

June 14, 2019

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- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.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 **June 14, 2019**. 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
2016AP375-CR	<u>State v. Tyrus Lee Cooper</u> When a defendant's counsel has engaged in serious professional misconduct leading up to the trial date affecting defendant's meaningful participation in his own defense, does that provide a sufficient reason to withdraw a guilty plea prior to sentencing? Did the circuit court erroneously exercise its discretion when it denied defendant's motion to withdraw his plea prior to sentencing without an evidentiary record to support substantial prejudice to the State? In deciding whether a defendant may withdraw his guilty plea, is the circuit court bound by the Supreme Court's findings and/or conclusions in <u>In re Disciplinary Proceedings Against Hicks</u> , 2016 WI 31, 368 Wis. 2d 108, 877 N.W.2d 848, including, but not limited to, language stating that the failure of defendant's trial counsel to properly communicate with him prevented him from adequately understanding and participating in his own defense, <u>see id.</u> , ¶¶23-28, 39?	12/12/2018 REVW Oral Arg 04/15/2019	1 Milwaukee	Unpub.
2016AP493	<u>Ann Cattau v. National Insurance Services of Wisconsin, Inc.</u> Is the pleading standard as stated in <u>Strid v. Converse</u> , 111 Wis. 2d 418, 331 N.W.2d 350 (1983), still the law in Wisconsin applicable to claims such as negligence and breach of fiduciary duty present in this case? Have plaintiffs stated a claim upon which relief may be granted against the defendants for negligence and/or breach of fiduciary duty, in particular have plaintiffs sufficiently pled the existence of a duty of care and/or the existence of a fiduciary duty? Have plaintiffs stated a claim upon which relief may be granted against the defendants for negligent and strict responsibility misrepresentation and, if not, should leave to amend have been granted?	10/09/2018 REVW Affirmed 04/30/2019 2019 WI 46	2 Winnebago	Unpub.
2016AP1688 (consolidated with 2016AP2502)	<u>Clean Wisconsin, Inc. v. DNR</u> Does the Department of Natural Resources (DNR) have authority to impose off-site groundwater-monitoring requirements and an animal-unit maximum on a Wisconsin Pollution Discharge Elimination System (WPDES) permit? Did DNR retain discretion to decide whether to impose certain permit conditions after denying review of the Administrative Law Judge's decision? Was the circuit court competent to enter, and, if so, did it correctly enter an award of costs and fees to Petitioners?	04/09/2019 CERT	4 Dane	--

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2016AP1837	<u>Rural Mutual Insurance Company v. Lester Buildings, LLC</u> Can a contractor use a subrogation waiver for the dismissal of tort claims contrary to Wis. Stat. § 895.447, which voids any provision in a construction contract eliminating or limiting tort liability? Can a contractor use a subrogation waiver to prospectively release it from liability for its own conduct when Wisconsin law prohibits the same release in exculpatory contracts?	08/15/2018 REVV Oral Arg 03/20/2019	4 Dane	Unpub.
2016AP2058-CR	<u>State v. Peter J. Hanson</u> Whether the admission of hearsay statements of a defendant's deceased wife inculpatory the defendant in murder violates a defendant's right to confrontation? Whether trial counsel is ineffective in failing to move to suppress inculpatory statements made by a defendant at a John Doe hearing where the defendant was in custody and not properly <u>Mirandized</u> . [<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)]	01/15/2019 REVV Affirmed 06/05/2019 2019 WI 63	3 Oconto	Unpub.
2016AP2296	<u>Maple Grove Country Club Inc. v. Maple Grove Estates Sanitary District</u> Did the respondent waive the right to assert the notice of claim statute 893.80(1d), Wis. Stats., as an affirmative defense when it failed to plead it in its answer? Did the petitioner satisfy the requirements of the notice of claim statute, sec. 893.80(1d)?	08/15/2018 REVV Reversed and remanded 04/23/2019 2019 WI 43	4 La Crosse	Unpub.
2016AP2334	<u>Leicht Transfer & Storage Company v. Pallet Central Enterprises, Inc.</u> Did crime policies issued against forgery cover losses ensuing from forged delivery tickets that the parties utilized to direct payment for pallets?	09/04/2018 REVV Affirmed 05/31/2019 2019 WI 61	3 Brown	Unpub.
2016AP2502 (consolidated with 2016AP1688)	<u>Clean Wisconsin, Inc. v. DNR</u> Does the Department of Natural Resources (DNR) have authority to impose off-site groundwater-monitoring requirements and an animal-unit maximum on a Wisconsin Pollution Discharge Elimination System (WPDES) permit? Did DNR retain discretion to decide whether to impose certain permit conditions after denying review of the Administrative Law Judge's decision? Was the circuit court competent to enter, and, if so, did it correctly enter an award of costs and fees to Petitioners?	04/09/2019 CERT Voluntary Dismissal 05/30/2019	4 Dane	--

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2016AP2503 (consolidated with 2017AP13)	<u>Enbridge Energy Company, Inc. v. Dane County</u> Wisconsin law (Wis. Stat. § 59.69(2)(bs), § 59.70(25)) expressly preempts counties from imposing certain insurance requirements on pipeline operators as conditions in a conditional use permit [(CUP)]. Can a county, while conceding that state law prevents it from enforcing a particular insurance requirement, nonetheless include that requirement as a condition in a CUP granted to a pipeline operator? Wisconsin law (Wis. Stat. § 59.69(11)) permits property owners, under certain circumstances, to enforce county “zoning ordinances.” Under this law, (1) can a property owner bring a citizen suit to enforce a particular condition in a CUP issued by a county, and (2) if so, can a property owner bring a citizen suit to enforce that condition when the county concedes that the condition is unenforceable? If the holder of an approved CUP successfully challenges a particular condition in that permit—but not the permit in its entirety—as unlawful, is striking the unlawful condition a proper remedy? Does this Court’s remedy jurisprudence under <u>Adams v. [State] Livestock Facility[ies] Siting Review Board</u>], 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404] apply to land-use permitting more generally?	09/04/2018 REVW Oral Arg 03/26/2019	4 Dane	Unpub.
2017AP13 (consolidated with 2016AP2503)	<u>Enbridge Energy Company, Inc. v. Dane County</u> Wisconsin law (Wis. Stat. § 59.69(2)(bs), § 59.70(25)) expressly preempts counties from imposing certain insurance requirements on pipeline operators as conditions in a conditional use permit [(CUP)]. Can a county, while conceding that state law prevents it from enforcing a particular insurance requirement, nonetheless include that requirement as a condition in a CUP granted to a pipeline operator? Wisconsin law (Wis. Stat. § 59.69(11)) permits property owners, under certain circumstances, to enforce county “zoning ordinances.” Under this law, (1) can a property owner bring a citizen suit to enforce a particular condition in a CUP issued by a county, and (2) if so, can a property owner bring a citizen suit to enforce that condition when the county concedes that the condition is unenforceable? If the holder of an approved CUP successfully challenges a particular condition in that permit—but not the permit in its entirety—as unlawful, is striking the unlawful condition a proper remedy? Does this Court’s remedy jurisprudence under <u>Adams v. [State] Livestock Facility[ies] Siting Review Board</u>], 2012 WI 85, 342 Wis. 2d 444, 820 N.W.2d 404] apply to land-use permitting more generally?	09/04/2018 REVW Oral Arg 03/26/2019	4 Dane	Unpub.

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2017AP141-CR	<u>State v. Dennis L. Schwind</u> Did the circuit court have inherent authority to reduce the length of the defendant's probation? If circuit courts have inherent authority to reduce the length of probation, what standard applies to their exercise of that authority?	09/04/2018 REVW Affirmed 05/03/2019 2019 WI 48	2 Walworth	--
2017AP170	<u>J. Steven Tikalsky v. Susan Friedman</u> Is a constructive trust a cause of action or a remedy and, if a remedy, how is the remedy to be pled by a plaintiff? Can a constructive trust be imposed against a third party against whom no cause of action for liability is pled?	07/31/2018 REVW Reversed 05/23/2019 2019 WI 56	2 Waukesha	Unpub.
2017AP344	<u>Yasmeen Daniel v. Armslist, LLC et al.</u> Whether the federal Communications Decency Act of 1996 permits liability to be imposed against the respondent under Wisconsin law based on an alleged breach of duties arising from the publication of a third-party seller's information.	08/15/2018 REVW Reversed 04/30/2019 2019 WI 47	1 Milwaukee	05/30/2018 Pub. 2018 WI App 32 382 Wis. 2d 241 913 N.W.2d 211
2017AP739	<u>David W. Paynter v. ProAssurance Wisconsin Insurance Company</u> <u>Guertin v. Harbour Assurance Co. of Bermuda, Ltd.</u> , 141 Wis. 2d 622, 415 N.W.2d 831 (1987), defined a "foreign cause of action," as used in Wis. Stat. § 893.07, Wisconsin's borrowing statute, as a claim for injuries sustained outside of Wisconsin. However, neither § 893.07 nor <u>Guertin</u> specifies whether § 893.07 applies where injuries are sustained, in part, in Wisconsin. See <u>Faigin v. Doubleday Dell Pub. Group, Inc.</u> , 98 F.3d 268, 270-272 (7 th Cir. 1996). Neither sets forth criteria for determining whether § 893.07 applies in multi-state claims. <u>Id.</u> Because § 893.07 does not address how to treat claims arising in multiple states, because Wisconsin courts have an interest in redressing claims arising here, and because of the all-or-nothing consequences of declaring all causes of action arising in multiple states "foreign," should this court adopt the Seventh Circuit's decision in <u>Faigin</u> and declare that § 893.07 does not apply to claims arising, at least in part, in Wisconsin? Given <u>Guertin</u> 's holding, should an injury-in-fact test or the nature of the cause of action determine whether § 893.07 applies to a particular cause of action? Although <u>Guertin</u> declared that § 893.07 does not apply to actions if injury occurred in Wisconsin, does that rule continue to apply if injury also occurred in another state?	08/15/2018 REVW Affirmed in part, reversed in part; remanded 06/07/2019 2019 WI 65	3 Ashland	04/25/2018 Pub. 2018 WI App 27 381 Wis. 2d 239 911 N.W.2d 374

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2017AP741-CR	<u>State v. Javien Cajujuan Pegeese</u> Whether the trial court's failure to insure that a defendant understood each constitutional right waived by his guilty plea entitled to him to a [<u>State v. Bangert</u> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986)] evidentiary hearing to determine whether his plea was knowing, intelligent, and voluntary.	01/15/2019 REVW Affirmed 05/31/2019 2019 WI 60	4 Rock	Unpub.
2017AP822	<u>Veritas Steel, LLC v. Lunda Construction Company</u> Did the court's decision in <u>Fish v. Amsted Indus. Inc.</u> , 126 Wis. 2d 293, 376 N.W.2d 820 (1985) "significantly" refine the court's analysis in <u>Tift v. Forage King Industries Inc.</u> , 108 Wis. 2d 72, 322 N.W.2d 14 (1982)? Does <u>Fish</u> require proof of "identity of ownership" to establish successor liability? Did <u>Fish</u> establish a rule of law that an actual transfer of stock or the sale to the buyer is a required element to establish successor liability under the de facto merger and continuation exceptions to rule of successor non-liability even though such a transaction is not a requirement of a statutory merger under Wis. Stat. § 180.1101(2)(c)? Is Wis. Stat. § 242.08(5)(b) a complete defense to a fraudulent transaction claim in light of this court's recent decision in <u>Springer v. Nohl Electric Products Corp.</u> , 2018 WI 48, 381 Wis. 2d 438, 912 N.W.2d 1?	04/09/2019 REVW Oral Arg 09/19/2019	4 Dane	Unpub.
2017AP880-W	<u>Joshua M. Wren v. Reed Richardson</u> Whether a defendant was deprived of his direct appeal due to the ineffectiveness of his trial counsel. Whether the defense of laches should preclude granting relief to the defendant.	05/14/2019 REVW Oral Arg 09/06/2019	1 Milwaukee	--
2017AP913-CR 2017AP914-CR	<u>State v. Autumn Marie Love Lopez</u> <u>State v. State v. Amy J. Rodriguez</u> Does Wis. Stat. § 971.36 or prosecutorial charging discretion allow for seven separate acts of retail theft of merchandise valued at \$126-\$314 each and committed over a two-week period to be charged as a single count of felony retail theft of merchandise totaling \$1,452.12?	04/09/2019 REVW Oral Arg 09/09/2019	4 Green	01/31/2019 Pub. 2019 WI App 2 385 Wis. 2d 482 922 N.W.2d 855
2017AP1104-CR	<u>State v. Roy S. Anderson</u> What constitutes sufficient knowledge of an offender's community supervision status where an officer wants to search him or her pursuant to Act 79? Did officers lack reasonable suspicion to search suspect's person pursuant to Act 79?	04/09/2019 REVW Oral Arg 09/04/2019	2 Racine	Unpub.

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2017AP1142	<u>Cacie M. Michels v. Keaton L. Lyons</u> What is the standard of proof required for a grandparent to overcome the presumption that parents' decisions regarding the scope and extent of their child's visitation with the grandparent is in the child's best interest?	06/11/2018 CERT Circuit court order vacated 05/24/2019 2019 WI 57	3 Chippewa	--
2017AP1206-CR	<u>State v. Emmanuel Earl Trammell</u> Is this court's holding in <u>State v. Avila</u> , 192 Wis. 2d 870, 535 N.W.2d 440 (1995) – that it is “not reasonably likely” that the standard jury instruction JI-140CR reduces the State's burden of proof – good law; or should it be overruled by this court on the ground that it stands rebutted by empirical evidence? Whether Wis. Stat. § 805.13(3) bars defendants from raising, post-trial, objections to jury instructions not raised during an instruction conference, if the objections were not known, and could not have been known or discovered, by the time of the conference.	11/13/2018 REVW Affirmed 05/31/2019 2019 WI 59	1 Milwaukee	Unpub.
2017AP1269	<u>John Teske v. Wilson Mutual Insurance Company</u> Does claim preclusion bar the plaintiffs-appellants-respondents' negligence claims where the parties were previously involved in litigation regarding claims for negligence and underinsured motorist (“UIM”) coverage arising out of a three-car accident and where a court of competent jurisdiction rendered a final judgment?	10/09/2018 REVW Affirmed in part, reversed in part 06/04/2019 2019 WI 62	2 Fond du Lac	Unpub.
2017AP1416-CR	<u>State v. Matthew C. Hinkle</u> Did one county's court lack competency under § 938.183(1)(b) to proceed on a defendant's nontraffic counts, when competency was based solely on another county's previous waiver? Did trial counsel provide ineffective assistance, when she failed to object to the nontraffic counts in criminal court and to the order waiving juvenile jurisdiction?	04/09/2019 REVW Oral Arg 09/04/2019	2 Fond du Lac	11/28/2018 Pub. 2018 WI App 67 384 Wis. 2d 612 921 N.W.2d 219

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2017AP1468	<u>Waukesha County v. S.L.L.</u> Whether this appeal is moot under the circumstances. Whether a circuit court has personal jurisdiction over the subject of a Chapter 51 petition for commitment and involuntary medication where the county did not serve the subject of petition. Whether, as a matter of law, a circuit court may enter a default judgment against the subject of a Chapter 51 commitment proceeding. Whether a circuit court order for commitment and medication under Chapter 51 is supported by sufficient evidence and violates due process where it rests upon the reports of "examining physicians" who never examined the subject individual and did not testify at the commitment hearing.	08/15/2018 REVW Affirmed 06/12/2019 2019 WI 66	2 Waukesha	Unpub.
2017AP1518-CR	<u>State v. Jessica M. Randall</u> Whether the defendant was entitled to suppression of the results of a test of a blood sample she voluntarily gave to police under the implied consent law because she informed the lab she was withdrawing her consent before the lab had analyzed the blood to determine the presence and quantity of drugs and alcohol.	10/09/2018 REVW Oral Arg 03/18/2019	4 Dane	Unpub.
2017AP1574	<u>Portage County v. J. W. K.</u> Is the appeal on sufficiency grounds of an extended mental health commitment moot when a subsequent extension is ordered? Is a doctor's recitation of the recommitment standard, without a factual explanation as to why the individual meets the standard, sufficient to extend an individual's mental health commitment?	06/11/2018 REVW Affirmed 05/21/2019 2019 WI 54	4 Portage	--

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2017AP1593	<p><u>Alan W. Pinter v. Village of Stetsonville</u></p> <p>Whether a village's oral policy, as testified to by the village president and its employees, that raw sewage accumulating in a lift station was to be pumped into a ditch when the raw sewage reached a certain level, creates a ministerial duty that upon its breach results in an exception to the governmental immunity of Wis. Stat. § 893.80(4).</p> <p>What must a plaintiff alleging that a private nuisance maintained by a municipality caused damage to the plaintiff show regarding causation in order to avoid dismissal on summary judgment, especially in the context of a backup from a municipal sewer system? Is expert testimony always required? Why or why not? If so, what must be included in the expert's testimony?</p> <p>Were the evidence and the inferences from that evidence in the summary judgment record sufficient to create a genuine issue of material fact regarding causation on plaintiff-appellant-petitioner's claim for private nuisance?</p>	<p>09/04/2018 REVW Oral Arg 02/11/2019</p>	<p>3 Taylor</p>	Unpub.
2017AP1720-CR	<p><u>State v. Robert James Pope, Jr.</u></p> <p>Where no transcripts of a jury trial occurring over 20 years ago are available in a direct appeal and appellate counsel is new to the case, does application of the requirement of <u>State v. Perry</u>, 136 Wis. 2d 92, 401 N.W.2d 748 (1987) that appellant assert a "facially valid claim of error" that might be supported by a portion of a missing transcript deny the constitutional right to meaningful appellate review?</p> <p>Whether a statement on transcript filed in an appeal binds an appellant in all future appeals in the same case.</p>	<p>04/09/2019 REVW Oral Arg 09/06/2019</p>	<p>1 Milwaukee</p>	Unpub.

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2017AP1823	<u>Lamar Central Outdoor, LLC v. Division of Hearing & Appeals</u> Whether DHA erred in finding that Wis. Stat. s. 84.30 and Wisconsin Administrative Code Trans. s. 201.10 prohibit the enlargement of nonconforming, off-premise signs erected after March 18, 1972. Whether DHA misinterpreted common law authorities relating to nonconforming uses. Whether DHA erred as a matter of law by finding that the right to cure provision in Wis. Stat. s. 84.30 (11) does not apply to the circumstances. Whether DHA erred as a matter of law by failing to require the Wisconsin Department of Transportation (DOT) to resolve statutory ambiguities by engaging in rulemaking. Whether [DOT]'s change of policy relating to the addition of extensions to nonconforming signs without promulgating a formal rule pursuant to Wis. Stat. s. 227.10(1) constituted unlawful rulemaking. Whether Wis. Stat. s. 227.10(1) required DOT to promulgate as rule its revised interpretation of Wis. Stat. s. 84.30(11).	04/09/2019 REVW Oral Arg 09/04/2019	4 Portage	Unpub.
2017AP1894-CR	<u>State v. Stephan I. Roberson</u> Whether identifications made out-of-court using a single photo are "showups" and inadmissible absent a showing of necessity.	02/12/2019 REVW Oral Arg 09/06/2019	4 Wood	Unpub.
2017AP1962	<u>Richard A. Mueller v. TL90108, LLC</u> Whether the six-year repose provision contained in Wis. Stat. §§ 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.	01/15/2019 REVW	1 Milwaukee	08/29/2018 Pub. 2018 WI App 52 383 Wis. 2d 740 917 N.W.2d 551

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2017AP1977-CR	<u>State v. Alexander M. Schultz</u> When determining whether two offenses charged in successive prosecutions are the same in fact, for purposes of the Double Jeopardy Clause, may a court determine the scope of jeopardy in the first prosecution based upon testimony which was adduced at trial? Or alternatively, must a court determine the scope of jeopardy based upon whether a reasonable person familiar with the totality of the facts and circumstances would have to construe the initial charging documents, at the time jeopardy attached in the first case, to cover the offense that is charged in the charging document of the subsequent prosecution? To determine the scope of jeopardy, does the court look at the charging documents in light of the facts and circumstances known when jeopardy attached, which in the case of a jury trial is when the jury is sworn, or may a court narrow the scope of jeopardy based upon testimony that was later adduced at trial? If there should be any ambiguity in the timeframe of a charging document, for purposes of the Double Jeopardy Clause, who should bear the burden resulting from the ambiguity, the defendant or the State?	04/09/2019 REVW Oral Arg 09/09/2019	3 Lincoln	01/31/2019 Pub. 2019 WI App 3 385 Wis. 2d 494 922 N.W.2d 866
2017AP2006-CR	<u>State v. John Patrick Wright</u> Does asking a lawfully stopped motorist as to whether he is carrying any weapons, in the absence of reasonable suspicion, unlawfully extend a routine traffic stop?	10/09/2018 REVW Reversed and remanded 04/30/2019 2019 WI 45	1 Milwaukee	Unpub.
2017AP2021	<u>Town of Rib Mountain v. Marathon County</u> Does the implementation of an county ordinance requiring adherence to a uniform naming and numbering system in an unincorporated town exceed the authority granted by Wisconsin Statutes §§ 59.54(4) and (4m)? Does the term "rural" within the context of Wisconsin Statutes §§ 59.54(4) and (4m) mean "unincorporated"?	10/09/2018 REVW Reversed 05/16/2019 2019 WI 50	3 Marathon	07/25/2018 Pub. 2018 WI App 42 383 Wis. 2d 493 916 N.W.2d 164

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2017AP2265-CR	<u>State v. Carrie E. Counihan</u> Whether one's right to due process at sentencing is violated when the circuit court conducts an independent investigation of "similar" cases and relies on these cases as the "most significant" of all information at sentencing but does not give the parties advance notice of such to allow the defense to review and rebut this information. Whether one forfeits a due process claim when during the court's pronouncement of sentence, the court first reveals that it conducted its own investigation and relied on information it discovered in determining a sentence but counsel did not interrupt to object. Whether a defendant, in establishing the prejudice prong of an ineffective assistance of counsel at sentencing claim, must show that the outcome of the proceeding—the sentence—would have been different.	05/14/2019 REVW	3 Door	Unpub.
2017AP2278-OA	<u>Kristi Koschkee v. Carolyn Stanford Taylor</u> Whether the Department of Public Instruction and the Superintendent must comply with the Regulations from the Executive in Need of Scrutiny ("REINS") Act (See 2017 Wis. Act 57, Wis. Stat. § 227.135(2)).	04/13/2018 ORIG Oral Arg 04/10/2019	4 Dane	--
2017AP2292-CR	<u>State v. Donavinn D. Coffee</u> Does a defendant forfeit the constitutional due process right to be sentenced based only upon accurate information by failing to make a contemporaneous objection at the time of sentencing when the nature of the inaccuracy could not have been reasonably determined by effective counsel at the time the misinformation is presented to the court at the sentencing hearing?	05/14/2019 REVW	1 Milwaukee	Unpub.

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Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2017AP2352	<u>DSG Evergreen Family Limited Partnership v. Town of Perry</u>	03/13/2019 REVV	4 Dane	Unpub.
	<p>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?</p> <p>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?</p> <p>Is a special exception to the doctrine of claim preclusion appropriate or necessary for such circumstances in the context of eminent domain proceedings?</p> <p>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?</p>			

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*2017AP2361	<p><u>Chris Hinrichs v. DOW Chemical Company</u></p> <p>In determining whether a fraudulent statement was made "to the public" (Wis. Stat. § 100.18), should courts employ a "particular relationship" test, abandon or modify that test, or follow § 100.18's terms?</p> <p>Can a plaintiff proceed with a Wis. Stat. § 100.18 claim when the plaintiff admits that it was in an ongoing commercial relationship with the defendant before the statement in question? (cf. <u>Kailin v. Armstrong</u>, 2002 WI App 70, 252 Wis. 2d 676, 643 N.W.2d 132).</p> <p>Are Wis. Stat. § 100.18 claims subject to the same heightened pleading requirements that Wis. Stat. § 802.03(2) says "shall" apply to "all" fraud claims?</p> <p>Whether the Economic Loss Doctrine (ELD) applies to a commercial plaintiff bringing a Wis. Stat. § 100.18 claim.</p> <p>In the context of <u>Linden v. Cascade Stone Co., Inc.</u>, 2005 WI 113, ¶6, 283 Wis. 2d 605, 699 N.W.2d 189; <u>Kaloti Enterprises, Inc. v. Kellogg Sales Co.</u>, 2005 WI 111, 129, 283 Wis. 2d 555, 699 N.W.2d 205, should the question of what constitutes an "integrated system" be answered by the "Product Bargained For" test?</p> <p>The ELD will not bar an intentional misrepresentation claim. <u>Kaloti Enterprises, Inc.</u>. In that context, if there is no obligation to purchase another product, does each purchase of another product constitute a new contract?</p>	<p>06/11/2019 REVW</p>	<p>2 Waukesha</p>	<p>Unpub.</p>
2017AP2510	<p><u>Antoinette Lang v. Lions Club of Cudahy Wisconsin, Inc.</u></p> <p>Is a business providing services to a sponsored event considered an agent of the sponsors such that they are afforded immunity from alleged negligence under Wis. Stat. § 895.52 (recreational immunity statute)?</p>	<p>03/13/2019 REVW Oral Arg 09/09/2019</p>	<p>1 Milwaukee</p>	<p>11/28/2018 Pub. 2018 WI App 69 384 Wis. 2d 520 920 N.W.2d 329</p>

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2018AP53-CR	<u>State v. Dennis Brantner</u> Do the United States and Wisconsin Constitutional protections against double jeopardy bar the State from punishing a criminal defendant twice for violations of Wis. Stat. § 961.41(3g)(am) for possessing pills containing different doses of the same substance at the same time? When an individual is arrested in one county with controlled substances on his person and transported in police custody to a different county where the substances are removed from the individual's person during the booking process, does a trial for possession of the controlled substances in the destination county violate the individual's rights under Article I, Section VII of the Wisconsin Constitution and Wis. Stat. § 971.19?	05/14/2019 REVW	2 Fond du Lac	--
2018AP59	<u>Clean Wisconsin, Inc. v. DNR</u> Did the Department of Natural Resources (DNR) lawfully approve eight high capacity wells without conducting an additional environmental review not required by statute or rule, given that Act 21 prohibits agencies from enforcing any requirement that is not "explicitly" permitted, and given that no statute explicitly authorizes additional environmental review for these wells? Is Petitioners' claim that DNR failed to "consider . . . cumulative impacts" when approving the wells barred by Wis. Stat. § 281.34(5m), which prohibits any person from "challeng[ing] an approval . . . of a high capacity well based on the lack of consideration of [] cumulative environmental impacts"?	04/09/2019 CERT	4 Dane	--
*2018AP75-CR	<u>State v. Charles L. Neill, IV</u> When a defendant was convicted of third offense operating while intoxicated (OWI) and was subject to a doubling of the minimum fine under Wis. Stat. § 346.65(2)(f)2 for having a child in the vehicle and a quadrupling of the minimum fine under Wis. Stat. § 346.65(2)(g)3 for having a blood alcohol concentration above .25, did the statute require that the circuit court multiply the defendant's minimum fine by a factor of eight?	06/11/2019 REVW	1 Milwaukee	01/31/2019 Pub. 2019 WI App 4 385 Wis. 2d 471 922 N.W.2d 861

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*2018AP116	<u>Roger Choinsky v. Germantown School District Board of Education</u> If an insurer refuses to provide an initial defense to its insured, can it nevertheless avoid application of the four-corners rule (see, e.g., <u>Olson v. Farrar</u> , 2012 WI 3, ¶32, 338 Wis. 2d 215, 809 N.W.2d 1) in determining whether the insurer breached its duty to defend? If an insurer refuses to provide a defense and coverage to its insured, but begins paying for the defense almost a year later, can the insurer invoke the protections of <u>Mowry v. Badger State Mut. Cas. Co.</u> , 129 Wis. 2d 496, 385 N.W.2d 171 (1986), to avoid fee liability and other equitable relief under <u>Elliott v. Donahue</u> , 169 Wis. 2d 310, 485 N.W.2d 403 (1992) and/or fee liability under <u>Newhouse v. Citizens Security Mut. Ins. Co.</u> , 176 Wis. 2d 824, 836, 501 N.W.2d 1 (1993)?	06/11/2019 REVW	2 Washington	03/27/2019 Pub. 2019 WI App 12 386 Wis. 2d 285 926 N.W.2d 196
2018AP203-W	<u>Ezequiel Lopez-Quintero v. Michael A. Dittmann</u> Can the appellate court apply an irrebuttable presumption of prejudice and deny ex parte a petition for writ of habeas corpus solely for untimeliness, under Wis. Stat. § 809.51(2)?	06/11/2018 REVW Reversed and remanded 05/29/2019 2019 WI 58	2 Kenosha	--
2018AP333	<u>Official Committee of Unsecured Creditors of Great Lakes Quick Lube LP v. John W. Theisen</u> Whether the one-year “discovery rule” set forth in Wis. Stat. § 893.425(1)—which governs the statute of limitations for fraudulent transfer and obligation claims—is triggered by the discoverability of the alleged fraudulent transfer or obligation itself, or rather is only triggered if and when the “fraudulent nature” of the transfer or obligation becomes discoverable.	04/09/2019 REVW Voluntary Dismissal 05/31/2019	1 Milwaukee	11/28/2018 Pub. 2018 WI App 70 384 Wis. 2d 580 920 N.W.2d 356
*2018AP651-CR	<u>State v. Kelly James Kloss</u> Is Solicitation of First-Degree Reckless Injury a crime under Wisconsin law? Was the evidence sufficient to show the defendant “unequivocally” intended that a “felony be committed” when the solicited conduct required the element of surprise and defendant knowingly forewarned the alleged victims?	06/11/2019 REVW	3 St. Croix	03/27/2019 Pub. 2019 WI App 13 386 Wis. 2d 314 925 N.W.2d 563
2018AP656	<u>L. G. v. Aurora Residential Alternatives, Inc.</u> Whether an order denying a motion to compel arbitration is immediately appealable, as of right, under either Wis. Stat § 808.03(1)’s “final order” rule, or under the Federal Arbitration Act.	10/09/2018 REVW Oral Arg 03/26/2019	3 Dunn	--

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*2018AP712-FT	<u>Joan C. Pulkkila v. James M. Pulkkila</u> Does a marital settlement agreement expressly providing a remedy that "shall" apply if either party fails to maintain life insurance provide an exclusive remedy such that a constructive trust is unavailable by operation of law? Was it a violation of Petitioner's right to due process under the federal and state constitutions for the appellate court to impose a constructive trust as a matter of law, without remand, before any court heard evidence related to the elements of constructive trust or adjudicated Petitioner's objection to Respondent's legal standing to move for a constructive trust in the divorce proceeding?	06/11/2019 REVW	2 Waukesha	Unpub.
2018AP1129	<u>City of Cedarburg v. Ries B. Hansen</u> When a circuit court reviews a first offense OWI that is mischarged due to an unknown prior offense, it is a defect in the circuit court's competency but not the circuit court's subject matter jurisdiction. Accordingly, a defendant must timely object to the circuit court's lack of competency or the objection is forfeited. (See <u>City of Eau Claire v. Booth</u> , 2016 WI 65, ¶1, 370 Wis 2d 595, 882 N.W.2d 738). Is the same true when the mischarged OWI is in a municipal court?	02/12/2019 BYPA Oral Arg 09/19/2019	2 Ozaukee	--
2018AP1214-W	<u>Raytrell K. Fitzgerald v. Circuit Court for Milwaukee Co.</u> <u>State v. Scott</u> , 2018 WI 74, ¶43, 382 Wis. 2d 476, 914 N.W.2d 141 held that "involuntary medication orders are subject to an automatic stay pending appeal." Which event triggers the automatic stay—the entry of the involuntary medication order or the filing of a notice of appeal? Either way, must the circuit court <u>enter</u> an "automatic stay" order?	10/09/2018 REVW Circuit Court order vacated, Court of Appeals affirmed 06/13/2019 2019 WI 69	1 Milwaukee	--
2018AP1296-CR	<u>State v. Raytrell K. Fitzgerald</u> Whether the involuntary medication provisions of Wis. Stat. § 971.14 are unconstitutional because they do not comport with <u>Sell v. United States</u> , 539 U.S. 166 (2003). Whether the circuit court's Order of Commitment for Involuntary Treatment violated a defendant's constitutional right to substantive and procedural due process. Whether the circuit court erred in ordering that a defendant is entitled to only 45 days of sentence credit for the time he has spent in custody.	12/12/2018 BYPA Circuit Court order vacated, Court of Appeals affirmed 06/13/2019 2019 WI 69	1 Milwaukee	--

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2018AP1346-CQ	<u>United States of America v. Dennis Franklin</u> Whether the different location subsections of the Wisconsin burglary statute, Wis. Stat. § 943.10(lm)(a)-(f), identify alternative elements of burglary, one of which a jury must unanimously find beyond a reasonable doubt to convict, or whether they identify alternative means of committing burglary, for which a unanimous finding beyond a reasonable doubt is not necessary to convict.	08/15/2018 CERQ Certified question answered, remanded 06/06/2019 2019 WI 64	7 th Circuit U.S. Court of Appeals	--
2018AP1681	<u>Steven J. Piper v. Jones Dairy Farm</u> Are the plaintiffs' state law claims for compensation for donning and doffing activities subject to the parties' historical negotiations and enforcement of their collective bargaining agreements, thus rendering those activities non-compensable? Are the plaintiffs' state law claims for compensation for donning and doffing activities subject to the doctrines of equitable estoppel, laches, waiver, and/or unjust enrichment, in light of the successive collective bargaining agreements plaintiffs agreed to and benefited from, and thus rendering those activities non-compensable? Are the plaintiffs' state law claims for compensation for donning and doffing activities subject to the doctrine of <u>de minimis non curat lex</u> , thus rendering those activities non-compensable?	05/14/2019 BYPA	4 Jefferson	--
2018AP2162	<u>Town of Wilson v. City of Sheboygan</u> Was a company's petitioned-for annexation a contiguous annexation under Wisconsin's annexation statutes? (Wis. Stat. § 66.0217 et seq.) Did the annexation strictly comply with the statutes when the Department of Administration did not certify the population count or estimate set forth in a company's petition? Did the annexation strictly comply with the signature requirements in Wis. Stat. § 66.0217(3)? Did a company's annexation petition satisfy the judicial rule of reason, and specifically the requirements that a need be demonstrated for the annexation?	05/14/2019 BYPA Oral Arg 09/19/2019	2 Sheboygan	--
2019AP559	<u>The League of Women Voters v. Tony Evers</u> Did the Wisconsin Legislature convene the December 2018 Extraordinary Session "at such time as shall be provided by law" as required by Article IV, Section 11 of the Wisconsin Constitution? Did convening the December 2018 Extraordinary Session by majority vote of each house's organizing committee violate the quorum requirement in Article IV, Section 7 of the Wisconsin Constitution?	04/15/2019 BYPA Oral Arg 05/15/2019	4 Dane	--

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2019AP622	<u>Service Employees International Union (SEIU), Local 1 v. Robin Vos</u>	04/19/2019 Wis. Stat. § 809.61, on court's own motion	4 Dane	--
	Whether the Wisconsin Legislature may enforce certain provisions of 2017 Wisconsin Act 369 and 370.			

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