MICHIGAN SUPREME COURT
Office of Public Information

For Immediate Release

Cases involving insurance, energy, criminal, movie production tax credits, "knock and talk", and arbitration matters and a Judicial Tenure Commission issue will be before the Michigan Supreme Court during oral arguments on March 8 and 9, 2017

LANSING, MI, February 23, 2017 – The Michigan Supreme Court will hear oral arguments on March 8 and 9 on the sixth floor of the Hall of Justice in Lansing, beginning at 9:30 each day.

The schedule of arguments is posted on the Supreme Court's oral arguments homepage. The Court broadcasts oral arguments and other hearings live via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench.

Follow the Court on Twitter @MISupremeCourt to receive regular updates as cases are heard. Archived video is available on YouTube.

Please contact the Office of Public Information at (517) 373-0714 or browneb@courts.mi.gov for permission to film or photograph during the hearing. See the link to Request and Notice for Film and Electronic Media Coverage of Court Proceedings.

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Wednesday, March 8, 2017
Morning Session

Docket No. 153116, 153118

ENBRIDGE ENERGY LIMITED PARTNERSHIP, Petitioner-Appellee, — Sean P. Gallagher

v (Appeal from Ct of Appeals) (MPSC)

UPPER PENINSULA POWER COMPANY, Respondent-Appellant, — Ronald W. Bloomberg

and

MICHIGAN PUBLIC SERVICE COMMISSION,
Appellee.

ENBRIDGE ENERGY LIMITED PARTNERSHIP, Sean P. Gallagher
Petitioner-Appellee,

v (Appeal from Ct of Appeals)

PENINSULA POWER COMPANY,
Respondent-Appellee,
and

MICHIGAN PUBLIC SERVICE COMMISSION, Spencer A. Sattler
Appellant.

In December 2009, the Michigan Public Service Commission (PSC) approved a settlement that allowed the Upper Peninsula Power Company (UPPC) to use a "revenue decoupling mechanism" (RDM) to determine rates. In a different case, the Court of Appeals later held that the PSC lacks statutory authority to order an RDM for electric utilities such as UPPC. Enbridge Energy Limited Partnership (Enbridge), a customer of UPPC that had not previously intervened in the case, filed a complaint with the PSC challenging the approval of the settlement. The PSC determined that it had the authority to approve the settlement, but in a published decision, the Court of Appeals reversed. The UPPC and PSC have filed applications for leave to appeal. The Court has ordered oral argument on the application, and asked the parties to address: (1) whether the Court of Appeals erred in holding that the analysis provided in *Dodge v Detroit Trust Co*, 300 Mich 575, 613 (1942), was relevant to the determination whether the PSC exceeded its statutory authority by approving a settlement agreement that included an RDM for an electric utility; (2) if *Dodge* applies, whether Enbridge was barred from arguing that the settlement agreement is unenforceable or void; and (3) whether Enbridge is procedurally barred from challenging the PSC's prior orders when it failed to intervene in the cases or appeal from the orders.

Docket No. 1 152831

IN RE HON. LISA O. GORCYCA, Christian A. Hildebrandt
Oakland Circuit Court Judge
JUDICIAL TENURE COMMISSION Glenn J. Page

Judge Gorcyca presided over a highly contentious divorce case involving three children. At a hearing in June, 2015, Judge Gorcyca informed the parties that she was appointing counsel for all three children and that she was proceeding with an immediate contempt hearing. She entered orders finding all three children in contempt of court, sending them to Children's Village for an indefinite period of time, and allowing their father to request an earlier review date if he determined that the children were complying with the orders. A few weeks later, the judge vacated the orders. The Judicial Tenure Commission ultimately found that the judge misused her contempt power, engaged in other acts that amounted to misconduct, and violated various

Canons of the Code of Judicial Conduct. The JTC recommended that Judge Gorcyca be publicly censured and suspended from office without pay for 30 days, and imposed costs, fees, and expenses. Judge Gorcyca filed a petition to reject or modify the JTC's recommendations. The Supreme Court is required to review sanctions imposed by the JTC upon the filing of such a petition.

Docket No. 151439

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

Margaret Gillis Ayalp

v (Appeal from Ct of Appeals)
(Wayne – Kenny, T.)

PHILLIP JOSEPH SWIFT, a/k/a
PHILLIP JOSEPH SWIFT, JR.,
Defendant-Appellant.

Ronald D. Ambrose

Phillip Swift was convicted by a jury of unarmed robbery and first-degree home invasion. He was sentenced, as a third-offense habitual offender, to 12 to 40 years for the home invasion conviction and 12 to 30 years for the unarmed robbery conviction. Swift argues on appeal that the prosecution failed to provide him with proper notice of its intent to seek a third habitual offender sentence enhancement. The Court of Appeals rejected this argument, finding that Swift was provided a felony warrant and complaint, which contained a written notice of the prosecution's intent to seek sentence enhancement, and that Swift's claim of error amounted to nothing more than the assertion that there was no proof of service filed in the lower court. The Supreme Court ordered argument on the application, asking the parties to brief: (1) whether serving the habitual offender notice prior to the defendant's arraignment on the information satisfies the 21-day time requirement under MCL 769.13, and (2) if not, whether the harmless error rules apply to the failure to serve the habitual offender notice within the 21-day time requirement under MCL 769.13.

Docket No. 152994

EMPLOYERS MUTUAL CASUALTY CO.,
Plaintiff/Counterdefendant- Appellee,

Megan C. Cavanagh

v (Appeal from Ct of Appeals)
(Wayne – Sullivan, B.)

HELICON ASSOCIATES, INC. and ESTATE
OF MICHAEL J. WITUCKI,
Defendants/Counterplaintiffs,

and

DR. CHARLES DREW ACADEMY and
JEREMY GILLIAM,

Defendants,
and

WELLS FARGO ADVANTAGE NATIONAL TAX FREE FUND, WELLS FARGO ADVANTAGE MUNICIPAL BOND FUND, LORD ABBETT MUNICIPAL INCOME FUND, INC. and PIONEER MUNICIPAL HIGH INCOME ADVANTAGE,
Defendants-Appellants. — Michael J. Watza

The plaintiff, Employers Mutual Casualty Company, issued an insurance policy to defendants Helicon Associates, Inc. and its principal owner and president, Michael J. Witucki. The defendants administered a charter school and were responsible for the issuance of $7 million in bonds on behalf of the school. The bonds were issued without legal authorization, and when they had to be reissued, the various funds that purchased those bonds lost approximately $4 million. The funds obtained compensation pursuant to a consent judgment in a federal suit, so Employers Mutual filed suit in state court seeking a declaratory judgment that it was not responsible for insurance coverage to defendants because, among other reasons, an exclusion for "fraud or dishonesty" applied. The circuit court held that Employers Mutual was not obligated to provide insurance coverage, and in a published opinion, the Court of Appeals affirmed. The central questions being posed are whether a consent judgment – which is a judgment agreed to by the parties – constitutes a "determination" of an insured's conduct, and whether an insurance policy exclusion clause for "fraud or dishonesty" applies under these circumstances. The Supreme Court ordered oral argument on the application, asking the parties to address: (1) whether the consent judgment amounts to a "judgment or adjudication . . . based on a *determination*" of the insured's conduct [emphasis added]; and, if so, (2) whether it was a determination that acts of fraud or dishonesty were committed by the insured.

Afternoon Session

Docket No. 153413

NEXTEER AUTOMOTIVE CORPORATION,
Plaintiff-Appellee, — John F. Birmingham, Jr.

v (Appeal from Ct of Appeals)
(Saginaw – Jurrens, M. R.)

MANDO AMERICA CORPORATION, TONY DODAK, THEODORE G. SEEGER, TOMY SEBASTIAN, CHRISTIAN ROSS, KEVIN ROSS, ABRAHAM GEBREGERIS, RAMAKRISHNAN RAJA VENKITASUBRAMONY, TROY STRIETER, JEREMY J. WARMBIER, and SCOTT WENDLING,
Defendants-Appellants. — Mary Massaron

Nexteer Automotive and Mando America both manufacture steering systems. In 2013, they entered into an agreement that contained an arbitration agreement. Nexteer eventually sued Mando. A case management order included a checked box that indicated that "[a]n agreement to arbitrate this controversy . . . exists" but "is not applicable." Mando subsequently requested arbitration of the dispute, contending that the checked box was not a waiver, and even if it were, Nexteer was not prejudiced by the late request to arbitrate. The trial court concluded that the arbitration provision was enforceable and had not been waived by Mando, but in a published opinion, the Court of Appeals reversed. It held that the box checked "not applicable" constituted a stipulation by Mando that expressly waived arbitration, even in the absence of prejudice to Nexteer. The Supreme Court ordered oral argument on the application, asking the parties to address: (1) whether a party asserting an express waiver of a right to arbitrate must demonstrate that it was prejudiced by the actions of the party asserting that right; and if not, (2) whether the case management order in this case constituted an express waiver of the right of Mando to arbitrate.

Docket No. 153420, 153421

TEDDY 23, LLC, and MICHIGAN TAX CREDIT FINANCE, LLC, d/b/a MICHIGAN PRODUCTION CAPITAL,
Plaintiffs-Appellants,

Jack L. VanCoevering

v (Appeal from Ct of Appeals)
(Ingham – Aquilina, R.; Court of Claims – Talbot, M.)

MICHIGAN FILM OFFICE and DEPARTMENT OF TREASURY,
Defendants-Appellees.

Christina M. Grossi
Jessica A. McGivney

Plaintiff Teddy 23 attempted to obtain a Michigan film tax credit (under a now-repealed statute) of about $4.5 million based on about $10.7 million in expenditures on a movie project known as "Scar 23." After an audit by the Department of Treasury, the Michigan Film Office denied the request for a postproduction certificate of completion that Teddy 23 needed to qualify for the tax credit. Teddy 23 filed an appeal in both the Court of Claims and the Ingham Circuit Court. The circuit court denied the application. The Court of Claims determined that it lacked subject-matter jurisdiction. Teddy 23 appealed both cases, and in a consolidated appeal with a published opinion, the Court of Appeals affirmed both lower courts. Teddy 23 filed an application for leave to appeal. The Supreme Court has ordered oral argument on the application to address whether the Court of Claims had jurisdiction over Teddy 23's claim under MCL 600.6419(1)(a), or whether the circuit court had exclusive jurisdiction under MCL 600.631, including whether the denial of the postproduction certificate of completion was a "decision . . . of [a] state board, commission, or agency, authorized under the laws of this state to promulgate rules from which an appeal or other judicial review has not otherwise been provided for by law . . . ."

Thursday, March 9, 2017
Morning Session

Docket No. 153049

KEITH TODD , — Jeff A. Steinport
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Wayne– MacDonald, K.)

NBC UNIVERSAL (MSNBC), — Leonard M. Niehoff
Defendant-Appellee,
and
EASTPOINTE POLICE DEPARTMENT and
A-ONE LIMOUSINE,
Defendants.

The defendant NBC Universal (MSNBC), aired an episode of the television series "Dash Cam Diaries" multiple times that erroneously listed the plaintiff, Keith Todd, as the perpetrator of a crime. (The actual perpetrator's name was Todd Keith.) Todd filed a complaint against MSNBC and two other defendants alleging defamation, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence. The trial court dismissed all of Todd's claims based on the one-year statute of limitations for defamation, and refused to allow him to amend his complaint to add new claims. The Court of Appeals affirmed the trial court's dismissal of the complaint, although it based the dismissal of the intentional infliction of emotional distress claim on different grounds. The Supreme Court ordered oral argument on the application, asking the parties to brief: (1) whether the erroneous statements contained in the television show aired by MSNBC must be considered in context with the pertinent facts and circumstances surrounding the statements, and if so, whether the statements viewed in that context rise to the level of extreme and outrageous conduct; (2) whether the statements in question are protected by the First Amendment; and (3) whether Todd should have been permitted to amend his complaint.

Docket No. 153115, **Docket No.153117**

PEOPLE OF THE STATE OF MICHIGAN, — James K. Benison
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Kent – Lieber, D.)

MICHAEL CHRISTOPHER FREDERICK, — Jeffrey P. Arnson
Defendant-Appellant.

PEOPLE OF THE STATE OF MICHIGAN, — James K. Benison
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Kent – Lieber, D.)

TODD RANDOLPH VAN DOORNE, Bruce A. Block
Defendant-Appellant.

Defendants Frederick and Van Doorne were corrections officers with the Kent County Sheriff's Department, and registered medical marijuana patients. After learning that Frederick and Van Doorne were marijuana patients, the Kent Area Narcotics Enforcement Team (KANET) went to their homes, without a search warrant. KANET arrived at Frederick's home at approximately 4:00 a.m. to conduct what is known as a "knock-and-talk," which means knocking on the door and asking to talk. Frederick permitted the group to enter and search his home, and told the officers where his "marijuana butter" was located. A similar series of events occurred at approximately 5:30 a.m. at Van Doorne's home. Both Frederick and Van Doorne were charged with marijuana offenses. They filed motions to suppress the statements they made to the investigators and the evidence seized during the search of their homes on the ground that the "knock and talk" procedures were unconstitutional and that they were coerced to provide statements to the police. The circuit court judge denied the motions, and the Court of Appeals affirmed in a two-to-one published opinion, with the majority holding that the knock-and-talk procedures were permissible under the Fourth Amendment to the United States Constitution. The Supreme Court ordered oral argument on the application, directing the parties to address: (1) whether the knock-and-talk procedures employed by the law enforcement officers violated the general public's implied license to approach the defendants' residences and constituted unconstitutional searches in violation of the Fourth Amendment; (2) whether the conduct of the law enforcement officers "objectively reveals a purpose to conduct a search" to obtain evidence without the necessity of obtaining a warrant; and (3) whether the conduct of the law enforcement officers was coercive.

Docket No. 153185

PEOPLE OF THE STATE OF MICHIGAN, Madonna Georges Blanchard
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Wayne – Brennan, M.)

WILLIAM LYLES, JR., Daniel J. Rust
Defendant-Appellee.

William Lyles, Jr. was prosecuted for committing a murder in 1983. He presented evidence at trial regarding his character for non-violence and peaceful domestic relationships. The trial court did not correctly instruct the jury regarding its consideration of this evidence, and the Court of Appeals granted Lyles a new trial. The Supreme Court reversed and remanded in 2015, asking the Court of Appeals to determine whether any error was harmless under the correct legal standard. On remand, the Court of Appeals again granted Lyles a new trial. The prosecutor appealed, and the Supreme Court ordered oral argument on the application, asking the parties to address whether the trial court's error was sufficiently prejudicial to warrant a new trial.

Docket No. 154347

POWER PLAY INTERNATIONAL, INC., and MARK HOWE, Personal Representative of the Estate of GORDON HOWE,
Plaintiffs/Counterdefendants-Appellees,

Kellie M. Blair

v (Appeal from Ct of Appeals)
(Oakland – Bowman, L.)

DEL REDDY,
Defendant-Appellant,
and
AARON HOWARD, MICHAEL REDDY, and IMMORTAL INVESTMENTS, LLC,
Defendants/Counterplaintiffs-Appellants.

Drew W. Broaddus

Power Play International and Del Reddy entered into a settlement agreement after a commercial dispute over ownership of hockey memorabilia relating to hockey legend Gordie Howe. Power Play later sued Reddy for destroying that memorabilia in contravention of the agreement. The jury awarded Power Play $3 million in damages. Power Play then filed a post-judgment motion for attorney fees, pursuant to a provision in the settlement agreement, which the court awarded after a postjudgment hearing. The Court of Appeals affirmed the judgment in all respects, along with the award of attorney fees. Reddy filed an application for leave to appeal with the Supreme Court, challenging, among other things, the fact that the trial court awarded attorney fees without submitting the attorney fee issue to a jury. The Court ordered oral argument on the application, asking the parties to address whether the trial court erred in awarding attorney fees following a postjudgment hearing rather than submitting the attorney fee issue to the jury.