MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE

'FAMILY JOYRIDING' AT ISSUE IN AUTO INSURANCE CASES BEFORE MICHIGAN SUPREME COURT IN ORAL ARGUMENTS NEXT WEEK

Family members were forbidden to drive vehicles by owners, but drove cars anyway; insurance companies invoke "taken unlawfully" no-fault provision to bar coverage, but claimants invoke "family joyriding" exception, saying unlawful taking does not apply where forbidden drivers had no intent to steal cars

LANSING, MI, March 2, 2012 – Does a "family joyriding" doctrine require auto insurers to pay medical expenses for two drivers who drove family members' cars – despite knowing that the owners had forbidden them to do so? That is a question that the Michigan Supreme Court will consider when it hears oral arguments next week.

In *Spectrum Health Hospitals v Farm Bureau*, a car owner allowed his son's girlfriend to use his car, but had forbidden his son to drive the car and had also warned the girlfriend not to let the son drive it. But the son, who lacked a valid driver's license, borrowed the car with his girlfriend's permission and got into an accident while legally drunk. In *Progressive Marathon Insurance v DeYoung*, a man with four drunk driving convictions was specifically excluded from his wife's auto insurance policy, and she had also forbidden him to drive her car. Despite knowing this, the man took his wife's car without permission and crashed it while driving drunk. The insurance companies in both cases argued that the injured drivers had "taken unlawfully" in violation of Michigan's No-Fault Act, MCL 500.3113(a), which provides that "A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident … [t]he person was using a motor vehicle or motorcycle which he or she had taken unlawfully …." But in both cases, the Michigan Court of Appeals concluded that the "taken unlawfully" provision does not apply to "family joyriding," where a family member borrows a car without permission but without meaning to steal it. The Court of Appeals judges in *Progressive Marathon* said they were "acutely aware" that the no-fault act does not provide a family joyriding exception, but said they were constrained by prior appellate decisions that recognized the doctrine.

The Supreme Court will also hear *People v Cole*, in which the defendant seeks to withdraw or amend his no-contest plea to sexually abusing his five-year-old stepdaughter. The state's criminal code requires lifetime electronic monitoring upon release from prison for anyone over age 17 who is convicted of second-degree criminal sexual conduct against a victim under 13. While the sentencing judge told the defendant about the length of his prison term, the judge did not inform him of the mandatory lifetime electronic monitoring. The defendant argues that lifetime monitoring is a sentencing term and that he could not make a knowing and voluntary plea without that information. In a split decision, a Court of Appeals panel ruled in the

defendant's favor, with the majority finding that electronic monitoring is a "sentence" that the sentencing judge was required to disclose. The dissenting judge observed that, while it would be "better practice" for a sentencing judge to inform a defendant of every action the state is required to take, "the law plainly does *not* require such disclosure."

The remaining 11 cases the Court will hear include constitutional, criminal, insurance, medical malpractice, legal procedure, property taxes and tort law issues.

The Court will hear oral arguments in its courtroom on the sixth floor of the Michigan Hall of Justice on **March 6, 7, and 8**, starting at **9:30 a.m**. each day. The Court's oral arguments are open to the public. The arguments will also be broadcast on Michigan Government Television (mgtv.org).

Please note: The summaries that follow are brief accounts of complicated cases and 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, or significance of their cases. Briefs are online at http://www.courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. For more details about these cases, please contact the attorneys.

Tuesday, March 6
Morning Session

SPECTRUM HEALTH HOSPITALS v FARM BUREAU MUTUAL INSURANCE COMPANY OF MICHIGAN, et al. (case no. 142874)
Court of Appeals case no. 296976
Attorney for plaintiff Spectrum Health Hospitals: Richard E. Hillary, II/(616) 831-1700
Attorney for defendants Farm Bureau Mutual Insurance Company of Michigan and Farm Bureau General Insurance Company of Michigan: Kimberlee A. Hillock/(517) 351-6200
Trial Court: Kent County Circuit Court
At issue: A hospital sued an insurance company to recover payment for medical services that it provided to Craig Smith, Jr. after he was injured in an accident while driving his father's car. Smith, who was unlicensed and legally drunk at the time of the accident, had been forbidden by his father to drive the car – but the father had given permission to Smith's girlfriend to use the vehicle, cautioning her not to let Smith drive it. The insurance company argued that it was not liable for benefits because Smith had taken the vehicle "unlawfully," as defined by Michigan's no-fault act. But the trial court ruled that Smith was driving the vehicle lawfully, because his girlfriend, by virtue of having the father's permission, could in turn give Smith permission to drive the car. May an immediate family member who knows that he has been forbidden to drive a vehicle nonetheless be a permissive user – and be eligible for personal protection insurance benefits under MCL 500.3113(a) – if an intermediate permissive user grants permission to operate the accident vehicle, despite the owner's prohibition? Does the "family joyriding" exception to MCL 500.3113(a) apply?
Background: On May 16, 2008, Craig Smith, Jr. was driving a car owned by his father, Craig Smith, Sr., when he hit a tree and was injured. Craig Jr. was legally intoxicated and had no valid license at the time of the accident. He was treated at Spectrum Health Hospitals.

Spectrum sued Farm Bureau, which insured the car, for Craig Jr.'s medical expenses, but the insurance company argued that it was not liable, contending that Craig Jr. had "unlawfully" taken the car. Craig Sr. had entrusted the vehicle to Craig Jr.'s girlfriend with instructions that she not allow Craig Jr. to drive it, but she had given Craig Jr. permission to take the car. Farm Bureau argued that Craig Jr. – who knew that his father did not want him to drive the car – had "taken unlawfully" in violation of Michigan's No-Fault Act, MCL 500.3113(a). That statute states, in part: "A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed: (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle."

But the trial court ruled in favor of Spectrum, finding that Farm Bureau had wrongfully denied benefits. By having Craig Sr.'s permission to use the car, Craig Jr.'s girlfriend was empowered to grant others permission to operate the vehicle, the judge said. In addition, MCL 500.3113(a) does not apply to cases where the person taking the vehicle unlawfully is a family member doing so not to steal, but for joyriding purposes, the trial judge said. The Court of Appeals affirmed in an unpublished per curiam opinion, citing, among other authorities, the Michigan Supreme Court's 1975 decision in *Cowan v Strecker*, 394 Mich 110: "[W]hen an owner willingly surrenders control of his vehicle to others he 'consents' to assumption of the risks attendant upon his surrender of control regardless of admonitions which would purport to delimit his consent." Farm Bureau appeals.

PROGRESSIVE MARATHON INSURANCE COMPANY v DEYOUNG, et al. (case no. 143330)

Court of Appeals case no. 296502

Attorney for plaintiff Progressive Marathon Insurance Company: Nicholas S. Ayoub/(616) 459-7100

Attorney for intervenors Spectrum Health Hospitals and Mary Free Bed Rehabilitation Hospital: Richard E. Hillary, II/(616) 831-1700

Attorney for amicus curiae Insurance Institute of Michigan: Carson J. Tucker/(248) 851-4111

Trial Court: Ottawa County Circuit Court

At issue: The no-fault automobile policy in this case expressly excluded the car owner's husband – who has four drunk driving convictions – from coverage. Although he knew this, the husband drove the car while drunk and was injured in an accident. The insurance company filed a lawsuit, seeking a declaration that it was not obligated to pay for the injured husband's medical treatment and care. The trial court ruled in the insurance company's favor, but the Court of Appeals reversed. Does the "family joyriding exception" in MCL 500.3113(a) apply to a family member who knows that he or she has been forbidden to drive a vehicle and is excluded from coverage in the no-fault policy, but nevertheless drives the car and is hurt in an accident? If so, should the "family joyriding" exception be limited or overruled?

Background: Ryan DeYoung has four drunk driving convictions and has not held a driver's license since age 17. He was listed as an excluded driver on his wife's no-fault insurance policy with Progressive Marathon Insurance Company; in addition, she had forbidden him to drive the car. Nevertheless, DeYoung took the car without her consent and, while intoxicated, crashed the car and was seriously injured.

DeYoung incurred medical expenses at Spectrum Health Hospitals and Mary Free Bed Rehabilitation Hospital and sought personal protection insurance benefits from Progressive, but the insurer denied the claim. Progressive filed a declaratory judgment against the DeYoungs, seeking a determination that Ryan DeYoung was not entitled to PIP benefits because, at the time of the accident, he was using a motor vehicle that he had taken unlawfully within the meaning of MCL 500.3113(a). That statute states, in part: "A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed: (a) The person was using a motor vehicle or motorcycle which he or she had taken unlawfully, unless the person reasonably believed that he or she was entitled to take and use the vehicle."

Spectrum and Mary Free Bed intervened in the lawsuit, arguing that the "family joyriding exception" applied, and that DeYoung should be covered by the Progressive policy. Under the family joyriding exception, MCL 500.3113(a) does not apply to cases where the person taking the vehicle unlawfully is a family member doing so without the intent to steal, but for joyriding purposes. The trial court ruled that family joyriding did not apply in this case, because DeYoung was listed on the policy as an excluded driver.

But in an unpublished opinion, the Court of Appeals reserved and remanded the case to the trial court, holding that, because the named driver exclusion did not by its terms apply to the no-fault policy's PIP coverage, the family joyriding exception applied under existing precedent. The panel added that its members were "acutely aware" that the family joyriding exception has no basis in MCL 500.3113(a). "[W]ere we writing on a clean slate, we would not adopt such an exception," the panel members explained. But the judges concluded that they were constrained by prior case law to apply the family joyriding exception in this case. Progressive appeals.

PEOPLE v COLE (case no. 143046)
Court of Appeals case no. 298893
Prosecuting attorney: Charles F. Justian/(231) 724-6435
Attorney for defendant David Mark Cole: Anne M. Yantus/(313) 256-9833
Attorneys for amicus curiae American Civil Liberties Union Fund of Michigan and the Criminal Defense Attorneys of Michigan: Kary L. Moss/(313) 578-6824, John R. Minock/(734) 668-2200
Trial Court: Muskegon County Circuit Court
At issue: The defendant entered a plea to two counts of second-degree criminal sexual conduct, with an evaluation from the court, under *People v Cobbs*, 443 Mich 276 (1993), for concurrent five-year minimum prison sentences. Consistent with the plea, the judge sentenced the defendant to concurrent prison terms of five to 15 years; he also ordered lifetime electronic monitoring as required by MCL 750.520n. On appeal, the defendant argued that his plea was not voluntary because he was not informed of the lifetime monitoring requirement. In a split decision, the Court of Appeals remanded the case to the trial court with directions to permit the defendant to withdraw his plea. Does Michigan Court Rule 6.302 require that a defendant entering a plea to first-degree or second-degree criminal sexual conduct be informed that he or she will be subject to lifetime electronic monitoring if the victim is under 13 years of age and the defendant is sentenced to prison? Must lifetime electronic monitoring be included in the terms of a sentence evaluation under *People v Cobbs*?
Background: David Mark Cole was charged with two counts of second-degree criminal sexual conduct involving his five-year-old stepdaughter. He entered a no contest plea, with a *Cobbs*

evaluation for concurrent five-year minimum sentences. (Under *People v Cobbs*, 443 Mich 276 (1993), a defendant may agree to a guilty or no-contest plea after being informed by the judge of the likely sentence; the judge determines the sentence based on an evaluation of the facts in the case, the defendant's criminal history, and other factors.) The judge sentenced Cole to concurrent terms of five to 15 years in prison, and also ordered Cole to be placed on lifetime electronic monitoring following his release from prison. MCL 750.520n(1) provides that a person over 17 years old convicted of second-degree criminal sexual conduct against someone under 13 "shall be sentenced" to lifetime electronic monitoring per MCL 791.285, which requires electronic monitoring to begin upon the offender's release from prison. Cole filed a motion to amend his sentence or to withdraw his plea, arguing that the trial court's failure to advise him of the mandatory penalty of lifetime electronic monitoring rendered his plea involuntary. The trial court denied the motion.

Cole appealed, arguing that his plea was invalid and that the trial court did not satisfy the requirements of MCR 6.302. Among other things, MCR 6.302 requires the trial court to "advise the defendant" of the "name of the offense to which the defendant is pleading," along with the "maximum possible prison sentence for the offense and any mandatory minimum sentence required by law." Cole argued that lifetime monitoring is a sentencing provision and that the court had to inform him of that aspect of his sentence at the plea hearing. Having failed to do so, the judge could not impose lifetime monitoring as a term of sentencing without first offering him the chance to withdraw his plea, Cole contended.

In a split unpublished per curiam opinion, the Court of Appeals agreed with the prosecutor that mandatory lifetime electronic monitoring was not a "minimum" sentence under MCR 6.302(B)(2). But, held the majority, a plea must still be "understanding" and "voluntary." MCL 750.520n characterizes monitoring as a "sentence"; moreover, being on tether or an electronic monitoring device is generally regarded as an alternative to jail or prison, the majority said, so being on a tether was part of the sentence itself. Since Cole was not informed that lifetime electronic monitoring would be part of the sentence, the majority concluded, he could not have entered a knowing, intelligent, and understanding plea. The majority remanded the case to the trial court to allow Cole to withdraw his plea. The dissenting judge, while saying that the "better practice" would require a judge to "inform a defendant of every action the state will mandatorily take," concluded that "the law plainly does *not* require such disclosure." The judge went on to say that "Electronic tethering is not a prison sentence any more than is registering as a sex offender. There is no requirement for a trial court to discuss the 'collateral consequences' of a plea with a defendant, even though those consequences may be severe and mandatory." The prosecutor appeals.

Afternoon Session

MCCAHAN v BRENNAN, et al. (case no. 142765)
Court of Appeals case no. 292379
Attorney for plaintiff Christina McCahan: Christian P. Collis/(248) 945-0100
Attorney for defendant University of Michigan Regents: Karl V. Fink/(734) 665-4441
Attorney for amicus curiae Michigan Association for Justice: Steven A. Hicks/(517) 853-3303
Trial Court: Court of Claims

At issue: The plaintiff, injured in a collision with vehicle owned by the University of Michigan, failed to file a notice of intent to file a claim with the Clerk of the Court of Claims within six months after the accident, as required by MCL 600.6431. She did provide information about the accident to the university within that time frame, and filed a notice of intent with the Clerk of the Court of Claims almost a year after the accident. The trial court granted summary disposition to the university and dismissed the case because the plaintiff failed to comply with MCL 600.6431's notice requirements. The Court of Appeals affirmed in a split, published decision. The plaintiff contends that the actual notice and information she provided substantially complied with the statute, foreclosing any claim that the university was prejudiced by noncompliance with the notice requirements. Did the plaintiff's failure to comply with the notice requirement of MCL 600.6431(3) require dismissal of her claim against the university?

Background: On December 12, 2007, Christina McCahan was injured in a collision with a vehicle owned by the University of Michigan and driven by a university employee. On May 7, 2008, McCahan's attorney sent a written notice addressed to the university's Office of Legal Counsel, explaining that McCahan intended to sue. Three weeks later, a senior claims representative from the university's Risk Management Services sent a letter acknowledging the attorney's letter and indicating that the university intended to conduct a full investigation into the incident. The representative also requested additional information from McCahan, including a statement by McCahan, and copies of medical records and medical bills. McCahan provided the university with her statement on June 12, 2008, the six-month anniversary of the accident. She also provided copies of all documentary materials available at that time, including the police report and her medical records. On October 31, 2008, McCahan filed a letter of intent with the Court of Claims, which was signed by McCahan and her attorney. McCahan filed her lawsuit in the Court of Claims on December 5, 2008.

The university moved to dismiss the lawsuit, arguing that McCahan had failed to satisfy the requirements of MCL 600.6431(3), which states that, in "all actions for property damage or personal injuries" against the state, a claimant "shall file with the clerk of the court of claims a notice of intention to file a claim or the claim itself within 6 months following the happening of the event giving rise to the cause of action." The trial court agreed with the university and granted its motion.

McCahan appealed, and the Court of Appeals affirmed in a split published opinion. The majority rejected McCahan's claim that she substantially complied with the requirements of the statute, and her alternative argument that the university failed to show that her delay caused it prejudice. Citing *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197 (2007), the majority held that MCL 600.6431(3) had to be applied as written. Because McCahan failed to file a notice with the Clerk of the Court of Claims within six months, as required by the statute, her lawsuit was properly dismissed, the majority held. The dissenting Court of Appeals judge would have reversed the trial court's grant of summary disposition to the university and remanded the case for trial: "Clearly, the university had actual knowledge of plaintiff's intention to file a claim within six months following the accident." McCahan appeals.

CEDRONI ASSOCIATES, INC. v TOMBLINSON, HARBURN ASSOCIATES ARCHITECTS & PLANNERS, INC. (case no. 142339)
Court of Appeals case no. 287024
Attorney for plaintiff Cedroni Associates, Inc.: Ryan W. Jezdimir/(248) 373-3700

Attorney for defendant Tomblinson, Harburn Associates Architects & Planners, Inc.: Ronald S. Lederman/(248) 746-0700
Attorney for amicus curiae American Institute of Architects - Michigan: Frederick F. Butters/(248) 357-0831
Trial Court: Genesee County Circuit Court
At issue: The plaintiff was the low bidder on a construction project contract that was offered by a public school district. The defendant architectural firm had an agreement with the school district to assist with the project bid evaluations. After the defendant provided its recommendation – which stated that the plaintiff should be disqualified – the school district chose the bidder that had submitted the second lowest bid. The plaintiff sued the defendant for tortious interference with a business expectancy, but the trial court granted summary disposition to the defendant. A split Court of Appeals reversed in a published decision. Are there genuine issues of material fact as to whether the plaintiff, a disappointed low bidder on a public contract, had a valid business expectancy? Did the defendant architectural firm's communications, made pursuant to its agreement with the school district, amount to intentional and improper conduct sufficient to sustain a claim of tortious interference with a business expectancy?
Background: The Davison Community Schools opened bidding on a construction project to renovate two elementary schools. The school district contracted with Tomblinson, Harburn Associates Architects & Planners, Inc., an architectural firm, to assist the school district with the competitive bidding selection process. The firm's duties included reviewing and evaluating bid applications, investigating contractors and their references, giving opinions on contractors' competence and workmanship, and making recommendations regarding which contractor should be awarded the project.

Although Cedroni Associates, Inc. submitted the lowest bid on the construction project, the school district, on Tomblinson, Harburn's recommendation, awarded the contract to the second lowest bidder. Cedroni sued Tomblinson, Harburn, alleging tortious interference with prospective economic relations. Cedroni argued that it had a legitimate expectation to receive the contract, and that Tomblinson, Harburn had wrongfully persuaded the school district not to award the contract to Cedroni. Cedroni contended that Tomblinson, Harburn intentionally interfered with its anticipated business relationship by wrongfully claiming that Cedroni was unqualified to perform the necessary work.

Tomblinson, Harburn filed a motion to dismiss, arguing that the school district reserved the right to accept or reject any or all offers and that the school district was not required to accept the lowest bid. Tomblinson, Harburn maintained that its recommendation was based on legitimate business reasons and information gathered during the bid process, including poor reviews from some of Cedroni's references. The trial court granted Tomblinson, Harburn's motion, concluding that Cedroni had failed to establish that it had a valid expectation of being awarded the contract, and that Cedroni also failed to establish that Tomblinson, Harburn engaged in intentional or improper interference.

Cedroni appealed, and in a split, published decision, the Court of Appeals reversed the trial court and remanded the case for trial. The majority concluded that there were genuine issues of material fact pertaining to whether Cedroni had a valid business expectancy and whether Tomblinson, Harburn did anything improper. The majority would "not preclude litigation when there exists evidence suggesting that the ostensible exercise of professional business judgment is in reality a disguised or veiled attempt to intentionally and improperly interfere with the contractual or expectant business relationships of others." The dissenting judge would have

affirmed the trial court. She opined that Cedroni had only "a legitimate expectancy that the bidding process would be openly and fairly conducted, and, thus, it had to establish fraud, injustice or violation of trust in order to avoid summary disposition." She concluded that Cedroni had failed to demonstrate "that defendant did anything improper or that its conduct was anything other than the exercise of professional business judgment." Tomblinson, Harburn appeals.

Wednesday, March 7
Morning Session

MICHIGAN PROPERTIES, L.C.C. v MERIDIAN TOWNSHIP (case nos. 143085-7)
Court of Appeals case nos. 289174-6
Attorneys for petitioner Michigan Properties, L.L.C.: Michael B. Shapiro, John D. Pirich/(313) 465-7000
Attorneys for respondent Meridian Township: Peter A. Teholiz, Michael G. Woodworth/(517) 886-7176
Attorney for amicus curiae Michigan State Tax Commission: Matthew B. Hodges/(517) 373-3203
Attorney for amicus curiae Michigan Townships Association and the Michigan Municipal League: Robert E. Thall/(269) 382-4500
Lower Tribunal: Michigan Tax Tribunal
At issue: In 2004, the petitioner purchased three properties. Such a transfer in ownership allows the township to "uncap" the property's taxable value and assess property tax on the full state equalized value without the limitations imposed by Proposal A (Const 1963, art 9, § 3). In this case, the township failed to uncap the SEV of the three properties for the 2005 or 2006 tax year. In March 2007, the local Board of Review corrected the taxable value for 2007, using the uncapped value of the property in 2005 as the base value. The petitioner appealed to the Tax Tribunal, arguing that MCL 211.27a requires that any change in taxable value be made in the year immediately after the property transfer. The Tax Tribunal ruled against the petitioner, but the Court of Appeals reversed, holding that the township was not permitted to adjust the taxable value because it had failed to do so in the year after the transfer. If the taxing authority fails to adjust real property's taxable value in the year immediately after a transfer, does MCL 211.27a(3) preclude a later adjustment?
Background: In December 2004, Michigan Properties L.L.C. purchased three apartment complexes in Meridian Township. In January 2005, Michigan Properties filed the required property transfer affidavits, advising the township that there had been a transfer of ownership of the property. Such a transfer allows the township to base the taxable value of the property on the property's state equalized value for the following year without regard to the limitations imposed by Proposal A (Const 1963, art 9, § 3) and the enabling statute MCL 211.27a. Proposal A caps the amount that a property's taxable value can increase each year, even if the property's true cash value or actual market value rose at a greater rate. The taxable value is "uncapped" upon a transfer of ownership: MCL 211.27a(3) states that "the property's taxable value for the calendar year following the year of the transfer is the property's state equalized value for the calendar year following the transfer." Without a transfer of ownership, the taxable value of the property cannot be increased from one tax year to the next by more than the lesser amount of 5 percent of the assessed value of the property for the previous year or the increase in the rate of inflation from the previous year. MCL 211.27a(2).

The township failed to make assessments for calendar year 2005 based on the properties' taxable value as defined by § 27a(3). Rather, it increased the taxable value by the amounts allowed by MCL § 27a(2). The township discovered its mistake in October 2006, and notified Michigan Properties that it had corrected the SEV.

Michigan Properties filed separate appeals for each apartment complex with the Michigan Tax Tribunal. The Board of Review granted the appeal and ruled in favor of the township, correcting the assessment for each parcel to reflect uncapping of the property with the 2005 SEV as the base figure for the taxable value.

Michigan Properties appealed each reassessment to the Tax Tribunal, claiming that, because the township failed to uncap the SEV in the year following the transfer, the township was precluded from doing so for any subsequent tax year. But the Tax Tribunal rejected that argument and ruled in the township's favor. The tribunal found that the property had been transferred in 2004 and that Michigan Properties had filed a timely affidavit of transfer, but that the township had failed to adjust the taxable value for 2005 in accordance with the actual sufficient evidence as required by MCL 211.27a(3). Relying on the Board of Review's powers under MCL 211.29 and .30 to correct errors in property assessments, the Tax Tribunal concluded that the township's increase in taxable value for tax year 2007 was proper.

Michigan Properties appealed all three cases to the Court of Appeals, which consolidated the appeals. Michigan Properties argued that MCL 211.27a(3) permits the taxable value of property to be "uncapped" based on a transfer of the property only in the calendar year following the transfer, where a timely affidavit of transfer has been filed, and that the Board of Review may not correct taxable value that is inconsistent with § 27a(3). But in a unanimous published per curiam opinion, the Court of Appeals reversed the Tax Tribunal. The Court of Appeals agreed with Michigan Properties' argument that MCL 211.27a(3) is unambiguous and only permits the taxable value of transferred property to be "uncapped" in the calendar year following the transfer. The broad authority of the Board of Review to correct erroneous assessments is restricted by the limitation in § 27a(3), the appeals court held. The township appeals.

TOLL NORTHVILLE LIMITED PARTNERSHIP, et al. v TOWNSHIP OF NORTHVILLE (case no. 143281)
Court of Appeals case no. 301043
Attorney for petitioner Toll Northville Limited Partnership: David B. Marmon/(248) 702-6100
Attorneys for respondent Township of Northville: Laura M. Hallahan, Amy K. Driscoll/(248) 731-3089
Attorney for amicus curiae Michigan Association of Realtors: Gregory L. McClelland/(517) 482-4890
Attorney for amicus curiae Building Owners and Managers Association of Metropolitan Detroit: Andrew M. Harris/(313) 965-2872
Attorney for amicus curiae Michigan Townships Association: Robert E. Thall/(269) 382-4500
Lower Tribunal: Michigan Tax Tribunal
At issue: Northville Township raised the taxable value of the petitioner's property in 2000, pursuant to a statute that provided for the increase. The petitioner did not challenge the increase in 2000, but in 2001, the petitioner filed a lawsuit claiming that the statute was unconstitutional; in 2008, the Michigan Supreme Court declared that the statute was unconstitutional. The

property owner then sought relief from the property taxes that it had paid on the unconstitutional addition to its property's taxable value. Did the Court of Appeals correctly hold that the Michigan Tax Tribunal had no jurisdiction to reduce an unconstitutional increase in the taxable value if the owner did not challenge the increase in the same year?

Background: Toll Northville is a residential property developer. In 2000, the township of Northville increased the taxable value of a parcel of land owned by Toll Northville pursuant to MCL 211.34d(1)(b)(viii). That statute permitted a township to increase taxable property values attributable to public infrastructure improvements. Toll Northville did not challenge the assessment for tax year 2000 before the local Board of Review. In 2001, Toll Northville filed an appeal of its assessment for tax year 2001, claiming that MCL 211.34d(1)(b)(viii) was unconstitutional. Because the Tax Tribunal has no authority to rule on the statute's constitutionality, the parties agreed, with the tribunal's approval, that Toll Northville would resolve its constitutional claims through a declaratory judgment in circuit court, and that the case before the tribunal would be held in abeyance. Toll Northville filed the declaratory judgment action in circuit court later that year. The circuit court and the Court of Appeals ruled in Toll Northville's favor; in 2008, the Michigan Supreme Court confirmed that the statute was unconstitutional.

This appeal arises from Toll Northville's attempt to have the value of the unconstitutional additions removed from the taxable value of its property for tax years 2000 and later. The township objected, arguing that the taxable value could not be reduced because Toll Northville failed to challenge the assessment in 2000, when the unconstitutional additions were first used to increase the property's taxable value. The Tax Tribunal rejected this argument, and ruled that Toll Northville was entitled to a reduction in the property's taxable value, but only for tax years 2001 and after. The township appealed. In a published opinion, the Court of Appeals reversed. The Court of Appeals held that the Tax Tribunal had no jurisdiction to reduce the taxable value of the property because Toll Northville had not timely challenged the assessment increase in tax year 2000. Toll Northville appeals.

IN RE ESTATE OF PRICE (case no. 143123)
Court of Appeals case no. 295212
Attorney for receiver Thomas Woods: Allan Falk/(517) 381-8449
Attorney for intervening defendant Dart Bank: Peter A. Teholiz/(517) 886-7176
Attorney for amicus curiae Community Bankers of Michigan: Michael A. Kus/(248) 364-3090
Attorney for amicus curiae Michigan Bankers Association and Michigan Credit Union League: Nicole L. Mazzocco/(616) 752-2000
Attorney for amicus curiae Michigan Association of Realtors: Gregory L. McClelland/(517) 482-4890
Trial Court: Ingham County Circuit Court
At issue: The trial court appointed a receiver to seize and sell property to satisfy an outstanding judgment against the property's owner. The receiver repaired the property, which was dilapidated and uninhabitable, to prepare it for sale. But as a result of the real estate market collapse, he could not sell the property for a high enough price to pay off an existing mortgage and to also pay the receiver's outstanding costs and fees. The trial court granted a lien against the property in the amount of the receiver's costs and fees, ruling that this lien had priority over the mortgage. The Court of Appeals affirmed. Must a mortgagee consent to the appointment of a

receiver to be required to pay the receiver's costs and fees? Does the statutory right of first priority belonging to the holder of the recorded mortgage, MCL 600.3236, override the common-law rule that a receiver's costs and fees are entitled to first priority? Can a mortgagee be required to pay for expenses that did not benefit it?

Background: In August 2003, Rudy Sterrett took out a loan with Dart Bank for $192,000, and granted Dart a mortgage on his DeWitt home. Soon after that, Sterrett died, and Lori Jean Kosmalski inherited the property. Three years later, Nastassia Price and Erin Duffy-Price, personal representatives of the Estate of Darryl Houston Price, filed a lawsuit to collect a judgment against various defendants, including Kosmalski. At the Prices' request, the court appointed a receiver, Thomas Woods, to seize and sell the property to satisfy the judgment. Dart claims that it did not seek the appointment of a receiver or consent to the receiver's appointment.

Shortly after his appointment, Woods learned that the DeWitt home was uninhabitable; it had to be cleaned, disinfected, repaired, and painted. In total, the repairs cost approximately $20,000. When Woods started these repairs, the city assessor valued the property at $350,000; the mortgage balance was less than $170,000.

Meanwhile, Dart's mortgage was in default. Despite warnings from Woods to Dart's counsel that a foreclosure on the property would constitute a contempt of court and a violation of the receivership order, Dart proceeded with a sheriff's sale in 2008. Dart was the sole bidder, and it bid only the balance due on its mortgage – $169,312.50.

Woods filed a motion to vacate the foreclosure, and to hold Dart in contempt for violating the court's receivership order. The trial judge left Dart's foreclosure in place, but he extended the redemption period to allow Woods additional time to sell the property at a favorable price. Due to the collapse in the housing market, Woods was unable to find a buyer at a price that was sufficient to pay off Dart's mortgage as well as the receiver's fees and expenses.

The receiver filed a motion to compel Dart to pay all of his fees and costs in connection with the property. He argued that Dart was aware of his appointment as receiver and did not challenge it. Moreover, Woods contended, Dart had worked with him on a continuing basis throughout the receivership period and should be deemed to have acquiesced in his appointment. The receiver also noted that Dart did not claim that the property had not been benefitted by the receiver's efforts in repairing and maintaining it, and in preparing it for sale. The trial court granted Woods' motion, granting him a lien of $41,874.57 on the net proceeds from the property's sale for his services and to reimburse him for his costs. This lien was to have priority over Dart's mortgage. The trial court also approved the receiver's turnover and relinquishment of the property to Dart.

Dart appealed, but the Court of Appeals affirmed the trial court's ruling in a published opinion. The trial court had the authority to place a lien on the property to collect the costs of the receivership even though Dart did not consent to the receivership, the Court of Appeals said: "[B]ecause [Dart] benefited from the receivership, it may be held responsible for the receivership expenses." Dart appeals.

Afternoon Session

ADMIRE v AUTO-OWNERS INSURANCE COMPANY (case no. 142842)
Court of Appeals case no. 289080
Attorney for plaintiff Kenneth Admire: George T. Sinas/(517) 394-7500

Attorney for defendant Auto-Owners Insurance Company: Kimberlee A. Hillock/(517) 351-6200
Attorney for amicus curiae Michigan Insurance Coalition: Lori McAllister/(517) 374-9150
Attorney for amicus curiae Coalition Protecting Auto No-Fault: Liisa R. Speaker/(517) 482-8933
Trial Court: Ingham County Circuit Court
At issue: This auto no-fault case involves a claim for reimbursement of the full cost of a handicap-accessible van for a person who was catastrophically injured in an automobile accident. The trial judge granted summary disposition in the plaintiff's favor, finding that the defendant insurance company was obligated under a contract between the parties to pay the full purchase price of a new van (as opposed to paying for only those modifications required to enable the injured person to use the van). The Court of Appeals affirmed. The insurance company appeals, arguing that it is not required under the no-fault act to pay the full purchase price for the new van. The plaintiff filed a cross-appeal, arguing that the insurance company is obligated under both the no-fault act and the contract to pay the full cost of a new van. Whether, or to what extent, is the defendant obligated to pay the plaintiff personal protection insurance benefits under the no-fault act, MCL 500.3101 *et seq.*, for handicap-accessible transportation?
Background: Kenneth Admire was injured in a motor vehicle accident in 1987, leaving him bound to a wheelchair. The driver of the other vehicle was insured by Auto-Owners Insurance Company. Under the no-fault act (MCL 500.3103 *et seq.*), Auto-Owners became responsible for paying personal protection insurance benefits to Admire.

As a result of his injuries, Admire is unable to get in or out of a standard vehicle, and needs hand controls for accelerations and braking. To accommodate Admire's special needs, Auto-Owners paid the full cost of three modified vans at seven-year intervals. Under the most recent transportation agreement, in April 2000, Auto-Owners agreed to pay $37,807.76 for a van. In December 2006, Admire's guardian, Russell Admire, notified Auto-Owners that it was time to purchase a new handicap-accessible van. Auto-Owners responded that it was not obligated to pay for a new van under either the transportation agreement or the no-fault act, but Auto-Owners advised Admire that he could trade in the 2000 van for a new one and that the insurer would cover the cost of "necessary medical modifications." In February 2007, Russell Admire purchased a new van and received $6,000 for the trade-in of the 2000 van, leaving a balance of $18,388.50, not including modifications. Auto-Owners later paid $19,405.00 for modifications.

Admire sued Auto-Owners, seeking reimbursement of the full cost of the replacement van ($18,388.50) as an allowable expense under MCL 500.3107(1)(a). Under this provision of the no-fault act, no-fault benefits are payable for "all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation." Auto-Owners filed a motion for summary disposition under MCR 2.116(C)(10), citing *Griffith v State Farm Mutual Automobile Ins Co*, 472 Mich 521 (2005), and *Weakland v Toledo Engineering Co*, 467 Mich 344 (2003), for the proposition that it was not obligated under the no-fault act to pay the base purchase price of the van, but was only required to pay for modifications required because of Admire's injuries. The trial judge denied Auto-Owners' motion, ruling that Auto-Owners was obligated under the parties' 2000 agreement to pay the full purchase price of the new van.

The Court of Appeals affirmed in an unpublished per curiam opinion. The appellate court did not agree with the trial court that the parties' 2000 agreement obligated Auto-Owners to purchase a new van; the contract was ambiguous in that regard, the Court of Appeals said. But

the Court of Appeals did conclude that the no-fault act imposed such an obligation on Auto-Owners. Admire had established that he could not drive a standard vehicle and needed a modified van for his transportation needs, the Court of Appeals stated. Moreover, Auto-Owners did not show that Admire could use alternative transportation or that the amount requested for reimbursement was unreasonable; accordingly, MCL 500.3107(1)(a) obligated Auto-Owners to purchase a van for Admire, the Court of Appeals concluded. Auto-Owners appeals.

ATKINS v SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, d/b/a SMART (case no. 140401)
Court of Appeals case no. 288461
Attorney for plaintiff Vivian Atkins: Steven W. Reifman/(248) 932-4000
Attorney for defendant Suburban Mobility Authority for Regional Transportation, d/b/a SMART: Carson J. Tucker/(248) 851-4111
Attorney for amicus curiae Michigan Defense Trial Counsel, Inc.: Hal O. Carroll/(248) 312-2800
Attorney for amicus curiae Michigan Municipal Risk Management Authority: James T. Mellon/(248) 649-1330
Trial Court: Wayne County Circuit Court
At issue: The plaintiff was injured while riding one of the defendant's buses. Within 60 days of the accident, she contacted the defendant regarding an auto no-fault claim. But when the plaintiff sued the defendant, the trial court dismissed her tort claims, noting that she had not notified the defendant in writing of her tort claims within 60 days of the accident, as required by MCL 124.419. The Court of Appeals reversed, finding that the plaintiff's written contacts with the defendant's no-fault insurer, and other information the plaintiff provided, were sufficient to put the defendant on notice of the plaintiff's tort claims. Does written notice of the plaintiff's no-fault claim, together with the defendant's knowledge of facts that could give rise to a tort claim, satisfy MCL 124.419's written notice requirement?
Background: Vivian Atkins was injured when the SMART bus she was riding on collided with another SMART bus. Within two weeks, Atkins contacted ASU Group, SMART's auto no-fault claims representative. ASU forwarded Atkins a no-fault claim form, which she completed and returned to ASU; this form included information about Atkins' injuries and identified her medical providers. ASU also received an attending physician's report stating that Atkins was on a medical leave of absence and that her mother and daughter were providing some household services for her.

More than 60 days after the accident, Atkins sued SMART alleging, among other things, that SMART's negligence caused her injuries. But SMART moved to dismiss the negligence portion of Atkins' lawsuit, arguing that she had not served written notice of that tort claim on SMART within 60 days of the accident, as required by MCL 124.419. That statute provides in part that "[W]ritten notice of any claim [against a common carrier] based upon injury to persons or property shall be served upon the [transportation] authority no later than 60 days from the occurrence through which such injury is sustained…." The trial court granted SMART's motion and dismissed Atkins' negligence claim, but on appeal, the Court of Appeals reversed in an unpublished per curiam opinion. Atkins' written no-fault claim, in conjunction with the other information in SMART's possession regarding the accident, Atkins' injuries, and her medical treatment, was sufficient notice under MCL 124.419, the Court of Appeals said. SMART appeals.

Thursday, March 8
Morning Session Only

TITAN INSURANCE COMPANY v HYTEN, et al. (case no. 142774)
Court of Appeals case no. 291899
Attorney for plaintiff Titan Insurance Company: Ronald M. Sangster/(248) 269-7040
Attorney for amicus curiae Insurance Institute of Michigan: Mary Massaron Ross/(313) 983-4801
Trial Court: Oakland County Circuit Court
At issue: The plaintiff insurance company issued a policy to an insured with a suspended driver's license; the policy became effective on the date that the insured expected her license to be reinstated. In fact, her license was not reinstated until about a month after the policy went into effect. Several months later, she was involved in an automobile accident, injuring two others. The insurance company sought to reduce the coverage provided by the policy, arguing that it could do so in light of the insured's misrepresentation about the status of her license, but the trial court denied its request. May an insurance carrier reform an insurance policy due to a misrepresentation in the insurance application where the misrepresentation is "easily ascertainable" and the claimant is an injured third-party?
Background: Titan Insurance Company issued an automobile insurance policy to McKinley Hyten with $100,000/$300,000 policy limits. Although Hyten's driver's license was suspended at the time, she expected that it would be reinstated by the policy's effective date. Hyten's license was not actually reinstated, however, until about a month after the policy went into effect. Some months later, Hyten injured Howard and Martha Holmes in an automobile collision; the Holmeses were insured by Farm Bureau Insurance Company and had underinsured motorist's coverage.

Titan Insurance filed a declaratory action against Hyten, the Holmeses, and Farm Bureau, seeking to reform its policy with Hyten to reduce the coverage to the statutory minimum of $20,000/$40,000; Titan argued that it was entitled to reform its policy with Hyten, based on her misrepresentation about the status of her driver's license. But the trial court disagreed, finding that Titan could have easily ascertained whether Hyten had a valid driver's license at the time the policy was issued. Titan's failure to do so barred it from reforming the contract to the detriment of the Holmeses and Farm Bureau, the trial court held. Titan appealed, but in a published opinion, the Court of Appeals affirmed the trial court's ruling. An insurer may not reform an insurance policy to the detriment of innocent third parties after an accident covered by the policy has occurred, the appellate court said. The Court of Appeals also affirmed on the alternate ground that Hyten's misrepresentation was cured when her license was reinstated: "Once Hyten received her license, the prior innocent misrepresentation lost its effectiveness as a potential ground for contract cancellation." Titan appeals.

PEOPLE v VAUGHN (case no. 142627)
Court of Appeals case no. 292385
Prosecuting attorney: Thomas M. Chambers/(313) 224-5749
Attorney for defendant Joseph Lashawn Vaughn: Randy E. Davidson/(313) 256-9833
Attorney for amicus curiae Craig A. Daly: Craig A. Daly/(313) 963-1455

Attorney for amicus curiae Attorney General Bill Schuette: Bruce H. Edwards/(517) 373-4875
Trial Court: Wayne County Circuit Court
At issue: During jury selection, the trial judge closed the courtroom to the public. Defense counsel did not object. Was the defendant denied his right to a public trial pursuant to US Const, Am VI, and Const 1963, art 1, § 20, see *Presley v Georgia*, 558 US ___; 130 S Ct 721; 175 L Ed 2d 675 (2010)? Did the defendant, by failing to object, forfeit or waive any error resulting from the exclusion of the public from the courtroom during the jury voir dire? If so, did trial counsel's failure to object amount to ineffective assistance of counsel? If some structural errors can be forfeited, is the denial of the right to a public trial among those forfeitable errors? Is the defendant is entitled to a new trial as a consequence of the trial court's exclusion of the public during the jury voir dire?
Background: A defendant in a criminal proceeding has both a state and federal constitutional right to a public trial. US Const Am VI; Const 1963, art 1, § 20. The right includes the right to have the courtroom open to the public during jury voir dire. *Presley v Georgia*, 558 US ___; 130 S Ct 721; 175 L Ed 2d 675 (2010). During Joseph Vaughn's criminal trial, the judge closed the courtroom to the public during voir dire and jury selection; Vaughn's attorney did not object. The jury eventually convicted Vaughn of two counts of assault with intent to commit great bodily harm, felon in possession of a firearm, and felony-firearm, second offense. Vaughn was sentenced to three and a half to 10 years for each assault conviction, two to five years for the felon in possession conviction, and five years for the felony-firearm conviction.

Vaughn appealed to the Court of Appeals, raising several issues, including his claim that the trial court erred when it excluded the public from his trial during jury voir dire. Vaughn argued that he has a constitutional right to a public jury that cannot be waived, and that his trial counsel was ineffective for failing to object to the trial judge's decision to close the courtroom during voir dire. But in a published opinion, the Court of Appeals affirmed his convictions. A defendant must assert his right to a public trial; the failure to timely assert the right forecloses later relief on appeal, the Court of Appeals said. Because Vaughn's defense counsel failed to object, Vaughn is not entitled to relief, the appellate panel stated. Moreover, Vaughn had not shown that his attorney's failure to object amounted to ineffective assistance; the attorney could have chosen not to object as a matter of trial strategy, the Court of Appeals said. "Reasonable trial counsel might conclude that the potential jurors would be more forthcoming in their responses when the courtroom is closed, that the proceedings will be less likely to be tainted by outside influences, or might simply find the procedure preferable because it will expedite the proceedings." Vaughn appeals.

DAVIS v EMERGENCY MANAGER FOR THE DETROIT PUBLIC SCHOOLS (case no. 144084)
Court of Appeals case no. 306165
Attorney for appellant Robert Davis: Andrew A. Paterson/(248) 568-9712
Attorney for appellee Emergency Manager for the Detroit Public Schools: Heather S. Meingast/(517) 373-6889
Lower Court: Court of Appeals (complaint quo warranto)
At issue: The respondent was appointed emergency manager for the Detroit Public Schools, but he did not take the oath of office before assuming his duties. The petitioner asked the Attorney General to institute quo warranto proceedings against the respondent, to obtain a declaration that the office of emergency manager was vacant due to respondent's failure to take the oath. The

respondent belatedly took the oath of office and the Attorney General declined the petitioner's request to institute quo warranto proceedings. The respondent filed an application for leave to file a complaint for quo warranto in the Court of Appeals, but the Court of Appeals denied the application. Should the office of emergency manager be declared vacant because the respondent did not take the oath of office before assuming his duties, but subsequently took the oath of office before this quo warranto action was filed?

Background: A quo warranto action is brought to inquire into the authority by which a public office is held. Michigan Court Rule 3.306(A)(1) requires a quo warranto action against a person who unlawfully holds state office to be brought in the Court of Appeals. Under MCR 3.306(B)(3)(a), a person may apply to the Attorney General to have the Attorney General bring a quo warranto action. Under MCR 3.306(B)(3)(b) and MCL 600.4501, if the Attorney General refuses to bring the action, a private party may bring the action himself.

In this case, petitioner Robert Davis asked the Attorney General to initiate quo warranto proceedings against respondent Roy Roberts, the emergency manager for the Detroit Public Schools. Davis sought the quo warranto action because Roberts did not take the oath of office before assuming his duties on May 16, 2011, as required by the state constitution. Article 11, § 1 states in part: "All officers, legislative, executive and judicial, before entering upon the duties of their respective offices, shall take and subscribe the following oath or affirmation . . . ." MCL 201.3 sets forth a list of events that will cause an office to become vacant; one such triggering event is the officeholder's "refusal or neglect to take his oath of office, or to give, or renew any official bond, or to deposit such oath, or bond, in the manner and within the time prescribed by law."

On August 30, 2011, while Davis' request to the Attorney General was still pending, Roberts took the oath of office. The Attorney General declined Davis' request to institute quo warranto proceedings one week later, on September 6, 2011.

Davis then filed an application for leave to file a complaint for quo warranto in the Court of Appeals, asking that court to declare vacant the office of emergency manager. The Court of Appeals denied the application in an order. The Court of Appeals stated that Roberts' failure to take the oath of office immediately did not violate MCL 201.3(7). Thus, the court held, the office of emergency manager did not need to be declared vacant. The Court of Appeals further noted that Roberts remedied his initial failure to take the oath of office by taking an oath of office in August 2011, before Davis filed his application for leave to file a complaint for quo warranto. Under the circumstances, the Court of Appeals held, Davis failed to disclose sufficient apparent merit to justify further inquiry by quo warranto proceedings. Finally, the Court of Appeals noted that Roberts was a de facto officer between the date of his appointment and the date he took his oath of office. Consequently, actions taken in his official capacity during that timeframe are recognized as valid. *Greyhound Corp v Public Service Comm'n*, 360 Mich 578, 589-594 (1960); *People v Matthews*, 289 Mich 440, 447-448 (1939). Davis appeals.

JOHNSON v HURLEY MEDICAL GROUP, P.C., et al. (case no. 141793)
Court of Appeals case no. 287587
Attorney for plaintiff Thelma Johnson, Personal Representative of the Estate of Carl Johnson: Michael S. Tashman/(248) 353-7750
Attorneys for defendant Hurley Medical Group, P.C., doing business as Hurley Medical Center: Marc S. Berlin, Anne Loridas Randall/(248) 647-4242

Attorney for defendant Dr. Moongilmadugu Inba-Vashvu, M.D.: Alan R. Sullivan/(989) 892-3924
Attorney for amicus curiae Michigan Association for Justice: David R. Parker/(313) 875-8080
Trial Court: Genesee County Circuit Court
At issue: The plaintiff sued the defendants for medical malpractice. The defendants moved for summary disposition, arguing that the plaintiff's pre-suit notice of intent to sue was defective because it did not contain the information required by MCL 600.2912b(4). The trial court granted the motion and dismissed the plaintiff's complaint. The Court of Appeals reversed, holding that the plaintiff was entitled to amend her notice of intent pursuant to MCL 600.2301 and *Bush v Shabahang*, 484 Mich 156 (2009), and to have that amendment relate back to the date of the original service of the notice. Does MCL 600.2301 apply to cases initiated before the amendment of MCL 600.5856 in 2004? Should the plaintiff have been allowed to amend her notice of intent?
Background: Thelma Johnson sued doctors who treated Carl Johnson before his death and Hurley Medical Center, for medical malpractice. The defendants filed a motion to dismiss the lawsuit. They argued that Johnson's pre-suit notice of intent to sue, which is required by MCL 600.2912b, did not satisfy the statute's requirements. As a result, the defendants contended, the statute of limitations was not tolled, and the time for filing the lawsuit had run out before Johnson sued them. The trial court agreed and dismissed the lawsuit, but the Court of Appeals reversed in an unpublished per curiam opinion. The Court of Appeals turned to *Bush v Shabahang*, 484 Mich 156 (2009), which held that MCL 600.5856, as amended in 2004, provided that a notice of intent filed in a medical malpractice case tolled the statute of limitations as long as it reflected a good-faith effort on the plaintiff's part to comply with the requirements of MCL 600.2912b. *Bush* further explained that a plaintiff would be entitled to amend such a defective notice under the provisions of MCL 600.2301, which states that a court has the power to "amend any process, pleading or proceeding . . . for the furtherance of justice" and that the court "shall disregard any error or defect in the proceedings which do not affect the substantial rights of the parties."

Applying *Bush* to Johnson's case, the Court of Appeals noted that *Bush* analyzed MCL 600.5856 as it was amended in 2004, and that Johnson's lawsuit, filed in 2000, would be governed by the version of MCL 600.5856 that existed before the 2004 amendment. But the panel concluded that this distinction did not matter, and that Johnson should be permitted to amend the defective notice of intent, with the amendment relating back to the date that the original notice was filed. The panel reasoned that it would be "anomalous to conclude that an amended notice of intent filed after 2004 . . . would relate back to the original notice's mailing date, as *Bush* dictates, but that an amendment of a notice of intent filed under former MCL 600.5856(d) would not relate back to the date of the original notice's filing." The defendants appeal.

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