



# MICHIGAN COURTS NEWS RELEASE

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## FOR IMMEDIATE RELEASE

### Michigan Supreme Court Oral Argument Cases Scheduled for December 9

LANSING, MI, December 1, 2015—The Michigan Supreme Court is scheduled to hear oral arguments December 9 on the sixth floor of the Michigan Hall of Justice beginning at 9:30 a.m. The cases involve the statute of limitations in Michigan's no-fault act, the Uniform Fraudulent Transfer Act, governmental immunity, and criminal conviction appeals.

Oral arguments are open to the public. Links to the briefs and case summaries are available [here](#).

The Court broadcasts its oral arguments and other hearings [live](#) on the Internet 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.

Please see the link to [Request and Notice for Film and Electronic Media Coverage of Court Proceedings](#).

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*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.*

### Michigan Supreme Court Oral Arguments December 9, 2015

#### *Morning Session*

**Docket # [149372](#)**

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Kimberly M. Manns

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

DENNIS LEE TOMASIK,  
Defendant-Appellant.

Kristoffer W. Tieber  
F. Martin Tieber

Defendant Dennis Lee Tomasik was convicted of two counts of first-degree criminal sexual conduct. On appeal, he challenged the prosecutor's presentation of expert testimony on child sexual abuse accommodation syndrome, and as well as the presentation of an unredacted

recording of his interrogation. Tomasik also argued that he was entitled to a new trial based on newly discovered evidence of the complainant's counseling records, and his trial counsel's ineffective assistance. The Court of Appeals affirmed Tomasik's convictions in an unpublished per curiam opinion. On March 25, 2015, the Court granted leave to appeal to consider: (1) whether the trial court erred by admitting the entire recording of Tomasik's interrogation in light of *People v Musser*, 494 Mich 337 (2013); (2) whether the trial court erred in admitting the expert's testimony regarding child sexual abuse accommodation syndrome under MRE 702, and *People v Kowalski*, 492 Mich 106 (2012); and (3) whether the trial court erred in denying Tomasik's motion for a new trial based on newly disclosed impeachment evidence in light of *People v Grissom*, 492 Mich 296 (2012).

**Docket # [150332](#)**

ALAN JESPERSON,  
Plaintiff-Appellant,

Mark Granzotto

v (Appeal from Ct of Appeals)  
(Macomb – Switalski, M.)

AUTO CLUB INSURANCE ASSOCIATION,  
Defendant-Appellee.

Drew W. Broaddus

MCL 500.3145, which is part of Michigan's no-fault act, sets forth both a statute of limitations and a one-year back rule for recovery of benefits. Subsection (1) states that an action for recovery of personal protection insurance benefits "may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident" or "unless the insurer has previously made a payment of personal protection insurance benefits for the injury." The statute continues to explain that, if notice has been given or a payment has been made, "the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."

In this case, plaintiff Alan Jespersion was injured in an automobile accident on May 12, 2009. Defendant ACIA was provided notice nearly 13 months later, and paid Jespersion \$21,712 in July, 2010. On May 16, 2011, Jespersion sued ACIA for additional benefits. ACIA filed an answer that referenced MCL 500.3145(1)'s one-year back rule, and later filed a motion for summary disposition on statute of limitations grounds. The trial court granted the motion, and the Court of Appeals affirmed in a split, published opinion. On April 1, 2015, the Court granted leave to appeal, directing the parties to address: (1) whether ACIA adequately raised the affirmative defense of the one-year statute of limitations stated in MCL 500.3145(1) in its answer to Jespersion's amended complaint; (2) if not, whether the Court of Appeals erred in rejecting Jespersion's argument that ACIA waived the affirmative defense; and (3) if ACIA did not waive the statute of limitations defense, whether its payment of benefits to Jespersion more than one year after the date of the accident satisfied the second exception to the one-year statute of limitations established in the first sentence of § 3145(1).

**Docket # 149631-3 & 149631**

GLENN S. MORRIS,  
Plaintiff-Appellee,

Clifford W. Taylor

v (Appeal from Ct of Appeals)  
(Kent – Yates, C.)

MORRIS, SCHNOOR & GREMEL, INC.,  
CHARRON & HANISCH, PLC, and  
DAVID W. CHARRON,  
Defendants,

and

NEW YORK PRIVATE INSURANCE AGENCY,  
LLC,  
Appellant.

Mark A. Aiello

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**Docket # 149632**

MORRIS, SCHNOOR & GREMEL PROPERTIES,  
LLC,  
Plaintiff-Appellee,

v

MORRIS, SCHNOOR & GREMEL, INC.,  
DAVID W. CHARRON, and CHARRON  
& HANISCH, PLC,  
Defendants,

and

NEW YORK PRIVATE INSURANCE AGENCY,  
LLC,  
Appellant.

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**Docket #149633**

GLENN S. MORRIS,  
Plaintiff-Appellee,

v

MORRIS, SCHNOOR & GREMEL, INC.,  
DAVID W. CHARRON, and CHARRON  
& HANISCH, PLC,  
Defendants,

and

NEW YORK PRIVATE INSURANCE  
AGENCY, LLC,  
Appellant

New York Private Insurance Agency (NYPIA) was sued in two lawsuits for alleged violations of the Uniform Fraudulent Transfer Act (UFTA). In each case, the trial court granted summary disposition to NYPIA, and scheduled a consolidated bench trial of the claims against the remaining defendants. The bench trial included contempt proceedings against several parties, including NYPIA, for violating an earlier injunction. In connection with the UFTA claims, the trial court ruled that NYPIA was not a good-faith purchaser, and it entered judgment against NYPIA and in favor of the plaintiffs. NYPIA appealed to the Court of Appeals, arguing that its due process rights were violated when a judgment was entered against it, a non-party, on the UFTA claims. The Court of Appeals affirmed in an unpublished per curiam opinion, concluding that the trial court possessed the authority under the UFTA to enter judgment against NYPIA, despite the fact that it dismissed NYPIA from the two lawsuits. NYPIA seeks leave to appeal to the Michigan Supreme Court. On April 1, 2015, the Court directed the Clerk to schedule oral argument on whether to grant the application or take other action.

### *Afternoon Session*

**Docket # [150364](#)**

HELEN YONO,

Plaintiff-Appellee,

L. Page Graves

v (Appeal from Ct of Appeals)  
(Ct of Claims – Canady, C.)

DEPARTMENT OF TRANSPORTATION,  
Defendant-Appellant.

Michael J. Dittenber

In July 2011, Helen Yono fell and was injured while walking to her car. Her car was parked in the parallel parking lane along M-22 in Suttons Bay. Yono sued the defendant Michigan Department of Transportation. She alleged that, under MCL 691.1402(1), MDOT had a duty to keep M-22 in reasonable repair, breached that duty, and proximately caused her injuries. MDOT moved to dismiss her claims, asserting governmental immunity. MDOT claimed it was immune from suit because the area where Yono fell was not the “improved portion of the highway designed for vehicular travel.” MDOT contended that its duty to maintain M-22 applied only to the “travel lanes” and not to the parallel parking area. Yono responded that the highway extended from curb to curb and that the parallel parking lanes are “designed for vehicular travel,” so MDOT could not claim governmental immunity. The trial court ruled that MDOT was not entitled to immunity. The Court of Appeals considered the case twice, and each time affirmed the trial court in a published opinion.

On June 10, 2015, the Court granted leave to appeal, directing the parties to include among the issues to be briefed: (1) whether a vehicle engages in “travel” under MCL 691.1402(1) when it parks in a lane of a highway designated for parking; (2) whether MDOT presented evidence of the design of the highway at issue which, if left un rebutted, would establish that Yono fell in an area of the highway not “designed for vehicular travel” under MCL 691.1402(1); (3) if so, whether Yono produced evidence establishing a question of fact regarding MDOT’s entitlement to immunity under MCL 691.1402(1); and (4) whether questions of fact on a motion for summary disposition involving governmental immunity under MCR 2.116(C)(7) must be resolved by the trial court at a hearing or submitted to a jury.

**Docket # [150132](#)**

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Joshua J. Miller

v (Appeal from Ct of Appeals)  
(Oakland – Anderson, M.)

KEYON LECEDRIC ROBERTSON,  
Defendant-Appellant.

Timothy P. Flynn

Law enforcement officers received an anonymous tip that Leroy Jackson would be at the Pontiac bus station and would have heroin. A team of officers conducted surveillance at the bus station, and they identified Jackson, who was travelling with defendant Keyon Robertson. Jackson was arrested on an outstanding warrant, and searched, but no heroin was found. Robertson was asked for identification, and he provided an ID that had incorrect information on it. According to one of the officers, Robertson was acting nervous, and was eventually placed in handcuffs. A canine unit examined the bags that Jackson and Robertson identified as belonging to them. Although the dog “alerted” on the bags, no drugs were found in them. Robertson did admit to the officer that he had smoked marijuana earlier in the day with Jackson. The officer then searched Robertson, and discovered heroin. Robertson was charged with possessing between 50 and 450 grams of heroin with the intent to distribute it. Following a hearing, the trial court granted Robertson’s motion to suppress the heroin, and it subsequently dismissed the charge. The prosecution appealed and, in an unpublished per curiam opinion, the Court of Appeals reversed and remanded the case for reinstatement of the charge. The panel held that, under the totality of the circumstances (specifically, the drug-sniffing dog’s alert on the luggage and Robertson’s admission that he smoked marijuana), probable cause existed to arrest Robertson. As a result, the search performed was a valid search incident to arrest. Robertson seeks leave to appeal to the Michigan Supreme Court. On June 10, 2015, the Court directed the Clerk to schedule oral argument on whether to grant the application or take other action.