

MICHIGAN SUPREME COURT



Office of Public Information

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FOR IMMEDIATE RELEASE

Apartment complex's liability for guest's shooting at issue in case before Michigan Supreme Court in oral arguments next week

LANSING, MI, March 1, 2013 – The victim of a shooting at a Flint apartment complex seeks to hold the complex liable for his injuries, in a case that the Michigan Supreme Court will hear in oral arguments next week.

In *Bailey v Schaaf*, the plaintiff was shot while attending his brother's barbecue in one of the complex's common areas. Residents had earlier seen the shooter brandishing a gun and threatening to kill someone; one resident approached two security guards about the shooter, but the guards did nothing. Minutes later, the gunman attacked the plaintiff, shooting him and rendering the plaintiff a paraplegic.

The plaintiff sued the apartment complex, its management company, the security company, and the two guards, as well as the shooter, but a circuit court judge dismissed all the defendants from the case except for the shooter, finding that the apartment complex and other defendants had no duty to protect the plaintiff. But the Court of Appeals partly reversed the circuit court, holding that the plaintiff could pursue his claim against the complex; as the "premises proprietor," the complex had a duty to "respond reasonably to situations occurring on the premises [including] a duty to call the police when required," the appellate court stated. The apartment complex and management company appeal that ruling, arguing that the apartment complex had no duty to protect the plaintiff from the criminal acts of another person.

The Court will also hear 10 other cases, involving collective bargaining, criminal, governmental immunity, auto no-fault insurance, and tax law issues.

The Court will hear the oral argument in its courtroom on the sixth floor of the Michigan Hall of Justice on **March 5, 6 and 7**, starting at **9:30 a.m.** each day. The Court's oral arguments are open to the public.

As a public service, the Court provides summaries of the cases it will hear at <http://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Oral-Arguments/Pages/default.aspx>.

Please note: 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.

Tuesday, March 5
Morning Session

MACOMB COUNTY, et al. v AFSCME COUNCIL 25 LOCALS 411 AND 893, et al. (case no. 144303)

Attorney for respondents Macomb County, Macomb County Road Commission, and 16th Judicial Circuit Court: Timothy K. McConaghy/(248) 594-1515

Attorney for charging party AFSCME Council 25 Locals 411 and 893: Richard G. Mack, Jr./ (313) 964-4454

Attorney for charging party International Union UAW Locals 412 and 889: Ava R. Barbour/(313) 926-5216

Attorney for charging party Michigan Nurses Association: Anita J. Szczepanski/(517) 853-5515

Attorney for amicus curiae Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, and the Public Corporation Law Section of the State Bar of Michigan: Mary Massaron Ross/(313) 983-4801

Tribunal: Michigan Employment Relations Commission

Issue: At issue is whether a change in calculating pension benefits for retired Macomb County employees can be pursued as an unfair labor practices claim – or whether these claims are subject to grievance and arbitration proceedings as provided in collective bargaining agreements.

[... Read more](#)

HILLSDALE COUNTY SENIOR SERVICES CENTER, INC., et al. v COUNTY OF HILLSDALE (case no. 144630)

Attorney for plaintiffs Hillsdale County Senior Services Center, Inc., Ella Asaro, Lyle Green, Ruth Green, Donelda Potts, John Potts, and Kerby Rushing: Brian A. Kaser/(517) 374-9008

Attorneys for defendant County of Hillsdale: David G. Stoker, Richard D. McNulty, Sherry L. Hedrington/(517) 372-9000

Attorney for amicus curiae Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, Michigan Association of School Boards, and the Public Corporation Law Section of the State Bar of Michigan: Steven D. Mann/(313) 963-6420

Trial Court: Hillsdale County Circuit Court

Issue: At issue is whether a court has the constitutional authority to issue a writ of mandamus ordering a local government to levy and spend taxes. [... Read more](#)

BAILEY v SCHAAF, et al. (case no. 144055)

Attorneys for plaintiff Devon Scott Bailey: Donald M. Fulkerson/(734) 467-5620, David A. Robinson/(248) 423-7234

Attorney for defendants Evergreen Regency Townhomes, Ltd., and Radney Management & Investments: Gary P. Supanich/(734) 276-6561

Attorney for amicus curiae Michigan Defense Trial Counsel, Inc.: Carson J. Tucker/(248) 283-0763

Attorney for amicus curiae Michigan Association for Justice: David R. Parker/(313) 875-8080

Trial Court: Genesee County Circuit Court

Issue: A guest at an apartment complex was shot while attending a barbeque in one of the complex's common areas; a resident had earlier complained about the shooter to security guards, who took no action. One issue is whether the apartment complex had a duty to summon police to protect the guest. ... [Read more](#)

Afternoon Session

MALPASS, et al. v DEPARTMENT OF TREASURY (case nos. 144430-2)

Attorney for plaintiffs Tad Malpass and Brenda L. Malpass, Tracy Malpass and Brenda K. Malpass, and Fred Malpass and Barbara Malpass: Nicole L. Mazzocco/(616) 752-2000

Attorney for defendant Department of Treasury: Scott L. Damich/(517) 373-3203

Attorney for amicus curiae Taxation Section of the State Bar of Michigan: Marjorie B. Gell/(616) 301-6800

Trial Court: Court of Claims

Issue: The plaintiffs seek to have their two companies – one operating in Michigan and the other in Oklahoma – treated as a “unitary business” for Michigan income tax purposes. ... [Read more](#)

WHEELER ESTATE et al. v DEPARTMENT OF TREASURY (case nos. 145367-70)

Attorneys for petitioners Wheeler Estate, Nicholas Huzella and Lisa J. Huzella, Patrick Wright and Michaelon Wright, and Thomas R. Wheeler and Patsy Wheeler: John D. Pirich/(517) 377-0712, June Summers Haas/(517) 377-0734

Attorney for respondent Department of Treasury: Kevin T. Smith/(517) 373-3203

Attorney for amicus curiae Taxation Section of the State Bar of Michigan: Marjorie B. Gell/(616) 301-6800

Tribunal: Michigan Tax Tribunal

Issue: The petitioners in this case argue that their Michigan-based S corporation and a German company should be treated as a “unitary business” for Michigan income tax purposes. ... [Read more](#)

Wednesday, March 6

Morning Session

PEOPLE v MUSSER (case no. 145237)

Prosecuting attorney: Timothy K. McMorrow/(616) 632-6710

Attorneys for defendant John M. Musser: Dennis C. Kolenda, Richard A. Glaser/(616) 458-1300

Attorney for amicus curiae Criminal Law Section of the State Bar of Michigan: Heather J. Garretson/(616) 301-6800

Trial Court: Kent County Circuit Court

Issue: The jury in the defendant's criminal sexual conduct case viewed a videotape of the defendant's interrogation by detectives about his alleged sexual abuse of a young girl. The defendant seeks to overturn his conviction, arguing that some of the detectives' statements and questions – in which they appeared to support the girl's credibility but disparage the defendant's – should not have been shown to the jury. ... [Read more](#)

HARRIS v AUTO CLUB INSURANCE ASSOCIATION, et al. (case no. 144579)

Attorney for plaintiff Brent Harris: Kurt A. Anselmi/(248) 338-2290

Attorneys for defendant-third party plaintiff Auto Club Insurance Association: John A. Lydick/(248) 646-5255, Elaine I. Harding/(313) 237-5626

Attorneys for third party defendant Blue Cross Blue Shield of Michigan: James J. Walsh, Jonathan A. Young/(734) 761-3780

Trial Court: Oakland County Circuit Court

Issue: Is the plaintiff entitled to “double dip” benefits for the same injury from his health care insurer and the no-fault insurer of the car that hit him? ... [Read more](#)

IN RE BRADLEY ESTATE (case no. 145055)

Attorney for petitioner Nancy Mick, Personal Representative of the Estate of Stephen Bradley, Deceased: Timothy T. Taylor/(616) 233-1300

Attorney for respondent Kent County Sheriff’s Department: Gary J. Mouw/(616) 336-6000

Attorney for amicus curiae Michigan Municipal League, Michigan Municipal League Liability & Property Pool, Michigan Townships Association, and the Public Corporation Law Section of the State Bar of Michigan: Mary Massaron Ross/(313) 983-4801

Attorney for amicus curiae Attorney General Bill Schuette: Aaron D. Lindstrom/(517) 373-1124

Trial Court: Kent County Circuit Court

Issue: The plaintiff sued the Kent County Sheriff’s Department for its failure to carry out a court order to take her suicidal brother into custody for psychiatric evaluation, but her lawsuit was dismissed on grounds of governmental immunity. May she seek damages – based on the same facts – under the civil contempt statute? ... [Read more](#)

Afternoon Session

PEOPLE v ELLIOTT (case no. 144983)

Prosecuting attorney: Jerrold Schrotenboer/(517) 788-4283

Attorney for defendant Samuel Lee Elliott: Linda D. Ashford/(313) 237-6316

Attorney for amicus curiae Attorney General Bill Schuette: B. Eric Restuccia/(517) 373-1124

Trial Court: Jackson County Circuit Court

Issue: The defendant was arrested for a gas station robbery and questioned by police detectives, but invoked his right to an attorney after he was advised of his *Miranda* rights. Three days later, he confessed to the crime in a jailhouse interview with a parole officer, who did not give the defendant a *Miranda* warning; the defendant’s attorney was not present for the interview. Was the parole officer a “law enforcement officer” for purposes of *Miranda*? Did the trial court err by allowing the parole officer to testify about the interview, including the defendant’s confession? ... [Read more](#)

Thursday March 7

Morning Session Only

CHERRYLAND ELECTRIC COOPERATIVE v BLAIR, EAST BAY & GARFIELD TOWNSHIPS (case nos. 145340-2)

Attorney for petitioner Cherryland Electric Cooperative: Norman D. Shinkle/(517) 655-5992

Attorney for respondents Blair Township, East Bay Township, and Garfield Township:

Thomas A. Grier/(231) 946-2700

Attorney for amicus curiae Michigan Townships Association: Robert E. Thall/(269) 382-4500

Tribunal: Michigan Tax Tribunal

Issue: A rural electric cooperative in Grand Traverse County claims it overpaid personal property taxes based on a “mutual mistake of fact” and is entitled to a refund of the overpayment under MCL 211.53a. ... [Read more](#)

LEFEVERS v STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, et al.
(case no. 144781)

Attorney for plaintiff Charles Anthony LeFevers: Robert S. Drazin/(248) 948-9696

Attorney for defendant State Farm Mutual Automobile Insurance Company: Devin R. Day/(616) 451-8111

Trial Court: Wayne County Circuit Court

Issue: Is a tailgate on a dump trailer “equipment permanently mounted on the vehicle” for the purposes of the auto no-fault act? ... [Read more](#)

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