ash Park, LLC v. Alexander & Bishop, Ltd.</u>	10/20/2009 REVW	3 Brown	05/27/2009 Pub 2009 WI App 71 314 Wis. 2d 772 767 N.W.2d 614
	<p>May a seller of real estate seek both specific performance, as well as interest on the purchase price, without a requirement that it mitigate damages?</p> <p>What is the proper procedure that should accompany an order for specific performance by a buyer in a real estate transaction?</p> <p>a. May a circuit court unconditionally order a buyer to complete a real estate transaction, including paying the purchase price? Must the circuit court consider a buyer's ability to pay or any other particular factor before issuing such an order: If such an order is proper, is the circuit court obligated to establish a time frame within which the transaction must be completed? What results if the buyer does not complete the transaction as ordered?</p> <p>b. Alternatively, must the circuit court, as part of an order of specific performance, order that the property be sold at a judicial sale, or must a buyer who is subject to an order of specific performance make some showing in order to obtain an order for a judicial sale? Stated another way, should the "better practice" of ordering a judicial sale, as described in <u>Heins v. Thompson and Flieth Lumber Co.</u>, 165 Wis. 563, 163 N.W. 173 (1917), be a required course of action or simply a recommendation for the circuit court to consider in the exercise of its discretion?</p> <p>Does a seller of real estate have any duty to "mitigate" its harm at any point after a buyer has failed to complete a transaction as required by the parties' contract? If so, what actions must a seller take to "mitigate" its harm?</p> <p>Is a seller of real estate who obtains an order of specific performance against a buyer entitled to prejudgment and postjudgment interest? Does an award of interest depend on who has possession of the property? If an award of interest is proper generally, should there be a limit to the periods for which interest can be awarded? How should such a limit be determined?</p>			

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2008AP1868	<u>William C. McConkey v. J.B. Van Hollen</u> Was Article XIII, Section 13 of the Wisconsin Constitution, commonly known as the marriage amendment, enacted in violation of the single subject rule set forth in Article XII, Section 1 of the Wisconsin Constitution? Can a voter who would have voted the same way on each of two propositions included in a single ballot referendum claim to have personally suffered a direct injury by an alleged violation of the single subject rule?	05/12/2009 CERT Oral Arg 11/03/2009	4 Dane	---
*2008AP2028	<u>Barbara C. Grygiel v. Monches Fish & Game Club, Inc.</u> Does <u>Millen v. Thomas</u> , 201 Wis. 2d 675, 550 N.W.2d 134 (Ct. App. 1996) allow holders of appurtenant easements to expand the use of those easements to access other unrelated lands, subject to a post-use analysis concerning the degree of "burden"? Should there be a "home base" exception to allow an easement's scope and purpose be expanded to new non-dominant land, so long as the easement holder touches the dominant "home base" before going to the non-dominant lands, and the easement holder does not actually own the new lands?	10/22/2009 REVV	2 Washington	07/29/2009 Pub 2009 WI App 102 770 N.W.2d 749
2008AP3065/ 2008AP3066/ 2008AP3067	<u>Sheboygan County DH & HS v. Tanya M. B.</u> Whether Wis. Stat. § 48.355 requires the trial court to order the DH &HS to provide specific services in a CHIPS (Children In Protective Services) dispositional order aside from the Department's inherent duty to supervise the case, such that failure to do so render the order void. Whether the parents waived their right to challenge the form and validity of the CHIPS order by submitting to the court's jurisdiction for four years.	09/11/2009 REVV Oral Arg 12/08/2009	2 Sheboygan	05/27/2009 Unpub
2009AP3-CR	<u>State v. Travis Vondell Cross</u> Whether a defendant who plead guilty to a crime under the mistaken belief that he faced greater potential punishment than he actually faced is, upon postconviction motion, entitled to an automatic plea withdrawal under due process grounds or whether he must show that a plea withdrawal is necessary to correct a manifest injustice. Whether the Court of Appeals' holdings in <u>State v. Harden</u> , 2005 WI App 252, 287 Wis. 2d 871, 707 N.W.2d 173 and <u>State v. Quiroz</u> , 2002 WI App 52, 251 Wis. 2d 245, 641 N.W.2d 715 (petition for review denied) are in conflict.	07/15/2009 BYPA Oral Arg 12/01/2009	3 St. Croix	---

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2009AP136/ 2009AP137/ 2009AP138/	<u>Sheboygan County DH & HS v. William L.</u> Whether Wis. Stat. § 48.355 requires the trial court to order the DH &HS to provide specific services in a CHIPS (Children In Protective Services) dispositional order aside from the Department's inherent duty to supervise the case, such that failure to do so render the order void. Whether the parents waived their right to challenge the form and validity of the CHIPS order by submitting to the court's jurisdiction for four years.	09/11/2009 REVW Oral Arg 12/08/2009	2 Sheboygan	05/27/2009

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.