WISCONSIN SUPREME COURT
CALENDAR AND CASE SYNOPSES
NOVEMBER 2019

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

Burnett
Dane
Langlade
Marathon
Milwaukee

MONDAY, NOVEMBER 4, 2019

9:45 a.m.	17AP1962	Richard A. Mueller v. TL90108, LLC
10:45 a.m.	17AP2510	Antoinette Lang v. Lions Club of Cudahy Wisconsin, Inc.
1:30 p.m.	17AP2352	DSG Evergreen Family Limited Partnership v. Town of Perry

MONDAY, NOVEMBER 25, 2019

9:45 a.m.	17AP2217	Marathon County v. D. K.
10:45 a.m.	18AP145-FT	Langlade County v. D. J. W.
1:30 p.m.	18AP458	Emer's Camper Corral, LLC v. Western Heritage Insurance Co.

In addition to the cases listed above, the following cases are assigned for decision by the court on the last date of oral argument based upon the submission of briefs without oral argument:

18AP1263-D	Office of Lawyer Regulation v. Donald J. Harman
18AP540-D	Office of Lawyer Regulation v. Beth M. Bant

Note: The Supreme Court calendar may change between the time you receive these synopses and when a cases 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 media coordinator Stephanie Fryer at WISC-TV, (608) 271-4321. The synopses provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
November 4, 2019
9:45 a.m.

No. 2017AP1962 Richard A. Mueller v. TL90108, LLC

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), that reversed a Milwaukee County Circuit Court decision, Judge Rebecca F. Dallet[1] presiding, that dismissed the complaint filed by plaintiffs, Richard Mueller and Joseph Ford, III, who sought return of stolen property.

Wisconsin Statutes §§ 893.35 and 893.51 govern actions taken to recover personal property that was wrongfully taken or wrongfully detained, and to recover damages for the wrongful taking or detention. Both sections set a statute of repose barring anyone from prosecuting a lawsuit for wrongful taking or wrongful detention more than six years "after the cause of action accrues." What is at issue here is what constitutes the "cause of action" in such cases.

This case involves a classic, and very valuable, automobile——a 1938 Talbot Lago two-door coupe. Roy Leiske purchased the disassembled car in 1967, and spent the next 30 years restoring it. Leiske kept the Talbot Lago at his place of business, a warehouse in Milwaukee.

On the morning of March 4, 2001, Leiske arrived at the warehouse to find that the Talbot Lago had been stolen from the warehouse and that documents related to the car had also been taken. In the course of their ensuing investigation, Milwaukee Police Department Detectives learned that earlier on the morning of the theft, witnesses had seen two men load a truck at the warehouse. The detectives also discovered that the thieves had created forged and fraudulent documents in order to ship the car to Europe. The Talbot Lago, however, was not recovered.

Richard Mueller inherited Leiske's title to the car when Leiske passed away in 2005. Mueller subsequently sold a partial ownership interest in the car to Joseph Ford, III, a Florida attorney.

According to the petition seeking review in the Supreme Court, in 2015, TL90108, LLC ("TL") purchased the Talbot Lago from a seller in Europe through international auto brokers for $6.9 million. As part of the sale, it received an original certificate of title, as well as signed and notarized documents that purported to show that Mueller had sold the car to the European seller. In 2016, Mueller and Ford demanded that TL deliver the Talbot Lago to them as the rightful owners. TL refused to hand over the car.

In February 2017, Mueller and Ford (the "plaintiffs") filed a complaint against TL in Milwaukee County circuit court. Their complaint alleged a claim for replevin——the return——of the Talbot Lago and a declaratory judgment claim for a declaration of their rights to the car. TL filed a motion to dismiss on the ground that the plaintiffs' claims were time-barred under Wis. Stat. §§ 893.35 and 893.51. It asserted that the plaintiffs' claims had accrued in 2001, when the car had been stolen, and therefore that the six-year statute of repose had expired long before the lawsuit had been filed. The circuit court agreed and dismissed the plaintiffs' complaint. The plaintiffs appealed.

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[1] Having subsequently been elected to the Supreme Court, Justice Dallet will not be participating in the Supreme Court's review of this case.

The Court of Appeals reversed the dismissal and remanded the case to the circuit court for further proceedings. The Court of Appeals concluded that a wrongful detention is separate from a wrongful taking. It acknowledged that all takings involve a wrongful detention, but not all wrongful detentions involve a taking. The Court of Appeals determined that the statutes created two separate and distinct causes of action——a claim for conversion (i.e., wrongful taking) and a claim for wrongful detention——and that the same property can be converted by one party and wrongfully detained by another. The time at which the claim for conversion or wrongful detention accrues therefore, in the view of the Court of Appeals, depends on the nature of the alleged wrongful act by the particular defendant. While a claim for conversion accrues (i.e., comes into existence) at the time that the property is wrongfully taken, a claim for wrongful detention accrues when the defendant detains the property and the detention is wrongful. The Court of Appeals further concluded that in order for a detention to be wrongful, the owner of the property must demand its return and the defendant must refuse that demand.

Applying this interpretation to the facts in the present case, the Court of Appeals determined that the plaintiffs had pled a wrongful detention claim and that it was not time-barred. Specifically, it concluded that the alleged wrongful detention began when TL allegedly wrongfully detained the car after plaintiffs' had demanded its return. Because that refusal to return the car following the plaintiffs' demand occurred less than six years before the filing of the complaint to commence the lawsuit, it was not time-barred by Wis. Stat. §§ 893.35 or 893.51.

TL's petition asks this court to review a single issue:

> [W]hether the six-year repose provision contained in Sections 893.35 and 893.51 for wrongful taking, conversion, or detention can be revived after it has expired if the original owner demands possession from the current possessor on the theory that the current possessor is "wrongfully detaining" the property even though it was previously converted.

WISCONSIN SUPREME COURT
November 4, 2019
10:45 a.m.

2017AP2510 Antoinette Lang v. Lions Club of Cudahy Wisconsin, Inc.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), that reversed and remanded a Milwaukee County Circuit Court decision, Judge William Sosnay presiding, that granted summary judgment to Fryed Audio, LLC, and its insurer, State Farm Fire and Casualty Company, on the ground that Fryed Audio and its insurer were immune from the suit under Wis. Stat. § 895.52.

Wisconsin Statute § 895.52 provides "recreational immunity" to property owners and occupiers, and officers, employees and agents of any property owner or occupier, for any injury that might occur on the property when the property is being used for a public recreational activity. The Supreme Court took up a question of recreational immunity in Westmas v. Creekside Tree Service, Inc., 2018 WI 12, 379 Wis. 2d 471, 907 N.W.2d 68, and Roberts v. T.H.E. Insurance Co., 2016 WI 20, 367 Wis. 2d 386, 879 N.W.2d 492. According to the petitioners to the Supreme Court, the Court of Appeals applied the Westmas and Roberts decisions in this case, with the majority concluding that those decisions had narrowed the analysis of agency in the recreational immunity context to determining whether the owner or occupier had provided "reasonably precise specifications" to the purported agent and whether the injury-causing conduct had occurred when the purported agent was following the owner's or occupier's specific directions. This case therefore provides an opportunity for the Supreme Court to clarify whether the Westmas and Roberts decisions were intended to create a new, narrower legal framework for analyzing agency under the recreational immunity statute.

In 2012, the Lions Club of Cudahy Wisconsin, Inc., sponsored an outdoor community festival in Milwaukee County's Cudahy Park. The Lions Club contracted with various musical groups to play in the music tent at the festival. One of those groups was Rhythm Method, LLC. The contract between the Lions Club and Rhythm Method, LLC provided that the band would be responsible for its own sound and lights. Rhythm Method, LLC was made up of six members. One of the members of the band was itself a limited liability company, Fryed Audio, LLC, whose sole member was Steve Fry, a player in the band. The contract between the Lions Club and Rhythm Method, LLC bound all of that LLC's members, including Fryed Audio.

According to Fryed Audio's petition, the Lions Club set up the stage inside the tent and placed the temporary electric power outlets for the bands to use. The bands or their sound people were required to use the electrical outlets and to run cords from those outlets to the band's equipment on or near the stage. Fryed Audio, through Steve Fry, set up the band's sound equipment and laid down electrical cords from the electrical outlets placed by the Lions Club to the stage.

While walking near the music stage during the festival, Antoinette Lang tripped and fell over cords that had been laid down by Fryed Audio, resulting in personal injuries. In March 2014, Antoinette and her husband, Jim, sued the Lions Club, Rhythm Method, LLC, Fryed Audio, and various insurance companies. Their complaint alleged negligence by the defendants in placing electrical cords in a pedestrian area.

According to the Court of Appeals' decision, Fryed Audio and its insurer are the only remaining defendants in the case——all the other defendants were apparently found to be immune from liability due to recreational immunity. Fryed Audio moved for summary judgment on the ground that it was immune from negligence under the recreational immunity statute as well. The circuit court granted summary judgment in favor of Fryed Audio, concluding that it was immune from suit under Wis. Stat. § 895.52.

In a split decision, the Court of Appeals reversed and remanded for further proceedings. The majority applied the decisions in Westmas and Roberts and concluded that someone claiming to be an "agent" of a landowner or occupier for reasons of recreational immunity must show that they were "subject to reasonably precise control" under "reasonably precise specifications" by the principal. The majority held that Fryed Audio could not demonstrate that it was an agent of the Lions Club because the Court of Appeals did not see evidence in the record that Fryed Audio was following the owner's or occupier's "specific directions." Thus, because there was no specific directions, it concluded that the Lions Club had neither "controlled [n]or had the right to control the details of Fryed's work."

Court of Appeals Judge William Brash dissented with respect to whether Fryed Audio had been an agent of the Lions Club under the recreational immunity statute. The dissent noted there was no contract between Fryed Audio and either the Lions Club or Rhythm Method. Both of those parties, however, had been dismissed, presumably on the ground that they were immune under the recreational immunity statute. The dissent reasoned that Rhythm Method must have been found to have been immune due to its contract with the Lions Club, and since Fryed Audio had no contracts with anyone, Fryed Audio was present and working on the property solely based on the fact that Steven Fry, the member of Fryed Audio, was a member of the band. Since the band had been found to have been immune, the dissent reasoned that Fry and Fryed Audio should have received the same immunity. With respect to Westmas, the dissent viewed the analysis of whether there had been "reasonably precise control" through "reasonably precise specifications" as being just one part of that "encompassing analysis," rather than the sum total of the analysis.

The Supreme Court is expected to address the following question:

> Is Fryed Audio, LLC an agent of the Lions Club such that they are afforded immunity under Wis. Stat. § 895.52?

WISCONSIN SUPREME COURT
November 4, 2019
1:30 p.m.

2017AP2352 DSG Evergreen Family Ltd. P'ship v. Town of Perry

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), that affirmed a decision of the Dane County Circuit Court, Judge Richard G. Niess, presiding, that dismissed DSG Evergreen Family Limited Partnership's claims against the Town of Perry for not meeting the required standards for compensation in a takings case.

This case provides the Supreme Court with an opportunity to develop and clarify certain standards applicable in takings cases, including identifying whether a party in a takings case can bring a private right to action under certain statutes, and whether the doctrine of claim preclusion applies to such a situation.

This case involves a disagreement between DSG Evergreen Family Limited Partnership ("DSG"), a private entity, and the Town of Perry about whether a replacement road built as a promised part of compensation for an eminent domain taking meets agreed-upon standards.

In 2000, DSG obtained an access permit from Dane County to construct a road from a county highway to its property. The initial permit stated the road for agricultural purposes only. This is called a "field road" under the Town of Perry Driveway Ordinance. DSG built this road with an eye to the future, including a planned future residence and farm building to be located on the parcel. In order to be used for those future residential purposes, the "road" would have to meet the standards for a "driveway" under the Driveway Ordinance. DSG constructed the road in 2001, meeting all the standards for a "driveway" under the town ordinance. This included paving, an emergency turn-out, and other attributes.

In February 2006, the Town initiated an eminent domain action for a portion of DSG's property to construct a public park. The taking included the "field road," so the Town was obligated to replace the old road. It was understood that the new road would be in a different location, but that it would be built to the same construction standards as the old road.

After the Town acquired title, the parties litigated compensation for the taking. As relevant here, the compensation assumed completion of the public park and the construction of the new road. Final judgment on the compensation was made in February 2009.

In November 2009, the Town finished construction of the new road. DSG was unhappy with the new road and claimed that the Town violated its obligation under the compensation judgment because the new field road did not meet the standards of DSG's previous field road, and DSG says these shortcomings interfere with the road's intended use, and future development. So, DSG filed a declaratory judgment action seeking a judicial declaration that the Town was required to build the new field road to the statutory standards in Wis. Stat. § 82.50 (Town road standards) or, alternatively, to the standards in a similar Town ordinance. The Town responded that it provided exactly what was promised, a field road. Cross motions for summary judgment were filed.

The circuit court concluded that neither Wis. Stat. § 82.50 nor the Town's ordinances create or allow a private right of action for DSG to enforce road standards. The circuit court also ruled that DSG's lawsuit was barred by the doctrine of claim preclusion, because the claims had already been litigated in the compensation case. Accordingly, the circuit court granted summary

judgment in favor of the Town and dismissed DSG's claims. The Court of Appeals agreed. DSG seeks review.

The Supreme Court is expected to address the following issues:

1. Is a property owner whose property is subject to a partial taking permitted to rely on a condemnor's promises to construct improvements in a manner intended to provide post-taking benefits to the property owner in exchange for greater compensation.
2. If a condemnor is able to acquire property in eminent domain at a lower cost by including construction of improvements for the benefit of the property owner in its project, but does not subsequently construct those improvements as promised, does claim preclusion prevent the property owner from maintaining an action against the condemnor for damages or to compel construction of the promised improvement to the promised standard?
3. If the lower courts' answers to Issue II are correct, is a special exception to the doctrine of claim preclusion appropriate or necessary for such circumstances in the context of eminent domain proceedings.
4. Can a private citizen maintain an action against a town for failing to construct a town road in accordance with the geometric design standards of Wis. Stat. § 82.50.

WISCONSIN SUPREME COURT
November 25, 2019
9:45 a.m.

No. 2017AP2217 Marathon County v. D.K.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that affirmed a decision of the Marathon County Circuit Court, Judge Karen L. Seifert, presiding, that entered a decision involuntarily committing D.K. and imposing involuntary inpatient medication and treatment.

This case is on the Supreme Court's calendar on the same day as Langlade County v. D.J.W., No. 2018AP145-FT, because both cases involve the same issue: what constitutes constitutionally sufficient evidence to establish "dangerousness" for Chapter 51 commitment or recommitment?

Constitutional due process requires that a person may not be involuntarily committed absent a showing of current dangerousness. Foucha v. Louisiana, 504 U.S. 71, 78 (1992); O'Connor v. Donaldson, 422 U.S. 563, 580 (1975). Wisconsin's statutes specify that an individual cannot be involuntarily committed unless the petitioner proves by clear and convincing evidence that the individual is mentally ill, a proper subject for treatment, and dangerous. Wis. Stat. § 51.20(1)(a) & (13)(e). The statutes contain several different definitions of "dangerous." See Wis. Stat. § 51.20(1)(a)2.a.-e. Wisconsin Stat. § 51.20(1)(a) 2.b provides that a person is "dangerous" if he or she: "Evidences *a substantial probability of physical harm to other individuals* as manifested by evidence of recent homicidal or other violent behavior, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them, as evidenced by a recent overt act, attempt or threat to do serious physical harm."

In April 2017, the Marathon County filed a petition seeking to commit D.K. involuntarily. At the hearing, the County presented one witness, a psychiatrist, who testified that D.K. suffered from a mental illness, specifically delusional disorder, and the delusional thoughts that make up D.K.'s disorder include his beliefs that people are "stalking him and they are talking about him, harassing him, threatening him, lying about him." Among other things, the psychiatrist testified that D.K. presented a substantial risk to people. D.K. had thoughts of harming people that were talking about him, had made threats against the police department, and had made statements regarding strangling the police officer and killing people who made fun of him. The doctor testified that D.K. was "potentially dangerous." The doctor provided a report, but that report was not offered or entered into evidence. The doctor was not aware of any dangerous or threatening behavior since D.K. had been hospitalized.

The circuit court determined that D.K. was dangerous because he "evidences a substantial probability of physical harm to others as manifested by evidence of recent homicidal or other violent behavior." The court entered an order committing D.K. for six months, with an involuntary medication order.

D.K. appealed, arguing that testimony that he was "potentially dangerous" is insufficient to constitute clear and convincing evidence that D.K. is currently dangerous. The Court of Appeals was not persuaded by D.K.'s argument. The Court of Appeals said that the doctor's testimony, "while certainly connoting a risk of harm less than a 'substantial probability,' *are not*

inconsistent with a further opinion of dangerousness as defined in Wis. Stat. § 51.20(1)(a)2.b." The court added that the statute does not require clairvoyance.

D.K. petitioned the Supreme Court for review. He argues that where a person's liberty is at stake, "speculation on dangerousness is not enough." D.K. would like the court to rule that in order to prove by clear and convincing evidence that a "substantial probability" exists that a person is dangerous, the county cannot rely solely on the testimony of a doctor that the person "could be potentially dangerous." He cites case law for the principle that "an expert opinion expressed in terms of possibility or conjecture is insufficient." Pucci v. Rausch, 51 Wis. 2d 513, 519, 187 N.W.2d 138 (1971); see also Wis. Stat. § 51.20(9)(a)5.

This case presents the court with the opportunity to provide guidance on the evidence needed to satisfy statutory and constitutional standards for involuntary commitment, specifically the nature of the expert testimony that is needed to establish "dangerousness."

The Supreme Court is expected to address the following issue:

> When the county's sole witness testifies that [D.K.] could be "potentially dangerous" does this evidence constitute clear and convincing evidence that D.K. is currently dangerous?

WISCONSIN SUPREME COURT
November 25, 2019
10:45 a.m.

No. 2018AP145-FT Langlade County v. D.J.W.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that affirmed two Langlade County Circuit Court orders, Judge Gregory F. Grau, presiding, that extended D.J.W.'s Chapter 51 involuntary recommitment and imposed involuntary inpatient medication and treatment.

This case is on the Supreme Court's calendar on the same day as Marathon County v. D.K., No. 2017AP2217, because both cases involve the same issue: what constitutes constitutionally sufficient evidence to establish "dangerousness" for Chapter 51 commitment or recommitment? In recommitment situations, like the one in this case, the state or county can meet the "dangerousness" prong by showing "a substantial likelihood, based on the subject individual's treatment record, that the individual would be a proper subject for commitment if treatment were withdrawn." Wis. Stat. § 51.20(1)(am).

In January 2017, D.J.W. was placed under an order committing him to the care and custody of Langlade County for six months and an order for involuntary medication. The facts are greatly abbreiviated, but briefly, the circumstances giving rise to that commitment were later described as follows:

> *[D.J.W.] was admitted after he violated a settlement agreement. And he was very, very delusional. He actually had quit a job because he thought he was the Messiah and sent from God to save humanity. And he was hearing voices on a daily basis and thought that others could hear his thoughts.*

In June 2017, the County filed a petition for recommitment. The Board[2] recommended extending D.J.W.'s commitment for one year and continuation of his involuntary medication order. At the evidentiary hearing on the County's petition, the circuit court considered: (1) the Board's written evaluation of D.J.W.'s treatment record; (2) the report of the court appointed expert psychiatrist; and (3) testimony from both the psychiatrist and D.J.W.

The psychiatrist diagnosed D.J.W. with schizophrenia based upon a review of D.J.W.'s treatment records. D.J.W. had experienced significant delusions over the past three years, including D.J.W.'s report of having seen the devil and experiencing auditory hallucinations. The psychiatrist testified that D.J.W.'s schizophrenia was responding to treatment, and he recommended that D.J.W. be medicated on an outpatient basis. However, the psychiatrist testified that D.J.W.'s "judgment is currently still impaired" despite the treatment. The following are some excerpts of statements the psychiatrist made in support of D.J.W.'s recommitment:

[2] The North Central Health Services Board (the Board), established by the County pursuant to Wis. Stat. § 51.42, evaluated D.J.W.'s treatment record.

- "The major danger is to himself. . . . He quit his job. So he harmed himself by quitting his job because he thought he was the Messiah. . . . He lost employment. He can't take care of himself. He can't provide for his basic needs because he can't maintain employment because he's the Messiah. . . . Well, I think he has moved in with his parents. I'm not sure if he was living on his own at the time [of the original commitment] or not. But again that goes to the conclusion that he would be homeless if it wasn't for others."
- "I think he could maintain employment while under treatment, but if he goes off treatment, he's going to be delusional and hallucinating and illogical and behavior is going to be unpredictable and he's not going to be able to maintain a job. . . . I'm sure he does well while under treatment. But when he goes off treatment we've seen the results of that he can't care for himself, he can't maintain a job. He needs to rely on his parents for housing. He has received disability so he's been found disabled. You can't be disabled and say I'm fine to do what I want to do."
- "[T]he main danger is to himself if he should go off treatment. He's apt to have exacerbation of his illness. He's apt to experience, you know, hallucinations to a greater degree. Become delusional. In the past, he has had some problems with aggressive behavior and property damage. But I think the greater risk is just his inability to properly care for himself and to properly socialize if he goes untreated."

On cross-examination, the psychiatrist could not recall any specific instances of aggressive behavior by D.J.W. Asked to clarify whether he believed D.J.W. is not a danger to others, the psychiatrist explained: "I said dangerousness is unpredictable. I don't believe he's an aggressive-type person who is apt to act out, but you can't predict the behavior when someone is acutely psychotic." He stated: "I don't find him homicidal or suicidal, but that doesn't eliminate the dangers that are presented in an untreated state."

The circuit court found that the requirements for recommitment were met. As relevant here, the court determined that there was a substantial likelihood that D.J.W. would become a proper subject for commitment if treatment were withdrawn. The court found that "the delusions and hallucinations that [D.J.W.] has experienced as a result of his mental illness are and have been significant." The court found that "if treatment were withdrawn, the hallucinations and the delusions would take their course. And I find given the degree of those delusions ultimately that course would put his judgment and perception in such a place that he would be a significant danger to himself." The court thus entered orders extending D.J.W.'s inpatient commitment for twelve months, and for his involuntary medication and treatment.

D.J.W. appealed and the Court of Appeals affirmed. The Court of Appeals concluded that the circuit court's finding of D.J.W.'s dangerousness under Wis. Stat. § 51.20(1)(am) was not clearly erroneous.

D.J.W. sought Supreme Court review. D.J.W. asserts that all the evidence really shows is that: (1) D.J.W. had lost employment before he was committed; (2) he applied for and received disability benefits because of his disorder after having been committed; (3) he was relying on family members for housing but was ultimately not homeless; and (4) he did not demonstrate any homicidal or suicidal behaviors while committed.

D.J.W. argues that merely "losing employment and relying on the assistance of the government and family is insufficient evidence of statutory dangerous[ness]" under Wis. Stat.

§ 51.20(1)(am). D.J.W. argues that without evidence of any threatening or violent behavior, there cannot be sufficient evidence to conclude that he is a danger to himself or others.

This case offers the court an opportunity to provide guidance on the evidence needed to satisfy statutory and constitutional standards for involuntary recommitment, specifically the nature of the evidence needed to establish "dangerousness" for purposes of recommitment.

The Supreme Court is expected to address the following issue:

> A doctor opined that [D.J.W.] is unable to care for himself, and therefore dangerous under Wis. Stat. § 51.20(1)(am), because he lost employment and relies on the assistance of the government and his family for income and housing. As a matter of law, did the circuit [court] err by concluding that the county, under these circumstances, met its burden to prove by clear and convincing evidence that [D.J.W.] is dangerous?

WISCONSIN SUPREME COURT
November 25, 2019
1:30 p.m.

No. 2018AP458 Emer's Camper Corral, LLC v. Western Heritage Insurance Co.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), that affirmed a decision of the Burnett County Circuit Court, Judge Melissa R. Mogen, presiding, that entered a directed verdict in favor of the defendant, Western Heritage.

This case presents the question of whether a plaintiff alleging negligence by an insurance agent must establish causation by showing that, absent the agent's negligence, the plaintiff would have been able to obtain a policy containing the plaintiff's desired terms.

Camper Corral sells new and used campers. In 2007, it had a policy to insure its inventory that included a $500 per-unit deductible for hail damage. In 2011, Camper Corral sustained approximately $100,000 in hail damage. Camper Corral made a claim, which was paid and its policy was renewed. A year later, Camper Corral again sustained approximately $100,000 in hail damage. Camper Corral made another claim, which was paid. The insurer then declined to renew the policy. Camper Corral's owner, Rhonda Emer, testified that her insurance agent, Michael Alderman, told her that he would need to shop in "other markets" to find new coverage for Camper Corral. Before the existing policy expired, Alderman told Emer that Western Heritage would insure Camper Corral's inventory, but with a much higher hail damage deductible, of $5,000 per unit. Emer testified that Alderman said that if Camper Corral did not submit a hail damage claim during the next policy year, Alderman believed he could obtain a policy with a reduced deductible of $1,000 per unit. Emer accepted the policy. In August 2012, Alderman allegedly told Emer that Western Heritage would renew Camper Corral's policy with a lower hail damage deductible of $1,000 per unit, capped at a $5,000 total deductible. They met, reviewed a summary of the policy, and Emer accepted the renewed policy.

Camper Corral's inventory again sustained hail damage; 25 campers were damaged. Then, Emer learned that her policy actually included a hail damage deductible of $5,000 per unit, rather than $1,000 per unit, and did not include an aggregate hail damage deductible. So, the total deductible was $125,000. Western Heritage ultimately paid Camper Corral approximately $65,000. Camper Corral sued Alderman for negligence, alleging that Alderman breached his duty of care to Camper Corral by procuring an insurance policy that contained a $5,000 per-unit deductible for hail damage claims, instead of a policy with a $1,000 per-unit hail damage deductible and an aggregate hail damage deductible of $5,000, even though he "knew that [Camper Corral] wanted insurance coverage without a $5,000 hail deductible." Camper Corral sought to recover the large deductible. The case went to trial.

The circuit court ultimately granted the defendant's motion for a directed verdict, concluding that, as relevant here, Camper Corral had failed to establish that Alderman's alleged negligence caused its damages. Camper Corral appealed.

The Court of Appeals observed that this is an issue of first impression in Wisconsin and looked to cases from other states and to similar cases in Wisconsin. Ultimately, the Court of Appeals affirmed, ruling that Camper Corral needed to establish that, but for Alderman's alleged negligence, Camper Corral could have obtained a policy that included a lower hail damage deductible than the policy Alderman actually obtained. Because Camper Corral failed to

produce any evidence supporting a conclusion that it would have been able to obtain such a policy, Camper Corral could not establish that Alderman's conduct was a cause of its damages.

Camper Corral seeks review. It maintains that it should not be required to show that it actually would have been able to obtain a policy containing a lower deductible absent Alderman's negligence. Instead, Camper Corral argues it should only be required to prove that policies with hail damage deductibles less than $5,000 per unit were "generally available" at the time of the September 2014 hail storm. It says there is "no dispute" that such policies were "generally available in the insurance marketplace" at that time. Camper Corral says that had Emer known her coverage was subject to a $5,000 per unit deductible, she could have reduced or eliminated her on-site inventory or taken other steps to mitigate possible loss. Camper Corral reasons that Alderman's misrepresentation was thus a "substantial factor" in causing her damages.

The Supreme Court is expected to address the following issue:

> In a suit for failure to procure requested insurance, must the plaintiff prove causal damages by showing she could have personally obtained an insurance policy equal to or better than the policy promised to her by her agent?