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 January 2020 Oral Arguments Schedule

LANSING, MI, December 20, 2019 —The Michigan Supreme Court announced that oral arguments in three cases will be heard on Wednesday, January 8, 2020. The Court will convene to hear the cases beginning at 9:30 a.m. in the Supreme Court courtroom, located on the sixth floor of the Hall of Justice. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

The Court broadcasts its oral arguments and other hearings live on the Internet. Watch the stream 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 to receive regular updates as cases are heard. Please contact the Office of Public Information at 517-373-0129 or SeaksL@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. The request must be submitted three days in advance of the hearing.

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, January 8, 2020
Morning Session - 9:30 a.m.

No. 1 158150-1

PROGRESS MICHIGAN, Mark Brewer
Plaintiff-Appellee,

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

ATTORNEY GENERAL, Kyla Barranco
Defendant-Appellant.

Believing that the state's (former) Attorney General and members of his staff used their personal e-mail accounts to perform official functions, plaintiff nonprofit organization requested, under the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, all of defendant's department's e-mails since 2010 that were sent or received using a personal

e-mail account in the performance of any official function. On October 19, 2016, defendant's department denied the request, explaining that it did not possess records that met plaintiff's description, with the exception of one e-mail that was exempt from disclosure. Plaintiff appealed, and defendant's department upheld the denial. On April 11, 2017, plaintiff filed a FOIA complaint in the Court of Claims, pursuant to MCL 15.240(1)(b). Defendant moved to dismiss the complaint for failure to comply with MCL 600.6431(1), which provides in part that no claim may be maintained against the state unless the claimant, within 1 year after the claim has accrued, files a written claim that "shall be signed and verified by the claimant before an officer authorized to administer oaths." Plaintiff amended its complaint to be statutorily compliant, but the amended complaint was filed on May 26, 2017, beyond the 180-day FOIA statute of limitations. Defendant moved for summary disposition, which the Court of Claims denied in part, holding that the original complaint tolled the limitations period and the amended complaint related back to the original, timely complaint. Defendant appealed. Drawing on medical malpractice caselaw, the Court of Appeals reversed in a published opinion, holding that because plaintiff's original, timely complaint was neither signed nor verified the "[n]o claim may be maintained" language in MCL 600.6431 was triggered, rendering the original complaint void and incapable of amendment. *Progress Michigan v Attorney General*, 324 Mich App 659 (2018). The Supreme Court has granted plaintiff's application for leave to appeal to address: (1) whether there is a sovereign or governmental immunity defense to the failure to disclose public records pursuant to the FOIA; (2) if so, whether that immunity is waived by the FOIA; (3) whether the notice and verification requirements of the Court of Claims Act, see MCL 600.6431(1), are applicable to a FOIA appeal; (4) if so, whether the Court of Appeals erred when it held that plaintiff's failure to follow the verification requirement in its original complaint, which was filed within one year after the FOIA claim accrued, MCL 600.6431(1), rendered the complaint "invalid from its inception" and incapable of amendment; and (5) whether the Court of Appeals erred when it held that the verified amended complaint, also filed within the one-year period, could not "relate back" to the date of the original complaint for purposes of compliance with the 180-day limitations period of the FOIA.

MOAA 158141

KAITLIN HAHN, Donald Fulkerson
Plaintiff-Appellee,

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

GEICO INDEMNITY COMPANY, Daniel Saylor
Defendant-Appellant.

Zachary Waller, in Michigan, when Waller fell asleep at the wheel and drove into a ditch. Plaintiff suffered severe injuries. At the time of the accident in 2015, Waller was a

Michigan resident and active-duty Marine, who had obtained a North Carolina auto insurance policy from defendant Geico Indemnity Company (GEICO), while he was stationed in North Carolina at Camp Lejeune. Plaintiff filed a claim with GEICO, which paid benefits to plaintiff as a non-resident spouse under MCL 500.3163. Plaintiff later filed a complaint for declaratory relief seeking to determine whether GEICO, Automobile Club Insurance Association (ACIA), or both companies were liable to pay personal protection insurance benefits under Michigan's No-Fault Act, MCL 500.3101 *et seq*. In the complaint, plaintiff asserted that she was domiciled with her father, who maintained a Michigan no-fault policy with ACIA. The parties agreed to limited discovery to address only the issue of Waller's and plaintiff's residency. Defendants each moved for summary disposition. GEICO argued that plaintiff and Waller both resided in Michigan at the time of the accident and, therefore, benefits were not allowable under MCL 500.3163. ACIA argued that the North Carolina policy was subject to reformation under MCL 500.3012. The trial court granted summary disposition to ACIA, but denied summary disposition to GEICO, holding that there was a genuine issue of material fact whether GEICO knew or should have known that Waller was a Michigan resident and that the North Carolina policy was subject to reformation under MCL 500.3012. See *Farm Bureau Ins Co v Allstate Ins Co*, 233 Mich App 38 (1998). GEICO appealed by leave granted, arguing that the *Farm Bureau* decision was wrongly decided and should be overturned or, alternatively, that even if *Farm Bureau* were permitted to stand, there is no genuine issue of material fact. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on GEICO's application for leave to appeal to address: (1) whether MCL 500.3012 permits the reformation of a non-Michigan insurance contract to comply with the requirements of the Michigan no-fault act; and (2) whether *Farm Bureau* was correctly decided, and if not, whether it should be overruled.

MOAA 158408
In re ROBERT E. WHITTON REVOCABLE TRUST.

MOLLY MICHALUK, Robert Zawideh
Petitioner-Appellant,

v (Appeal from Ct of Appeal)
(Oakland PC – Hallmark, L.)

EDDIE WHITTON and RICHARD WHITTON, Michael Latiff
Successor Trustees of the ROBERT E. WHITTON REVOCABLE TRUST,
Respondents-Appellees.

Petitioner is a beneficiary of her deceased father's trust. The trust contains an in terrorem clause providing that any beneficiary who contests the trust forfeits his or her interest under the trust, unless probable cause for the challenge exists. Petitioner sought a

declaratory ruling on whether an action to modify the trust, to give her a greater share of the trust assets, would violate the in terrorem clause, and if so, whether she has probable cause. The probate court denied the petition, ruling that the proposed action would violate the in terrorem clause and would not be supported by probable cause. In an unpublished opinion, the Court of Appeals affirmed the denial of the petition on the basis that any challenge to the trust was purely hypothetical and therefore the case was not ripe for judicial resolution. The court held that *McLeod v McLeod*, 365 Mich 25 (1961), was dispositive, and it vacated the probate court's ruling on the probable cause issue. The Supreme Court has ordered oral argument on petitioner's application for leave to appeal to address whether the Oakland Probate Court had jurisdiction to entertain the request for declaratory relief in light of *McLeod*.

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