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### Supreme Court accepts one new case

**Madison, Wis.** (Jan. 20, 2010) – The Wisconsin Supreme Court has voted to accept one new case. The Court also acted to deny review in a number of cases. The case numbers, issues, and counties of origin are listed below. Court of Appeals' opinions/certification memos available online for the newly accepted cases are hyperlinked.

2009AP728 [Wis. Med. Society v. Michael L. Morgan](#)

This certification from District IV Court of Appeals asks the Supreme Court to review two issues related to legislation that transferred \$200 million from the Injured Patients and Families Compensation Fund to the Medical Assistance Trust Fund: (1) whether the Wisconsin Medical Society and David Hoffman, M.D. (the health care providers) have a protectable property interest in the Injured Patients and Families Compensation Fund (the Fund); and (2) whether a statute that retroactively repudiates a government's contractual obligation is constitutional.

Some background: The health care providers brought this action against the Secretary of the Department of Administration, Michael Morgan, in his official capacity, claiming that his actions implementing the fund transfer under 2007 Wis. Act 20, § 9225, part of the 2007-09 state budget, were illegal.

The health care providers claim the transfer is (1) an unconstitutional taking of property rights without just compensation; (2) an unconstitutional impairment of contractual rights; (3) an improperly promulgated tax; (4) a denial of rights to equal protection under the law; (5) a violation of statutorily required provision; and (6) a deprivation of constitutional rights under the color of state law, contrary to 42 U.S.C. § 1983.

The health care providers sought a declaration that the Act is illegal and an order directing that the \$200 million plus interest be returned to the Fund, with an award of their attorney fees. Secretary Morgan countered that he was entitled to summary judgment because (1) the health care providers have no property interest in the Fund; and (2) the health care providers' claims were barred by the Doctrine of Sovereign Immunity.

The circuit court granted summary judgment in favor of Secretary Morgan, concluding that the health care providers did not have a protectable property interest in the Compensation Fund, and that their remaining claims were barred by sovereign immunity.

Briefs amicus curiae have been received from the Wisconsin Hospital Association, as well as a joint brief from the Wisconsin Academy of Family Physicians, the American Academy of Family Physicians, the Wisconsin Chapter of the American College of Physicians, the Milwaukee District Association of Osteopathic Physicians and Surgeons, and the American Medical Association. An additional amicus brief has been submitted by Dean Health Systems Inc., Marshfield Clinic and Gunderson Lutheran Health System, Inc. Further, the Medical College of Wisconsin has submitted an amicus brief

A decision by the Supreme Court would have statewide impact.

**Review denied:** The Supreme Court denied review in the following cases. Supreme Court review is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented. As the state's law-developing court, the Supreme Court exercises its discretion to consider for review only those cases that fit certain criteria, but these criteria neither control nor fully measure the Court's discretion (see Wis. Stat. (rule) § 809.62).

**Brown**

2008AP1297-CR      State v. Holz

2008AP3043-CR      State v. Huck

2009AP71-CR        State v. Bero

2009AP291-CR      State v. McGowan  
*Chief Justice Shirley S. Abrahamson dissents.*

**Calumet**

2008AP2420-22-CR State v. Gerhartz

**Dane**

2008AP2101-CR      State v. Cruz-Delvalle

2008AP2543         Mohammed v. Wis. Ins. Sec. Fund

2009AP1710         Est. of Zimmerman v. Dane Co. and  
2009AP1711         Gonnering v. Endres (consolidated matters)

2009AP2924-W      Pettigrew v. Cir. Ct. Dane Co.

**Eau Claire**

2008AP2564-CR      State v. Emig

2009AP76            State v. Marquardt  
*Justice Patience Drake Roggensack did not participate.*

**Green**

2008AP992-CR      State v. Adams

**Jackson**

2009AP1997      Jackson Co. DHHS v. Susan H.

**Kenosha**

2008AP2846-CR      State v. Tidwell

**La Crosse**

2009AP1376      State v. Pozo

**Marathon**

2008AP1519-CR      State v. Osborne  
*Chief Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley dissent.*

2009AP341-CR      State v. Haydon

**Milwaukee**

2007AP2335-CRNM      State v. Lewis

2008AP384      State v. Crawford

2008AP751-CR      State v. Reed

2008AP780      Lebedinsky v. Akhmedov

2008AP896      State v. Booth

2008AP1826-CR      State v. Williams

2008AP1827-CRNM      State v. Salazar-Wetzel

2008AP1960-CR      State v. Valoe

2008AP2061      State v. 260 N. 12th St.

2008AP2141      Sliwinski v. City of Milwaukee

2008AP2614-CRNM      State v. Mathis

2008AP2657      State v. Lipscomb

2008AP2821-CR      State v. Perkins

2009AP150            Terry v. LIRC

2009AP202            Wauwatosa Ave. United Methodist v. City of Wauwatosa

2009AP249-CR        State v. Phillips  
*Chief Justice Shirley S. Abrahamson dissents.*

2009AP535-CR        State v. Fisher

2009AP569-CR        State v. Deramus

2009AP700-CR        State v. Jackson

2009AP1385-W        Rogers v. Thurmer

**Ozaukee**

2008AP3227-CR        State v. Servantez

**Racine**

2008AP1330-CR        State v. Gibbs

2008AP1517            James Cape & Sons Co. v. Streu Const.

2008AP2872            James Cape & Sons Co. V. Streu Const.

2008AP2995-CR        State v. McAlister

**Rock**

2008AP2135-CR        State v. Davis

**Shawano**

2009AP277-FT        Fuller v. Fuller

**St. Croix**

2008AP1528            Maypark v. Securitas  
*Chief Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley dissent.*

**Washington**

2008AP1171-CR        State v. Brayshaw

**Waukesha**

2009AP587/88-CR     State v. Schaefer

**Winnebago**

2009AP960-CR        State v. Kosky