MICHIGAN COURTS NEWS RELEASE
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FOR IMMEDIATE RELEASE

REMINDER
Michigan Supreme Court Announces October 7-8, 2020, Oral Arguments

LANSING, MI, October 5, 2020 —The Michigan Supreme Court announced that oral arguments in 11 cases will be heard on October 7-8, 2020. The court will convene to hear the cases beginning at 9:30 a.m., via Zoom, and attorneys for the parties have all agreed to argue their cases via Zoom. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

Oral arguments will be livestreamed at: http://www.youtube.com/c/MichiganSupremeCourt.

Archived video of oral arguments will also be posted on YouTube.

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Wednesday, October 7, 2020
Morning Session - 9:30 a.m.

MOAA 158852

DETROIT ALLIANCE AGAINST THE RAIN TAX, DETROIT IRON & METAL COMPANY, AMERICAN IRON & METAL COMPANY, McNICHOLS SCRAP IRON & METAL COMPANY, MONIER KHALIL LIVING TRUST, and BAGLEY PROPERTIES, LLC,
Plaintiffs-Appellants, — Frederick Baker

v (Appeal from Ct of Appeals)

CITY OF DETROIT, DETROIT WATER AND SEWERAGE DEPARTMENT and DETROIT BOARD OF WATER COMMISSIONERS,
Defendants-Appellees. — Sonal Mithani

The plaintiffs are property owners in Detroit who are being charged for their impervious acreage, i.e., hard surfaces that limit the ability of storm water to soak into the ground. The plaintiffs filed an original action in the Court of Appeals to challenge the drainage charge on the basis that it constitutes a tax for which voter approval has not been obtained as required by the Headlee Amendment, Const 1963, art 9, § 31. The Court of Appeals, in an unpublished opinion, upheld

the drainage charge as a "fee" rather than a "tax," thus obviating the application of the Headlee Amendment's voter approval requirement. The Supreme Court has ordered oral argument on the application to address whether the Court of Appeals erred in concluding that *Bolt v City of Lansing*, 459 Mich 152, 164 (1998), is distinguishable from this case on the basis that Detroit's sewer system is a combined system rather than a separate storm and sanitary sewer system.

No. 1 148981 (30-minute arguments per side)
PEOPLE OF THE STATE OF MICHIGAN, Charles Justian
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Muskegon – Marietti, W.)

PAUL J. BETTS, JR., Jessica Zimbelman
Defendant-Appellant.

In 1993, the defendant pled guilty to second-degree criminal sexual conduct and was sentenced to a prison term. He was paroled in 1999. In 2013, he pled no contest to failing to register under the Sex Offender Registration Act (SORA), MCL 28.721 *et seq*., conditioned on his ability to challenge its constitutionality. In a split decision, the Court of Appeals denied leave to appeal for lack of merit. After hearing oral argument on the defendant's application for leave to appeal, the Supreme Court has granted leave to appeal to address: (1) whether the requirements of SORA, taken as a whole, amount to "punishment" for purposes of the Ex Post Facto Clauses of the Michigan and United States Constitutions, US Const, art I, § 10; Const 1963, art 1, § 10; see *People v Earl*, 495 Mich 33 (2014), see also *Does #1-5 v Snyder*, 834 F3d 696, 703-706 (CA 6, 2016), cert den sub nom *Snyder v John Does #1-5*, 138 S Ct 55 (Oct 2, 2017); (2) if SORA, as a whole, constitutes punishment, whether it became punitive only upon the enactment of a certain provision or group of provisions added after the initial version of SORA was enacted; (3) if SORA only became punitive after a particular enactment, whether a resulting ex post facto violation would be remedied by applying the version of SORA in effect before it transformed into a punishment or whether a different remedy applies, see *Weaver v Graham*, 450 US 24, 36 n 22 (1981) ("the proper relief . . . is to remand to permit the state court to apply, if possible, the law in place when his crime occurred."); (4) if one or more discrete provisions of SORA, or groups of provisions, are found to be ex post facto punishments, whether the remaining provisions can be given effect retroactively without applying the ex post facto provisions, see MCL 8.5; (5) what consequences would arise if the remaining provisions could not be given retroactive effect; and (6) whether the answers to these questions require the reversal of the defendant's conviction pursuant to MCL 28.729 for failure to register under SORA.

MOAA 159856
2 CROOKED CREEK LLC and RUSSIAN FERRO ALLOYS, INC., Aaron Lindstrom
Plaintiffs-Appellants,

v (Appeal from Ct of Appeals)
(Ct of Claims – Talbot, M.)

CASS COUNTY TREASURER, Thomas King
Defendant-Appellee.

Plaintiff 2 Crooked Creek, LLC (2CC) owned property in Cass County subject to a mortgage held by plaintiff Russian Ferro Alloys, Inc. (RFA). Defendant Cass County Treasurer included the subject property in her annual tax foreclosure petition for nonpayment of 2011 taxes, and the circuit court entered a tax foreclosure judgment in early 2014, extinguishing the plaintiffs' property interests. The plaintiffs assert that they never received notice of the foreclosure, and they were damaged as a result by the loss of real property worth over $3.5 million. The plaintiffs filed suit in the Court of Claims for monetary damages under MCL 211.78l, which allows the owner of a property interest that was extinguished by a tax foreclosure to bring an action to recover monetary damages if the owner claims that it "did not receive any notice required under this act. . . ." Following the plaintiffs' presentation of proofs at trial, the Court of Claims granted the defendant's motion for involuntary dismissal. The Court of Appeals affirmed in a published opinion. The Supreme Court has ordered oral argument on the plaintiffs' application to address whether 2CC can sustain an action to recover monetary damages under MCL 211.78l(1) by claiming that it "did not receive any notice required under this act" due to a lack of actual notice and, specifically, whether constructive notice is sufficient to fall within the confines of "any notice" under MCL 211.78l(1) such that 2CC can be charged with knowledge of the notice that was posted to the subject property during a time when 2CC was exercising control and dominion over it. See *In re Treasurer of Wayne Co for Foreclosure (Perfecting Church)*, 478 Mich 1 (2007).

MOAA 158652

PEOPLE OF THE STATE OF MICHIGAN, Joshua Miller
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Oakland – Jarbou, H.)

KRISTOPHER ALLEN HUGHES, Jason Eggert
Defendant-Appellant.

The defendant was convicted by a jury of armed robbery and was sentenced to 25 to 60 years imprisonment. The evidence presented at trial included cell phone records obtained through a search warrant issued after the defendant's phone was seized when he was arrested in an unrelated case. The Court of Appeals affirmed the defendant's conviction in an unpublished opinion. The Supreme Court has ordered oral argument on the application to address: (1) whether the probable cause underlying the search warrant issued during the prior criminal investigation authorized police to obtain all of the defendant's cell phone data; (2) whether the defendant's reasonable expectation of privacy in his cell phone data was extinguished when the police obtained the cell phone data in a prior criminal investigation; (3) if not, whether the search of the cell phone data in the instant case was within the scope of the probable cause underlying the search warrant issued during the prior criminal investigation; (4) if not, whether the search of the cell phone data in the instant case was lawful; and (5) whether the defendant's trial counsel was ineffective for failing to challenge the search of the cell phone data in the instant case on Fourth Amendment grounds.

Wednesday, October 7, 2020
Afternoon Session – t/b/d

MOAA 159524-5

LAKESHORE GROUP, CHARLES ZOLPER, JANE UNDERWOOD, LUCIE HOYT, and WILLIAM REININGA,
Petitioners-Appellants,
and

KENNETH ALTMAN, DAWN SCHUMANN, GEORGE SCHUMANN, MARJORIE SCHUHAM, and LAKESHORE CAMPING,
Intervenors,

Dustin Ordway

v (Appeal from Ct of Appeals)
(Ingham – Aquilina, R.)

DEPARTMENT OF ENVIRONMENTAL QUALITY and DUNE RIDGE SA LP,
Respondents-Appellees.

Daniel Bock
Kyle Konwinski

A real estate developer is seeking to transform a "critical dune area" located in Saugatuck into a residential neighborhood. Under the Sand Dunes Protection and Management Act (SDPMA), MCL 324.35301 *et seq*., the developer applied for permits from the Department of Environmental Quality (DEQ). Between 2014 and 2016, the DEQ issued a number of permits to the developer for the project. The petitioners and intervenors are individuals and groups who have property interests in close proximity to the sand dunes. They challenged the issuance of the permits in administrative contested case proceedings, which were ultimately dismissed for lack of standing. On judicial review, the circuit court reversed as to the petitioners and remanded for further proceedings. In an unpublished opinion, the Court of Appeals reversed the circuit court and reaffirmed the administrative orders dismissing all petitioners and intervenors for lack of standing. The Supreme Court has ordered oral argument on the application to address whether appellants Jane Underwood and Charles Zolper, as "owner[s] of [] property immediately adjacent to the proposed use" at the time of their intervention in these contested cases, satisfy the statutory standard for standing under MCL 324.35305(1), notwithstanding the developer's subsequent sales of land located between each appellant's respective property and the property being developed.

MOAA 157476-8

157476

MARIE HUNT, Personal Representative of the ESTATE OF EUGENE WAYNE HUNT,
Plaintiff/Counterdefendant/
Garnishor-Plaintiff-Appellee/
Cross-Appellant,

Andrew Finn

v (Appeal from Ct of Appeals)
(Bay – Gill, H.)

ROGER DRIELICK, d/b/a ROGER DRIELICK

TRUCKING,
Defendant/Counterplaintiff/Cross-Plaintiff/Cross-Defendant-Appellee,
and
COREY A. DRIELICK,
Defendant/Counterplaintiff/Cross-Plaintiff/Cross-Defendant-Appellee,
and
GREAT LAKES CARRIERS CORP.,
Defendant/Cross-Defendant-Appellee/Cross-Appellant,
and
GREAT LAKES LOGISTICS & SERVICES, INC., and MERMAID TRANSPORTATION, INC.,
Defendants,
and
SARGENT TRUCKING, INC.,
Defendant/Cross-Plaintiff-Appellee/Cross-Appellant,
and
EMPIRE FIRE AND MARINE INSURANCE COMPANY,
Garnishee-Defendant-Appellant/Cross-Appellee.

Nicolette Zachary

157477

BRANDON JAMES HUBER,
Plaintiff/Garnishor-Plaintiff-Appellee/Cross-Appellant,

v (Appeal from Ct of Appeals)
(Bay – Gill, H.)

COREY A. DRIELICK and ROGER DRIELICK, d/b/a ROGER DRIELICK TRUCKING,
Defendants/Counterplaintiffs/Cross-Plaintiffs/Cross-Defendants-Appellees,
and
GREAT LAKES CARRIERS CORP.,
Defendant/Cross-Defendant-Appellee/Cross-Appellant,
and
GREAT LAKES LOGISTICS & SERVICES, INC., and MERMAID TRANSPORTATION, INC.,
Defendants,
and
SARGENT TRUCKING, INC.,
Defendant-Appellee/Cross-Appellant,
and
EMPIRE FIRE AND MARINE INSURANCE

COMPANY,
Garnishee-Defendant-Appellant/
Cross-Appellee.

157478

THOMAS LUCZAK and NOREEN LUCZAK,
Plaintiffs/Garnishor-Plaintiffs-
Appellees/Cross-Appellants,

v (Appeal from Ct of Appeals)
(Bay – Gill, H.)

COREY A. DRIELICK and ROGER DRIELICK,
d/b/a ROGER DRIELICK TRUCKING,
Defendants/Counterplaintiffs/Cross-
Plaintiffs/Cross-Defendants-
Appellees,
and
GREAT LAKES CARRIERS CORP.,
Defendant/Cross-Defendant-
Appellee/Cross-Appellant,
and
GREAT LAKES LOGISTICS & SERVICES,
INC., and MERMAID TRANSPORTATION,
INC.,
Defendants,
and
SARGENT TRUCKING, INC.,
Defendant-Appellee/Cross-
Appellant,
and
EMPIRE FIRE AND MARINE INSURANCE
COMPANY,
Garnishee-Defendant-Appellant/
Cross-Appellee.

In 1996, Corey Drielick was driving a semi-tractor bobtail (not pulling a trailer) to pick up a load at Great Lakes Carriers Corporation (GLC) when he allegedly struck multiple vehicles, killing one person and seriously injuring two others. The three plaintiffs filed suit in 1996/1997 against the Drielick Trucking defendants, GLC, and Sargent Trucking. Drielick Trucking's insurer under a non-trucking use policy was Empire Fire and Marine Insurance Company, which denied coverage. In 2000, consent judgments were entered against the Drielick defendants, who then assigned their rights under the Empire policy to the plaintiffs, GLC, and Sargent. Writs of garnishment were filed in late 2000 against Empire, which continued to deny coverage under a business-use exclusion. On June 2, 2016, the trial court entered three final judgments in favor of garnishor-plaintiffs, holding Empire liable for the amounts awarded in the earlier consent judgments plus statutory judgment interest for the entire period from 1996/1997 to 2016. In a published opinion, the Court of Appeals affirmed in part, vacated in part, and remanded for further proceedings. The Court of Appeals vacated the final judgments on the basis of its conclusion that Empire was only liable for prejudgment interest from 1996/1997 to 2000 and not liable for any postjudgment interest, and remanded the case to the trial court for recalculation of the amount of prejudgment interest. The Supreme Court has ordered oral argument on the

application for cross appeal filed by GLC and Sargent to address the period of time for which garnishee-defendant Empire is liable for the payment of judgment interest under MCL 600.6013 or any postjudgment interest, and the proper method of calculation, see *Matich v Modern Research Corp*, 430 Mich 1 (1988).

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

MOAA 159516

PEOPLE OF THE STATE OF MICHIGAN, David McCreedy
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Wayne – Cox, K.)

TRESHAUN LEE TERRANCE, Angeles Meneses
Defendant-Appellee.

In 2015, the defendant's girlfriend died by suffocation after a severe beating. The defendant was charged with first-degree premeditated murder and first-degree felony murder, with the predicate felony being torture, which was not separately charged. At trial, the jury acquitted the defendant of first-degree murder and the lesser offense of second-degree murder. The jury was unable to reach a verdict on the felony-murder charge and the trial court declared a mistrial. The prosecutor again charged the defendant with felony murder, and the defendant pleaded guilty to second-degree murder. But the defendant filed a motion to withdraw his plea, vacate his conviction, and dismiss the charge against him on double jeopardy grounds. The trial court granted the motion, the Court of Appeals affirmed in an unpublished opinion, the Supreme Court denied leave to appeal, and the United States Supreme Court denied certiorari. The prosecutor then charged the defendant with torture, and the defendant again moved to dismiss, arguing that the charge constituted a double jeopardy violation and a vindictive prosecution. The trial court denied the motion. In a split unpublished opinion, the Court of Appeals majority held that the torture charge was barred by the issue-preclusion aspect of double jeopardy. The Supreme Court has ordered oral argument on the prosecutor's application to address whether the Court of Appeals erred when it concluded that the jury in the defendant's first trial, when it acquitted him of first- and second-degree murder, necessarily decided an issue of ultimate fact such that the issue-preclusion aspect of the Double Jeopardy Clause bars prosecution for the crime of torture arising out of the same criminal incident.

No. 3 159492-3 (20-minute arguments per side)
159492

SAMANTHA LICHON, Sima Patel
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Oakland – Kumar, S.)

MICHAEL MORSE and MICHAEL J. MORSE, PC, Robert Riley
I.W. Winsten
Defendants-Appellants.

159493

JORDAN SMITS, Sima Patel
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Oakland – Kumar, S.)

MICHAEL MORSE and MICHAEL J. MORSE, PC, Robert Riley
I.W. Winsten
Defendants-Appellants.

Plaintiffs Samantha Lichon and Jordan Smits were employed by Michael J. Morse, PC, the defendant law firm. When they worked at the firm, they signed a Mandatory Dispute Resolution Procedure Agreement (MDRPA). The MDRPA applies "to all concerns you have over the application or interpretation of the Firm's Policies and Procedures relative to your employment, including, but not limited to, any disagreements regarding . . . discrimination or violation of other state or federal employment or labor laws. . . . This Procedure includes any claim against another employee of the Firm for violation of the Firm's Policies, discriminatory conduct or violation of other state or federal employment or labor laws." The plaintiffs filed separate lawsuits alleging that they were sexually harassed by attorney Michael Morse. The defendants filed motions for summary disposition under MCR 2.116(C)(7) in each case, alleging that the MDRPA required arbitration of the plaintiffs' claims. Both trial courts agreed and dismissed the plaintiffs' complaints. The Court of Appeals consolidated the plaintiffs' appeals and, in a split published opinion, reversed the trial courts and held that the plaintiffs' claims were not subject to arbitration. The Supreme Court has granted leave to appeal to address whether the claims set forth in the plaintiffs' complaints are subject to arbitration.

No. 4 159660-1 (20-minute arguments per side)
159660
MAEGAN TURNER, by WALTER SAKOWSKI, Conservator,
Plaintiff,
and

RIVERVIEW MACOMB HOME & ATTENDANT CARE, LLC,
Intervening Plaintiff,

v (Appeal from Ct of Appeals)
(Wayne – Berry, A.)

FARMERS INSURANCE EXCHANGE, Jordan Wiener
Defendant/Cross-Plaintiff/
Cross-Defendant-Appellee,
and
ENTERPRISE LEASING CORPORATION OF DETROIT, LLC and EAN HOLDINGS, LLC, Robert Kamenec
Defendants/Cross-Defendants-
Appellants,
and
ESTATE OF JASON PUCKETT, by GARY DUANE RUPP, Personal Representative,
Defendant/Cross-Plaintiff,

and
PATSY VILLNEFF and TAMERA HARPER,
Defendants/Cross-Defendants.

159661
JONTE EVERSON,
Plaintiff,

v (Appeal from Ct of Appeals)
(Washtenaw – Swartz, D.)

FARMERS INSURANCE EXCHANGE, Jordan Wiener
Defendant/Third-Party Plaintiff-
Appellee,
and
ENTERPRISE LEASING COMPANY, Robert Kamenec
Third-Party Defendant-Appellant.

These two cases involve disputes between Farmers Insurance Exchange and Enterprise Leasing Company over the payment of personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*. Vehicles owned by Enterprise and registered in other states were involved in accidents in Michigan. Enterprise, which is self-insured, argued that it was not liable to pay PIP benefits arising out of the accidents because the vehicles had not been operated in Michigan for more than 30 days in the applicable year and were not required to be registered in Michigan. The trial courts in both cases granted summary disposition in favor of Enterprise, but the Court of Appeals reversed in a split published opinion, holding that Enterprise was not entitled to summary disposition – and Farmers was entitled to summary disposition – because Enterprise was subject to the priority provision in the former MCL 500.3114(4)(a) as the insurer of the owner of the vehicles, regardless of whether the vehicles were required to be registered in Michigan. The Supreme Court has granted leave to appeal to address whether a self-insured vehicle owner is subject to the priority provision in the former MCL 500.3114(4)(a) as "[t]he insurer of the owner or registrant of the vehicle occupied" if the self-insured entity's vehicle involved in the accident was not subject to the security provisions of the no-fault act because it was registered in another state, did not need to be registered in this state, and was not operated in this state for more than 30 days during the applicable year.

MOAA 158764
In re CHRISTOPHER ROSS, JR., Minor

PEOPLE OF THE STATE OF MICHIGAN, Danielle Walton
Petitioner-Appellee,

v (Appeal from Ct of Appeals)
(Wayne – Cox, K.)

CHRISTOPHER ROSS, JR., Emily Long
Respondent-Appellant.

Following a bench trial, the trial court entered an order adjudicating the juvenile respondent

responsible for fourth-degree criminal sexual conduct. On appeal, the respondent challenged his attorney's performance and the Court of Appeals remanded the case to the trial court for an evidentiary hearing. After the evidentiary hearing, the trial court concluded that the respondent was denied the effective assistance of counsel and ordered a new trial. The Court of Appeals reversed the trial court in an unpublished opinion and denied the respondent's motion for reconsideration. The respondent filed an application for leave to appeal in the Supreme Court, but the prosecution argued that the application was untimely because juvenile delinquency cases are civil in nature and the respondent did not file his application within 42 days of the Court of Appeals order denying reconsideration as required by MCR 7.305(C)(2)(c). The Supreme Court has ordered oral argument on the application to address: (1) whether appeals from juvenile adjudications for criminal offenses are governed by the time limits for civil cases or by the time limits for criminal cases, see MCR 7.305(C)(2); (2) whether the standard for granting a new trial in a juvenile delinquency case is the same as the standard for granting a new trial in a criminal case, compare MCR 3.992(A) with MCR 6.431(B); (3) whether juveniles who claim a deprivation of their due process right to counsel must satisfy the two-part test set forth in *Strickland v Washington*, 466 US 668, 687 (1984); and (4) whether the Court of Appeals erred in reversing the trial court's decision to grant the respondent a new trial based on evidence that trial counsel did not obtain or present.

MOAA 159691

CITY OF DEARBORN, Gary August
Plaintiff/Counterdefendant-
Appellee,

v (Appeal from Ct of Appeals)
(Wayne – Hughes, M.)

BANK OF AMERICA,
Defendant/Cross-Defendant-
Appellee,
and
WEST DEARBORN PARTNERS LLC, Robert Kamenec
Defendant/Counterplaintiff/
Cross-Plaintiff-Appellant.

After receiving property (Parcel C) as the result of a federal bankruptcy court order, the City of Dearborn filed a quiet title action against West Dearborn Partners, LLC (West Dearborn) and Bank of America (BOA). BOA held a mortgage on the property, which purportedly was assigned to West Dearborn. The bankruptcy court order requiring the sale of the property to the City extinguished any interest in the property that was not of record. Although BOA's interest in the mortgage was recorded at the time of the bankruptcy court order, West Dearborn's assignment was not. BOA subsequently discharged the mortgage. All parties filed motions for summary disposition. The trial court granted the City's motion, holding that West Dearborn's interest in the mortgage was extinguished by the bankruptcy court order, and quieted title in the property to the City. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court has ordered oral argument on West Dearborn's application to address: (1) whether the bankruptcy court's October 5, 2011 order extinguished West Dearborn's interest in Parcel C; (2) whether BOA's filing of a discharge of the mortgage in 2015 impacted any interest West Dearborn had in Parcel C at that time; and (3) whether the equitable arguments raised by West Dearborn require the reversal of the Court of Appeals opinion.

-MSC-