



MICHIGAN COURTS NEWS RELEASE

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Michigan Supreme Court Announces Cases for October 2018 Oral Arguments

LANSING, MI, September 14, 2018 – The Michigan Supreme Court announced that oral arguments in 12 cases will be heard October 9-10, 2018. The Court will convene to hear the first case at 9:30 a.m. in the sixth floor of the Hall of Justice, 925 W. Ottawa Street. The schedule of arguments is posted on the Supreme Court’s oral arguments [homepage](#).

The Court broadcasts oral arguments and other hearings [live](#) online. Watch the stream live 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.

**Tuesday, October 9, 2018
Morning Session – 9:30 a.m.**

[#155784, Matthew Dye v Esurance Property & Casualty Ins Co](#)

Plaintiff Matthew Dye was injured in a motor vehicle accident and sought no-fault personal protection insurance (“PIP”) benefits. The car plaintiff was driving at the time of the accident was titled in his name, but plaintiff’s father had obtained insurance for the vehicle from defendant Esurance Property & Casualty Insurance Company. Esurance claims that defendant GEICO Indemnity Company is the higher priority insurer, but GEICO denies liability based on *Barnes v Farmers Ins Exch*, 308 Mich App 1 (2014), which held that “under the plain language of MCL 500.3113(b), when none of the owners maintains the requisite coverage, no owner may recover PIP benefits.” The trial court granted summary disposition in favor of Esurance and plaintiff against GEICO, but the Court of Appeals reversed in an unpublished opinion. The Supreme Court has granted plaintiff’s cross-application for leave to appeal to address whether an owner or registrant of a motor vehicle involved in an accident may be entitled to PIP benefits for accidental bodily injury where no owner or registrant of the motor vehicle maintains security for payment of benefits under personal protection insurance.

[#156198, People of MI v Alphonso L. Straughter, Jr.](#)

A jury convicted defendant of several felonies arising from his part in the robbery of a man whom his girlfriend had befriended. The trial court sentenced defendant as a habitual offender to serve enhanced prison terms on each count. On appeal, the Court of Appeals affirmed defendant's convictions but remanded for resentencing because the prosecution had failed to file a proof of service for the habitual offender notice, rendering the notice void. The Supreme Court has directed oral argument on the prosecutor's application for leave to appeal to address: (1) whether the harmless error tests articulated in MCR 2.613 and MCL 769.26 apply to violations of the habitual offender notice requirements in MCL 769.13, compare *People v Cobley*, 463 Mich 893 (2000), with *People v Johnson*, 495 Mich 919 (2013); (2) whether the prosecutor may establish that a defendant received a habitual offender notice at any time before the 21-day time limit in MCL 769.13 by any means other than a proof of service; and (3) whether providing a habitual offender notice in district court satisfies the requirement set forth in MCL 769.13 that the habitual offender notice be served within 21 days after the defendant's arraignment on the information.

[#156132-4, Mary Ann Hegadorn v Dep't of Human Services Director](#)

In these three cases, plaintiffs are individuals in nursing homes who applied for and were denied Medicaid for their long-term care. Before applying, plaintiffs' spouses had created so-called "Medicaid trusts" in which the couples' assets were transferred to a trust solely for the benefit of the non-institutionalized spouse and payable over the spouse's lifetime. After plaintiffs applied for Medicaid, the Department of Health and Human Services changed its policy to treat these type of Medicaid trusts as "countable assets" for purposes of determining Medicaid eligibility of the institutionalized spouse. Applying this policy, an administrative law judge ruled that plaintiffs are not eligible for Medicaid. Two plaintiffs appealed to the Livingston Circuit Court, which reversed. The third plaintiff appealed to the Washtenaw Circuit Court, which reversed, relying on the ruling of the Livingston Circuit Court. In a published opinion, the Court of Appeals reversed and reinstated the department's denials, holding that the department's application of the Medicaid program (42 USC 1396 *et seq.*) is correct. The Supreme Court granted leave to appeal to address whether the Court of Appeals clearly erred in holding that the trust assets are "countable assets" for purposes of Medicaid eligibility, and whether the department could base its decision on the retroactive application of a department policy adopted more than 45 days after plaintiffs' applications were filed.

[#156341, Sejasmi Industries, Inc v A+ Mold, Inc.](#)

Plaintiff Sejasmi Industries, Inc., is an automotive component supplier that contracted with defendant A+ Mold, Inc., d/b/a Takumi Manufacturing Company, for plastic injection molds. Takumi in turn subcontracted a portion of the manufacturing process to defendant Quality Cavity, Inc. Pursuant to the Mold Lien Act, MCL 445.611 *et seq.*, Quality, the moldbuilder, perfected its liens on four molds in the possession and use of Sejasmi, the molder, but for which Quality alleged that it had not been fully paid by Takumi as its "customer." See MCL 445.611(a), MCL 445.619(1) and (2). Plaintiff filed this lawsuit, seeking in part a declaratory judgment that it was entitled to possession of the molds because Quality's liens were extinguished under MCL 445.916(5). Quality filed a counterclaim, alleging that it was entitled to enforcement of its liens because it was still owed money for the molds. After lengthy proceedings, the trial court granted plaintiff a

declaratory ruling that Quality's liens were extinguished and dismissed Quality's counter-claim. Quality appealed. Plaintiff filed a motion to affirm, which the Court of Appeals granted on the basis of law of the case doctrine arising from its earlier decision in the case in Docket No. 328292. The Supreme Court has directed oral argument on Quality's application for leave to appeal.

Afternoon Session – Approximately 1:00 p.m.

[#156223, People of MI v Brian Keith Roberts](#)

A jury convicted defendant of felony murder and first-degree child abuse. The victim was his two-year-old son, who suffered a brain injury after defendant pulled the child's legs out from under him, causing the child to fall back and hit his head. Defendant filed a motion for new trial, alleging that his trial counsel had rendered ineffective assistance by failing to adequately investigate the medical controversy surrounding abusive head trauma in children and by failing to call an expert witness at trial to support the defense theory that the child's injury was the result of an accident rather than intentional abuse. Following an evidentiary hearing, the trial court found that counsel had not rendered ineffective assistance and denied the motion for new trial. In an unpublished opinion, the Court of Appeals reversed, holding that counsel had rendered ineffective assistance. The Supreme Court has directed oral argument on the prosecution's application for leave to appeal to address whether the Court of Appeals erred in holding that defendant was denied the effective assistance of trial counsel. *Strickland v Washington*, 466 US 668 (1984).

[#156018, Van Buren Charter Township v Visteon Corp](#)

In 2003, plaintiff Van Buren Charter Township issued municipal bonds to help finance the construction of defendant Visteon Corporation's national headquarters in the township. In 2010, as defendant was emerging from bankruptcy, the parties entered into an agreement for a property tax reduction even though the parties anticipated that the agreed-upon reduction eventually would put plaintiff in a position where it would not be able to meet its bond repayment obligations. The agreement included a provision requiring defendant to enter into future good faith negotiations with plaintiff to determine the amount of any shortfall and to make a non-tax payment to assist plaintiff in meeting its bond repayment obligations. In 2013, plaintiff arranged for a cash-flow analysis that predicted a shortfall ranging from \$23.7 million to \$36.4 million sometime in 2017-2018, but later projected for 2019, when a portion of the debt was retired. Plaintiff demanded that defendant engage in negotiations to determine defendant's payment obligations with respect to the projected shortfall. Although defendant met with plaintiff, defendant disputed that it had any obligation to negotiate until plaintiff experienced an actual bond payment shortfall, and, even if there is an actual shortfall, defendant argued that it may not owe plaintiff any amount. In July 2015, plaintiff filed this lawsuit against defendant, alleging breach of contract and seeking a declaratory judgment. Defendant moved to dismiss the lawsuit, arguing that it was not ripe for decision. The trial court granted the motion and dismissed the lawsuit "without prejudice." The Court of Appeals affirmed in a published decision. The Supreme Court has directed oral argument on plaintiff's application for leave to appeal to address whether the Court of Appeals: (1) properly determined that a declaratory judgment was not ripe under MCR 2.605; and (2) properly interpreted the contract to

determine that “defendant is not obligated to perform [under the contract] until . . . a shortfall has occurred, and . . . property taxes paid by defendant are inadequate for plaintiff to pay that portion of the bonds that was used to fund the Village.” *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 548 (2017).

Wednesday, October 10, 2018
Morning Session – 9:30 a.m.

[#155811, Song Yu v Farm Bureau General Ins Co](#)

Plaintiffs are a married couple who purchased a homeowner’s policy to insure property that initially was their full-time residence. They later moved to another residence and treated the insured property as a vacation home. After making a claim under the policy for water damage, one of the plaintiffs informed defendant’s adjuster that they were in the process of moving. Defendant paid the water damage claim, but it did not follow up to determine whether plaintiffs had completed their move. In December 2013, soon after the policy had automatically renewed, defendant terminated the policy effective January 18, 2014, because the property was no longer plaintiffs’ “residence premises” covered under the policy. However, before plaintiffs received notice of the termination, the property incurred more water damage. Plaintiffs made a new claim for coverage, which defendant denied. Plaintiffs filed this lawsuit against defendant, alleging breach of contract and asserting that defendant should be equitably estopped from denying coverage in light of defendant’s payment on the earlier water damage claim and automatic renewal of the policy, which led plaintiffs to believe that they had coverage. The trial court granted judgment in favor of defendant. In an unpublished opinion, the Court of Appeals reversed, holding that defendant is equitably estopped from denying coverage. One judge dissented. The Supreme Court has granted leave to appeal to address whether the plain language of the insurance policy precluded coverage, and, if so, whether and under what circumstances the doctrine of equitable estoppel may be applied to require an insurer to expand coverage that is contrary to the express terms of an insurance contract and the elements of an estoppel claim.

[#156161, People of MI v Wilbert Joseph McKeever](#)

A jury convicted defendant of unarmed robbery and assault for beating a man while defendant’s girlfriend took the man’s wallet. His defense was to admit that he was guilty of assault, but not robbery, because he had no part in taking anything from the victim. The girlfriend pled guilty before defendant’s trial but did not testify, though she later claimed to be willing to testify that defendant did not know she was going to take the wallet. Defendant’s trial counsel made statements on the record suggesting that he was precluded from calling the witness, though the trial court made no such statements on the record. The trial court conducted an evidentiary hearing to determine whether it was the court or counsel who was responsible for the girlfriend’s failure to testify, and whether counsel was ineffective for any such decision in that regard. Defense counsel was unable to secure the girlfriend’s presence at the hearing. The trial court denied defendant’s motion for a new trial, but the Court of Appeals reversed. The Supreme Court has directed oral argument on the prosecution’s application for leave to appeal to address: (1) whether defendant is

entitled to a new trial based on either trial court error or ineffective assistance of counsel, where the defense witness that was not produced at trial also did not appear at the post-conviction evidentiary hearing; and (2) whether the witness's failure to appear at the hearing is attributable to the defense under these circumstances.

[#155863, Jones Family Trust v Saginaw County Land Bank Authority](#)

Plaintiff owned a house adjacent to a blighted property that was acquired by the Saginaw County Land Bank Authority (the "SCLBA"). The SCLBA made a request through the city to demolish the blighted property, and the city entered into an agreement with a contractor (Rohde Brothers Excavating, Inc.) to complete the demolition. During demolition, the roof on the blighted structure collapsed onto plaintiff's house, causing damage. Plaintiff filed this lawsuit against the SCLBA for inverse condemnation and against Rohde Brothers for breach of third-party contract. The trial court granted the SCLBA's motion to dismiss the inverse condemnation claim and also granted pretrial motions that effectively limited the measure of damages on the contract claim to those applicable in tort actions. The parties thereafter reached a settlement before trial, and the trial court entered a stipulated judgment against the contractor on the contract claim, and dismissed all other claims with prejudice. Plaintiff expressly preserved its right to challenge on appeal the limitation on damages as to the contract claim. In an unpublished decision, the Court of Appeals affirmed. The Supreme Court has directed oral argument on plaintiff's application for leave to appeal to address: (1) whether the trial court erred in granting summary disposition in favor of the SCLBA on plaintiff's inverse condemnation claim; and (2) whether the measure of damages on plaintiffs' breach of third-party contract claim is the same as the measure of damages on a tort claim for the negligent destruction of property.

[#156648, People of MI v Gregory Carl Washington](#)

In 2004, a jury convicted defendant of second-degree murder and other offenses. On direct appeal, the Court of Appeals affirmed the convictions but remanded for resentencing. While defendant's application for leave to appeal was pending in the Supreme Court, the trial court resentenced defendant, in violation of MCR 7.215(F)(1)(a) (providing that a Court of Appeals judgment is not effective until the disposition of the application for leave to appeal in the Supreme Court) and MCR 7.305(C)(6)(a) (providing that an application in the Supreme Court stays any proceedings on remand that were ordered by the Court of Appeals). Ten years later, after a second direct appeal and an initial motion for relief from judgment, defendant filed a successive motion for relief from judgment, arguing that the trial court lacked jurisdiction to resentence him in 2006. The trial court granted relief and ordered resentencing. The prosecutor appealed, and the Court of Appeals affirmed in a published opinion. The appeals court held that although defendant's claim was not properly brought as a successive motion for relief from judgment—because it did not assert a retroactive change in the law or a claim of new evidence, see MCR 6.502(G)—defendant asserted a jurisdictional defect, which may be raised at any time. The Supreme Court has directed oral argument on the prosecution's application for leave to appeal to address whether the trial court's action of resentencing defendant while an application for leave to appeal was pending was a jurisdictional defect, and, if so, whether defendant could properly raise the jurisdictional defect in a successive motion for relief from judgment.

Afternoon Session – Approximately 1:00 p.m.

[#156389 Bauserman v Unemployment Agency](#)

The state's Unemployment Insurance Agency (UIA) used the Michigan Integrated Data Automated System (MiDAS) to detect suspected cases of fraudulent benefit claims, ultimately resulting in thousands of individuals being falsely accused of fraud and ordered to repay benefits. In this case, the UIA issued a redetermination that each of the three named plaintiffs was ineligible for benefits and had to repay them, plus penalties. In two of the three cases, the UIA issued a second redetermination voiding the initial finding of ineligibility. Plaintiffs sued the UIA, alleging that the determination of guilt without notice and an opportunity to be heard before the imposition of penalties violated their right to due process. The Court of Claims denied the UIA's motion for summary disposition, holding that plaintiffs had complied with the 6-month notice provision of the Court of Claims Act, MCL 600.6431(3), because the cause of action did not accrue until issuance of the second redetermination (i.e., the decision showing that the benefit claims were not fraudulent). In an unpublished opinion, the Court of Appeals reversed, holding that plaintiffs' claims accrued at the time of the first redetermination (i.e., the decision notifying them of their alleged fraudulent conduct), and that their suit was therefore time-barred. The Supreme Court has directed oral argument on plaintiffs' application for leave to appeal to address whether "the happening of the event giving rise to plaintiffs' cause of action" for the deprivation of property without due process occurred when defendant issued its allegedly wrongful notice of redetermination, or when defendant actually seized plaintiffs' property. MCL 600.6431(3); MCL 600.5827; cf. *Frank v Linkner*, 500 Mich 133, 149-153 (2017).

[#157907, In re J Ferranti, Minor](#)

Respondents are the biological parents of a child with spina bifida and other medical issues. In 2015, the Department of Health and Human Services (DHHS) filed a petition alleging medical and physical neglect of the child, who was then removed from respondents' home and placed in foster care. Both respondents admitted to certain allegations in the petition, and the family court assumed jurisdiction over the child. Respondents did not appeal the adjudication. When respondents failed to show progress with their case-service plan, the family court terminated their parental rights. On appeal, respondents challenged the family court's initial adjudication, arguing that the court failed to explain the consequences of a plea admitting jurisdiction, and failed to inform them of the rights they were waiving. They also argued that the family court judge erred in visiting their home and interviewing their child in chambers. The Court of Appeals affirmed, holding that respondents' collateral challenge to the initial adjudication was barred under *In re Hatcher*, 443 Mich 426 (1993), and rejecting respondents' remaining arguments. The Supreme Court has directed oral argument on respondents' application for leave to appeal to address: (1) whether *In re Hatcher*, 443 Mich 426 (1993), correctly held that the collateral attack rule applied to bar respondents from challenging the court's initial exercise of jurisdiction over the respondents on appeal from an order terminating parental rights in that same proceeding; (2) if not, (a) by what standard should courts review respondents' challenge to the initial adjudication, in light of the respondents' failure to appeal the first dispositional order

appealable of right, see MCR 3.993(A)(1), and (b) what must a respondent do to preserve for appeal any alleged errors in the adjudication, see e.g., *In re Hudson*, 483 Mich 928 (2009); (3) if *Hatcher* was correctly decided, whether due process concerns may override the collateral bar rule, see *In re Sanders*, 495 Mich 394 (2014), and *In re Wangler*, 498 Mich 911 (2015); (4) whether a family court is permitted to visit a respondent's home to observe its condition, and, if so, what parameters should apply to doing so; and (5) whether a family court may interview a child who is the subject of child-protective proceedings in chambers, and, if so, what parameters should apply.

-MSC-