MICHIGAN COURTS NEWS RELEASE
John Nevin, Communications Director
Ph: 517-373-0129 Twitter: @MISupremeCourt FB: facebook.com/misupremecourt

FOR IMMEDIATE RELEASE

Michigan Supreme Court Announces April 15, 2020 and April 22, 2020 Oral Arguments Schedule

Virtual Arguments to be livestreamed on Court's YouTube channel

LANSING, MI, April 6, 2020 – The Michigan Supreme Court announced today that oral arguments in two cases will be heard on April 15, 2020. Two additional cases will be heard on April 22, 2020. On both days, the Court will convene to hear the first case beginning at 9:30 a.m. and the second case at 10:30 a.m. Justices will participate in oral argument via Zoom and the attorneys for the parties have all agreed to argue their cases using Zoom.

All four oral arguments will be livestreamed at: http://www.youtube.com/c/MichiganSupremeCourt

The schedule of arguments is posted on the Supreme Court's oral arguments homepage. Archived video of oral argument will also be posted on YouTube.

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, April 15, 2020
9:30 a.m.

MOAA 159107, 159124
159107

KATHLEEN M. GAYDOS, Personal Representative of the ESTATE OF DIANA LYKOS VOUTSARAS,
Plaintiff-Appellee,
and
SPIRO VOUTSARAS
Plaintiff,

Shane Hilyard

v (Appeal from Ct of Appeals)
(Ingham – Stewart, M.)

GARY L. BENDER, RICHARD A. CASCARILLA, LINDSAY NICOLE DANGL, VINCENT P. SPAGNUOLO, and MURPHY & SPAGNUOLO PC,

Defendants,
and
KENNETH M. MOGILL and MOGILL, POSNER & COHEN, — Kathleen Klaus
Defendants-Appellants,
and
KERN G. SLUCTER and GANNON GROUP, PC,
Defendants-Appellees.

159124
KATHLEEN M. GAYDOS, Personal Representative of the ESTATE OF DIANA LYKOS VOUTSARAS, — Shane Hilyard
Plaintiff-Appellee,
and
SPIRO VOUTSARAS,
Plaintiff,

v (Appeal from Ct of Appeals)
(Ingham – Stewart, M.)

GARY L. BENDER, RICHARD A. CASCARILLA, LINDSAY NICOLE DANGL, VINCENT P. SPAGNUOLO, and MURPHY & SPAGNUOLO PC,
Defendants,
and
KENNETH M. MOGILL and MOGILL, POSNER & COHEN,
Defendants-Appellees,
and
KERN G. SLUCTER and GANNON GROUP, PC, — John Brennan
Defendants-Appellants.

Diana Lykos Voutsaras and her husband, Spiro Voutsaras, were defendants in a foreclosure action brought by Gallagher Investments, the holder of the note on their mortgage. They filed a counterclaim and a third-party claim against Gallagher and others, alleging professional malpractice. The Voutsarases' attorney hired another attorney as well as real estate experts to provide litigation support services and to give expert testimony at trial. Ultimately, their attorney informed them that the litigation strategy was doomed to fail, and the trial court granted summary disposition against the Voutsarases in the foreclosure action. After Diana died in January 2015, her estate filed this malpractice action against her attorneys and the attorney and real estate experts retained in the underlying foreclosure action. Plaintiff-estate alleged that the retained experts failed to provide professionally competent opinions. The trial court held that defendants were entitled to witness immunity, and granted summary disposition in their favor. Plaintiff-estate appealed, and the Court of Appeals reversed and remanded in a published opinion, holding that "licensed professionals owe the same duty to the party for whom they

testify as they would to any client and that witness immunity is not a defense against professional malpractice." The Supreme Court has ordered oral argument on defendants' application for leave to appeal to address whether the privilege of witness immunity extends to suits against retained experts. See *Maiden v Rozwood*, 461 Mich 109 (1999).

Wednesday, April 15, 2020
10:30 a.m.

No. 2 159510-1 (20-minute arguments per side)

SKANSKA USA BUILDING, INC., Edward Boucher
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Midland – Beale, M.)

M.A.P. MECHANICAL CONTRACTORS, INC., Jeffrey Gerish
AMERISURE INSURANCE COMPANY, and
AMERISURE MUTUAL INSURANCE COMPANY,
Defendants-Appellees.

Plaintiff Skanska USA Building, Inc., was the construction manager on a hospital renovation project in Midland. Plaintiff subcontracted the heating and cooling portion of the project to defendant M.A.P. Mechanical Contractors, Inc. M.A.P. obtained a commercial general liability insurance policy from defendant Amerisure Insurance Company. Plaintiff and the hospital were named as additional insureds on the CGL policy. M.A.P. improperly installed parts of the heating system, resulting in damage that required extensive repairs. After plaintiff notified M.A.P. of the faulty installation, M.A.P. sent a notice of claim to Amerisure. Meanwhile, the hospital demanded payment of damages from plaintiff, who in turn sent a demand letter to M.A.P., asserting that it was responsible for all repair costs. Plaintiff performed the repairs and submitted a claim for coverage to Amerisure, which was denied. Plaintiff then filed this lawsuit against M.A.P. and Amerisure. The trial court denied Amerisure's motion for summary disposition, finding that genuine issues of material fact existed whether the faulty installation was an "occurrence" under the policy. The trial court also denied plaintiff's motion for summary disposition. Both parties appealed, arguing that the coverage issue should be resolved as a matter of law. The Court of Appeals consolidated the appeals and reversed in an unpublished opinion, holding that there was no "occurrence" under the policy because damage only occurred to plaintiff's own work product. The Supreme Court has granted plaintiff's application for leave to appeal to address whether: (1) the definition of "occurrence" in *Hawkeye-Security Ins Co v Vector Construction Co*, 185 Mich App 369 (1990), remains valid under the terms of the CGL policy at issue here; and (2) plaintiff has shown a genuine issue of material fact as to the existence of an "occurrence" under those terms.

Wednesday, April 22, 2020
9:30 a.m.

No. 3 159539 (20-minute arguments per side)

ANTHONY HART, William Goodman
Plaintiff-Appellant,

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

STATE OF MICHIGAN, Joseph Froelich
Defendant-Appellee.

In 2001, the then-juvenile plaintiff was adjudicated as having committed misdemeanor fourth-degree criminal sexual conduct. He was required, under the Sex Offender Registration Act (SORA), MCL 28.721 *et seq*., to report and register his address for 25 years. The SORA was amended in 2011 to establish a tier system, classifying plaintiff's offense as Tier II and providing in part that Tier II offenders who had been adjudicated as juveniles were no longer required or expected to register. The parties agree that plaintiff's name should have been removed from the sex offender registry, but that did not occur and plaintiff continued to register. In 2013, plaintiff registered his address incorrectly and was charged with violating SORA. He pleaded no contest to the charge and was assessed a fine. In 2014, plaintiff was again arrested for failing to comply with SORA. He pleaded guilty to the felony charge of failure to register and was sentenced to serve a prison term and ordered to pay a fine. After 17 months of imprisonment, plaintiff was released from prison, and his convictions and sentences were vacated. Plaintiff filed suit against the state, alleging that it had violated his constitutional rights through its policies, customs, and practices, which were a "moving force" behind the constitutional violations. The Court of Claims denied defendant's motion for summary disposition, concluding that plaintiff properly alleged that, due in part to defendant's knowledge that law enforcement officers and prosecutors rely on the sex offender registry when making charging decisions, there was a direct causal link between defendant's policies, practices, and customs that led to the inaccuracy of the registry and plaintiff's illegal arrests and prosecutions. The Court of Appeals reversed, holding that plaintiff had not alleged sufficient facts showing a direct causal link between the alleged failure to train employees and the alleged constitutional violation such that defendant's "deliberate indifference" could be shown. The Supreme Court has granted plaintiff's application for leave to appeal to address whether the Court of Appeals erred when it concluded that he had failed to allege sufficient facts to state a constitutional-tort claim under the principles outlined in *Canton v Harris*, 489 US 378 (1989), and *Bryan Co Bd of Co Commr's v Brown*, 520 US 397, 409 (1997).

Wednesday, April 22, 2020
10:30 a.m.

159205
Caleb Griffin, Mark Bendure
Plaintiff-Appellant,

v Appeal from Ct of Appeals
(Genesee – Farah, J.)

Swartz Ambulance Service, Aaron Caffrey
Defendant-Appellee,

and

Sarah Elizabeth Aurand,
Defendant.

Plaintiff Caleb Griffin was involved in a rollover accident that injured his leg, including dislocating his knee. As he was being transported to the hospital in an ambulance provided by defendant Swartz Ambulance Service, the ambulance driver struck another vehicle. At the time of the collision, the ambulance was exiting the highway and the driver was not operating the siren or flashing lights. A second ambulance then transported plaintiff to the hospital, where his leg had to be amputated.

Plaintiff sued Swartz Ambulance Service, alleging that Swartz's employee, Mary Shifter, a licensed emergency medical technician (EMT) and the driver of the ambulance, was grossly negligent in causing the second accident. Plaintiff further alleges that the delay in treatment led to the amputation of his leg. Defendant Swartz filed a motion to dismiss plaintiff's lawsuit under a provision of the Emergency Medical Services Act (EMSA), MCL 333.20965(1), which establishes immunity for EMTs and other medical first responders who provide services "in the treatment of a patient," except in cases where there is a showing of gross negligence or willful misconduct. Defendant argued that plaintiff's allegations and evidence established, at most, that Shifter's conduct was ordinary negligence; therefore, it was immune from liability under the EMSA. Plaintiff countered that immunity under the EMSA only limits liability "in the treatment of a patient," and that the word "treatment" in this context does not include the operation of an ambulance. The circuit court agreed with defendant Swartz and dismissed plaintiff's lawsuit.

Plaintiff appealed. The Court of Appeals affirmed in a 2-1 split decision. The majority applied the definition of "treatment" from *Merriam-Webster's Collegiate Dictionary* (11th ed) as including the handling of a patient in an ambulance or techniques customarily applied when caring for ambulance patients, consistent with the training of first responders. The majority concluded that the statutory term "treatment" was not limited to "medical services," and that defendant Swartz was entitled to immunity from Shifter's allegedly negligent driving. The dissenting judge did not disagree with the majority's approach, but relied instead on a different dictionary, the *Oxford English Dictionary* (2d ed), to define "treatment" as "[m]anagement in the application of remedies; medical or surgical application or service." Applying this definition, the dissenting judge determined that the act of transportation was not "treatment" under the statute and Swartz was not entitled to immunity.

Plaintiff then filed an application for leave to appeal in the Supreme Court, which ordered oral argument on the application to address whether the operation of the ambulance in this case by defendant Swartz's employee constitutes an "act[] . . . in the treatment of a patient" within the meaning of MCL 333.20965(1).

-MSC-