

SUPREME COURT OF WISCONSIN

CASE No.: 2021AP635

COMPLETE TITLE: Pepsi-Cola Metropolitan Bottling Company, Inc.,
Plaintiff-Appellant,
v.
Employers Insurance Company of Wausau,
Defendant-Respondent-Petitioner.

REVIEW OF DECISION OF THE COURT OF APPEALS
Reported at 404 Wis. 2d 337, 979 N.W.2d 627
PDC No: 2022 WI App 45

OPINION FILED: May 24, 2023
SUBMITTED ON BRIEFS:
ORAL ARGUMENT: March 15, 2023

SOURCE OF APPEAL:
COURT: Circuit
COUNTY: Waukesha
JUDGE: Ralph M. Ramirez

JUSTICES:
Per curiam.
NOT PARTICIPATING:
BRIAN HAGEDORN, J., withdrew from participation.
ANNETTE KINGSLAND ZIEGLER, C.J., did not participate.

ATTORNEYS:

For the defendant-respondent-petitioner, there were briefs filed by *Michael J. Cohen, Pamela J. Tillman, James M. Sosnoski, Caleb R. Gerbitz*, and *Meisser, Tierney, Fisher & Nichols, S.C.*, Milwaukee. There was an oral argument by *Michael J. Cohen*.

For the plaintiff-appellant, there was a brief filed by *Lee M. Seese, Kimberly A. Streff*, and *Michael Best & Friedrich, LLP*, Milwaukee, and *Jeffrey S. Raskin, David S. Cox, David B. Salmons, Brendan J. Anderson* and *Morgan, Lewis & Bockius, LLP*, San Francisco, Los Angeles, and Washington D.C. There was an oral argument by *David B. Salmons*.

An amicus curiae brief was filed by *Heidi L. Vogt, Janet E. Cain* and *von Briesen & Roper, s.c.*, Milwaukee, for the Complex Insurance Claims Litigation Association.

An amicus curiae brief was filed by *Raj Patel, Robert J. Gilbert, Michael L. Huggins*, and *Latham & Watkins, LLP*, Chicago, Boston, and San Diego, for Wisconsin Manufacturers & Commerce and Emerson Electric Company.

An amicus curiae brief was filed by *James A. Friedman, Daniel C.W. Narvey*, and *Godfrey & Kahn, S.C.*, Madison, for the Wisconsin Insurance Alliance.

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 2021AP635
(L.C. No. 2019CV1307)

STATE OF WISCONSIN : IN SUPREME COURT

Pepsi-Cola Metropolitan Bottling Company, Inc.,

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FILED

MAY 24, 2023

Sheila T. Reiff
Clerk of Supreme Court

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. Employers Insurance Company of Wausau (Wausau) petitioned for review of a court of appeals decision, Pepsi-Cola Metropolitan Bottling Company, Inc. v. Employers Insurance of Wausau, 2022 WI App 45, 404 Wis. 2d 337, 979 N.W.2d 627, which reversed a circuit court order granting summary judgment for Wausau and denying partial summary judgment for Pepsi. No three justices reach agreement to either affirm, reverse, or affirm in part and reverse in part the court of appeals decision. Because the court did not reach a majority as to the mandate, the decision of the court of appeals is affirmed.

¶2 BRIAN HAGEDORN, J., withdrew from participation.

¶3 ANNETTE KINGSLAND ZIEGLER, C.J., did not participate.

