



MICHIGAN COURTS NEWS RELEASE

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Michigan Supreme Court Announces Cases for October Oral Arguments

LANSING, MI, August 28, 2015—The Michigan Supreme Court announced that oral arguments in 11 cases will be heard October 13-15, 2015. The Court will convene to hear the first case at 9:30 am, October 13, in the [old Supreme Court courtroom](#) on the third floor of the State Capitol. The other 10 cases will be argued in the Supreme Court courtroom on the sixth floor of the Hall of Justice, 925 W. Ottawa Street, Lansing.

The order of argument in the cases will be announced on September 15.

[Docket No. 149032](#)

Bernstein, DPM v Seyburn Kahn Ginn Bess & Serlin

Two podiatrists, Randy Bernstein and Kenneth Poss, entered into a business relationship. They eventually separated when Bernstein accused Poss, as well as the attorney who authored the corporate entity, of fraud. Bernstein sued the attorney for legal malpractice and breach of fiduciary duty for fraudulently working with Poss to defraud him of his business interests. The issues are whether Bernstein's claim for legal malpractice accrued at the time the defendants discontinued the provision of generalized legal services and whether those services were "the matters out of which the claim for malpractice arose" under MCL 600.5838. (Note: Justice Richard Bernstein is no relation to the litigant.)

[Docket No. 149043](#)

Linda C. Hodge v State Farm Mutual Automobile Insurance Company

This case concerns the jurisdiction of the district court when a plaintiff presents evidence and argument of damages in excess of the district court's \$25,000 jurisdictional limit. The issues to be addressed include: (1) whether a district court is divested of subject-matter jurisdiction when a plaintiff alleges less than \$25,000 in damages in his or her complaint, but seeks more than \$25,000 in damages at trial, i.e., whether the "amount in controversy" exceeds \$25,000 under such circumstances; and, if not, (2) whether such conduct nevertheless divests the district court of subject-matter jurisdiction on the basis that the amount alleged in the complaint was made fraudulently or in bad faith.

[Docket No 149246-7](#)

Michael Lego v Jake Liss

Michael Lego and Jake Liss are police officers. During their work on an anti-crime task force, Liss fired his weapon at a crime scene and wounded Lego. The main issues in the trial court were whether Lego's claims against Liss are barred by the exclusive-remedy provision of the worker's compensation act and whether governmental immunity applies. The issues to be addressed in the Supreme Court include: (1) whether, and if so to what degree, a defendant governmental actor's mental state or level of culpability is relevant to determining what constitutes normal, inherent, and foreseeable risks of the firefighter's or police officer's profession; and (2) whether the defendant's alleged violation of numerous departmental safety procedures is relevant to

determining whether the shooting in this case was one of the normal, inherent and foreseeable risks of the plaintiff's profession.

[Docket No 149494](#)

Makenzie Greer v Advantage Health

This case concerns the birth of Makenzie Greer. Joint and several claims of negligence were filed against all defendants attending mother Elizabeth Greer during the delivery of Makenzie, which resulted in injury to both Elizabeth and Makenzie. This Court is being asked to determine whether Makenzie is entitled to recover the full amount of her invoiced medical expenses even though Makenzie's health care insurers paid Makenzie's health care providers a lesser discounted amount. The Court is also being asked to determine whether the judgment must be reduced by the entire amount of a settlement between the plaintiffs and the hospital.

[Docket No. 149516](#)

Bonnie Black v Anthony Shafer

The plaintiff, as Next Friend of 16-year-old Jessica Bitner, sued Bitner's boyfriend, Ian Gearhart, after Bitner was shot in the leg by Gearhart while they were social guests at Anthony Shafer's grandparents' home. The Court of Appeals held that Shafer owed Bitner a duty of care, and that a reasonable jury could determine that he breached that duty. The issues to be addressed include: (1) whether this action sounds in ordinary negligence or in premises liability; (2) the role, if any, of licensor-licensee relationships in this action; (3) the specific nature of the duty, if any, owed by defendant Shafer to Bitner, including whether the parties had a legally significant "special relationship"; (4) whether a reasonable juror could determine that a duty was breached; (5) the import of a third party's criminal act in negligently discharging a firearm; and (6) causation generally.

[Docket No 149537](#)

In re Wangler/Paschke, Minors

The Department of Human Services filed a petition of abuse and neglect seeking removal of the three minor children due to mother's opiate addiction and her repeated exposure of the minor children to domestic violence in the home. The children were placed in the care of an aunt. The parties agreed to alternative dispute resolution; at the mediation, the mother signed a written agreement, entering a plea as to certain allegations of neglect, with her plea to be held in abeyance so she could participate in services. But she failed to adhere to the terms of the agreement, and DHS filed a petition to terminate parental rights. The mother argues that her written plea was not valid. The issues to be addressed include: (1) the meaning of the phrase "dispositional order" within the context of a termination of parental rights proceeding; (2) whether the termination order constituted the first dispositional order; and (3) whether and to what extent the collateral attack analysis in *In re Hatcher*, 443 Mich 426 (1993), extends to the mother's due process challenge.

[Docket No. 149599](#)

Bank of America, NA v First American Title Insurance Company

The plaintiff bank sued the defendant title insurance company and closing agents to recover millions in losses from fraudulent home loans. The issues to be addressed include: (1) whether a separate contract between the lender and the closing agent existed outside of the closing protection letters; (2) whether there was a genuine issue of material fact regarding the closing agent's violation of the terms of the lender's written closing instructions; and (3) whether the full

credit bid rule of *New Freedom Mortgage Corp v Globe Mortgage Corp*, 281 Mich App 63 (2008), is a correct rule of law and, if so, whether it applies to this case.

Docket No 149622

Associated Builders & Contractors v City of Lansing

This case involves a prevailing wage ordinance enacted by the City of Lansing. The issues to be addressed include: (1) whether *Attorney General, ex rel. Lennane v City of Detroit*, 225 Mich 631 (1923), should be overruled; and (2) what authority, if any, enabled the City of Lansing to enact its prevailing wage ordinance.

Docket No 150001 (MOAA, Mini Oral Argument on the Application)

Coalition Protecting Auto No-Fault v MI Catastrophic Claims Ass'n

This case involves the request of the Coalition Protecting Auto No-Fault to inspect certain of records of the MI Catastrophic Claims Ass'n (MCCA) premised on the Michigan Freedom of Information Act (FOIA). The MCCA was created by the Legislature to protect no-fault automobile insurers from catastrophic losses arising from their obligation to pay or reimburse no-fault policyholders' medical expenses. The Supreme Court directed oral argument on the application to determine whether to grant the application or take other action. The issue to be addressed is whether MCL 500.134 violates Const 1963, art 4, § 25 by creating an exemption to the Freedom of Information Act (FOIA – MCL 15.231 *et seq.*) without reenacting and republishing the sections of FOIA that are altered or amended.

Docket No 150040 (MOAA)

People of MI v William Lyles, Jr.

William Lyles, Jr. presented evidence at trial regarding his character for non-violence and peaceful domestic relationships. The trial court did not instruct the jury regarding its consideration of this evidence, and the Court of Appeals granted Lyles a new trial. The Supreme Court directed oral argument on the prosecutor's application to determine whether to grant the application or take other action. The issue to be addressed is whether it is more probable than not that the failure to properly instruct the jury regarding evidence of the defendant's good character was outcome determinative.

Docket No 150119 (MOAA)

People of MI v Fateen Rohn Muhammad

Defendant Fateen Muhammad filed a motion in the circuit court to dismiss the habitual offender notice, arguing that the prosecutor failed to comply with the requirements of MCL 769.13. The circuit court granted the motion to dismiss, but the Court of Appeals reversed, holding that any error was harmless. The Supreme Court directed oral argument on the application to determine whether to grant the application or take other action. The issues to be addressed include: (1) whether the defendant's acknowledgement that he received a felony complaint that contained a habitual offender notice filed in district court satisfies the requirement set forth in MCL 769.13 that the habitual offender notice be served "within 21 days after the defendant's arraignment on the information charging the underlying offense or, if arraignment is waived, within 21 days after the filing of the information charging the underlying offense;" and (2) if not, what is the proper application of the harmless error tests articulated in MCR 2.613 and MCL 769.26 to violations of the habitual offender notice requirements set forth in MCL 769.13.

NOTE: Briefs regarding all of these cases, along with previous orders and opinions are available [online](#).

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