

INSURANCE CASES, 2008-9 THROUGH 2013-14

Four-to-Three Decisions in Insurance Cases

4-3 Alignments

Justices	Total	Case Names
Prosser, Roggensack, Ziegler, Gableman	3	<i>Society Insurance; Siebert; Maxwell</i>
Abrahamson, Bradley, Crooks, Prosser	3	<i>Johnson Controls; Force; Blasing</i>
Bradley, Prosser, Roggensack, Ziegler	1	<i>Bethke</i>
Abrahamson, Bradley, Crooks, Roggensack	1	<i>Day</i>

4-3 Membership in the Majority

Justice	Votes
Abrahamson	4
Bradley	5
Crooks	4
Prosser	7
Roggensack	5
Ziegler	4
Gableman	3

4-3 Majority Opinions Authored

Justice	Opinions
Abrahamson	2
Bradley	3
Crooks	0
Prosser	1
Roggensack	1
Ziegler	1
Gableman	0
Total	8

Decisions by Vote Split in Insurance Cases¹

7-0 (or 6-0) 14/34 (41%)	6-1 2/34 (6%)	5-2 (or 4-2) 10/34 (29%)	4-3 8/34 (24%)
<i>Roehl Transp., Inc. v. Liberty Mut. Ins. Co.</i>	<i>Plastics Engineering Co. v. Liberty Mut. Ins. Co.</i>	<i>Lisowski v. Hastings Mut. Ins. Co.</i>	<i>Johnson Controls, Inc. v. London Mkt.</i>
<i>MercyCare Ins. Co. v. Wis. Comm'r of Ins.</i>	<i>Marlowe v. IDS Prop. Cas. Ins. Co.</i>	<i>Farmers Auto. Ins. Ass'n v. Union Pac. Ry.</i>	<i>Day v. Allstate Indem. Co.</i>
<i>Zarder v. Humana Ins. Co.</i>		<i>Blum v. 1st Auto & Cas. Ins. Co.</i>	<i>Bethke v. Auto-Owners Ins. Co.</i>
<i>Olson v. Farrar</i>		<i>Steffens v. BlueCross BlueShield</i>	<i>Force v. Am. Family Mut. Ins. Co.</i>
<i>Orlowski v. State Farm Mut. Auto. Ins. Co.</i>		<i>Wadzinski v. Auto-Owners Ins. Co.</i>	<i>Blasing v. Zurich Am. Ins. Co.</i>
<i>Waranka v. Wadena Ins. Co.</i>		<i>Hirschhorn v. Auto-Owners Ins. Co.</i>	<i>Soc'y Ins. v. Labor & Indus. Review Comm'n</i>
<i>Belding v. Demoulin</i>		<i>Best Price Plumbing, Inc. v. Erie Ins. Exch.</i>	<i>Siebert v. Wis. Am. Mut. Ins. Co.</i>
<i>Brethorst v. Allstate Prop. & Cas. Ins. Co.</i>		<i>Schinner v. Gundrum</i>	<i>Maxwell v. Hartford Union High Sch. Dist.</i>
<i>Admiral Ins. Co. v. Paper Converting Mach. Co.</i>		<i>Adams v. Northland Equip. Co.</i>	
<i>Froedtert Mem'l Lutheran Hosp., Inc. v. Nat'l States Ins. Co.</i>		<i>Kimble v. Land Concepts, Inc. (4-2)</i>	
<i>Miller v. Hanover Ins. Co.</i>			
<i>Casper v. Am. Int'l S. Ins. Co.</i>			
<i>Phillips v. Parmelee (6-0)</i>			
<i>Jackson v. Wis. County Mut. Ins. Corp. (6-0)</i>			

¹ In a few cases there were justices who concurred in part and dissented in part. For the tables in this post, each such vote has been categorized as either a dissent or a concurrence according to the following guidelines. If a justice's opinion dissented from the result on one or more issues, it was classified as a dissent. If the opinion concurred with the result on all issues but disputed the majority's reasoning on one or more issues, it was classified as a concurrence. In one case (*Casper v. American International South Insurance Company*) the vote total yielded by this method (5-2, with the votes by Justices Abrahamson and Bradley classified as dissents) has been changed to 7-0. Here the dispute encompassed three issues, the second of which pertained to an insurance policy. On this second issue (and also the first), Justices Abrahamson and Bradley concurred with the majority. Finally, I have excluded a couple cases in which insurance companies, although central to the discussion, were opposing each other—which makes it impossible to categorize the decisions as “favorable” or “unfavorable” to an insurance company.

Frequency in the Majority in Insurance Cases

These charts display how frequently each justice voted in the majority in decisions filed during the six terms covered here. The first chart includes all cases in which a justice voted (out of the total of 34 cases specified above), while the second chart includes only cases decided by split votes.

All Cases²

Justice	Majority Votes Cast	Total Votes Cast	Percent in Majority
Abrahamson	21	34	62%
Bradley	22	34	65%
Crooks	30	34	88%
Prosser	29	31 ³	94%
Roggensack	30	34	88%
Ziegler	29	34	85%
Gableman	28	34	82%

Non-Unanimous Decisions

Justice	Majority Votes Cast	Total Votes Cast	Percent in Majority
Abrahamson	7	20	35%
Bradley	8	20	40%
Crooks	16	20	80%
Prosser	17	19 ⁴	89%
Roggensack	16	20	80%
Ziegler	15	20	75%
Gableman	14	20	70%

² As explained above, the votes by Justices Abrahamson and Bradley in *Casper v. American International South Insurance Company* have been classified as concurrences.

³ Justice Prosser did not vote in *Kimble v. Land Concepts, Inc.*; *Phillips v. Parmelee*; and *Jackson v. Wis. County Mut. Ins. Corporation*.

⁴ *Kimble v. Land Concepts, Inc.* was a non-unanimous decision.

Opinions Authored in Insurance Cases

This chart indicates how many majority opinions a justice authored in cases decided by each of the four possible majority vote totals.

Opinion Author	7-0 (or 6-0)	6-1	5-2 (or 4-2)	4-3
Abrahamson	2	0	0	2
Bradley	6	0	1	3
Crooks	2	0	1	0
Prosser	3	0	2	1
Roggensack	1	0	3	1
Ziegler	0	1	2	1
Gableman	0	1	1	0

The chart below shows how many concurring and dissenting opinions each justice authored.

Opinion Author	Concurring Opinions	Dissenting Opinions
Abrahamson	2	4
Bradley	3	6
Crooks	1	3
Prosser	1	1
Roggensack	2	2
Ziegler	0	4
Gableman	0	1

Votes Favoring Insurance Companies

	Number of Votes favoring insurance companies	Percentage of all votes cast by each justice
Abrahamson	5	5/34= 15%
Bradley	4	4/34= 12%
Crooks	14	14/34= 41%
Prosser ⁵	15	15/31= 48%
Roggensack	18	18/34= 53%
Ziegler	19	19/34= 56%
Gableman	22	22/34= 65%

⁵ Justice Prosser did not vote in *Kimble v. Land Concepts, Inc.*; *Phillips v. Parmelee*; and *Jackson v. Wis. County Mut. Ins. Corporation*.

Agreement Among Pairs of Justices in Insurance Cases

The following tables show the percentage of cases in which every possible pair of justices found themselves on the same side in a decision—either both in the majority or both dissenting. The first table covers all 34 cases; the second table narrows its focus to cases in which decisions were not unanimous. When reading the first table, for instance, one finds that Justices Abrahamson and Ziegler voted together in 47% of the cases, while the figure for Justices Roggensack and Gableman was 88%.

Agreement Between Pairs of Justices—All Cases

	Bradley	Crooks	Prosser	Roggensack	Ziegler	Gableman
Abrahamson	33/34= 97%	25/34= 74%	17/31= 55%	17/34= 50%	16/34= 47%	17/34= 50%
	Bradley	24/34= 71%	18/31= 58%	18/34= 53%	17/34= 50%	16/34= 47%
		Crooks	25/31= 81%	26/34= 76%	25/34= 74%	26/34= 76%
			Prosser	25/31= 81%	26/31= 84%	25/31= 81%
				Roggensack	33/34= 97%	30/34= 88%
					Ziegler	31/34= 91%
						Gableman

Agreement Between Pairs of Justices—Non-Unanimous Cases

	Bradley	Crooks	Prosser	Roggensack	Ziegler	Gableman
Abrahamson	19/20= 95%	11/20= 55%	5/19= 26%	3/20= 15%	2/20= 10%	3/20= 15%
	Bradley	10/20= 50%	6/19= 32%	4/20= 20%	3/20= 15%	2/20= 10%
		Crooks	13/19= 68%	12/20= 60%	11/20= 55%	12/20= 60%
			Prosser	13/19= 68%	14/19= 74%	13/19= 68%
				Roggensack	19/20= 95%	16/20= 80%
					Ziegler	17/20= 85%
						Gableman

Agreement Between “Liberal” and “Conservative” Justices

The first two tables cover civil and criminal cases of all types—that is, not just insurance cases—in which pairs of justices participated during the six terms considered here. When reading the second table, for instance, one finds that Justices Bradley and Ziegler voted together in 46 out of 191 (24%) non-unanimous decisions.

Unanimous and Non-Unanimous Decisions in Cases of All Types

	Roggensack	Ziegler	Gableman
Abrahamson	170/336= 51%	171/332= 52%	169/332= 51%
Bradley	185/337= 55%	187/332= 56%	182/332= 55%

Non-Unanimous Decisions in Cases of All Types

	Roggensack	Ziegler	Gableman
Abrahamson	27/193= 14%	29/190= 15%	28/191= 15%
Bradley	43/195= 22%	46/191= 24%	43/193= 22%

The next two tables specify rates of agreement between pairs of justices in just the 34 insurance cases featured in this post. The information has been extracted from the larger tables in the preceding section (“Agreement Among Pairs of Justices in Insurance Cases”) and is presented here to aid comparison with the first two tables.

All 34 Insurance Cases

	Roggensack	Ziegler	Gableman
Abrahamson	17/34= 50%	16/34= 47%	17/34= 50%
Bradley	18/34= 53%	17/34= 50%	16/34= 47%

Non-Unanimous Insurance Cases

	Roggensack	Ziegler	Gableman
Abrahamson	3/20= 15%	2/20= 10%	3/20= 15%
Bradley	4/20= 20%	3/20= 15%	2/20= 10%