Record-breaking case

A sexual harassment lawsuit nets an eight-figure verdict. In this week's Verdicts & Settlements.

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Go To Lawyers

Lawyers Weekly profiles the state's "go to" attorneys in the construction law sector. A special section.

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MICHIGAN Lawyers Weekly

MILAWYERSWEEKLY.COM

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IMPORTANT OPINIONS OF THE WEEK

Consumer Protection — Credit Report

Where a plaintiff has alleged that the defendant debt collector violated the Fair Debt Collection Practices Act by not removing a dispute notation from a debt on her credit report, the complaint should be dismissed because the "dispute" notation does not amount to a false statement in connection with the collection of a debt.

PAGE 13

Employment — Accommodation

Where a plaintiff has alleged that by making her return to work in person, the defendant employer failed to accommodate her disability and discriminated against her under the Americans with Disabilities Act, the complaint must be dismissed.

PAGE 14

Negligence — Contractors

Where a defendant owner of a warehouse has moved to dismiss a negligence complaint, that motion should allowed only as to the plaintiffs' claim that the defendant was negligent in its selection of contractors, held the U.S. District Court for the Eastern District of Michigan.

PAGE 16

No-Fault Law — UM Motorist Coverage

Where a defendant insurance company moved for summary disposition on a plaintiff's complaint for uninsured motorist benefits after the insurer of the vehicle that struck the plaintiff denied coverage, the trial court was correct when it denied the defendant's motion for summary disposition.

PAGE 17

No-Fault Law — Shuttle Van Service

Where a plaintiff was receiving a ride home from a car dealership's shuttle van service when the shuttle van was involved in an automobile accident, there remains a genuine issue of material fact regarding whether the dealership's shuttle van service is considered a "motor vehicle operated in the business of transporting passengers."

PAGE 17

Taxation —Burden of Proof

Where the Michigan Tax Tribunal determined that an airplane hangar a petitioner built on land it leased from the Northwestern Regional Airport Commission was subject to taxation by the respondent city, the tribunal applied an incorrect burden of proof.

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DEPOSITPHOTOS.COM

Under new EEOC guidance, attorneys advise that employers should make diversity programs as inclusive as possible.

New guidance defines how EEOC will weigh DEI policies

By James Andersen and Kris Olson

Amid the flurry of executive orders President Donald Trump signed upon returning to office was one titled: "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." It took aim at the amorphous concept of "DEI" and what the order described as an "unlawful, corrosive, and pernicious identity-based spoils system."

Gretchen Whitmer subsequently issued an executive directive instructing each Michigan state department to consult with Attorney General Dana Nessel to ensure compliance with federal and state laws as well as the recent orders. Shortly thereafter, 16 attorneys general — not including Nessel — released a five-page guidance document urging private employers to stay the course on diversity, equity, inclusion and accessibility efforts. The AGs stated

Continued on page 23

Highly paid employee misclassified as salaried

Pay structure made inspector an hourly worker

By Eric T. Berkman
Lawyers Weekly Correspondent

The 6th U.S. Circuit Court of Appeals has ruled that an employee who was guaranteed $800 pay each week for the equivalent of eight hours work, with each subsequent hour paid hourly, was misclassified as an exempt salaried worker.

Plaintiff Lynwood Pickens works as a piping inspector at a natural-gas export terminal in Texas.

Through his pay structure, Pickens – who regularly worked more than 50 hours a week for the defendant, Tennessee-based Hamilton-Ryker IT Solutions, and sometimes more than 80 hours in a week – typically earned $5,200 a week for annual earnings of more than $270,000.

Pickens asserted in a putative class action that this compensation arrangement made him a non-exempt hourly worker entitled to overtime under the Fair Labor Standards Act.

A U.S. District Court judge in the Middle District of Tennessee, however, granted summary judgment to the employer, finding that Hamilton-Ryker satisfied the salary basis test for determining if an employee is exempt from overtime by paying Pickens a fixed $800 salary on a weekly basis plus additional compensation at an hourly rate.

But the 6th Circuit reversed, relying on the U.S. Supreme Court's 2023 *Helix Energy Solutions Group v. Hewitt* decision.

"Pickens, just like the employee in *Helix*, was guaranteed payment for a single day's work. But he was not paid a salary," wrote Judge Jeffrey S. Sutton for the panel. "It is no more appropriate for Hamilton-Ryker to sidestep *Helix* based on its use of eight hours as the weekly salary than it

Continued on page 24

Website can establish jurisdiction in trademark lawsuit

By James Andersen
jandersen@milawyersweekly.com

An interactive website that permitted a defendant to conduct sales in Michigan was sufficient to establish personal jurisdiction in a trademark suit, a U.S. District Court in the Eastern District of Michigan has ruled.

Plaintiff FenF, LLC, filed suit against Handelnine Global, alleging violations of the Lanham Act and copyright infringement.

When the defense failed to respond to the complaint within 21 days, the plaintiff requested an entry of default.

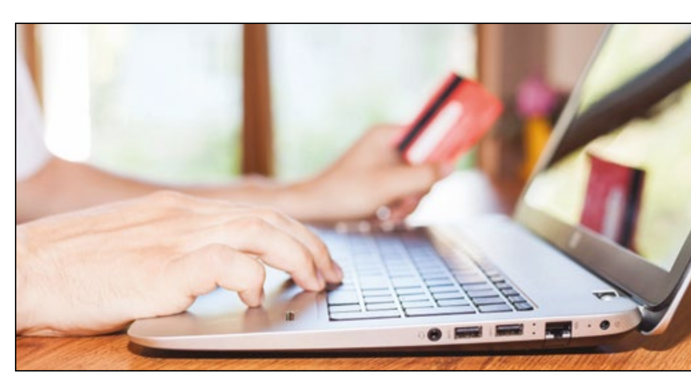
The defense asked that the default be set aside and moved to dismiss, arguing that the court lacked personal jurisdiction.

But U.S. District Court Judge Judith E. Levy found that FenF had satisfied its burden by making a *prima facie* case that the defendant purposefully availed itself of the privilege of doing business in Michigan and that FenF's claims arose out of or related to the defendant's Michigan contacts.

The 24-page decision is *FenF, LLC v. Handelnine Global LLC;* MiLW No. 02-109085.

E-commerce challenges

Richard W. Hoffman of Reising Ethington in Troy, who represented the plaintiff, said that in cases where e-commerce is involved, it can



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A district court ruled that an e-commerce website which made sales in Michigan was enough to establish personal jurisdiction.

be difficult to establish that jurisdiction in Michigan is appropriate.

"We were pleased with being able to stay in Michigan," he said. "[I've had] other cases where I've had to go to Chicago or [further] outside the area to chase people down. [The decision] will make meeting the requirements for personal jurisdiction in trademark cases significantly easier for us."

Continued on page 24

News Briefs

Attorney fees, device rule changes proposed

The U.S. District Court for the Eastern District of Michigan approved publication of proposed amendments to local rules on attorney fees (LR 54.1.2(a)) and the possession and use of electronic devices in federal courthouses (LR 83.32(e)).

The court is soliciting comments on the proposed changes, which must be received no later than May 21, 2025. Comments may be sent to Local_Rules@mied.uscourts.gov or to Local Rules, 539 Theodore Levin United States Courthouse, 231 W. Lafayette Boulevard, Detroit, Michigan 48226. If comments are sent via email, it is not necessary to send a hard copy by regular mail.

The text of the proposed amendments may be found at mied.uscourts.gov/.

Gov appoints judges to high court, COA

Gov. Gretchen E. Whitmer recently announced the appointments of four new judges to the Michigan Supreme Court and Michigan Court of Appeals.

Judge Noah P. Hood has been appointed to the Michigan Supreme Court. He currently serves as a judge on the Michigan Court of Appeals. His appointment was made to fill a partial term following the resignation of Chief Justice Elizabeth Clement.

Prior to his appointment to the bench, Hood served as an assistant United States attorney in the Eastern District of Michigan and the Northern District of Ohio.

Judge Mariam S. Bazzi has been appointed to the Michigan Court of Appeals, First District. She currently serves as on the Third Circuit Court in Wayne County, where she has been re-elected twice since first being appointed by former Gov. Rick Snyder in 2017. Bazzi is being appointed to fill the partial term created by the forthcoming resignation of Hood.

Christopher M. Trebilcock has been appointed to the Michigan Court of Appeals, Second District. Trebilcock is a senior principal at Clark Hill, working in the areas of employment litigation, administrative litigation, traditional labor law, and election law. His appointment will be made to fill a partial term following the resignation of Judge Mark J. Cavanagh.

Daniel S. Korobkin has been appointed to the Michigan Court of Appeals, Third District. He currently serves as legal director for the American Civil Liberties Union of Michigan, where he has worked since 2008. His appointment will be made to fill a partial term following the resignation of Judge Jane E. Markey.

Supreme Court issues proposed rule orders

The Michigan Supreme Court recently issued the following orders:

• The court declined to adopt a proposed amendment to MRPC 1.6, which would have provided an exception to the confidentiality rule regarding disclosure of confidences or secrets to prevent self-harm that may result in the client's death. The order was issued April 23, 2025, and is effective immediately.

• The proposed adoption of AO 2025-X, proposed rescission of AO 2012-7, and proposed amendment of MCR 2.407, would clarify when, from where, and how a judicial officer may participate remotely, subject to the chief judge's approval. The comment period expires July 1, 2025.

• Proposed amendments to MCJC 3 and MRPC 6.5 would incorporate the ABA Model Code of Judicial Conduct Canon 2, Rule 2.3, into Michigan's code and rule to prohibit bias, prejudice, and harassment. The comment period expires July 1, 2025.

• Proposed amendments to subchapters MCR 9.100, MCR 9.200, MRPC 1.12 and MRPC 3.5 would replace the term "master" or "special master" with "neutral arbiter," or add the term "neutral arbiter" to a definition. The order was issued April 23, 2025, and the comment period on the proposed amendments expires on Aug. 1, 2025.

Top state court names new COO

The Michigan Supreme Court recently announced that longtime Chief Commissioner Daniel C. Brubaker has been named the court's chief operating officer.

For the past 13 years, Brubaker has served as chief commissioner, coordinating the flow of cases through the court from filing to disposition. He previously served for a decade as a commissioner, reviewing applications for leave to appeal and preparing summary reports for the justices.

Among other responsibilities, the chief operating officer formulates long-term strategic plans for efficient operation of the Michigan Supreme Court, including implementing new and maintaining existing technologies and case management systems; coordinating the operational activities of the clerk's office, reporter of decisions, court crier, and commissioner's office; and serving as the primary contact for operational issues and questions from justices' offices and other court staff and as the point person for the chief justice on matters involving case management.

Prior to his service in the commissioner's office, Brubaker worked in private practice for a decade at a Grand Rapids law firm.

Attorney Discipline

• Notice of Reprimand
Notice issued: April 18, 2025
Alexander R. Starr, Battle Creek
Reprimand - Effective April 18, 2025

• Notice of Suspension (By consent)
Notice issued: April 17, 2025
Danasia Nikhol Neal
Suspension– 30 months, effective July 22, 2024

• Notice of Disbarment and Restitution (Pending review)
Notice issued: April 17, 2025
Robert A. Canner, Southfield
Disbarment – Effective April 16, 2025

• Notice of Suspension and Restitution (By consent)
Noticed issued: April 17, 2025
Daniel J. Andoni, Flint
Suspension – 180 days, effective February 23, 2024

• Order of Reinstatement
Notice issued: April 23, 2025
John O. Knappman
Reinstatement – Effective April 23, 2025

• Notice of Reprimand with Conditions (By consent)
Notice issued: April 25, 2025
Michelle L. Radloff, Farmington Hills
Reprimand – Effective April 24, 2025

• Notice of Suspension and Restitution
Notice issued: April 25, 2025
John F. Calvin, West Bloomfield
Suspension – 180 days, effective April 25, 2025

Bias claim fails over answers at deposition

A defendant employer should be awarded summary judgment on discrimination claims brought by a plaintiff employee who repeatedly admitted at her deposition that none of the alleged workplace mistreatment she suffered was caused by her sex or gender, a U.S. District Court judge has ruled.

The plaintiff filed a complaint alleging that she was treated poorly at her job with the City of Detroit, which she attributed to discrimination based on her race and her gender. The defendants moved for summary judgment on the discrimination counts under federal and state law.

"It is widely recognized that a plaintiff's admissions at deposition that she has no evidence to sustain a crucial element of her prima facie case are sufficient to justify summary judgment for a moving defendant," Judge David M. Lawson wrote.

"In this case, … the plaintiff admitted repeatedly at her deposition that she was not mistreated 'because of' her race or sex," he pointed out.

The plaintiff "testified herself out of the case on these claims by repeatedly admitting at her deposition that none of the alleged mistreatment was caused by her sex or gender," the judge found.

"Because the plaintiff has not offered sufficient evidence to create a material fact question connecting her allegations of adverse employment action to any discriminatory or retaliatory motivation by the defendants, the Court will grant the motion and dismiss the case," Lawson concluded.

The 23-page decision is *Collins v. Detroit;* MiLW No. 02-109168.

Nessel prevails in case against Google

A federal trial court has found that Google maintained illegal monopolies in the digital advertising technology industry, stifling competition and harming website publishers, advertisers, and consumers.

Attorney General Dana M. Nessel was part of a coalition of 17 attorneys general joining the Department of Justice in suing Google in 2023, seeking to stop anticompetitive conduct that threatens markets in the online advertising industry.

The lawsuit alleged Google's market power allows it to control nearly every aspect of online ad sales, allowing it to extract higher fees from advertisers while paying lower amounts to publishers for their ad space.

The decision, issued by Judge Leonie Brinkema of the Eastern District of Virginia, found Google liable for violating antitrust law by acquiring and maintaining monopolies in the publisher ad server and ad exchange markets for open-web display advertising. The judge also found Google liable for unlawfully tying together its publisher ad server and its ad exchange.

A second phase of the trial to determine remedies for Google's conduct will take place at a later date.

Immunity granted for manufacturing defect

The Public Readiness and Preparedness (PREP) Act precluded a hospital and a pharmaceutical company from being held liable for strokes allegedly caused by contaminated doses of an antiviral medication, the Court of Appeals has ruled.

The complaint involved the alleged dissemination of contaminated doses of remdesivir, an FDA-approved antiviral medication, to the plaintiff's ward, who was hospitalized and treated for COVID-19. He thereafter suffered two strokes. The complaint was brought against Gilead Sciences, Inc., as well as St. Joseph Mercy Chelsea, Inc., doing business as St. Joseph Mercy Chelsea. The plaintiffs claimed that Gilead manufactured, and St. Joseph administered, a product containing microscopic glass particles.

"Gilead and St. Joseph argue that the trial court erred by denying their motions for summary disposition because the PREP Act's plain language grants immunity from manufacturing defect claims. We agree," Judge Michelle Rick wrote for the panel.

"Congress acted to prevent suits like this in the face of a serious public health emergency. Gilead and St. Joseph are ultimately correct: under the PREP Act, no liability can attach here," Rick stated.

"The sole basis for which liability can be imposed under the PREP act is "for death or serious physical injury proximately caused by willful misconduct," 42 USC 247d-6d(d)(1) (emphasis added). … Plaintiffs did not plead in avoidance of the PREP Act by alleging that Gilead or St. Joseph engaged in willful misconduct in this case, nor does it appear that an unintentional error allegedly causing contamination of the remdesivir during the manufacturing process rises to the level of willful misconduct for which Gilead and St. Joseph can be held liable," she added.

"Congress has unequivocally extended immunity to scientists, pharmaceutical companies, and other healthcare providers who grappled with the unprecedented nature of the COVID-19 pandemic. The PREP Act also extends immunity to those entities vis-à-vis any potential future health crises, barring allegations of willful misconduct. The trial court thus erred by declining to grant summary disposition under MCR 2.116(C)(8). On remand, the trial court shall enter an order granting summary disposition to Gilead and St. Joseph under MCR 2.116(C)(8) and dismissing plaintiffs' claims in their entirety," Rick said.

The eight-page decision is *DN v. Gilead Sciences Inc.;* MiLW No. 07-109176.

Veil piercing uncalled for in LLC tax dispute

The Court of Appeals has vacated a judgment holding a limited liability company's sole owner personally liable for the LLC's unpaid personal-property taxes.

The case was filed in the district court by the plaintiff city of Livonia and its treasurer. The complaint alleged that the defendant, Amor Transportation, LLC, failed to pay personal-property taxes owed to the plaintiffs and that a codefendant, as the sole owner and resident agent of Amor, was personally liable for the payment of those unpaid taxes under the Michigan General Property Tax Act.

In granting summary disposition to the plaintiffs, the district court found that the codefendant, as the sole owner and member of Amor, violated the requirements of MCL 450.4806, MCL 450.4807 and MCL 450.4808. The circuit court affirmed the district court's ruling, finding that piercing the corporate veil was warranted because of the codefendant's "failure to dispute the assessments, not pay taxes, file late returns, and violate the statute" for dissolution.

NEWS BRIEFS

"On appeal, [the codefendant] does not dispute that a judgment could be entered against Amor for unpaid taxes. But, [the codefendant] argues that summary disposition should have been granted in her favor because plaintiffs failed to offer evidence justifying her personal liability, and at a minimum, summary disposition in plaintiffs' favor was inappropriate because questions of material fact remained. We agree, and remand for further proceedings," a three-judge Court of Appeals panel wrote in a per curiam opinion.

"Although it is true [the codefendant] was the sole member, owner, and resident agent of Amor, this alone does not establish that Amor was a 'mere instrumentality' of [the codefendant] instead, it establishes that [the codefendant] owned and operated Amor. … Plaintiffs offered no other evidence supporting that Amor was a mere instrumentality of [the codefendant] beyond [the codefendant] being the sole owner and member. By itself, a single owner and operator will not defeat the corporate veil," the panel stated.

"Plaintiffs seemingly conclude that because Amor was assessed $20,000, and now has no assets, [the codefendant] must have wrongfully disposed of any assets — without offering any evidence in support. This is insufficient to justify piercing the corporate veil. … When viewed in the light most favorable to [the codefendant], plaintiffs offered no evidence that [the codefendant] purposefully and wrongfully removed assets or dissolved Amor to avoid paying taxes. Moreover, on appeal, plaintiffs still do not identify any evidence of fraud or misuse of the corporate form," the panel added.

"As previously stated, we cannot find any evidence showing that [the codefendant] merely used Amor as an instrumentality to commit fraudulent or otherwise wrongful acts. Accordingly, because plaintiffs failed to demonstrate evidence sufficient to justify piercing the corporate veil, the district court erred by granting summary disposition in plaintiffs' favor as opposed to [the codefendant's] favor," the panel concluded.

The seven-page decision is *Livonia City Treasurer v. Briggs;* MiLW No. 08-109203.

Dismissal for failure to appear vacated

It was improper for a trial court to dismiss a complaint on the basis of the plaintiff's failure to appear without first considering alternative sanctions on the record., the Court of Appeals has ruled in an unpublished decision.

The plaintiff, who purchased a mobile home from the defendant, brought an invasion of privacy claim alleging that one of the defendant's employees gave false statements to the police that resulted in the police entering the plaintiff's property and allowing three of the plaintiff's cars to be towed without legal cause.

The trial was scheduled for 10 a.m. on May 7, 2024. The plaintiff did not appear for trial. The trial court dismissed the case without prejudice on the basis of the plaintiff's failure to appear.

"In this case, there is no indication in the lower court record that the trial court took the requisite step of 'carefully evaluat[ing] all available options on the record' before concluding that dismissal was the proper sanction. ... The trial court's order dismissing the case states only that the trial court did so because of 'plaintiff's failure to appear for trial,'" the Court of Appeals wrote in a per curiam opinion.

"Although the trial court arguably weighed dismissal with prejudice against dismissal without prejudice when it stated that it would 'dismiss ... without prejudice ... just in case something extreme has happened to [plaintiff],' we do not believe that this constitutes a careful evaluation of the trial court's available options. ... We therefore vacate the trial court's order dismissing the case without prejudice and remand the case for the trial court to engage in the proper analysis on the record," the Court of Appeals stated.

The five-page decision is *Mays v. Parkway Village*; MiLW No. 08-109206.

Airline wins appeal over 'hidden' cost

An airline that received a cut of a passenger's travel assistance purchase should not be held liable for unjust enrichment, the 6th U.S. Circuit Court of Appeals has ruled.

The plaintiff visited defendant American Airlines' website to purchase a plane ticket. After the plaintiff selected her flight, the website asked if she wanted to buy travel assistance. The plaintiff bought her ticket and paid for the travel assistance.

As it turns out, the airline received a cut of the plaintiff's travel assistance purchase. Alleging that the defendant intentionally failed to disclose that "hidden fee," the plaintiff claimed breached of contract and unjustly enrichment under Michigan law. After American removed the case to federal court, the complaint was dismissed for failure to state a claim. The plaintiff appealed the dismissal of her unjust enrichment claim.

"An unjust enrichment claim under Michigan law has two elements. First, the plaintiff must establish the 'receipt of a benefit by the [defendant] from the [plaintiff].' *Karaus v. Bank of N.Y. Mellon,* 831 N.W.2d 897, 905, 906 (Mich. Ct. App. 2012) (per curiam). Second, the plaintiff must show 'an inequity resulting to the [plaintiff] because of the retention of the benefit,'" Judge Amul Roger Thapar wrote for a three-judge 6th Circuit panel.

"[The plaintiff] failed to make a showing on element two: whether there is 'inequity resulting to the [plaintiff] because of the retention of the benefit by the [defendant],' no matter who conferred the benefit to the defendant," Thapar stated.

"[The plaintiff] got what she bargained for — travel assistance. That is not inequitable. ... She voluntarily paid the listed price for travel assistance and received that service in return. … Where's the inequity in that? Any fees remitted to American didn't injure [the plaintiff]: she still got what she paid for," Thapar added.

"In sum, American made money from [the plaintiff's] purchase of travel insurance from [Allianz Global Assistance]. 'But making money is still allowed.' ... American's continued possession of that money isn't inequitable. So [the plaintiff] hasn't stated a claim for unjust enrichment under Michigan law," the panel concluded.

The seven-page decision is *Trotta v. Am. Airlines, Inc.*; MiLW No. 01-109190.

AG supports firms targeted by Trump

Michigan Attorney General Dana M. Nessel has joined a coalition of 21 attorneys general in filing two amicus briefs supporting law firms that are challenging executive orders alleged to unconstitutionally impose severe sanctions in retaliation for doing work disfavored by the Trump administration.

The executive orders require federal officials to suspend any active security clearances held by individuals at the law firms, to refuse to engage with or hire employees of these firms, and to deny the law firms' personnel entry to federal buildings. The orders also direct federal contractors to disclose any business they do with the law firms so that agencies can terminate any contract with the firms.

The coalition's briefs were filed in support of cases challenging two of these orders in the U.S. District Court for the District of Columbia: *Jenner & Block LLP v. U.S. Department of Justice and Wilmer Cutler Pickering Hale and Dorr LLP v. Executive Office of the President*. In both cases, the law firms obtained temporary injunctive relief and are now asking a judge to permanently block the executive orders against them.

Nessel and the coalition argue that the administration's actions are a gross abuse of authority that threaten the rule of law. They further argue that the orders will harm the residents of their states by making it more difficult for many potential clients, especially those who currently rely on pro bono representation, to obtain legal services and vindicate their rights in court.

Ex-peer center head sentenced for stealing

Tanya Hobson has been sentenced by Judge Jason Bitzer in the 71B Judicial District Court in Caro to 6 months in jail after pleading guilty to embezzlement.

Hobson was also ordered to pay restitution to the Tuscola County Peer Center.

The defendant served as the director of the Tuscola County Peer Center from May to December 2023. The Peer Center, affiliated with the Tuscola Behavioral Health Systems, receives much of its funding from Medicaid and assists members receiving mental health services with self-advocacy skills, providing self-help and mutual support services.

As director, Hobson was responsible for scheduling outings, collecting and monitoring the mail, obtaining grants, picking up supplies and paying bills. During her time as director, Hobson embezzled over $1,000 of the center's funds for personal use.

Man receives life for 2011 murder

Chadwick Mobley has been sentenced to lifetime imprisonment without the possibility of parole by Judge Michael Nolan in the 40th Circuit Court in Lapeer County for killing Andrea Eilber.

Mobley pled no contest in February to first-degree murder, felony murder, and felony firearm.

In 2011, Eilber was shot in the head at the home of a relative. Evidence found at the scene was tested for DNA during the investigation, and again in 2022 in a renewed effort that positively identified Mobley, who by then resided in Utah.

Mobley fled his home shortly after questioning by police and was later in Montana before being returned to Michigan to face criminal charges.

Verdicts & Settlements

Insurance

Insurance case settled after policy reformed

$240,000 settlement


MATZ

A declaratory action requested that the court declare the applicable insurance policy limits. Farm Bureau indicated that the limits were $100,000/$300,000 but only had signed DIFS forms from when the policy commenced, several years before the crash. The court concluded that signed DIFS forms were required at each and every renewal in order to be effective. The court found an ineffective reduction in coverage and reformed the policy to provide $250,000 per person worth of coverage. The case settled for $240,000.

Plaintiff's counsel provided the case information.

Action: Insurance

Injuries alleged: Improper reduction of insurance benefits

Case name: Cornett v. Mbaye and Farm Bureau General Insurance Company of Michigan

Court/case no.: Macomb County Circuit Court/24-000364-NI

Judge: Hon. James Biernat

Judgment amount: In favor of plaintiff, increasing insurance policy limits from $100,000/$300,000 to $250,000/$500,000. Case settled for $240,000.

Date: October 21, 2024

Attorney for plaintiff: Jared I. Matz, Matz Injury Law, Southfield

Medical malpractice

More surgery required, surgeon not at fault

$0 defense verdict

A 58-year-old female registered nurse underwent an abdominoplasty at a surgery center. The defendant plastic surgeon encountered an abnormal lymph node and proceeded to dissect the node for possible biopsy. Massive bleeding occurred and the patient was transferred to the hospital for vessel repair by a vascular surgeon.

After the initial repair, the patient was returned to surgery that night for a fasciotomy release due to compartment syndrome. The patient underwent five additional surgeries during her 11-day hospital stay.

The node was benign.

The plaintiff alleged that she had not consented to the node removal and it would have been safer to remove it after imaging and not at a surgical center. The defendant argued that the standard of care required the removal of the node, as failure to do so could have resulted in the delay of cancer treatment.

Case information was submitted by defendant's counsel.

Action: Medical malpractice

Injuries alleged: Blood vessel injury resulting in emergency transfer, surgery and five subsequent surgeries including compartment release, permanent leg scarring, lifelong pain from peripheral vascular disease, and need for future popliteal bypass.

Case name: Susan Yuska v. Southwest Michigan Plastic and Hand Surgery, P.C., and Raghu Elluru

Court/case no.: Kalamazoo County Circuit Court/2023-0229-NH

Judge: Hon. Curtis J. Bell

Mediator: Robert Riley

Special damages: Plaintiff asked the jury for $3,354,895.14; past medical: $285,468.14; future medical: $1,069,427; noneconomic past: $1,500,000; noneconomic future: $500,000.

Verdict amount: $0

Date: April 19, 2025

Plaintiff's demand: $1 million

Defendant's offer: $0

Attorneys for defendant: Michael W. Stephenson, East Lansing and Joseph T. Van Horn, Traverse City.

Contract

Settlement reached in dispute over gas debt

$115,000 settlement

This case stems from a significant gas debt that the plaintiff owed to the defendants. The plaintiff, along with her husband, operated several gas stations in the metro-Detroit area.

Around 2012, the plaintiff became indebted to the defendants for outstanding payments on gas deliveries in excess of $275,000. To resolve the debt, the plaintiff assigned her gas stations to a holding company owned by the plaintiff and the defendants and agreed to gradually repay the amount owed using income generated from the holding company.

In 2022, the plaintiff initiated legal action, accusing the defendants of membership oppression, breach of operating agreement, and breach of management.

Before trial, the plaintiff made a demand of $1.9 million. At trial, the plaintiff demanded $2.4 million plus forgiveness of the $250,000 debt. The parties reached a settlement mid-trial. The terms included a $115,000 credit toward the plaintiff's outstanding gas debt and a mutual waiver of all claims, terms that the defendants would likely not have secured through a jury verdict.

Defendant's counsel provided the case information.

Action: Contract

Injuries alleged: Membership oppression, breach of operating agreement, and breach of management agreement

Case name: Rasha Ahmed v. Tarek Gayar et al.

Court/case no.: Oakland County Circuit Court/2022-195738-CB

Judge: Hon. Victoria A. Valentine / Hon. James M. Alexander (ret.)

Settlement amount: $115,000 credit to debt owed by plaintiff to defendants; mutual waiver of all claims

Date: July 31, 2024

Attorneys for defendant: Shawn H. Head and Sean P. Murphy, Head Murphy Law, Farmington Hills

Negligence

Restaurant manager sues after warehouse injury

$1 million settlement


MARKO


STARE

The plaintiff, a 36-year-old single mother and restaurant manager from Detroit, was injured while picking up an order from the defendant's warehouse. As she entered through the facility's intake door — an entrance regularly used by customers — her right foot was hit by heavy equipment operated by a warehouse employee.

While the defendant denied liability, company employees confirmed that the plaintiff had been struck by a power jack. She sustained nerve damage, scarring, and stitches to her right foot as a result. There were no surgeries, fractures, breaks, or tears.

During litigation, the defendant and its employees sought to minimize the severity of the incident, dismissing the plaintiff's injuries as merely a "scratch." However, medical records painted a different picture, detailing a traumatic injury to her right foot, ongoing pain, and permanent scarring.

The defendant also failed to preserve crucial video footage and neglected to file an incident report — missteps that ultimately led the court to grant the plaintiff's spoliation motion for an adverse jury instruction.

As a result of her injuries, the plaintiff incurred medical expenses and lost earning capacity due to her inability to continue her physically demanding job. The plaintiff demanded $1 million in damages, citing the long-term impact of her injuries and the defendant's failure to uphold safety standards.

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VERDICTS & SETTLEMENTS

The defendant ultimately agreed to settle the case for its full $1 million commercial insurance policy limits.

Plaintiff's counsel provided the case information.

Action: Negligence

Injuries alleged: Nerve pain, scarring and stitches to right foot

Case name: Chantal Tyus v. Alnamer Wholesale, LLC

Court/case no.: Wayne County Circuit Court/23-012376-NO

Judge: Hon. Adel A. Harb

Mediator: Daniel P. Makarski

Settlement amount: $1 million

Date: Jan. 13, 2025

Attorneys for plaintiff: Jonathan R. Marko and Gasper Stare, Marko Law Firm, Detroit

Motor vehicle negligence

Disabled man hit on sidewalk dies

$2 million settlement

ANEESE

The plaintiff, a 44-year-old disabled man, was sitting in a wheelchair on a sidewalk outside of a business in Detroit. The defendant, who was allegedly operating his vehicle recklessly, lost control and struck the plaintiff, causing him serious injuries. The plaintiff was taken to the hospital, where he later died from his injuries.

Plaintiff's counsel provided the information.

Action: Motor vehicle negligence

Injuries alleged: Wrongful death

Case name: Confidential

Court/case no.: Wayne County/Confidential

Judge: Confidential

Settlement amount: $2 million

Date: April 29, 2024

Attorney for plaintiff: Matthew Aneese, The Sam Bernstein Law Firm

Fraud

Business that defrauded medical practice ordered to pay damages

$1.001 million judgement

SILVENIS

The Wayne County Circuit Court awarded over $1 million in damages against business managers who defrauded a medical practice, engaged in financial mismanagement, and obstructed court proceedings.

The plaintiff, a medical practice, entered into a management services agreement with the defendants, owners of Alfa Professional Development, LLC. The agreement, drafted by the defendants, granted them 60-65% of the practice's revenue in exchange for handling bookkeeping, financial reporting, billing, vendor payments, and patient records management.

Rather than fulfilling these obligations, the defendants diverted funds to other entities under their control. They failed to pay vendors, leases, and rent, removed patient records, and attempted to sell the practice's receivables without authorization. The plaintiff only discovered the misconduct when it was unable to fulfill medical record requests due to missing documentation.

The plaintiff filed suit, seeking injunctive relief. The court issued a temporary restraining order, compelling the defendants to return patient records, cease unauthorized sales, and account for all received funds. The defendants stipulated to a preliminary injunction requiring collected funds to be deposited into an IOLTA account. However, they failed to comply and admitted to converting additional funds.

The case was marked by numerous discovery violations that led to multiple court sanctions and ultimately a default.

The court held a bench trial on damages. It found that the plaintiff was entitled to damages and awarded $1,001,083.65.

Additionally, the court found the plaintiff was entitled to reasonable costs and attorney fees.

Plaintiff's counsel provided the case information.

Action: Fraud

Injuries alleged: Breach of management agreement, conversion of monies, fraud, conspiracy

Case name: Genesis M.D. Diagnostic Imaging, P.C. v. Alfa Professional Development, LLC, et al

Court/case no.: Wayne County Circuit Court/22-004062-CB

Judge: Hon. Brian Sullivan

Judgement amount: $1,001,083.65

Date: Jan. 22, 2025

Attorneys for plaintiff: Steven Z. Cohen and Aaron E. Silvenis, Cohen, Lerner & Rabinovitz, Royal Oak

Employment

Sexual harassment suit nets a record-breaking verdict

$32 million verdict

RUNYAN

Six former female employees of Science Beauty Tech, Inc. sued the company and its owner for sexual harassment that allegedly occurred throughout their employment.

Jane Doe 4 was hired by the defendants when she was 18 years old.

Throughout her employment, the defendant's owner frequently sexually harassed Jane Doe 4 by, among other things, trying to coerce her into having sex with him by offering to buy her designer purses, frequently commenting on her body, and forcefully kissing her on the lips without her consent.

In January 2022, the defendant informed Jane Doe 4 that he wanted to take her to Florida to attend an important business meeting. Jane Doe 4 agreed because she was excited about the opportunity to attend the meeting and was informed that she would have her own room.

Upon arriving at the hotel in Florida, the defendant informed Jane Doe 4 that he had only booked one room, and she would have to share it with him. During the stay, he allegedly attempted to force her to have sex with him.

The event caused Jane Doe 4 significant post-traumatic stress. At trial, she received an individual verdict of $32,000,000 in non-economic damages. This was the highest verdict of the six plaintiffs and is reported to be the highest individual employment verdict in Michigan history.

Plaintiff's counsel provided the case information.

Action: Employment

Injuries alleged: Sexual harassment, PTSD, anxiety, panic attacks

Case name: Jane Doe v Science Beauty Tech, Inc., et al

Court/case no.: Oakland County Circuit Court/2023-202785-CD

Judge: Hon Cheryl A. Matthews

Verdict amount: $32 million

Date: Feb. 19, 2025

Attorney for plaintiff: Zach Runyan, Runyan Law Group, St. Clair Shores

The **Verdicts & Settlements** page is a forum for lawyers in Michigan to share results of recent cases. It is intended as a tool to help in determining case values for trial or settlement. Submissions are provided by one of the lawyers in the case. Michigan Lawyers Weekly reserves the right to edit submissions for style, language and length.

MICHIGAN'S GO TO Lawyers

CONSTRUCTION

Michigan Lawyers Weekly is pleased to present the next group of honorees in our program recognizing leading lawyers in a particular field of law. On the following pages, we showcase "Michigan's Go To Lawyers" for construction.

We asked our Go To Lawyers to complete a short questionnaire. Their responses appear in the following pages.

The questions we asked, along with the short titles that we use in the paper, are:

- Practice area for which you are best known (Best known for)
- Why did you choose your legal area?
- What has been your most memorable case?
- What legal developments in construction law do you expect to see in the second half of 2025? (Outlook for 2025)

Please join us in congratulating these outstanding construction attorneys.

And we look forward to celebrating Go To Lawyers for business litigation in July.

Susan A. Bocamazo, Esq.
Managing Director

Principal
August Law
Troy

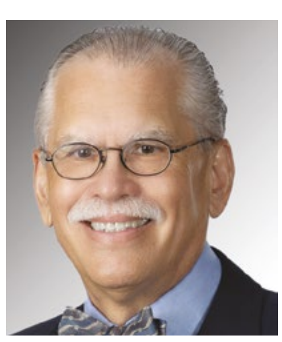
GARY AUGUST

Best known for:
Representing owners on large projects such as the McNamara Terminal construction at the Detroit Metropolitan Airport and Dearborn's Combined Sewer Overflow Project, among others.

Why I chose my legal area:
Construction litigation rewards those who are both creative and detailed-oriented. While many cases go to a final litigated result, a project can often be saved by creative thinking and negotiation. It is also rewarding that at the end of the day there is a physical structure that exists that you can say, "That is there because of me." I think about that every time I fly out of the Detroit Metropolitan Airport, where I opened over 70 separate files for issues on that project.

Most memorable case:
The Wayne County failed Consolidated Jail Project, a litigation against the architects and contractor, and a successful negotiation to move the project forward at a different site.

Prediction for 2025:
Litigation and claims for termination for convenience of projects getting eliminated or stopped due to the withdrawal of federal funding.



Member
Bodman
Ann Arbor

HARVEY W. BERMAN

Best known for:
Preparing thorough contracts that minimize project issues and working collaboratively with project stakeholders and their attorneys; resolving project issues without litigation; offering trusted/practical advice and going the extra mile for clients.

Why I chose my legal area:
The people (salt of the earth), the projects (tangible and visible) and the benefit of the finished project. It's very compelling to be involved in improvements to real estate that significantly impact the lives of others.

Most memorable case:
I represented the owner (a parts manufacturer) in a matter involving a 600,000 square-foot design-build automotive parts manufacturing facility in Alabama. The top half of the steel columns displayed signs of rust prior to substantial completion and required resolution related to their design. We were able to creatively resolve the issues without litigation.

Prediction for 2025:
More uncertainty caused by tariffs and the market, leading to pricing volatility. Lots of new construction projects as manufacturing increases, significant increases in cost of labor and materials, and possible difficulty sourcing certain types of products and materials.

Shareholder
Kotz Sangster
Detroit

R. EDWARD BOUCHER

Best known for:
Successfully arguing on behalf of contractors for the insurance coverage decision in *Skanska USA Building Inc. v M.A.P. Mechanical Contractors, Inc., et al.*, 505 Mich 368 (2020).

Why I chose my legal area:
No other area of law allows you to work so closely with clients on matters of such significance to them while wrestling with such interesting factual and legal issues.

Most memorable case:
This concerned a senior healthcare facility in Macomb County in 2009. We fought over a dozen issues in a 29-day arbitration. It was a bare-knuckled, and clean, brawl. It also led to great friendships with opposing counsel.

Prediction for 2025:
This is a challenging time for the construction industry. We face a funding cliff for our roads, labor shortages, and financing challenges as project owners grapple with variable demand for office space, tariffs, and other unknowns. But I am optimistic — the Michigan construction industry is strong and dynamic.

Member
Dickinson Wright
Detroit

CHRISTOPHER A. CORNWALL

Best known for:
Complex commercial and business litigation and construction law

Why I chose my legal area:
Construction law combines legal knowledge with an understanding of the industry, which is constantly evolving. It often involves complex legal issues, diverse projects, and a wide range of client needs, keeping the work interesting, engaging and intellectually stimulating. It also gives me the opportunity to be involved in projects that impact various businesses, from battery plants to hospitals.

Most memorable case:
One was obtaining a $3.2 million verdict in U.S. District Court on behalf of a national construction company against an earth retention contractor for breach of contract and delays, plus a no-cause award on the counter claims of breach of contract and wrongful termination.

Prediction for 2025:
I predict that new construction projects will slow down, budgets will tighten as a result of tariffs, and construction litigators will have a very busy year.

Attorney
Rhoades McKee
Grand Rapids

BRUCE COURTADE

Best known for:
Commercial and business litigation, construction law

Why I chose my legal area:
I wanted to help people. Most people in this industry are hard-working, no-nonsense, common-sense people looking for guidance and help when something goes wrong. I love working for people like that!

Most memorable case:
A small general contractor and close friend was sued by a subcontractor for $8,000. The sub had accidentally dumped a 55-gallon drum of toxic chemicals, costing tens of thousands of dollars to clean up. Handling the case at reduced rates, we got the court to award the full remediation costs and showed that the complaint was frivolous and vexatious. We settled for less than the full amount of the judgment, but received attorneys' fees of more than $100,000 and my friend got the time and cash he needed to keep his business.

Prediction for 2025:
As AI grows, the skills and experience of seasoned professionals will become more and more important and in demand. Nothing can replace years of experience, especially in the areas of law that deal directly with individuals and their real human issues.

Founder and President
Deneweth, Vittiglio & Sassak
Troy

RONALD DENEWETH

Best known for:
Construction and surety law, real estate and business acquisitions

Why I chose my legal area:
I sort of fell into it. While in law school, I clerked at a firm that had a division specializing in construction and surety law. I was hired by that firm after graduation and worked exclusively in that field. When the opportunity presented itself to join one of the former partners of that firm, I jumped at the opportunity. Since that time, we have expanded into real estate and business acquisitions involving the construction industry.

Most memorable case:
The collapse of the Bloomfield Park Project in Bloomfield Township and Pontiac. I learned that if owners, lenders and contractors are not pulling in the same direction, the results can be disastrous, especially for contractors.

Prediction for 2025:
We are again coping with unpredictable pricing and labor and material shortages. I predict that 2025 will be a year of cost uncertainty and lessons learned.

Shareholder
Butzel Long
Detroit

ERIC J. FLESSLAND

Best known for:
All construction-related matters

Why I chose my legal area:
Construction contractors are industrious, genuine professionals. The majority of contractors in our area are family-owned and operated, often across multiple generations. I deeply respect their entrepreneurial spirit and find it rewarding to help them achieve success. The construction industry is a cornerstone of economic growth. A successful project demands cost-effective building solutions, requiring active collaboration among all these stakeholders. I enjoy facilitating those solutions.

Most memorable case:
The first construction case I worked on involved a precast parking garage. The prestressed concrete columns bowed outward, which made the bearing area where the Double-T concrete beams sat on the haunches in the beams smaller with each level. The bearing area was so dangerously small at Level 6 that the City issued a stop work order and condemned the parking garage. My experiences with that case changed me. Whenever I drive into a parking garage, I look up at the underside of the beams more than I look for a parking space!

Shareholder
Maddin, Hauser, Roth & Heller
Southfield

MARTIN S. FRENKEL

Best known for:
Construction law, including litigation, transactional matters and regulatory issues

Why I chose my legal area:
I fell in love with construction law because it allowed me to meld both litigation and transactional work. I also have the privilege of working with fantastic clients, helping to grow their businesses, and frequently seeing the tangible results of my efforts in the real world.

Most memorable case:
I negotiated a construction contract, then later successfully litigated the resolution of a dispute relating to the reuse and reconstruction of a portion of the historic Tiger Stadium site.

Prediction for 2025:
Uncertainty is my word for construction in 2025. Interest rates remain high, the availability and focus of government funding for construction projects remain unclear, and the full impact of tariffs is not yet known. In my opinion, these factors will combine, in the intermediate term, to slow the amount and pace of construction projects this year.

Member
Clark Hill
Detroit

JEFFREY M. GALLANT

Best known for:
Construction law, including contract negotiations to complex litigation, handling intricate project issues and disputes in both domestic and international projects.

Why I chose my legal area:
My background in civil engineering, coupled with my affinity for construction projects and solving technical challenges. The strong construction law community in Michigan, along with the guidance of my mentor in the field.

Most memorable case:
We represented the glass and glazing contractor on a modern $100M+ building with numerous challenging exterior glass enclosures features. Despite the client's objections, the owner, commissioning agent, and prime contractor all claimed that the windows failed the commissioning test, requiring a complete reinstallation. We demonstrated that the commissioning was done improperly and that the windows should not have been rejected. The client recovered its costs associated with the improper commissioning and associated delays, and the prime contractor received nothing on its original $20M delay counterclaim.

Prediction for 2025:
A significant uptick in construction projects, with a renewed focus on energy and infrastructure improvements.

Member
Hirzel Law
Farmington

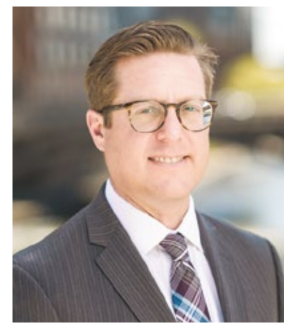
BRANDAN A. HALLAQ

Best known for:
Real estate law, construction/development and condominium law

Why I chose my legal area:
I am a first-generation born Chaldean American. My parents emigrated to the United States in the 1980s. Like many immigrant families, we started a small business to make ends meet. Working alongside my family in that business at a young age sparked my passion for entrepreneurship and business. I developed a deeper interest in real estate law after clerking at a real estate law firm during law school.

Most memorable case:
I serve as lead counsel for a local developer on a multi-year large-scale redevelopment project, having had a hands-on role in every legal aspect from the very beginning. That level of involvement, and the opportunity to see the project evolve in real time, has been incredibly rewarding.

Prediction for 2025:
The shortage of affordable housing in large cities will continue to increase, which will drive demand for new construction. As people continue to move out of densely populated urban centers, suburban and rural areas will experience sustained growth.



Founding Member
Hilger Hammond
Grand Rapids

BENJAMIN H. HAMMOND

Best known for:
Complex commercial construction law, litigation, mediation, arbitration

Why I chose my legal area:
I love working with folks who create things from nothing. Down-to-earth people who are competitive and generous pretty accurately describes the clients which make this practice area a joy to work in.

Most memorable case:
Public case is pending; private arbitrated matter is confidential. In general, litigating multi-million dollar claims for contractors seeking payments from owners. .

Prediction for 2025:
Tariffs and tumultuous times will result in more up-front contract negotiation, a COVID-like atmosphere as it relates to tariffs (parties mostly working together and not fighting each other), and construction generally proceeding as predicted. 2026 could be an entirely different story, however.

Counsel
Varnum
Novi

KATHERINE O'CONNOR

Best known for:
Construction and business law and litigation

Why I chose my legal area:
Construction law provides a unique opportunity to work on complex and impactful projects important to society as a whole. I have found that the legal issues I help with are just as crucial to the project as the design or engineering. I find it deeply rewarding to help resolve issues that can significantly impact not only my client's businesses, but surrounding communities as well.

Most memorable case:
Extensive transactional work on large-scale conveyor systems and automotive battery plants across the country.

Prediction for 2025:
With supply chains in flux, the construction industry will need to navigate increases in costs, which may result in potential delays and prolonged negotiations between a project's parties.

Attorney
Howard & Howard Attorneys
Royal Oak

BRADLEY KNICKERBOCKER

Best known for:
Successful closeout of the construction/renovation phase of the former GM World Headquarters renovation for the nonprofit owner ($130M project at the time); defeating Honeywell claims made in connection with the Ryan/Mound state prison being constructed in Detroit; and development of Silver Lake Village in Fenton, Novi Research Park I and II, and world HQ complex for a major medical supplier in Fraser.

Why I chose my legal area:
My dad was a builder. I built my own home twice, so I like construction!

Most memorable case:
Probably an arbitration where we deconstructed the contract of a major U.S. company performing HVAC work on a major Detroit project, the critical path scheduling and related matters, and eventually showed that the company had been overpaid at the time it filed the arbitration (which was quickly withdrawn after a half-day of our client's defense).

Prediction for 2025:
Repurposing office space will remain the rage so long as there is demand for new multifamily residential or possibly data centers exists. Location, location, location!

Managing Shareholder
McAlpine, PC
Auburn Hills

MARK MCALPINE

Best known for:
Construction claims litigation, large and complex cases and related commercial litigation

Why I chose my legal area:
I have always been fascinated by the construction process and impressed with those who work and succeed in the field.

Most memorable case:
Wayne Oakland Contracting vs. Garden City, Wayne County Circuit Court. My client was attempting to recover about $1 million in cost overruns on a streetscape project on which their work was interfered with and significantly changed by the defendant. The client went out of business during the litigation due, in part, to a scorched-earth defense strategy. The jury ultimately awarded my client three $12 million verdicts to cover its project losses and the lost value of its business. After successfully defending challenges in both the state Court of Appeals and Supreme Court, my client collected $16 million and was able to resurrect its business and re-hire its employees.

Prediction for 2025:
I expect to see an increase in claims litigation due to lingering COVID impacts and similar impacts due to the tariffs being imposed by the current administration.

Member
Dawda
Bloomfield Hills

JOHN MUCHA III

Best known for:
Effective advocacy for clients and attention to detail.

Why I chose my legal area:
To serve the needs of my clients, many of whom have been large retailers.

Most memorable case:
A construction dispute regarding a failed large aquarium tank at a Cabela's in Michigan, which ended up being very expert witness-intensive.

Prediction for 2025:
Tariffs are likely to slow the pace of new construction as developers take a wait-and-see approach. Sometimes such trends result in more litigation as developers fight over past projects in lieu of advancing new opportunities.

Mamber
Miller Johnson
Detroit

EMILY C. PALACIOS

Best known for:
Construction and real-estate adjacent litigation

Why I chose my legal area:
Though I'm not an engineer, I worked for a consulting engineering firm for many years before crossing over to law. I knew from that experience how much I enjoy digging into how things get built and learning from the architects, engineers, and surveyors that make it happen.

Most memorable case:
It's impossible to name just one. Every case has taught me something new and been memorable because of the people involved.

Prediction for 2025:
Economic uncertainty slows and, in some cases, halts construction projects in Michigan despite calls to build by state and federal politicians. That's tough. Parts of Michigan have already experienced slow activity due to interest-rates and inflation. Falling further behind in housing starts is not good for anyone.

Principal
Cavanaugh & Quesada
Royal Oak

GARY QUESADA

Best known for:
Construction litigation and arbitration. I served a leading role in the passage of the 2011 amendment to MCL 600.5805(13), statute of limitations for architect/engineer/surveyors malpractice.

Why I chose my legal area:
My first career was as an architectural photographer with the Studio of Balthazar Korab, and later with Hedrich-Blessing. I had the opportunity to work directly with some of the best designers in Michigan, such as Ken Neumann, William Kessler, Gunnar Birkerts, Victor Saroki, Art Smith, Alan Cobb and others. It was natural to move into construction law from architectural photography.

Most memorable case:
My very first case I should have won, but didn't. I appealed it all the way to the Supreme Court of Michigan and was remanded for trial. Still lost. Learned lots of lessons along the way.

Prediction for 2025:
Lots of requests for escalation clauses.

Shareholder
Foster, Swift, Collins & Smith
Lansing

BRANDON M. H. SCHUMACHER

Best known for:
Construction and business/commercial litigation

Why I chose my legal area:
I like problem-solving and love the competitive nature of litigation and trial work. It is very exhilarating to roll the dice and take a bold step to resolve a case by trial or other unique resolutions.

Most memorable case:
K2 Retail Construction Services, Inc v. West Lansing Retail Development, LLC, et al. This decision was the first of its kind and answered many unknown questions about the Construction Lien Act, including what occurs if an owner does not redeem following a foreclosure, a lien claimant's right to credit bid a lien at foreclosure, and what the court must do to determine surplus where a credit bid occurs. It also highlighted the CLA's flexibility and the circuit court's broad equitable authority to craft an appropriate remedy based upon all the circumstances.

Prediction for 2025:
Depending on how tariffs effect downstream industries, I expect to see a rise in payment delays and litigation associated with such delays.

Partner
Plunkett Cooney
Bloomfield Hills

SCOTT H. SIRICH

Best known for:
Construction law, including MIOSHA/OSHA disputes. I principally represent design professionals and contractors. I believe I am recognized as a skilled practitioner and respected by my peers for my litigation skills and collegial approach to the practice. I am probably best know for my experience representing architects and engineers.

Why I chose my legal area:
I was always interested in construction, even as an undergrad at the University of Michigan. I have found construction law to be very rewarding, given that most my engagements involve complex issues on large commercial projects.

Most memorable case:
If I had to choose one, it would be the litigation I had involving the design and construction of the University of Michigan Cardiovascular Center Hospital. It eclipsed nearly a decade, including over a year in arbitration, a federal court action and two trips to the 6th U.S. Circuit Court of Appeals. My client prevailed at every stop.

Prediction for 2025:
Michigan national champs in football and basketball.

Shareholder
Smith, Haughey, Rice & Roegge
Ann Arbor

THOMAS J. VITALE

Best known for:
Being pragmatic and focused on adding value to clients' businesses by a commitment to superior client service and consistent results.

Why I chose my legal area:
My construction and real estate practice focuses on closely held entrepreneurial businesses, and I enjoy providing a high degree of creative, strategic legal solutions to locally owned businesses and business owners.

Most memorable case:
Skanska v. Amerisure, and every case I've dealt with since involving advising contractors and/or owners to ensure the best outcome under CGL or other construction policies. Construction cases involve very nuanced legal issues, and the case law is regularly evolving based on the terms and conditions in the insurance policies and the underlying circumstances of each case.

Prediction for 2025:
The uncertainty surrounding tariffs will require all construction parties continued caution concerning project budgets, cost controls and issues resulting from cost escalation.

Partner
Hilger Hammond
Grand Rapids

AILEEN M. LEIPPRANDT

Best known for:
Deep and wide knowledge of issues affecting the construction industry, effective advocacy grounded in professionalism and integrity (peppered with humor). A practical problem-solver.

Why I chose my legal area:
The industry is fascinating! The legal issues can be complex, especially on large, complicated projects. With the variety of circumstances that can go sideways, there is never a dull moment. Construction professionals are interesting, creative, down-to-earth, and gritty. And the bar is welcoming and collegial.

Most memorable case:
No one ever forgets their first trial. How pedantically I attempted to strategically position a large wooden podium in the precise location as taught in trial advocacy class. Oblivious to the floor conditions, I accidentally rolled a wheel of that podium into an open electrical socket, causing the behemoth box-on-wheels to crash to the floor. The shock and amusement on the jurors' faces is indelibly inked in my mind. Everyone laughed, including Judge Kelly. We received a favorable outcom:e, notwithstanding the courtroom clumsiness.

Prediction for 2025:
Unpredictable. (tariffs on, off, on again, paused …)

Managing Attorney
Tina S. Gray, P.C.
Williamston

TINA S. GRAY

Best known for:
Knowledge of the law and attention to details of the case.

Why I chose my legal area:
I chose construction law because I enjoy the trades, it is a niche area with a body of statutes and case law that can be mastered, and I enjoy helping business owners improve their practices.

Most memorable case:
All cases are memorable! The times when you can achieve a beneficial result for your client in an efficient manner are enjoyable achievements.

Prediction for 2025:
2025 is a year of defining goals and focusing in on the essential elements of what motivates action.

Opinions from the Courts

Editor's note: The full text of these decisions can be found on Lawyers Weekly's website, milawyersweekly,com

6TH U.S. CIRCUIT COURT OF APPEALS

Appeals
Standing - Amicus curiae

Where a nonprofit organization has filed an appeal challenging a 2023 decree concerning the allocation, management and regulation of fishing in the Great Lakes waters, the appeal must be dismissed for lack of appellate jurisdiction because the organization only appears as amicus curiae and was never granted party status through intervention.

"In December 2022, the United States, the State of Michigan, and the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Bands of Odawa Indians, and the Little River Band of Ottawa Indians (collectively, the 'Stipulating Parties') filed the proposed 2023 Great Lakes Fishing Decree (the '2023 Decree'). The 2023 Decree reflects the Stipulating Parties' effort to resolve their differences concerning the allocation, management, and regulation of fishing in the Great Lakes waters.

"Amicus curiae, the Coalition to Protect Michigan Resources (the 'Coalition') –– a nonprofit organization representing Michigan-based recreational fishing and conservancy groups –– objected to the 2023 Decree's entry. Over the Coalition's objection, the district court entered the 2023 Decree. United States v. Michigan, 2023 WL 5444315, at *70 (W.D. Mich. Aug. 24, 2023). The district court concluded that the 2023 Decree preserves tribal treaty rights and conserves the fishery resource. ... The Coalition now challenges the 2023 Decree's entry on appeal. However, this court lacks jurisdiction over this appeal because the Coalition only appears as amicus curiae and was never granted party status through intervention.

"For this court to have jurisdiction to hear the Coalition's appeal, the Coalition must have properly become a party to this suit. The rule that only parties may appeal adverse judgments is not a mere technicality; it provides structure and order that is 'essential to the administration of justice.' *Broidy Cap. Mgmt. LLC v. Muzin,* 61 F.4th 984, 994 (D.C. Cir. 2023) (citation omitted). As we have stated before, the 'evolution of amicus curiae [through] the judicial fiat of "litigating amicus curiae" ... transcends the traditional concept of that term within accepted jurisprudence.' ... We have declined to contribute to that evolution previously, and we decline to contribute to that evolution now.

"Accordingly, we dismiss the Coalition's appeal for lack of appellate jurisdiction and dismiss as moot the United States's cross-appeal."

United States v. State of Michigan; MiLW No. 01-109053, 10 pages; U.S. Court of Appeals for the Sixth Circuit; Gibbons, J., joined by McKeague, J., Stranch, J.; on appeal from the U.S. District Court for the Western District of Michigan.

Civil Rights
County jail – Due process

Where a plaintiff alleged that she fell and broke her ankle after slipping on the wet shower floor of a county jail, her complaint does not "plausibly suggest" that the conditions of the jail shower violated the Due Process Clause.

Judgment dismissing complaint affirmed.

"Misty Coleman alleges that she fell and broke her ankle after slipping on the wet shower floor of a county jail. This accident led Coleman to pursue constitutional claims under 42 U.S.C. § 1983 and negligence claims under Ohio law against the county and many corrections officers and medical personnel. The district court dismissed all claims against all parties. Coleman's appeal raises a mix of substantive and procedural questions. As for the substantive: Did Coleman adequately allege that the slippery shower violated the Due Process Clause? Did she adequately allege that a county policy or custom was behind her poor medical care? And may the county invoke state-law immunity from her negligence claim at the pleading stage? As for the procedural: When did Coleman's claims accrue and start the running of the statute of limitations? Did her amended complaint (which named actual corrections officers and medical personnel) 'relate back' to the date of her original complaint (which named 'John Doe' and 'Jane Doe' defendants) for statute-of-limitations purposes? And can Coleman rely on equitable tolling to delay the running of the limitations period? We agree with the district court on the answers to all six questions. We thus affirm its dismissal of Coleman's complaint.

"Coleman's complaint does not 'plausibly suggest' that the conditions of the jail shower violated the Due Process Clause. ... An ordinary risk that every member of the public faces everyday falls well below what is required to show an unconstitutional risk for inmates."

Coleman v. Hamilton County Bd. of County Comm'rs; MiLW No. 01-109050, 18 pages; U.S. Court of Appeals for the Sixth Circuit; Murphy, J., joined by Sutton, J., Bush, J.; on appeal from the U.S. District Court for the Southern District of Ohio at Cincinnati; Lydia A. Caylor for appellant; James S. Sayre for appellee.

Civil Rights
Wrongful convictions

Where plaintiffs whose murder convictions were overturned brought suit against defendant detectives, the denial of the defendants' request for summary judgment should be upheld because the qualified immunity doctrine does not apply.

"This §1983 case concerns alleged constitutional violations in the investigation and prosecution of George Clark and Kevin Harrington. Clark and Harrington spent nearly two decades in prison before the Wayne County Prosecution Integrity Unit determined that they did not receive a fair trial because their murder convictions were secured based on the testimony of a singular eyewitness, who claimed she had been coerced to lie by detectives. Following dismissal of the charges and Clark's and Harrington's releases from prison, the men sued those detectives for violating their constitutional rights.

"After discovery, the district court granted in part and denied in part the detectives' motion for summary judgment based on qualified immunity. Specifically, the district court denied qualified immunity on the men's claims that the detectives fabricated the statement of the eyewitness, facilitated their prosecution without probable cause, and violated the Brady rule by withholding evidence that detectives threatened and offered benefits to key witnesses. The detectives filed an interlocutory appeal on the denial of qualified immunity. For the following reasons, we AFFIRM the district court's denial of qualified immunity and REMAND for trial on the merits."

Dissenting judge's comments

ALICE M. BATCHELDER, Circuit Judge, concurring in part and dissenting in part. "I agree with the denial of qualified immunity on the fabrication-of-evidence and malicious prosecution claims and, therefore, concur in the Majority's analysis and judgments for those claims. But I would reverse the district court on the *Brady* claims because the allegedly withheld information is not the type of evidence that fits within Brady's disclosure requirements and, even if it were, that information was readily available to defense counsel at the time of trial."

Clark v. Abdallah; MiLW No. 01-109052, 39 pages; U.S. Court of Appeals for the Sixth Circuit; Moore, J., joined by Bush, J.; Batchelder, J., concurring in part and dissenting in part; on appeal from the U.S. District Court for the Eastern District of Michigan at Detroit; Kali M. L. Henderson for appellant; Wolfgang Mueller for appellee

Civil Rights
Qualified immunity - Forensic serologist

Where (1) two plaintiffs who were convicted of murder brought suit against a defendant forensic serologist who testified at their trial and (2) the defendant's summary judgment motion under the qualified immunity doctrine was denied, that ruling should not be overturned despite the defendant's argument that the law at the time did not clearly establish that the duty of disclosure applied to scientists.

"In 1995, a Kentucky jury convicted Garr Keith Hardin and Jeffrey Clark of murdering Rhonda Sue Warford. Robert Thurman, a forensic serologist, testified at their trial that a hair found at the crime scene was 'similar' to a sample of Hardin's hair. After Clark and Hardin spent over two decades in prison, DNA testing proved that this hair was not, in fact, Hardin's. A state court thus vacated Hardin's and Clark's convictions. Clark and Hardin then brought this suit under 42 U.S.C. § 1983 against (among others) Thurman. In discovery, they obtained the 'observation notes' that Thurman had written when examining the hairs. These notes suggested that the hair found at the scene might not have matched Hardin's hair sample in various ways. Hardin claimed that Thurman's failure to disclose the notes before trial violated his disclosure obligations under *Brady v. Maryland,* 373 U.S. 83 (1963). The district court denied Thurman's qualified-immunity defense. On appeal, Thurman argues (1) that his notes were neither exculpatory nor material under Brady, and (2) that the law in the mid-1990s did not clearly establish that *Brady's* duty of disclosure applied to scientists. Our precedent deprives us of jurisdiction over Thurman's first argument. And it also dooms his second argument that *Brady* did not clearly apply to him. We thus affirm in part and dismiss in part for lack of jurisdiction."

Concurring judges' comments

STRANCH, Circuit Judge, concurring. "The majority opinion correctly holds that we lack jurisdiction over Thurman's argument that his notes were neither exculpatory nor material. I write separately to address the apparent inconsistency in this circuit's precedent on the extent of our jurisdiction over mixed questions of fact and law in the context of appeals of denial of qualified immunity and to note that, even under a broader conception of this court's jurisdiction, we would lack jurisdiction in this case."

MURPHY, Circuit Judge, concurring. "In *Brady v. Maryland,* 373 U.S. 83 (1963), the Supreme Court held that the prosecution has a due-process duty to disclose evidence to the defense that meets the Court's 'favorability' and 'materiality' elements. ... Garr Keith Hardin asserts that Robert Thurman, a forensic serologist with the Kentucky State Police, violated *Brady* by failing to disclose his 'observation notes' to the prosecution. Why? Those notes allegedly conflicted with Thurman's later testimony that a hair found on Rhonda Sue Warford was 'similar' to a sample of Hardin's hair. Given our precedent, the majority opinion correctly resolves the two main Brady issues that this appeal presents. First, our caselaw holds that we lack jurisdiction over whether the summary-judgment record would allow a reasonable jury to find a Brady claim's favorability and materiality elements. So we must refuse to consider Thurman's arguments that his notes were neither exculpatory nor material. Second, our caselaw holds that plaintiffs may recover damages for Brady violations under 42 U.S.C. §1983 without showing that a state defendant harbored any malicious intent when failing to disclose the identified evidence. So Thurman's argument that he did not act in bad faith by failing to hand over his notes (and instead merely followed his lab's policy) cannot rebut Hardin's *Brady* claim. Although our cases require us to reach these two conclusions, I write this concurrence because I am not sure either is right."

Clark v. Louisville-Jefferson County Metro Gov't; MiLW No. 01-109025, 30 pages; U.S. Court of Appeals for the Sixth Circuit per curiam; Bush, J.; Stranch, J., concurring; Murphy, J., concurring; on appeal from the U.S. District Court for the Western District of Kentucky at Louisville; Ed Monarch for appellant; Emma Freudenberger for appellee.

Contract
Assignment – Franchise agreement

Where plaintiffs, who want to reward some longtime loyal employees by assigning franchise rights to them, sued defendant for breach of contract and sought declaratory relief because the defendant conditioned its consent for that assignment on the new owners signing updated franchise agreements, a grant of summary judgment in favor of the defendant should be affirmed under a consent-to-assign provision, which was not waived by the parties.

"Plaintiffs operate twelve Dairy Queen franchises and want to reward some longtime loyal employees by assigning franchise rights to them. When defendant American Dairy Queen Corporation conditioned its consent for that assignment on the new owners signing updated franchise agreements, plaintiffs sued for breach of contract and sought declaratory relief. The district court granted summary judgment in defendant's favor, and we affirm.

"In 1965, American Dairy Queen Corporation ('ADQ') granted rights to a franchisee to develop and operate Dairy Queen restaurants in Oakland County, Michigan, under a franchise agreement ('the 1965 Agreement').

"We must first determine the terms of the franchise agreement under which the parties operate. ADQ seeks to enforce the terms of the 1965 Agreement's consent-to-assign provision, while plaintiffs contend that the parties waived that consent provision.

"Because there is not 'clear and convincing evidence' of an intent to modify or waive the consent requirement, we must enforce the terms of the contract as written. ... The district court therefore correctly determined that under the unambiguous terms of the 1965 Agreement, ADQ had a right to withhold consent to plaintiffs' assignment of the franchise agreement.

"Next, we analyze whether the 1965 Agreement's consent provision is enforceable. As the parties conceded—and as we explained—the 1965 Agreement unambiguously restricts plaintiffs' assignment right by requiring ADQ's consent to transfer the franchise agreement. Although Michigan courts enforce 'unambiguous contracts' as written, … plaintiffs argue that the consent-to-assign provision in the 1965 Agreement is unenforceable under Michigan's Franchise Investment Law (MFIL). We disagree.

"Last, we ask whether ADQ had 'good cause' under the MFIL to condition transfer on proposed franchisees signing new agreements. It did. As the district court appropriately held, ADQ's condition that new franchisees sign an updated franchise agreement is commercially reasonable.

"In sum, ADQ had good cause for conditioning consent to transfer on prospective franchisees' execution of a new agreement. Assuming without deciding that the MFIL applies retroactively, the 1965 Agreement's consent-to-assign requirement is enforceable. Because this provision is enforceable and ADQ had good cause, ADQ did not breach its agreement with plaintiffs and are not entitled to declaratory relief."

Oakland Family Rest. v. Am. Dairy Queen Corp.; MiLW No. 01-109054, 12 pages; U.S. Court of Appeals for the Sixth Circuit; Griffin, J., joined by Clay, J., Gibbons, J.; on appeal from the U.S. District Court for the Eastern District of Michigan.

Employment
Retaliation

Where a defendant employer was awarded summary judgment in a Title VII retaliation

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action, that judgment should be affirmed because the employer provided three independent non-pretextual reasons for firing the plaintiff.

"Kirstyn Paige Bashaw was fired by her employer, Majestic Care of Whitehall. Bashaw then sued Majestic Care under Title VII and Ohio law, claiming retaliation. The district court granted Majestic Care summary judgment, holding it had provided three non-pretextual grounds for Bashaw's termination. For the reasons below, we AFFIRM.

"Majestic Care offered four reasons in support of its decision to terminate Bashaw, all of which she now challenges on appeal: (1) 'Bashaw had surreptitiously recorded work conversations and meetings'; (2) 'Bashaw was often tardy or missed work'; (3) 'Bashaw told Ms. Nieset that she did not want to return to work'; and (4) 'Bashaw violated company policies regarding the safe discharge of a resident.'

"Bashaw argues that her surreptitious recording of work meetings did not actually motivate [Vice President of Human Resources Melany] Nieset to fire her. We disagree.

"In sum, Bashaw has provided no evidence to rebut Nieset's testimony that she fired Bashaw because she reasonably believed Bashaw had undermined trust in the workplace and put the company at risk.

"Bashaw next contends that her work attendance and tardiness was a pretextual reason for firing her because similarly situated employees were not also terminated. We once again disagree.

"Bashaw also argues that Majestic Care's belief that she did not want to return to work was pretextual because it was not based in fact. We again disagree.

"In sum, Nieset formed an honest belief that Bashaw no longer wanted to work at Majestic Care. A jury could not find this reason was pretext for retaliation."

Bashaw v. Majestic Care of Whitehall LLC; MiLW No. 01-109024, 13 pages; U.S. Court of Appeals for the Sixth Circuit; Larsen, J., joined by Kethledge, J., Thapar, J.; on appeal from the U.S. District Court for the Southern District of Ohio at Columbus; Carrie J. Dyer for appellant; Joseph J. Brennan for appellee.

Immigration
Nexus – Loan sharks

Where applications for asylum, withholding of removal, and protection under the Convention Against Torture were denied, that decision should be upheld because threats from loan sharks lack any connection to the petitioners' membership in a purported protected class of people.

"Bhavanaben Patel petitions on behalf of herself, her husband, and her two sons to review the Board of Immigration Appeal's decision rejecting their applications for asylum, withholding of removal, and protection under the Convention Against Torture. Seeing no error in the Board's decision, we deny the petition.

"Roughly a decade ago, Bhavanaben Patel, a native of India, lived in the state of Gujarat, along with her husband Dinesh and her two sons. While there, her husband amassed considerable debt owed to local loan sharks. When that debt was not repaid, the family was subjected to numerous forms of coercion from their lenders, including threats to kill Dinesh and kidnap the Patels' two children. Out of concern that they lacked any 'legal proof' of these tactics, the Patels never reported the loan sharks' actions to local authorities. Before any of those threats ever came to fruition, the family fled India for the United States.

"Because the family arrived in the United States without a visa or any other permission to enter, the Department of Homeland Security immediately pursued their removal. ... Bhavanaben in turn sought asylum and withholding of removal for the family under the Immigration and Nationality Act (INA), as well as Convention Against Torture (CAT) protection, all under the theory that the Patels could not return to India without harm at the hands of the loan sharks. After conducting a hearing and considering evidence submitted by the government and the Patels, an immigration judge denied the family relief from removal on the three grounds asserted. The Patels appealed that decision to the Board. But they fared no better there, with the Board dismissing their appeal. The Patels then petitioned this Court to review the Board's order.

"Start with the asylum and withholding claims—two related, but distinct forms of relief under the INA. ... Both afford relief from removal based on a 'nexus' between a noncitizen's risk of persecution in the country of removal and their membership in a protected group, including a 'particular social group.'

"The family's claims are all premised on the contention that they would face future persecution in India because of their membership in two particular social groups: 'victims of government-sanctioned extortion' and 'victims of threats, extortion, and kidnapping by loan sharks.' As a starting point, the Board had well-taken concerns about whether these are cognizable particular social groups. … But even setting those apprehensions aside, a reasonable adjudicator would nonetheless not be compelled to disagree with the Board's conclusion regarding the absence of a connection between the Patels' membership in their claimed groups and their risk of future persecution. Nexus, it bears reminding, 'is a question of motive, not just simple causation.' Cruz-Guzman v. Barr, 920 F.3d 1033, 1037 (6th Cir. 2019) (citations omitted). Accordingly, the Patels needed evidence that the loan sharks' persecution was 'motivated by a particular animus toward [the group of loan shark victims] itself'—that is, a desire to harm loan-shark victims for the reason that they are loan-shark victims—and not a more general reason, such as the 'ordinary criminal desire for financial gain.'

"The record presented to the Board contained no such evidence. Nothing suggests that a reason the loan sharks threatened the Patels was because the family were loan-shark victims. Instead, the record uniformly shows that they did so to get the money they felt Dinesh owed them. As unwelcome as those threats might have been for the family, they lack any connection to their membership in a purported protected class of people."

Patel v. Bondi; MiLW No. 01-109051, 6 pages; U.S. Court of Appeals for the Sixth Circuit; Readler, J., joined by McKeague, J., Kethledge, J.; on appeal from the Board of Immigration Appeals; Margaret W. Wong for petitioner; Brooke M. Maurer for respondent.

Immigration
Aggravated felony - Arson

Where a petitioner's removal from the United States was ordered for having been convicted of an aggravated felony under the Immigration and Nationality Act, the removal order should be upheld because the petitioner's Virginia arson conviction was an aggravated felony under the INA, making her deportable under 8 U.S.C. §1227(a)(2)(A)(iii).

"Shenisa Mohammed seeks review of a decision of the Board of Immigration Appeals ('BIA') ordering her removal from the United States for having been convicted of an aggravated felony under the Immigration and Nationality Act ('INA'). Mohammed raises one issue: Is her Virginia arson conviction an 'aggravated felony' under the INA, making her deportable under 8 U.S.C. §1227(a)(2)(A)(iii)? Because we answer in the affirmative, we deny her petition for review.

"We must decide whether Mohammed's conviction for arson under Virginia law is an offense described in the federal arson statute. Because the INA specifies a 'conviction, not conduct, as the trigger for immigration consequences,' we employ the categorical approach. Mellouli v. Lynch, 575 U.S. 798, 806 (2015). In doing so, 'we ask whether the state statute defining the crime of conviction categorically fits within the ... federal definition of a corresponding aggravated felony.'

"Because the federal arson statute necessarily incorporates the aiding-and-abetting statute, the Virginia arson statute is not broader than the federal arson statute. Therefore, Mohammed's state arson conviction qualifies as an aggravated felony."

Mohammed v. Bondi; MiLW No. 01-109023, 6 pages; U.S. Court of Appeals for the Sixth Circuit; Mathis, J., joined by Griffin, J., Nalbandian, J.; On Petition for Review from the Board of Immigration Appeals; Michael S. Henry for appellant; Jaclyn G. Hagner for appellee.

EASTERN DISTRICT OF MICHIGAN

Commercial
Fraudulent transfer

Where a plaintiff that obtained a money judgment against a defendant has alleged that the defendant's transfer of real property was in violation of the Michigan Uniform Voidable Transactions Act, the plaintiff should be awarded summary judgment, as the transfer was made with actual intent to hinder, delay or defraud the defendant's creditors.

"Before the court is Plaintiff's motion to avoid a fraudulent transfer (ECF No. 21). On August 2, 2023, this court entered a stipulated money judgment in favor of Plaintiff and against Defendant. ... Plaintiff has since sought to collect on this judgment. ... However, Plaintiff alleges that in June 2023, Defendant transferred real property from himself to joint ownership between himself and his spouse, Jumana Yousif, for $1.00 (the transaction was recorded in July 2023). ... Plaintiff alleges this transfer was an effort to defraud Plaintiff as a creditor of Defendant in violation of the Michigan Uniform Voidable Transactions Act (MUVTA), Mich. Comp. Laws §566.31, et seq., and seeks to void that transfer. Defendant does not dispute that the transfer occurred, but disputes that this was a fraudulent transfer in violation of MUVTA.

"Here, the transfer was unquestionably to an insider (a), and the Defendant remained in possession of the property (b). These two on their own are significant.

"Additionally, Yousif was already aware of a lawsuit against him (d), the transfer occurred shortly before stipulated judgment was entered (j), and because Yousif admitted in his testimony that he could not satisfy any of the judgment in June 2023, the house can be fairly assumed to be the bulk or entirety of Defendant's collectible assets (e). Finally, because no payment was made, the transfer was not made for 'reasonably equivalent value' (h). … These six factors all indicate that the transfer was made in an attempt to prevent a forced sale of Defendant's marital residence by Defendant's creditors.

"The court therefore finds by the preponderance of the evidence that the transfer by the Defendant Yousif to tenancy by the entireties with his spouse was made with actual intent to hinder, delay, or defraud his creditors, and the transfer is voidable under Mich. Comp. L. §566.34(1)(a).

"Although not strictly necessary, the court notes that the transfer is also voidable under §566.34(1)(b). Subsection 1(b) functions similarly to (1)(a).

"Therefore, independent of whether there was actual fraudulent intent, and unrelated to Defendants' argument that the transfer was a correction of a mistake, Plaintiff has also proven by the preponderance of the evidence that the transfer is voidable as constructive fraud under Mich. Comp. L. §566.34(1)(b)."

Caldwell Co. v. Yousif; MiLW No. 02-109029, 21 pages; U.S. District Court for the Eastern District of Michigan; Behm, J.

Consumer Protection
Credit report – Dispute notation

Where a plaintiff has alleged that the defendant debt collector violated the Fair Debt Collection Practices Act, specifically 15 U.S.C §1692e(8), by not removing a dispute notation from a debt on her credit report, the complaint should be dismissed because the "dispute" notation does not amount to a false statement in connection with the collection of a debt.

"On July 10, 2024, Plaintiff Crystal Mims ('Ms. Mims') initiated this action against Defendant LVNV Funding LLC ('LVNV'), a debt collector. In her Complaint, Ms. Mims alleges that LVNV violated the Fair Debt Collection Practices Act ('FDCPA'), specifically 15 U.S.C §1692e(8), by not removing the dispute notations from a debt on Ms. Mims's credit report. LVNV has moved to dismiss the action pursuant to Federal Rule of Civil Procedure 12(b)(6). … For the reasons set forth below, the Court is granting LVNV's motion.

"As indicated, Ms. Mims alleges that LVNV violated §1692e(8) of the statute. … In its motion, LVNV argues that Ms. Mims fails to allege a violation of this provision because marking a debt as 'disputed' on a credit report is not done 'in connection with the collection of any debt[.]' This court agrees with LVNV.

"LVNV's 'dispute' notation on Ms. Mims' credit report is not a demand for payment. It raises a question regarding the balance due, rather than stating that one in fact is owed. Such a notation would not constitute a 'strategy to make payment more likely.' ... In fact, it likely would have the opposite effect. It does not express an attempt to collect a debt, nor does it threaten consequences for the failure to pay. Finally, it was not a direct communication between LVNV and Ms. Mims that might induce her to pay the debt; instead, it was merely an updated remark under the account details of her credit report. For these reasons, the Court finds that the 'dispute' notation does not amount to a false statement in connection with the collection of a debt.

"Reporting a debt without a 'dispute marker,' when the debt in fact is disputed, violates §1692e. … But there is no apparent harm to a debtor when a dispute notation is not removed from an undisputed, or no longer disputed, debt.

"For these reasons, the Court finds that Ms. Mims has not established that LVNV's 'dispute notation' was a false or misleading statement made 'in connection with the collection of a debt.' She, therefore, fails to allege a viable claim under the FDCPA."

Mims v. LVNV Funding, LLC; MiLW No. 02-109026, 8 pages; U.S. District Court for the Eastern District of Michigan; Parker, J.

Consumer Protection
TCPA

Where a plaintiff has filed a complaint alleging violations of the Telephone Consumer Protection Act, the Michigan Telephone Companies as Common Carriers Act and the Michigan Home Solicitation Sales Act, the defendants' motions to dismiss should be granted in part and denied in part.

"Plaintiff Mark W. Dobronski brings this pro se consumer protection suit against Tobias & Associates, Inc., Michael Tobias, Robert Phillips, Jesse Ventura, Fidelity Life Association, and Great Western Insurance Company, alleging violations of the Telephone Consumer Protection Act ('TCPA'), 47 U.S.C. §227 et seq., the Michigan Telephone Companies as Common Carriers Act ('MTCCCA'), Mich. Comp. Laws §484.101 et seq., the Michigan Home Solicitation Sales Act ('MHSSA'), Mich. Comp. Laws §445.101 et seq., and the Florida Telephone Solicitation Act ('FTSA'), Fla. Stat. §501.059.

"Plaintiff's suit is related to thirteen phone calls he received between April 20, 2022 and February 2, 2023.

"All Defendants argue the amended

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complaint 'do[es] not plausibly allege calls 1-11 were made by or on behalf of Defendants.'

"The Court reminds the parties that its determination here is only that of plausibility, not actual fact. ... After discovery is conducted, the evidence may demonstrate that Defendants are correct, and these eleven calls have no connection to them. On the other hand, there may be evidence that these eleven calls were placed on behalf of Defendants. At this point, the Court declines to dismiss allegations regarding Calls 1-11.

"Plaintiff alleges that Call 13 violated the TCPA's prohibition on calling telephone numbers on the DNC Registry, 47 C.F.R. §64.1200(c)(2), and the TCPA's requirements that certain disclosures be made during telemarketing calls, 47 C.F.R. §64.1200(d)(4). … Plaintiff also alleges that Call 13 violated the MHSSA and the FTSA.

"Plaintiff does not allege that he had a signed, written agreement with any Defendant giving his prior, express invitation or permission to call, or that he had a personal relationship with any Defendant. … As such, GWIC's argument that Plaintiff consented to Call 13 is denied and Plaintiff's claim that Call 13 violated the TCPA's prohibition on calling numbers on the DNC Registry remains in the case.

"As to Plaintiff's other TCPA claim related to Call 13, the TCPA requires a 'person or entity making an artificial or prerecorded-voice telephone call . . . for telemarketing purposes [to] provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted.' 47 C.F.R. §64.1200(d)(4). Plaintiff's claim that Call 13 violated §64.1200(d)(4) must be dismissed because he does not allege that Call 13 involves 'an artificial or prerecorded-voice telephone call.'

"The MHSSA prohibits telephone solicitors from making 'a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the [DNC Registry].'

"The Court dismisses these claims as to Call 13 because Call 12 and 13 constitute one, single telephone solicitation.

"Defendants argue that Plaintiff fails to plead Defendants' vicarious liability for these actions.

"The Court finds that Plaintiff's allegations are sufficient for a finding of vicarious liability.

"As such, the T&A Defendants' arguments regarding vicarious liability are denied.

"As such, Plaintiff's allegations are sufficient to allege apparent authority or ratification for Fidelity.

"As such, Plaintiff's allegations are sufficient to allege apparent authority or ratification for GWIC.

"Here, Plaintiff plausibly alleges Calls 1-12 were initiated in Michigan because they had Michigan area codes displayed on the Caller ID. … The display of Michigan area codes suggests the calls originated in Michigan, even though there are other indications that the calls did not originate in Michigan. At this stage of the case, the Court must construe the complaint in the light most favorable to the Plaintiff. … As such, Plaintiff's MTCCA claims will remain in the case. …

"For the reasons set forth above, Defendants' motions to dismiss (ECF Nos. 49, 51, 52) are GRANTED IN PART AND DENIED IN PART."

Dobronski v. Tobias & Assoc., Inc.; MiLW No. 02-109030, 50 pages; U.S. District Court for the Eastern District of Michigan; Levy, J.

Constitutional

Second Amendment – Domestic violence

Where a plaintiff. whose conviction of a misdemeanor crime of domestic violence was recently set aside, filed a Second Amendment complaint after his firearms were confiscated, the complaint must be dismissed, as the plaintiff is still prohibited from possessing firearms because the relief he received under Michigan law did not fully "expunge" or "set aside" his conviction under federal law.

"Federal law prohibits people convicted of a misdemeanor crime of domestic violence from possessing firearms. 18 U.S.C. §922(g)(9). But that prohibition does not extend to someone whose conviction has been 'expunged' or 'set aside.' See 18 U.S.C. §921(a)(33)(B)(ii). In 2008, Jeramy Wilburn was convicted of a misdemeanor crime of domestic violence, but that conviction was recently set aside by a Michigan state court under Michigan law.

"After his conviction was set aside, Wilburn began acquiring firearms, believing himself to be once again eligible to do so. However, the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) disagreed and confiscated Wilburn's firearms. So Wilburn sued ATF and its Director (collectively 'ATF' or 'the Government') for violations of his Second Amendment rights and moved for a preliminary injunction seeking the return of his firearms. The Government now moves to dismiss, arguing that Wilburn is still prohibited from possessing firearms because the relief he received under Michigan law did not fully 'expunge' or 'set aside' his conviction under federal law.

"As explained below, the Government is correct, so its motion to dismiss will be granted, and Wilburn's motion for preliminary injunction will be denied as moot.

"Wilburn's claim is that because his conviction was 'set aside' under Michigan law, it was also 'set aside' for purposes of §921(a)(33)(B)(ii), such that it no longer disqualifies him from possessing guns. ... As the Government notes, such a claim is essentially a matter of statutory interpretation-one that boils down to two questions: First, what is the definition of 'expunge' or 'set aside' under federal law? Second, does the relief Wilburn received under Michigan law meet that definition?

"In Wyoming ex rel. Crank v. United States, 539 F.3d 1236 (10th Cir. 2008), the court held that Congress intended the terms 'expunged' and 'set aside' in 18 U.S.C. §921(a)(33)(B)(ii) 'to be interpreted equivalently,' and that the plain meaning of both terms 'require[s] that the state procedure completely remove all effects of the conviction at issue.'

"Turning now to the second question, which forms the heart of the parties' disagreement: did Michigan's set-aside procedure completely remove all the effects of Wilburn's conviction?

"It did not. Although Wilburn alleges that he is 'no longer subject to any ... effects of the conviction[],' … Michigan law expressly provides that a conviction may have various effects even after it is set aside. … For example, courts may consider a conviction that has been set aside when determining the sentence for a subsequent felony offense. Mich. Comp. Laws. §780.623(2)(c). Such a conviction may also be considered 'by a court, law enforcement agency, prosecuting attorney, or the attorney general for use in making determinations regarding charging, plea offers, and sentencing.'

"In sum, as a matter of statutory construction, the relief Wilburn received under Michigan's set-aside procedure did not expunge or set aside his conviction for purposes of federal law. Accordingly, the motion to dismiss will be granted as to Count I."

Wilburn v. Bureau of Alcohol, Tobacco, Firearms & Explosives; MiLW No. 02-109059, 21 pages; U.S. District Court for the Eastern District of Michigan; DeClercq, J.

Education

Sexual abuse

Where plaintiffs alleging sexual abuse by an individual who was employed to work with students with visual impairments at public schools in Michigan have asserted claims against defendant school districts and school administrators, the defendants are entitled to summary judgment on the plaintiffs' federal-law claims, as they did not act with deliberate indifference, while the plaintiffs' state-law claims should be dismissed without prejudice based on a lack of supplemental jurisdiction.

"This case involves disturbing allegations of sexual abuse by James Baird, who was employed to work with students with visual impairments at public schools in Michigan. 'School should be a safe, nurturing, and positive environment for [all] children.' … Plaintiffs allege that the five minor children subject to Baird's abuse were denied the school environment they deserve. In addition to asserting claims against Baird, Plaintiffs assert claims against the school districts and school administrators who worked at the schools where Baird worked.

"Before the Court are Defendants Garden City Public Schools ('GCPS'), Derek Fisher, and James Bohnwagner's Motion for Summary Judgment ('the GCPS Motion'), (ECF No. 112), and Defendants Wayne Westland Community School District ('WWCSD'), Jill Simmons, Kimberly Doman, John Dignan, Matthew Provost, and Emily Hawthorne's Motion for Summary Judgment ('the WWCSD Motion'). …

"For the reasons set forth below, the GCPS Motion and the WWCSD Motion are GRANTED with respect to Plaintiffs' federal-law claims. The Court declines to exercise supplemental jurisdiction over Plaintiffs' state-law claims and therefore dismisses them without prejudice.

"Even if the Court assumes that GCPS had an inadequate screening procedure, under binding precedent, this prior conduct does not rise to the level necessary to establish that Baird's alleged sexual abuse of students was a known or obvious consequence of hiring him, such that doing so constituted deliberate indifference to Plaintiffs' rights. It is not enough to show that Baird was a 'poor candidate' or that more extensive review would have led to the decision not to hire him. ... Instead, the alleged rights violations must have been a 'plainly obvious consequence of the hiring decision.' … While the record of Baird's conduct in Allegan Public Schools is troubling, it does not include conduct comparable to the pattern of sexual abuse and assault alleged in this litigation. The significant differences between the prior accusations against Baird and the allegations in these lawsuits, in combination with public comments from an Allegan Public Schools administrator denying any threat to student safety, undermines Plaintiff's claim that this conduct put GCPS on notice that there was a high likelihood of the specific constitutional violations alleged here."

Petty v. Garden City Pub. Sch.; MiLW No. 02-109028, 52 pages; U.S. District Court for the Eastern District of Michigan; Levy, J.

Employment

Accommodation – Interactive process

Where a plaintiff has alleged that by making her return to work in person, the defendant employer failed to accommodate her disability and discriminated against her under the Americans with Disabilities Act, the complaint must be dismissed because the undisputed evidence shows that the plaintiff abandoned the interactive process in seeking her accommodation.

"Beginning in 2012, Plaintiff Shavonne Green worked for Defendant Rocket Mortgage at its office in Detroit, Michigan. But in March 2020, the COVID-19 pandemic arrived. In response to the pandemic, Rocket—like many corporate workplaces—required its employees to work from home to reduce the spread of the virus. By 2021, the threat of the virus had significantly decreased, and Rocket required its employees to return to the office. But Green sought an accommodation from Rocket's return-to-office mandate, asserting that she had developed 'pandemic-related stress,' which caused her to feel depressed and anxious.

"At first, Rocket granted Green some accommodations, but it required Green to submit updated medical forms documenting the necessity and parameters of her requested accommodations moving forward. Rocket and Green corresponded for months, and still Green did not provide the required information to Rocket. So, in 2022, Rocket fired Green.

"Green now has sued Rocket, alleging that by making her return to work in person, it failed to accommodate her disability and discriminated against her under the Americans with Disabilities Act (ADA). But because the undisputed evidence shows that Green abandoned the interactive process in seeking her accommodation, summary judgment is appropriate, and the complaint will be dismissed.

"Green did not provide enough information to Rocket to allow consideration of her requested accommodation.

"Green's cursory and conflicting documentation—five notes from three providers referencing different, if any, diagnoses and recommending two different accommodations—left Rocket with more questions than answers. Thus, no jury could find that it was unreasonable for Rocket to request more information from Green before granting a remote work accommodation.

"And despite Green's arguments to the contrary, the undisputed evidence shows that Rocket clearly and repeatedly requested an explanation of why Green's disabilities required remote work.

"By refusing to submit the requested updated accommodation packet, and by never providing an explanation for why her disability required her to work from home, Green abandoned the interactive process. Because of Green's abandonment, Rocket Mortgage may not be held liable for failing to accommodate her disability. ... Therefore, Defendant's motion for summary judgment will be granted and Green's reasonable-accommodation claim—and thus her complaint—will be dismissed."

Green v. Rocket Mortgage, LLC; MiLW No. 02-109027, 23 pages; U.S. District Court for the Eastern District of Michigan; DeClercq, J.

Employment

Discrimination - Absenteeism

Where a defendant employer has moved for summary on a disability discrimination claim, that motion should be allowed because the plaintiff has not shown that the employer's stated reason for terminating the plaintiff was pretextual.

"Defendant states that it had a legitimate, nondiscriminatory reason for discharging Plaintiff – her excessive absenteeism.

"Here, Plaintiff asserts that Defendant's stated reason for her termination 'had no basis in fact' and did not actually motivate Defendant's decision to terminate her. ... As the evidence of pretext, Plaintiff identifies that she was not disciplined for absenteeism prior to her termination. Plaintiff also asserts that she 'had no write ups.'

"While Defendant did not impose discipline (such as a suspension) upon Plaintiff prior to her termination, the admissible evidence before the Court reflects that Defendant did verbally warn Plaintiff of her attendance problems and that she would be subject to dismissal if her attendance problems continued. Contrary to Plaintiff's assertions in her brief, there are written records regarding Plaintiff's attendance problems documenting the warnings she was given about them.

"The Court concludes that Plaintiff has not presented the Court with sufficient evidence of pretext to create an issue of fact. Defendant is entitled to summary judgment in its favor as to Plaintiff's wrongful discharge claim.

"Plaintiff did testify that the chair she was using would go missing from time-to-time in the store entrance areas after she left work, or she would have to hide it, so others would not use it. That evidence, however, is not sufficient to meet the high bar of a disability-related hostile work environment claim. The Court grants summary judgment in Defendant's favor on this claim."

Barley v. Meijer Great Lakes Ltd. P'ship; MiLW No. 02-109055, 26 pages; U.S. District Court for the Eastern District of Michigan; Cox, J.

OPINIONS FROM THE COURTS

EASTERN DISTRICT OF MICHIGAN

Employment

Harassment – Sexual orientation

Where a plaintiff has brought suit against his former employer for discrimination due to a hostile work environment and retaliation under Title VII, the defendant's motion for summary judgment should be allowed because the plaintiff has not offered evidence to create fact questions on all the elements of his claims.

"Plaintiff Kevin Hamm, a bi-sexual male who works in the construction industry, brought this case against his former employer for discrimination due to a hostile work environment and retaliation under Title VII of the Civil Rights Act of 1964 and its state law counterpart. After discovery closed, the defendant moved for summary judgment of dismissal on all counts. The Court heard oral argument on March 6, 2025. Because the plaintiff has not offered evidence to create fact questions on all the elements of his claims, the motion will be granted, and the case will be dismissed.

"The plaintiff has failed to substantiate a viable cause of action for hostile work environment harassment based on his sexual orientation, for two reasons. First, his evidence does not support a finding of sufficiently severe and pervasive hostility. Second, even if the plaintiff could prove that the work environment was intolerably hostile, it is undisputed that the defendant immediately took corrective action that foreclosed any further exposure to the alleged harassment.

"The plaintiff's evidence certainly describes boorish incivility revealing his coworkers' base instincts. But it does not rise to the level of actionable hostility under Sixth Circuit law.

"Second, even if the plaintiff could establish the existence of a sufficiently hostile environment, he cannot prevail on the second element of his hostile environment claim, which requires him to show that the defendant failed to take prompt corrective action.

"Where there is no dispute that a defendant acted promptly by taking corrective action that ends harassment, such a showing is fatal to the Title VII hostile work environment claim.

"The plaintiff has not produced evidence that creates a fact question on two of the essential elements of his hostile work environment claim. Count I of his amended complaint therefore will be dismissed.

"The plaintiff cannot prevail on his retaliation claim because, even if he has made out a viable prima facie case, he has not presented sufficient evidence to rebut the defendant's proffered legitimate non-discriminatory ground for termination based on the plaintiff's refusal of several alternative work assignments.

"The plaintiff has offered no evidence here to rebut the defendant's proofs that he was terminated for refusal to accept several new work assignments on grounds entirely unrelated to either the alleged harassment or the plaintiff's medical leave.

"The plaintiff has made out a prima facie case for retaliation, but he has not presented sufficient evidence to rebut the defendant's legitimate reason for termination based on the serial refusal of alternative work assignments on various grounds. The defendant has shown that it is entitled to judgment as a matter of law on the retaliation claim. Count II of the amended complaint will be dismissed."

Hamm v. Pullman SST, Inc.; MiLW No. 02-109058, 23 pages; U.S. District Court for the Eastern District of Michigan; Lawson, J.

Evidence

Expert - PTSD

Where the defendants in a suit involving accusations that public school students with visual impairments were subject to sexual abuse have moved to strike the testimony an expert witness, that motion should be allowed in part and denied in part, as the expert's diagnoses of the plaintiffs are admissible, but his multiaxial assessments and his opinions about causation, prognosis and treatment are not.

"Before the Court is Defendants Garden City Public Schools, Derek Fisher, James Bohnwagner, Wayne Westland Community School District, Jill Simmons, Kimberly Doman, Matthew Provost, and Emily Hawthorne's Motion to Strike Plaintiffs' Expert Gerald Shiener, M.D. … For the reasons set forth below, the Court grants in part and denies in part the Motion to Strike.

"This case involves accusations that minor children with visual impairments who were students in two public school districts in Michigan, were subject to sexual abuse. The factual background is set forth in a previous Opinion and Order in this case.

"Plaintiffs offer Dr. Gerald Shiener as an expert to provide 'causation and damages testimony relating to the psychiatric issues' the children face as a result of the alleged sexual abuse. … Dr. Shiener provided reports regarding minor Plaintiffs Z.F. Doe, P.H. Doe, M.S. Doe, and K.B. Doe.

"Dr. Shiener offers diagnostic opinions, multiaxial assessments, opinions about causation, and opinions about prognosis and treatment. For the reasons set forth below, only Dr. Shiener's diagnoses of Plaintiffs are admissible.

"To start, there is the question of Dr. Shiener's reliance on a previous edition of the DSM. The DSM-V was published in 2013, Lopez ex rel Ilarrava v. CSX Transp., Inc., No. 14-cv-257, 2021 WL 11889869, *3 n.1 (W.D. Penn. Aug. 19, 2021), and the DSM-IV was phased out shortly thereafter. Hughes v. Colvin, No. 14-C-1883, 2015 WL 2259833, at *10 n.2 (N.D. Ill. May 12, 2015). This issue arises with respect to his diagnosis of PTSD based on the DSM-IV, as well as his reliance on multiaxial assessments, a feature of the DSM-IV that was phased out in the DSM-V. For the reasons set forth below, his diagnostic opinions are admissible, but his multiaxial assessments are not.

"Defendants also object to Dr. Shiener's opinion that Plaintiffs' psychiatric diagnoses arose from sexual abuse, arguing that his opinions on this issue do not address any 'other external circumstances,' in addition to being conclusory and unsupported.

"While he is not required to deal with every possible cause of Plaintiffs' condition, Plaintiffs have the burden of establishing that Dr. Shiener engaged in a reliable process to reach his conclusions about causation. They do not do so. Accordingly, Dr. Shiener may not testify regarding the cause of Plaintiffs' conditions.

"Similar deficiencies afflict his opinions about the prognosis and proper treatment for Plaintiffs. With respect to each Plaintiff, Dr. Shiener opines that because of the persistence of their symptoms, there is 'poor prognosis' for their recovery. … He also expresses the view that each Plaintiff requires 'supportive psychotherapy' and, possibly, 'antidepressant medication.' … Dr. Shiener does not cite any scientific literature as a basis for these conclusions. He offers nothing of the '"how" and "why"' behind his opinions regarding prognosis and treatment, which is an insufficient basis for an admissible expert opinion. ... Accordingly, Dr. Shiener's opinions regarding Plaintiffs' prognosis and treatment

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are inadmissible."

Petty v. Garden City Pub. Sch.; MiLW No. 02-109057, 24 pages; U.S. District Court for the Eastern District of Michigan; Levy, J.

Mortgages

Laches

Where plaintiffs have brought an action to quiet title, a motion by the defendant to dismiss the complaint should be denied because laches is an affirmative defense and not an element of the plaintiffs' prima facie case.

"Plaintiffs Prasad and Suseela Nannipaneni bring suit to quiet title, and Defendant Ashland Capital Fund 2, LLC ('Ashland') moves to dismiss on the ground that Plaintiffs do not allege facts showing that it is guilty of laches. But laches is an affirmative defense and not an element of Plaintiffs' prima facie case. The Court shall deny Ashland's motion to dismiss.

"Plaintiffs hold record title to a parcel of land in Bloomfield Hills, Michigan (the 'Parcel'). Ashland holds a mortgage in the Parcel (the 'Mortgage') that Plaintiffs gave in 2007 to secure a $160,000 note.

"In October 2021, Plaintiffs received a document stating that their outstanding liability on the Mortgage—nearly $240,000—had been discharged. Plaintiffs duly paid income taxes on this sum and presumed that the Mortgage was extinguished. But in September 2024, Plaintiffs received a 'corrected' version of that document which reduced the amount discharged to $0. Ashland subsequently foreclosed the Mortgage by advertisement and an auction was scheduled for October 29, 2024.

"This suit followed in Michigan's Sixth Circuit Court. Plaintiffs seek orders: (1) declaring that the Mortgage is 'void and of no legal effect' (Count I); (2) quieting title to the Parcel in their favor under Michigan's quiet-title statute (Count II); and (3) enjoining the Parcel from being auctioned pending the resolution of this suit (Count III).

"Here, Ashland does not address the strength of its title on the pleadings; Ashland argues that Plaintiffs' quiet-title claim fails because they do not plead facts showing that it is guilty of laches. Laches is an equitable doctrine that bars recovery by a plaintiff whose unjustifiable delay in bringing suit has rendered enforcement of his or her rights fundamentally unfair. … Thus, whether Ashland is guilty of laches would only matter here if Ashland had pled a counterclaim against Plaintiffs, and Plaintiffs cannot prevail on their quiet-title claim by proving that Ashland is guilty of laches. It follows that Ashland cannot prevail on its motion to dismiss by demonstrating that Plaintiffs do not plead that it is guilty of laches.

"Plaintiffs ask the Court to declare that the Mortgage is void, to quiet title to the Parcel in their favor, and to enjoin the Parcel from being auctioned pending the resolution of this suit. Ashland moves to dismiss, and the thrust of Ashland's motion is that Plaintiffs fail to plead facts showing that it is guilty of laches. But Plaintiffs cannot use laches offensively against Ashland, so any failure by them to allege facts which, if true, would show that Ashland is guilty of laches is irrelevant to whether they state a claim upon which relief may be granted. Accordingly, IT IS ORDERED that Ashland's motion to dismiss (ECF No. 4) is DENIED."

Nannipaneni v. Ashland Capital Fund 2, LLC; MiLW No. 02-109056, 6 pages; U.S. District Court for the Eastern District of Michigan; Cox, J.

Negligence

Hart doctrine - Contractors

Where a defendant owner of a warehouse has moved to dismiss a negligence complaint, that motion should allowed only as to the plaintiffs' claim that the defendant was negligent in its selection of contractors.

"In May 2023, Plaintiffs — two companies that harvest and sell freshwater fish — were storing millions of dollars' worth of fish at a frozen-goods warehouse in Taylor, Michigan, under a contract with the warehouse operator. The warehouse operator did not own the warehouse, but merely leased it from a separate corporate entity.

"On May 30, 2023, contractors hired by the warehouse owner inadvertently released ammonia gas into the warehouse while performing work on the building. The ammonia gas spoiled all of Plaintiffs' fish, rendering them unfit for human consumption.

"Plaintiffs thus sued the warehouse operator for breach of contract, as well as the warehouse owner and contractors for negligence. The warehouse owner now seeks dismissal from this case. But, as explained below, Plaintiffs' negligence claim against the owner survives — though in a narrower form — so the motion to dismiss will be denied.

"Trolley seeks dismissal of Plaintiffs' sole claim against it: Count VIII, which alleges that Trolley was negligent in (1) selecting Great Look and Dynamic to perform construction services; (2) supervising Great Look and Dynamic when the two were performing the construction; and (3) delegating and assigning work to Great Look and Dynamic that involved special risks and dangers.

"Trolley argues that Plaintiffs' claim is barred by the 'economic loss doctrine' because 'a party to a contract cannot be held liable to a non-contracting third party unless there exists a duty separate and distinct from the obligations under contract.' ... Plaintiffs respond that the economic loss doctrine applies only when there is a contract for goods — not, as here, when there is a contract for services.

"Plaintiffs are correct that the economic loss doctrine does not apply here. But the same legal concept applies to all contracts generally, under a different name: the Hart doctrine. Thus, this Court will consider the merits of Trolley's motion to dismiss under the Hart doctrine, which Trolley admits applies the same 'underlying legal principles' as the economic loss doctrine.

"To determine whether the Hart doctrine bars a tort claim, courts must ask whether the plaintiff has alleged a 'violation of a legal duty separate and distinct from [a] contractual obligation.'

"The guiding question at this stage is whether Trolley owed Plaintiffs a duty under common-law tort principles that is 'separate and distinct' from any duty contemplated by a contract. Id. If Trolley did not owe Plaintiffs such a duty, Hart bars Plaintiff's negligence claim. But if Trolley did owe Plaintiffs such a duty, Hart would not apply at this stage. Luckily, Plaintiffs are not the first ones to bring these kinds of negligence claims against property owners who have hired construction contractors, and Michigan law provides some guidance on what duties the property owner owes to third parties present upon the land during that construction.

"Recall that Plaintiffs allege Trolley failed to exercise the common-law duty of reasonable care at three points: when it (1) selected Great Look and Dynamic as contractors to perform construction work; (2) supervised their performance of the construction work which involved 'special risks and dangers'; and (3) delegated construction work to Great Look and Dynamic that involved 'special risks and dangers.'

"As to the first allegation, Michigan law does not recognize any duty requiring property owners to exercise reasonable care when selecting an independent contractor. … Thus, because there is no separate and distinct legal duty arising under tort for Trolley's selection and hiring of Great Look and Dynamic, the Hart doctrine bars this theory of negligence.

"As to the second and third allegations, however, Trolley might have owed Plaintiffs a duty under common-law negligence — depending on whether the construction work posed a special risk of harm.

"Here, Plaintiffs have alleged that Trolley hired the contractors to perform work that included 'special risks and dangers.' ... Thus, at this early motion-to-dismiss stage, Plaintiffs' second and third theories of negligence against Trolley may proceed to discovery — during which it can be determined whether the construction work performed was inherently dangerous and involved 'a peculiar danger or risk of harm.' ... If the construction work performed was inherently dangerous, Trolley would have owed Plaintiffs a separate and distinct duty of care. But if it was not inherently dangerous, then Trolley would have owed no separate and distinct duty of care, and these theories of negligence would be barred under Hart. So Trolley's motion will be denied at this stage as to Plaintiffs' allegations of negligent delegation and supervision of construction work that involved special risks and dangers."

1594052 Ontario, Inc. v. FreshOne Distrib. Serv., LLC; MiLW No. 02-109060, 11 pages; U.S. District Court for the Eastern District of Michigan; DeClercq, J.

APPEALS COURT – PUBLISHED

Municipal

Immunity - MISS DIG Act

Where a plaintiff suffered a sewage overflow in his home when a contractor drilled a hole into the ground and struck a pipe, the denial of a motion for summary disposition filed by Independence Township of Oakland County should be affirmed despite the township's argument that the trial court erred by determining that the township was not entitled to governmental immunity.

"Plaintiff, Brian Zezula, suffered a sewage overflow in his home after defendant and neighbor Nina Brown ('Brown') hired contractors to do some work on her property. One contractor, defendant Kaltz Excavating ('Kaltz'), drilled a hole into the ground and struck a pipe, causing the backup in Zezula's home. The question at this point in the litigation is whether Independence Township of Oakland County ('Independence Township'), the location of these homes, is immune from any liability arising from this overflow. The trial court denied Independence Township's motion for summary disposition under MCR 2.116(C)(7) (governmental immunity) and MCR 2.116(C)(8) (failure to state a claim on which relief can be granted). We affirm and remand for further proceedings.

"Brown hired Detroit Energy Company ('DTE'), to perform electrical line groundwork at her property. DTE subcontracted the work to Kaltz, an excavating company. During the groundwork, Kaltz performed mechanical boring, which punctured and drilled through Zezula's underground sewer lead, causing waste and sewage to flood into Zezula's basement drainage pipes.

"Zezula initially brought a complaint for negligence against DTE, Kaltz, and Brown. Kaltz filed a notice of nonparty at fault, alleging Independence Township was liable for violations of the MISS DIG Underground Facility Damage and Safety Act, MCL 460.721 et seq. ('the MISS DIG Act') and other local ordinances. Specifically, Kaltz alleged that it requested Independence Township mark its facilities. Independence Township replied there was 'no conflict' and failed to mark the facilities. Zezula filed a second amended complaint, adding Independence Township as a defendant.

"Independence Township then moved for summary disposition, arguing governmental immunity. Independence Township also argued Zezula failed to comply with the pre-suit notice requirements of MCL 691.1419. The trial court denied Independence Township's motion for summary disposition, reasoning Zezula could sustain a claim against Independence Township

OPINIONS FROM THE COURTS

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because Independence Township was not entitled to governmental immunity regarding violations of the MISS DIG act. The trial court did not rule on the issue of notice, requiring additional briefing.

"Independence Township argues the trial court erred by determining Independence Township was not entitled to governmental immunity for alleged violations of the MISS DIG Act. We disagree.

"In this case, Independence Township moved for summary disposition, arguing Zezula's claims were barred by governmental immunity. The trial court disagreed, reasoning, in part, 'Independence Township is not entitled to governmental immunity pursuant to MCL 691.1407(7).' We hold that the trial court's conclusion is supported by the plain language of the relevant statutes.

"We affirm the trial court's holding that the GTLA has a broad exception to governmental immunity for alleged violations of the MISS DIG act. Because Zezula alleges Independence Township violated MISS DIG, Independence Township cannot claim governmental immunity.

"We affirm the trial court's decision that Independence Township is not entitled to governmental immunity for alleged violations of the MISS DIG Act. We also affirm the trial court's decision to allow Zezula to amend his complaint to include allegations under MCL 691.1417."

Dissenting judge's comments

BOONSTRA, P.J. (dissenting). "I respectfully dissent. It is the role of the Legislature, and not of this Court, to enact exceptions to governmental immunity. … The majority errs, in my view, by misinterpreting the scope of our Legislature's actions, by failing to interpret those actions narrowly as is required, by instead reading into the law what it describes as a 'broad exception to governmental immunity for alleged violations of the [MISS DIG underground facility damage prevention and safety act, MCL 460.721 et seq. (MISS DIG act)],' and, by doing so, failing to properly defer to the Legislature on matters within its purview. And, in my judgment, the majority also errs by finding potentially viable a proffered claim under the sewage-disposal-system-event exception to governmental immunity."

Zezula v. Brown; MiLW No. 07-109062, 7 pages; Michigan Court of Appeals published; Young, J., joined by K. F. Kelly, J.; Boonstra, J., dissenting; on appeal from Oakland Circuit Court; Margaret T. Debler for appellant; Daniel A. Groves for appellee.

No-Fault Law

Shuttle van service

Where a plaintiff was receiving a ride home from a car dealership's shuttle van service when the shuttle van was involved in an automobile accident, there remains a genuine issue of material fact regarding whether the dealership's shuttle van service is considered a "motor vehicle operated in the business of transporting passengers" under MCL 500.3114(2).

Reversed and remanded.

"Plaintiff, Keith Smith, was receiving a ride home from a car dealership's shuttle van service when the shuttle van was involved in an automobile accident. Smith suffered injuries requiring physical therapy and, eventually, surgery. Smith filed a claim for no-fault insurance benefits against defendants Farm Bureau General Insurance Company of Michigan and Farm Bureau Mutual Insurance Company of Michigan (collectively 'Farm Bureau'), Motorists Commercial Mutual Insurance Company ('Motorists'), and the Michigan Automobile Insurance Placement Facility ('MAIPF'). The question before us on appeal is whether the dealership's shuttle van service is considered a 'motor vehicle operated in the business of transporting passengers' under MCL 500.3114(2). We reverse and remand because there remains a genuine issue of material fact in this regard.

"The fundamental question on appeal is whether the trial court erred in determining Farm Bureau has priority to pay Smith's PIP benefits under the Michigan No-Fault Act's, MCL 500.3101 et seq., general priority rule, MCL 500.3114(1), and whether the listed exception in MCL 500.3114(2) applies. Farm Bureau, with support from amicus curiae MAIPF, argues the plain language of MCL 500.3114(2) applies where a passenger is injured while being transported in a car dealership's shuttle van service. We hold the trial court erred because there remains a genuine dispute of material fact in this regard."

Concurring judge's comments

YOUNG, P.J., (concurring dubitante) "I concur dubitante in the result only. I write separately to urge our Supreme Court to consider whether the 'primary purpose/incidental nature test' is consistent with the plain language of MCL 500.3114(2). I posit it is not."

Smith v. Farm Bureau Mut. Ins. Co. of Michigan; MiLW No. 07-109064, 8 pages; Michigan Court of Appeals published per curiam; Young, J., O'Brien, J., Swartzle, J.; Young, J., concurring dubitante; on appeal from Wayne Circuit Court; Mark D. Sowle for appellant; Marc J. Mendelson for appellee.

No-Fault Law

Uninsured motorist coverage

Where a defendant insurance company moved for summary disposition on a plaintiff's complaint for uninsured motorist benefits after the insurer of the vehicle that struck the plaintiff denied coverage because of contractual obligations the owners of that vehicle did not meet related to notice, the trial court was correct when it denied the defendant's motion for summary disposition because the plaintiff was entitled to uninsured motorist coverage.

"Plaintiff Ibo Ware was injured when his car was struck by another vehicle. The vehicle that hit Ware was operated by defendant Dustin Schilling, owned by defendant Krystal Schilling, and insured by State Farm Insurance. Ware insured his vehicle through defendant Meemic Insurance Company, through which he paid an additional premium so that Meemic would 'pay damages for bodily injury which is ... sustained by an insured person ... is caused by accident; and ... arises out of the ownership, operation, maintenance or use of an uninsured motor vehicle[.]' (Emphases omitted.) After State Farm denied coverage for Dustin and Krystal, Ware sought to recover the uninsured motorist damages from Meemic. The trial court denied summary disposition for Meemic, finding that a genuine issue of material fact existed as to whether Meemic should pay Ware the uninsured motorist damages and also ordered the remainder of the case move to arbitration. Meemic appeals both decisions in these consolidated appeals. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

"The trial court relied heavily on an

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unpublished opinion of this Court with nearly identical facts: Integon Nat'l Ins Co v Berry, unpublished per curiam opinion of the Court of Appeals, issued March 25, 2010 (Docket Nos. 289320, 289366, and 291175).

"Meemic contends the trial court erred when it denied Meemic's motion for summary disposition. We disagree with Meemic and instead affirm. The trial court was correct when it found that the Schillings' vehicle was 'in essence ... uninsured' and that Ware was entitled to uninsured motorist coverage under the automobile insurance policy through Meemic.

"The trial court was correct when it denied Meemic's motion for summary disposition because, under the terms of the policy, Ware was entitled to uninsured motorist coverage.

"It is undisputed that at the time of the accident, the vehicle driven by Dustin was covered by an insurance policy with State Farm. However, when State Farm eventually was informed about Dustin and Krystal's potential liability, it denied coverage because of contractual obligations Dustin and Krystal did not meet related to notice. For this issue, the sole question to consider is whether the vehicle driven by Dustin was 'not insured by a bodily injury liability policy or bond that is applicable at the time of the accident[.]' (Emphasis omitted.) More specifically, the parties disagree about what the word 'applicable' means in this context. As the trial court observed, this Court has already answered this question, albeit in an unpublished decision.

"Neither party claims that Integon is factually distinguishable from this case and that is for good reason—it is not. We also find the legal reasoning of Integon sound and in keeping with the plain language of the insurance policy and our rules of interpretation for the same.

"Ware and the trial court agreed the remainder of the case should be submitted to arbitration. Meemic contends the case should not be bifurcated in such a manner. We agree with Meemic.

"For the reasons explained above, we affirm the trial court's order denying defendant's motion for summary disposition, reverse the order referring the case to arbitration, and remand for further proceedings."

IBO Ware v. Meemic Ins. Co.; MiLW No. 07-109040, 9 pages; Michigan Court of Appeals published; Young, J., joined by Garrett, J., Wallace, J.; on appeal from Wayne Circuit Court; Lindsey A. Peck for appellant; John R. Nachazel for appellee.

Parent and Child

Jurisdiction - Paternity

Where the Gladwin County Friend of the Court's motion to dismiss a paternity complaint for failure to file the complaint in the proper court was allowed, the dismissal order must be reversed because the trial court had subject-matter jurisdiction to consider the paternity complaint.

"In this paternity case, plaintiff, through the Gladwin County Prosecutor, appeals by right the trial court's order granting the Gladwin County Friend of the Court's (Gladwin FOC) motion to dismiss the paternity complaint for failure to file the complaint in the proper court. We reverse and remand.

"Plaintiff argues that the trial court had subject-matter jurisdiction to consider her paternity complaint. We agree.

"In the present case, plaintiff filed a paternity complaint in the Gladwin Circuit Court alleging that ACR was born out of wedlock and that defendant was ACR's father. The complaint included plaintiff's affidavit stating that she had lived in Gladwin for the previous five years and that ACR had lived in Gladwin since her birth. Because plaintiff's complaint contained allegations regarding the paternity of ACR and defendant's support obligations, her claim fell within the trial court's subject-matter jurisdiction.

"Plaintiff argues that MCR 3.204 does not apply and that the Gladwin Circuit Court was the appropriate venue for her claim. We agree.

"Because the child resided in Gladwin County at the time the complaint was filed, the Gladwin Circuit Court was the exclusive venue to hear the paternity complaint.

"Plaintiff also argues on appeal that the trial court erred by dismissing her complaint because the Gladwin FOC did not have statutory authority to file a motion to dismiss plaintiff's complaint. We agree.

"We reverse the trial court's order dismissing the paternity complaint and remand for reinstatement of the complaint, reinstatement of the trial court's findings as to paternity, custody, and support, and for entry of an order of filiation."

Rose v. May; MiLW No. 07-109039, 8 pages; Michigan Court of Appeals published; Gadola, J., joined by K. F. Kelly, J., Redford, J.; on appeal from Gladwin Circuit Court; Mark A. Toaz for appellant; Jonathan May, pro se appellee.

Taxation

Burden of proof

Where the Michigan Tax Tribunal determined that an airplane hangar a petitioner built on land it leased from the Northwestern Regional Airport Commission was subject to taxation by the respondent city, the tribunal applied an incorrect burden of proof, so a remand must be ordered.

"Petitioner, Bodeco LLC, appeals of right two decisions of the Michigan Tax Tribunal as to whether an airplane hangar Bodeco built on land it leased from the Northwestern Regional Airport Commission was subject to taxation by respondent, City of Traverse City, under MCL 211.181(1). In the first decision, the Tax Tribunal dismissed petitioner's claims concerning tax years 2019 and 2020 on timeliness grounds. In the second decision, the Tax Tribunal ruled on the merits regarding tax years 2021 and 2022, but it applied an incorrect burden of proof. Therefore, we vacate the Tax Tribunal's order holding that petitioner was subject to the tax imposed by MCL 211.181(1) for tax years 2021, 2022, and beyond, and we remand for further proceedings concerning those tax years.

"On appeal, petitioner challenges the dismissal of his claims for tax years 2019 and 2020 on timeliness grounds. In addition, petitioner contests the Tax Tribunal's determination on the merits concerning his claims for tax years 2021, 2022, and beyond.

"Petitioner faults the Tax Tribunal for improperly dismissing the appeal regarding tax years 2019 and 2020. Petitioner claims the Tax Tribunal had the authority to afford relief for tax years 2019 and 2020 under MCL 205.735a, MCL 211.53a, and MCL 211.53b. We disagree, and so we affirm the Tax Tribunal's dismissal of petitioner's claims related to tax years 2019 and 2020.

"In sum, no statute petitioner identifies provides the Tax Tribunal with the authority to grant relief on petitioner's claims for tax years 2019 and 2020. Therefore, we affirm the Tax Tribunal's dismissal of petitioner's claims regarding tax years 2019 and 2020.

"Petitioner insists the Tax Tribunal erred when it held that petitioner's property was subject to taxation under MCL 211.181(1). First, petitioner contends the Tax Tribunal applied the burden of proof to the wrong party when it required petitioner to establish that it was not subject to the tax imposed in MCL 211.181(1) and that respondent should have borne the burden of proving that the tax imposed by MCL 211.181(1) applied to petitioner's property. Second, petitioner asserts that there was no evidence that the hangar was used in connection with a business conducted for profit. We agree with petitioner that the Tax Tribunal employed an incorrect burden of proof, so we vacate the Tax Tribunal's final order and judgment and remand for further proceedings.

"We … conclude that respondent had the burden of proof to show that the tax-imposing statute, MCL 211.181(1), applied to petitioner's property. In contrast, petitioner would have the burden of establishing that the tax-exempting subsection, i.e., MCL 211.181(2), applies.

"Because the Tax Tribunal employed an incorrect burden of proof by requiring petitioner to prove that MCL 211.181(1) did not apply to its property, instead of requiring respondent to show that MCL 211.181(1) did apply to that property, we must vacate the Tax Tribunal's final opinion and judgment and remand for further proceedings."

Bodeco LLC v. City of Traverse City; MiLW No. 07-109063, 10 pages; Michigan Court of Appeals published; Yates, J., joined by Riordan, J., Ackerman, J.; on appeal from Michigan Tax Tribunal; James D. Praasterink for appellant; Stephanie S. Morita for appellee.

APPEALS COURT – UNPUBLISHED

Employment

Non-compete - Standing

Where plaintiffs brought suit to enforce non-compete agreements against former employees, the trial court did not err in granting the defendants summary disposition on the basis of the plaintiffs' lack of standing but did err in denying the plaintiffs' request to amend the complaint.

Affirmed in part and reversed in part.

"Plaintiffs/counterdefendants Romeo Computer Company, Inc. and Avant Garde Media, LLC, doing business as MI Digital Solution (individually, RCC and MIDS; collectively, plaintiffs) appeal as of right the trial court's dismissal of their claims against defendants/counterplaintiffs Charles J. Moran, Jonathan M. Centala, and Digimark LLC, and defendant John Wallace (collectively, defendants). We affirm the trial court's grant of summary disposition, but reverse that portion of its opinion and order denying plaintiffs the ability to file an amended complaint consistent with its prior ruling, and remand for further proceedings consistent with this opinion.

"More specifically, defendants argued that plaintiffs failed to plead that either has standing to sue because: (1) the contracts at issue were between Moran, Centala, and RCC, which is no longer in operation and, therefore, has no business interest to protect; and (2) plaintiffs failed to attach, to their complaint or motion, the assignment of those contracts to MIDS in accordance with MCR 2.113(C)(1).

"On appeal, plaintiffs argue that the trial court erred in granting defendants summary disposition on the basis of standing, and in denying their request to amend the complaint.

"Plaintiffs requested leave to amend the complaint to attach the complete Assignment and Purchase Agreement, and where the grounds asserted for summary disposition are based on subrule (C)(8), (9), or (10), 'the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified.' MCR 2.116(I)(5).

"Although the trial court originally granted plaintiffs' request, it later denied their motion for entry of an order to that effect within its order granting summary disposition, on the basis that plaintiffs failed to timely file the order allowing amendment or their proposed amended complaint. … While 'the leeway granted to a plaintiff to amend a complaint "is not a license for carelessness or gamesmanship,"' … defendants' argument that establishing which contracts RCC transferred to MIDS through attachment of the complete Assignment would have changed the dynamic of facilitation, does not rise to the level of prejudice necessary to overcome the liberal amendment standards set forth above. … Thus, the trial court abused its

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discretion by failing to allow plaintiffs to file an amended complaint along with the complete Assignment and Assumption and Purchase Agreements attached in accordance with its earlier grant of leave to amend on this basis.

"The trial court's decision to grant summary disposition is affirmed, but the portion of the opinion and order denying plaintiffs the ability to file an amended complaint consistent with its prior ruling is reversed, and the matter is remanded for further proceedings consistent with this opinion."

Romeo Computer Co., Inc. v. Moran; MiLW No. 08-109067, 11 pages; Michigan Court of Appeals unpublished per curiam; Murray, J., K. F. Kelly, J., D. H. Sawyer, J.; on appeal from Macomb Circuit Court; Cindy R. Victor for appellant; Brian H. Rolfe for appellee.

Family Law

Divorce - Marital property

Where a judgment of divorce has been challenged on appeal, a remand is necessary for findings on the value of real property in Detroit and Jamaica.

"In this domestic-relations matter, defendant appeals as of right the trial court's judgment of divorce awarding plaintiff sole physical and legal custody of the minor children and the entirety of the marital property. We affirm in part, vacate in part, and remand for further proceedings.

"Plaintiff and defendant were married in 2011 and share four biological children. Plaintiff filed for divorce in 2023, and defendant counterclaimed for divorce. Plaintiff argued that she should receive sole physical and legal custody of the three minor children because defendant was abusive, did not contribute to the marriage, and had a poor relationship with the children. With respect to property issues, plaintiff contended that she bought the marital home in Detroit with funds from her student loans and the home was in her name. She argued defendant purchased vacant property in Jamaica using her bank card.

"Lastly, defendant argues that the trial court erred when it awarded plaintiff the Detroit and Jamaica properties, but all associated debts to defendant.

"The trial court awarded the Detroit property to plaintiff, but all associated debt to defendant. In doing so, the trial court accepted plaintiff's testimony that she bought this property with money from her student loans, and it was in her name. The fact-finder is best suited to consider a witness's credibility and demeanor, and 'an appellate court should not conduct an independent review of credibility determinations.' Smith v Anonymous Joint Enterprise, 487 Mich 102, 113, 130 n 64; 793 NW2d 533 (2010).

"As a result, we must defer to the trial court's finding the house was purchased with money from plaintiff's student loans and was in her name. There is no evidence in the record that the student loans were comingled with marital property before the house was purchased. Further, the trial court found plaintiff contributed to the marital estate, and defendant did not. However, the house was purchased during the marriage, and '[t]he actions and course of conduct taken by the parties are the clearest indicia of whether property is treated or considered as marital, rather than separate, property.' ... The parties lived together in the house during the marriage, and defendant testified that he extensively renovated it. Further, defendant continued to reside in the house when plaintiff left with the children, a period of approximately three years. The trial court failed to make findings on all the relevant factors, suggesting that awarding to plaintiff the house and any equity in it was inequitable, at least in the absence of an explanation why defendant's renovations (if any) and contributions while living in the house during the entire marriage does not garner defendant any interest in the house.

"The trial court also awarded plaintiff the entirety of the Jamaica property, termed by the court as the 'mountaintop property.' As an initial matter, there is no demonstrative evidence in the record that the Jamaica property exists and is in defendant's name, with the only evidence that of plaintiff's testimony that defendant used her money to buy the land, and that she saw the deed. As explained, the trial court found defendant's testimony lacked credibility, and awarded plaintiff the Jamaica property, finding her claims about the property credible.

"The trial court erred because it did not make findings on all the relevant considerations regarding the Jamaica property. The trial court awarded plaintiff the Jamaica property without knowing definitively whether defendant actually owned it, the size and location of the property, or its present value. Plaintiff opined the property was in defendant's name because she saw documents, but did not present the deed or any other means of confirming her statements to the trial court. Simply put, the record does not contain sufficient information to allow this Court (or the trial court) to determine whether the purported Jamaica property was marital or separate, its value, and whether the trial court's distribution was equitable.

"Further, the trial court's awarding of all assets to plaintiff and all debt to defendant appears to be inequitable. 'The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances.' ... 'The trial court need not divide the marital estate into mathematically equal portions, but any significant departure from congruence must be clearly explained.' ... Here, there was no value placed on either property, and no finding that the Jamaica property even existed. Whether, and to what extent, either of these properties have value, must be determined before engaging in any distribution of that property. As a result, we reverse the trial court's awarding to plaintiff of the entire value of the two properties, and remand to the trial court for it to make findings on the value of the Detroit and Jamaica properties, and on the extent of any distribution of those properties and associated debt.

"The judgment is affirmed in part, vacated in part, and the matter is remanded for further proceedings."

Grant v. Grant; MiLW No. 08-109069, 8 pages; Michigan Court of Appeals unpublished per curiam; Murray, J., K. F. Kelly, J., D. H. Sawyer, J.; on appeal from Wayne Circuit Court; Brenda J. Richard for appellant; Antonette R. Grant, pro se appellee.

Municipal

Immunity - Causation

Where a plaintiff's vehicle was struck by a city-owned truck, a grant of summary disposition in favor of the defendant city and its co-defendant employee must be reversed in part, as there is a factual dispute regarding causation.

"In this case for excess economic and noneconomic damages, plaintiff appeals as of right from the order granting summary disposition to defendants Ian Nock and the City of Huntington Woods (the City) under MCR 2.116(C)(7), (8), and (10). We reverse in part the trial court's order granting summary disposition to defendants, reverse the order denying plaintiff's motion to amend, and remand for further proceedings.

"This case arises from a motor vehicle accident. In November 2020, Nock, an employee in the City's Department of Public Works, was driving his leaf-collection route using a City-owned truck. As Nock attempted to make a right turn onto a neighboring street, he struck the driver's side of plaintiff's vehicle between her front and rear doors. As a result of the accident, plaintiff claimed she sustained injuries to her shoulder and back.

"Plaintiff argues that the trial court erred by granting summary disposition to defendants because she properly pleaded in avoidance of governmental immunity.

"In her complaint, plaintiff did not expressly plead that she was bringing her claim under the motor vehicle exception to governmental immunity or cite to MCL 691.1405.

"Nevertheless, plaintiff did seek permission to amend her complaint, should the court conclude that it was not properly plead.

"In its order denying plaintiff's motion for reconsideration, the trial court stated that it could have denied plaintiff's motion to amend her complaint 'for undue delay as set forth in the Nock Defendants' Response.' And in that response, defendants argued that plaintiff's motion to amend should be denied for undue delay because plaintiff was aware that her complaint was deficient as early as November 2022, as defendants' affirmative defenses and initial disclosures put plaintiff on notice of deficiencies within her complaint. Defendants contended that plaintiff waited nearly eight months to move to amend her complaint, after defendants had already filed their motions for summary disposition. But defendants never claimed that plaintiff's delay prejudiced them in any way or was the result of bad faith, nor did the trial court ever make such a finding. Thus, plaintiff's delay alone did not warrant denial of her motion to amend. ... And, given the facts of the accident, it would not have been futile for plaintiff to amend the complaint to properly allege a negligence claim under the motor vehicle exception. Accordingly, the trial court abused its discretion by denying plaintiff's motion to amend.

"Plaintiff also argues that the trial court erred by granting summary disposition to defendants because there was a genuine issue of material

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fact whether her injuries were caused by the underlying motor vehicle accident.

"On the basis of the evidence presented, we conclude that there is a genuine issue of material fact regarding causation. Although plaintiff had a brief history of lower back and left shoulder pain, there is no evidence to indicate this was ongoing immediately before or at the time of the accident. Plaintiff reported feeling intense pain in her shoulder and back on the same day of the accident, and presented herself for medical treatment shortly thereafter. Plaintiff was referred for MRIs which revealed damage to her back and shoulder, for which she had to receive physical therapy and surgical interventions. Admittedly, her provider's affidavit did not explain how any of plaintiff's injuries were caused by the accident. Rather, her provider issued a blanket statement that plaintiff's shoulder was injured 'in the manner in which she described[.]' Moreover, the affidavit did not address plaintiff's alleged back injuries. Because an affidavit consisting of conclusory allegations that are devoid of facts is insufficient to demonstrate that there is a genuine issue of material fact, … the affidavit does not create a question of fact regarding whether plaintiff's injuries were caused by the accident. However, the testimonial and medical record evidence created 'a logical sequence of cause and effect' between the accident and plaintiff's injuries, Patrick, 322 Mich App at 617. Although defendants' experts both agreed that plaintiff's injuries were not the result of a traumatic event, this does not defeat plaintiff's claim, rather, it demonstrates that there is a factual dispute regarding causation. As a result, the trial court erred by granting summary disposition to defendants.

"The trial court's order granting defendants' motion for summary disposition is reversed in part, and affirmed in part; the order denying plaintiff's motion to amend is reversed; and the case is remanded for further proceedings."

Kencaid v. State Farm Mut. Auto. Co.; MiLW No. 08-109065, 9 pages; Michigan Court of Appeals unpublished per curiam; Murray, J., K. F. Kelly, J., D. H. Sawyer, J.; on appeal from Oakland Circuit Court; Christopher J. Schneider for appellant; Holly S. Battersby for appellee.

Negligence

Medical malpractice - Limitations

Where the defendants in this medical malpractice action moved for summary disposition based on the application of the statute of limitations, their appeal must fail based on a Michigan Supreme Court ruling.

Affirmed.

"In these consolidated appeals, defendants1appeal by leave granted the trial court's order denying defendants' motions for summary disposition under MCR 2.116(C)(7) that were premised on the application of the statute of limitations in this medical malpractice action. For the reasons set forth in this opinion, we affirm.

"This case arises out of the suicide death of David Thomas on April 29, 2019. His daughter, Danielle Asplund, brought this medical malpractice action as personal representative for the estate and generally alleged that defendants were professionally negligent in treating Thomas's mental health issues during the time leading up to his death. Asplund served the notice of intent (NOI) on June 11, 2021, and she filed the complaint in this action on December 13, 2021. Defendants moved for summary disposition under MCR 2.116(C)(7), claiming that the action was untimely and barred by the statute of limitations. The trial court denied defendants' motions and concluded that both the NOI and complaint were timely pursuant to the operation of the statute of limitations. Michigan Supreme Court's Administrative Order No. 2020-3, 505 Mich cxxvii (2020) (AO 2020 3), and Administrative Order No. 2020-18, 505 Mich clviii (2020) (AO 2020-18), which were entered during the COVID-19 pandemic.

"After this Court granted defendants' applications for leave to appeal and consolidated their appeals, we held this matter in abeyance 'pending the decision of our Supreme Court in the case of Carter v DTN Management Co, 511 Mich 1025; 991 NW2d 586 (2023).'

"In the present case, defendants argue that the Supreme Court lacked the authority to issue Administrative Order No. 2020-3, 505 Mich cxxvii (2020) (AO 2020-3) and Administrative Order No. 2020-18, 505 Mich clviii (2020) (AO 2020-18), and that, if the Supreme Court had the authority, the tolling orders only applied to deadlines that expired during the period of the state of emergency.

"In Carter v DTN Mgt Co, ___ Mich ___, ___ & n 15; ___ NW3d ___ (2024) (Docket No. 165425); slip op at 21 & n 15, our Supreme Court held that AO 2020-3 and AO 2020-18 were valid exercises of the Court's constitutional authority. The Supreme Court further held that pursuant to these orders, the 'days from March 10, 2020, through June 19, 2020, were "not included for purposes of MCR 1.108(1)."'

"Therefore, pursuant to Carter, defendants' arguments must be rejected. Defendants have not demonstrated that the trial court erred by denying their motions for summary disposition. To the extent the trial court's reasoning may have differed somewhat, this Court may affirm a summary disposition decision by the trial court when it reaches the correct result even if our reasoning differs. Kyocera Corp v Hemlock Semiconductor, LLC, 313 Mich App 437, 449; 886 NW2d 445 (2015)."

Asplund v. Sharpe; MiLW No. 08-109041, 4 pages; Michigan Court of Appeals unpublished per curiam; Letica, J., Borrello, J., Rick, J.; on appeal from Muskegon Circuit Court; Jeffrey C. Gerish for appellant; Christopher P. Desmond for appellee.

No-Fault Law

Arbitration

Where a defendant insurance company's motion requesting relief from an order setting aside an arbitration judgment was allowed, the trial court applied the wrong legal standard in granting the defendant relief.

Reversed and remanded.

"This case arises out of a motor vehicle accident on January 27, 2013, after which plaintiff sought personal injury protection (PIP) benefits under the no-fault act, MCL 500.3101 et seq., from defendant. In January 2016, plaintiff filed a complaint against defendant in Oakland Circuit Court. The parties agreed to submit the matter to binding arbitration, and the court dismissed the case with prejudice. Arbitration concluded in October 2017, and the arbitrators awarded plaintiff $221,750. In October 2018, the court entered judgment pursuant to the arbitration award (hereinafter, 'arbitration judgment'), and closed the case.

"In August 2019, plaintiff filed another complaint seeking benefits from defendant in Wayne Circuit Court. Defendant moved for partial summary disposition, pursuant to MCR 2.116(C)(7), arguing that plaintiff was estopped from making any claim for attendant care benefits because he waived them in the parties' arbitration agreement. Defendant attached a copy of the agreement to its motion. Plaintiff responded, arguing that defendant's copy of the arbitration agreement was not the one he signed, and that he signed a different version of the agreement, which did not waive future attendant care benefits. Plaintiff attached his own copy of the arbitration agreement in support of his motion, though it lacked defendant's signature.

"In May 2020, Wayne Circuit Court denied defendant's motion for partial summary disposition, concluding that a genuine issue of material fact remained with respect to the agreed upon terms of the arbitration agreement. The court noted several discrepancies between the two versions of the agreement, and noted that plaintiff's signature appeared 'somewhat compromised' on defendant's version.

"In October 2021, plaintiff filed a motion in the original Oakland Circuit Court matter, requesting the court set aside the arbitration judgment pursuant to MCR 2.612(C)(1)(d), (e), or (f) because his primary treatment providers, Dr. Seid Cosovic and Somerset Pain Clinic, rescinded their agreement to continue treatment. Because the arbitration judgment limited plaintiff's treatment to these providers, he argued relief from the arbitration judgment was justified. Plaintiff served his motion through the state court electronic filing system (MiFile), but defendant's prior counsel in the original Oakland Circuit Court action was served instead of defendant's updated counsel. Thus, defendant did not respond to plaintiff's motion to set aside, and the court granted plaintiff's motion without oral argument, setting aside the arbitration judgment. Defendant filed a motion for reconsideration of the order, which the court denied.

"In March 2022, defendant filed a motion in the Wayne Circuit Court case to transfer venue to Oakland Circuit Court, which the court granted, noting it lacked jurisdiction to grant declaratory relief regarding the arbitration judgment entered by the Oakland Circuit Court. After the case was transferred to Oakland Circuit Court, in July 2023, defendant filed a motion requesting relief from the order setting aside the arbitration judgment under MCR 2.612(C)(1)(f), based primarily on its lack of notice of plaintiff's motion to set aside. In response, plaintiff argued that because he served the motion through MiFile, service was proper. Following a hearing, the court granted defendant's motion for relief and reinstated the arbitration judgment pursuant to defendant's version of the arbitration agreement. The court found that judgment was properly entered on that agreement, and that defendant lacked proper notice of plaintiff's motion to set aside.

"Plaintiff argues that the trial court abused its discretion in granting defendant's motion when it concluded that the arbitration judgment was properly entered based on defendant's version of the arbitration agreement.

"We first note that while the trial court's decision and the bulk of plaintiff's argument on appeal focus on the validity of the parties' arbitration agreement, the briefings underlying the trial court's order setting aside the arbitration award do not focus on this issue.

"The trial court applied the wrong legal standard in effectively determining this issue under MCR 2.612(C)(1)(f) without making a record analyzing the foregoing facts."

Dushkajv v. Auto Club Ins. Ass'n; MiLW No. 08-109043, 5 pages; Michigan Court of Appeals unpublished per curiam; Murray, J., K. F. Kelly, J., D. H. Sawyer, J.; on appeal from Oakland Circuit Court; Carla D. Aikens for appellant; Michael J. Cook for appellee.

Premises Liability

Licensee - Trespass

Where a defendant was awarded summary disposition in a premises liability action, the trial court erred in finding that the plaintiff, a door-to-door salesman, was a trespasser, so the judgment must be reversed and a remand ordered.

"Plaintiff was working as a door-to-door salesman for ADT Safe Haven, and defendant had no notice that plaintiff was coming to his house. Plaintiff went to defendant's house when it was still light out, and the ground was not wet or icy. After plaintiff left a flyer on defendant's door, he proceeded down the front steps when his leg buckled on the second to last step. Although he tried to brace himself, because there was no handrail, plaintiff fell.

"Plaintiff argues that the trial court erred in granting defendant summary disposition because, contrary to what the trial court ruled, he was not a trespasser on defendant's property.

"A trespasser enters a landowner's premises without their consent, Stitt v Holland Abundant Life Fellowship, 462 Mich 591, 596; 614 NW2d 88 (2000), while a licensee has the landowner's consent to enter the premises, Pippin v Atallah, 245 Mich App 136, 142; 626 NW2d 911 (2001).

"The trial court erred in finding that plaintiff was a trespasser. There was no factual dispute that plaintiff only approached defendant's door to leave a flyer, and the front porch area of a single-family home is customarily used by the public. ... Plaintiff did not exceed the generally implied license granted to the public, and thus, there is no factual dispute regarding whether he was a licensee. ... There was also no evidence of any 'no trespassing' or 'no solicitors' signs that could have potentially revoked defendant's implied consent. … While plaintiff admitted that defendant did not know plaintiff was coming to his house, defendant's prior knowledge is not required for the implied license to approach a house and knock on the door.

"As plaintiff was a licensee, the question then becomes what duties were owed to him and whether those duties were breached. ... These issues were not addressed in the trial court since defendant was granted summary disposition after the court concluded plaintiff was a trespasser. These issues are best resolved initially in the trial court.

"Reversed and remanded for further proceedings."

Jones v. Jaman; MiLW No. 08-109066, 3 pages; Michigan Court of Appeals unpublished per curiam; Murray, J., K. F. Kelly, J., D. H. Sawyer, J.; on appeal from Wayne Circuit Court; Todd J. Stearn for appellant; Sarah Nadeau for appellee.

Real Property

Billboard - Lease

Where a defendant purchased real property at a tax foreclosure sale, it was error for the plaintiff to be awarded summary disposition, as the plaintiff's lease interest did not survive the foreclosure.

"Defendant/third-party plaintiff, CHHC, Inc. appeals as of right the trial court's order granting summary disposition to plaintiff, Outfront Media, LLC, and third-party defendant, Five Star Outdoor Media, LLC, under MCR 2.116(C)(8) and (10), and denying CHHC, Inc. summary disposition under MCR 2.116(C)(10). We affirm in part, vacate in part, and remand for further proceedings.

"This case involves the respective rights of the parties in real property located at 15323 West Eight Mile Road in Detroit (the property). In 2007, the property was owned by Eastside Outdoor, LLC (Eastside). On August 21, 2007, Eastside entered into a lease agreement with CBS Outdoor Inc. (CBS) that permitted CBS to operate a billboard on the property.

"At the time CHHC acquired the property in October 2021, plaintiff Outfront Media, LLC (Outfront) allegedly was operating the billboard located on the property pursuant to the 2007 lease agreement between Eastside and CBS.

"CHHC contends that the trial court erred by denying its motion for summary disposition and granting summary disposition to Outfront and Five Star. We agree that the trial court erred by granting Outfront's motion for summary disposition, but disagree that the trial court erred by granting Five Star's motion for summary disposition.

"CHHS contends that Outfront's lease was extinguished by the tax foreclosure. Outfront filed its complaint initiating this matter, seeking to quiet title to the property and seeking a declaration that it has the right to maintain its billboard on the property because maintaining the billboard is a permitted activity within the easement held by Five Star. Outfront alleges that it is the successor of CBS in the lease, and for purposes of a motion for summary disposition under MCR 2.116(C)(8), we accept the factual allegations of the pleadings as true.

"Outfront moved for summary disposition, requesting that the trial court declare that because Five Star's easement was not extinguished by the judicial foreclosure, Outfront's leasehold interest likewise was not extinguished by the judicial foreclosure. The trial court granted Outfront's motion for

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summary disposition, though without specifically declaring whether Outfront's interest in the property survived. We disagree that Outfront's lease interest survived the foreclosure.

"Subject to exceptions identified in MCL 211.78k, a properly conducted judicial tax foreclosure, followed by a failure to redeem, extinguishes 'all existing recorded and unrecorded interests in that property.' MCL 211.78k(5)(e). The Legislature's use of the word 'all' in the statute indicates the intent to extinguish every type of interest in the foreclosed property not explicitly excepted in the statute. The statute enumerates certain exceptions; regarding leases, only 'interests of a lessee or an assignee of an interest of a lessee under a recorded oil or gas lease' survive tax foreclosure. … Consequently, the lease agreement with CBS and its alleged successor, Outfront, which does not involve a recorded oil or gas lease, was extinguished by the tax foreclosure.

"CHHC argues that the extinguishing of the Lease Agreement results in the easement's purpose no longer existing. We disagree. Although the lease agreement between Eastside and CBS was extinguished by the tax foreclosure, the easement was not. We note that the easement's purpose was to grant JJ and its successors the exclusive right to construct and maintain a billboard, not only Outfront's billboard. We give effect to every word of a contract 'while avoiding interpretations that would render any part of the document surplusage or nugatory.' Patel v Fisher-Broyles, LLP, 344 Mich App 264, 272; 1 NW3d 308 (2022). We conclude that the easement's purpose survives tax foreclosure, even though Outfront's lease does not.

"Outfront suggests that in this case, because a lease is a permitted activity in which Five Star could engage under its easement agreement, the lease was not extinguished if the easement was not. We find no support, however, for the reasoning that because a lease is an allowed activity under an easement, the easement protected the lease from being extinguished by the plain operation of unambiguous statutory language. That is, Eastside could not prevent the lease from being extinguished by foreclosure simply by transferring the lease to an easement holder. And it is axiomatic that an assignee cannot obtain greater rights than the assignor. Jawad A. Shah, MD, PC v State Farm Mut Auto Ins Co, 324 Mich App 182, 204; 920 NW2d 148 (2018). Even if, as Outfront suggests, Eastside transferred the lease along with the easement, where it made its way to JJ, to VIP, and finally to Five Star, Eastside could not shield the lease from being extinguished by the tax foreclosure under the statute.

"We affirm the order of the trial court granting Five Star summary disposition of CHHC's third-party complaint, and denying CHHS summary disposition of its third-party complaint. We vacate the judgment of the trial court granting Outfront summary disposition of Outfront's complaint, and remand for entry of an order granting CHHS summary disposition of Outfront's complaint."

Outfront Media LLC v. CHHC, Inc.; MiLW No. 08-109042, 7 pages; Michigan Court of Appeals unpublished per curiam; Murray, J., K. F. Kelly, J., D. H. Sawyer, J.; on appeal from Wayne Circuit Court; Randall T. LeVasseur for appellant; J. Adam Behrendt for appellee.

Unemployment Compensation

Pandemic

Where the Unemployment Insurance Appeals Commission found a claimant was eligible for benefits, a Circuit Court judgment affirming the UIAC's decision must be reversed because the claimant never qualified for benefits under federal law.

"Claimant, Ansley Nickell, applied for Pandemic Unemployment Assistance ('PUA') benefits in May 2020 during the COVID-19 pandemic, and initially did not need to provide proof of prepandemic employment. When the law changed, requiring applicants to submit proof of prepandemic employment to demonstrate they were otherwise able to work but could not work due to COVID-related reasons, claimant failed to submit proof of prepandemic employment and was ordered to pay restitution for overpaid benefits. Claimants subsequent appeal to the Unemployment Insurance Appeals Commission ('UIAC') was successful, and it was determined she was eligible for benefits. Appellant, the Department of Labor and Economic Opportunity/Unemployment Insurance Agency ('the Agency'), appealed the administrative decision to the Wayne Circuit Court, which affirmed the UIAC's decision that claimant was eligible for PUA benefits.

"The Agency now appeals by leave granted the trial court's order affirming the UIAC's decision. Because claimant never qualified for benefits under federal law, we reverse the trial court's order and remand.

"The Agency argues the trial court erred in ruling claimant was eligible for PUA benefits because claimant did not present documentation of prepandemic employment. We agree the trial court erred, but for different reasons.

"The trial court did not apply the correct legal analysis when it affirmed the UIAC's ruling that claimant was eligible for PUA benefits.

"In ruling claimant was eligible for PUA benefits, the ALJ did not rule claimant had submitted documentation to substantiate employment, as the [Continued Assistance for Unemployed Workers Act of 2020 (CAA)] requires. Indeed, the ALJ stated the documents claimant produced—her tax returns and college transcript—did not substantiate her employment. Claimant's 2019 tax return indicated she earned no income that year. Further, the ALJ found the income claimant earned in 2020, came from employment after the pandemic began. Claimant testified she was not employed in March 2020.

"The ALJ also did not rule claimant had substantiated any planned employment. In all, claimant's testimony, even if it showed she planned to begin employment, would not qualify as the documentation required by the CAA, which is 'proof of recent attachment to the labor force.' Despite all of this, the ALJ ruled claimant was eligible for benefits because but for the pandemic, she could have received a job offer. This ruling was contrary to law, and was clear error.

"Because we hold the ALJ erred in determining claimant was eligible for PUA benefits after claimant was given several opportunities to provide documentation to the ALJ during the appeal process, we decline to address whether claimant received proper notice of the requirement to submit documentation. And because the trial court affirmed the orders entitling claimant to PUA benefits, the trial court did not

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apply the correct legal principles.

"We reverse the trial court's order and remand for further proceedings consistent with this opinion."

Concurring judge's comments

SWARTZLE, J., (concurring). "I concur in full with the majority opinion. I write separately simply to point out that the question of whether the agency should waive restitution and interest is not before us in this appeal, contrary to claimant's position at oral argument.

"Because claimant failed to show eligibility for unemployment insurance benefits, and because the issue of restitution and interest is not before us, I concur in the majority's opinion."

Nickell v. Dep't of Labor & Econ. Opportunity/Unemployment Ins. Agency; MiLW No. 08-109068, 6 pages; Michigan Court of Appeals unpublished per curiam; Young, J., O'Brien, J.; Swartzle, J., concurring; on appeal from Wayne Circuit Court; Marisa Casazza for appellant; Anthony D. Paris for appellee.

MICHIGAN COURT OF CLAIMS

Antitrust

Exemption - RFP process

Where a plaintiff has alleged that the defendants' conduct during a request-for-proposals process violated Michigan's Antitrust Act, the defendants' motion for summary disposition should be allowed because they are exempt under MCL 445.774(3).

"The RFP process constitutes acts by a governmental unit in a subject matter authorized by law. Therefore, defendants are exempt from liability under the Antitrust Act for their roles in the RFP process. … Defendants are exempt from suit under the Antitrust Act and the Court GRANTS defendants' motion for summary disposition on that basis."

LG-Solutions, LLC v. Michigan Dep't of Tech., Mgmt. & Budget; MiLW No. 04-109035, 6 pages; Court of Claims; Redford, J.

Licenses and Permits

Law firm – Professional corporation

Where the defendant Michigan Department of Licensing and Regulatory Affairs denied a plaintiff's request to investigate a law firm's alleged unauthorized practice of law, the defendant is entitled to summary disposition because no provision in the Michigan Business Corporation Act permits or requires the defendant to investigate claims that a law firm licensed as a professional corporation is engaging in activities beyond its licensed purpose or to revoke a law firm's professional corporation license for such a violation.

"Defendant moves to summarily dismiss plaintiff's complaint under MCR 2.116(C)(8). Plaintiff files a cross-motion for summary disposition under MCR 2.116(I)(2). No provision of the Michigan Business Corporation Act (MBCA), MCL 450.1101 et seq., permits or requires defendant, the Michigan Department of Licensing and Regulatory Affairs (LARA), to investigate claims that a law firm licensed as a professional corporation is engaging in activities beyond its licensed purpose or to revoke a law firm's professional corporation license for such a violation. Accordingly, plaintiff, Iqbal Faizi, has not stated a claim upon which relief may be granted. The Court GRANTS defendant's motion for summary disposition, DENIES plaintiff's cross-motion, and DISMISSES plaintiff's complaint in its entirety.

"Plaintiff's lawsuit centers on the activities of the law firm representing his ex-wife in their divorce proceedings, Berry Moorman, PC (BMP). Plaintiff asserts that BMP allowed a paralegal to represent his ex-wife, amounting to the illegal practice of law by a nonlawyer. Because BMP is a licensed professional corporation, plaintiff asked defendant to investigate the firm's alleged unauthorized practice of law. Plaintiff contended that defendant was required to investigate corporate misconduct under the MBCA as part of its duty to enforce the act. Defendant allegedly advised plaintiff that such complaints should be directed to the Attorney General's office.

"Defendant contends its only duty is to review the articles of incorporation submitted by a corporation and accept them for filing if they meet statutory requirements. Claims of misconduct by a corporation are investigated by the Attorney General, and claims of attorney misconduct are investigated by the Attorney Grievance Commission, defendant asserts. Accordingly, defendant argues that plaintiff has no legally viable claim against it.

"Plaintiff responds by citing a litany of MBCA provisions, which he contends requires defendant to investigate his complaints. The Court has reviewed each count in the complaint and the various statutory provisions cited therein and finds plaintiff has raised no legally supportable claim.

"Plaintiff did not follow the proper course of action when he suspected employees at Berry Moorman, BMP were practicing law without a license. The Michigan State Bar has an easily accessible complaint form that anyone can submit regarding suspected incidents of the unauthorized practice of law. … The State Bar's Unauthorized Practice of Law Committee investigates and prosecutes if it determines that an individual or company has engaged in the unauthorized practice of law. ... The Michigan Attorney Grievance Commission also has an easily accessible investigation request form for members of the public.

"The Legislature has directed that LARA investigate licensees in other industries in the manner sought by plaintiff. The absence of any such language directing LARA to investigate lawyers and law firms in any statute clearly demonstrates that the Legislature did not intend LARA to investigate complaints against attorneys and law firms related to the practice of law.

"And none of the MBCA statutes on which plaintiff relies supports that a citizen may file a complaint with LARA and expect an investigation of a lawyer or law firm regarding the unauthorized practice of law.

"Although LARA issues business licenses to law firms formed as professional service corporations, LARA is not permitted to investigate complaints connected with the practice of law, authorized or not. Accordingly, plaintiff cannot state a legally actionable claim against LARA for its failure to investigate his complaint that a BMP employee practiced law without a license. Defendant is entitled to summary disposition under MCR 2.116(C)(8)."

Faizi v. Michigan Dep't of Licensing & Regulatory Affairs; MiLW No. 04-109034, 9 pages; Court of Claims; Patel, J.

Prisons

Outstanding fees and costs

Where a complaint has been filed by a plaintiff prisoner with outstanding court filing fees and costs from previous civil action, the complaint must be dismissed because MCL 600.2963(8) precludes the plaintiff from filing the current action until those outstanding fees and costs are paid.

"Plaintiff owes the Michigan Supreme Court $375.00 in connection with Docket No. 166879, and $375 in Docket No. 166956. These outstanding debts preclude plaintiff from filing the current action.

"He is not challenging any unappealable act or omission from his earlier criminal trial or trials. He is challenging prison conditions as they relate generally to a prisoner's ability to pursue judicial actions. Jackson [v. Wayne Circuit Court Judge, 326 Mich App 629; 929 N.W.2d 798 (2018)] is inapposite and does not apply to plaintiff's case."

Mier v. Michigan Dep't of Corr. Dir. Washington; MiLW No. 04-109037, 3 pages; Court of Claims; Redford, J.

Prisons

PLRA

Where plaintiffs have challenged prisoner work policies and conditions, the complaint

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New guidance helps define how EEOC will judge DEI policies

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that executive orders and related federal executive actions do not and cannot overturn longstanding civil rights and anti-discrimination laws, values and practices.

The latest salvo came on March 19, when the Equal Employment Opportunity Commission released two documents, a one-pager for employees titled "What to Do If You Experience Discrimination Related to DEI at Work," and a longer FAQ-style document. The publications offered some additional insight into what constitutes "illegal DEI" according to what's left of the EEOC, which lacks a quorum after Trump removed two commissioners.

The Trump EEOC and state attorneys general disagree about less than it may appear at first glance, according to management-side employment lawyers.

Michelle Crockett, a partner at Honigman in Detroit, said the guidance is a reminder employers must adhere to the mandates of Title VII in the context of their DEI programming — which is nothing new, as Title VII has been the law for 60 years.

But there are lessons to be gleaned from the new documents, in terms of the lens the EEOC will bring to longstanding practices.

For example, while the EEOC has long been concerned about discrimination in hiring and firing, the one-page document highlights exclusion from training, fellowships and mentoring or sponsorship programs as other forms of "disparate treatment" with which the EEOC will be concerned.

"What's particularly helpful was the identifying of some of the situations or moments in time in the course of an employment or employment decisions that employers should be mindful of," said Alexandra D. Thaler of Constangy, Brooks, Smith & Prophete in Boston.

However, nothing in the documents offers a radical new interpretation of the law, according to lawyers.

"From the legal context, the law isn't really changing based upon this guidance," said Providence, Rhode Island attorney Alicia Samolis. "It's more that the chances that somebody gets a lawsuit have changed, and potentially employees' attitudes have changed."

Come one, come all

One topic addressed by both the state AGs and the EEOC is what has become known as employee resource groups, or ERGs, which the AGs noted are designed to "create an inclusive and supportive space where employees of particular backgrounds or common experiences feel valued and heard."

The EEOC has now warned that membership in ERGs should not be limited to certain protected groups but instead should be open to all.

"What is clear from the guidance is that the means or measures employers may utilize to achieve diversity in the workplace, cannot in any way, be to the exclusion of anyone," said Crockett said. "If employers offer the same programming or opportunities to all employees, but that programming or opportunity is segregated in some way, that may be evidence of an 'illegal DEI' program in accordance with EEOC guidance."

> DEI programs or trainings can still be pursued by employers, but the easy thing to comply with this is to make it voluntary, to not exclude anyone, which seems to serve the general purpose of Title VII.
>
> **— Brian K. Mitzel, Bloomfield Hills**

Brian K. Mitzel of Plunkett Cooney in Bloomfield Hills agreed that being as inclusive as possible is important.

"DEI programs or trainings can still be pursued by employers, but the easy thing to comply with this is to make it voluntary, to not exclude anyone, which seems to serve the general purpose of Title VII," he said. "If you serve the general purpose of Title VII ... it's OK to have a program where it's 'Hey, let's learn about this [topic].' You just have to make it voluntary and not a requirement of the job."

Some employers may not have paid that much attention to the risks of not making such groups inclusive because they have been formed with the "noble goal" of promoting diversity in the workplace, Boston attorney Christopher S. Feudo of Foley Hoag said.

"I think employers really have to be paying attention to the fact that, however noble the goal of increasing your diversity within the workplace, you can't use unlawful means to do it," he said.

The same is true with mentoring programs, he added. If a man's female coworkers are all invited to attend a mentoring program and he is excluded, recent case law makes clear that such circumstances may well give rise to a meritorious Title VII claim.

Crockett agreed that the position of the EEOC "may make it easier for employees of majority groups to assert claims of discrimination as it relates to DEI programs or initiatives."

Training the trainers

If there is one sentence in the EEOC's guidance that might set off alarm bells, attorneys said that it is the one that reads: "Depending on the facts, DEI training may give rise to a colorable hostile work environment claim."

Boston attorney Catherine E. Reuben of Hirsch, Roberts, Weinstein recalled a time when, as a junior lawyer, she gave a training in which she offered examples of "things you shouldn't say because they would be deemed discriminatory."

"That was not a smart thing for me to do because by saying those things, I was underscoring them," she said.

While the term "reverse discrimination" may be falling out of favor, Samolis said she has long believed it important to incorporate the concept into employee training that, in the examples being discussed, the forms of discrimination can go in either direction, particularly among atypical employee groups, such as nurses, who are predominantly women.

"Reverse discrimination" has been part of some of the worst disputes with which she has been involved because there tends to be more evidence that is damning to the employer in writing.

"The problem is you have people who are well-intended, and they don't realize that it's equally as illegal to say, 'our next CEO needs to be Black' or 'the next person we elevate to the C-suite needs to be a woman,'" Samolis said.

The key concept when doing training on topics such as implicit bias is to make sure that the training is balanced and reflects everyone's experiences, said Boston attorney David C. Kurtz.

Thaler noted the EEOC cited the U.S. District Court of the Eastern District of Pennsylvania case De Piero v. Pennsylvania State University, which notes that training on concepts such as white privilege, white frailty, implicit bias or critical race theory can contribute positively to nuanced, important conversations about how to form a healthy, inclusive work environment. The training just must be done the right way.

The key questions are: "Is it done even-handedly? Is it done in a way that isn't vilifying one group over another, but rather just exposing people to concepts and helping open conversation about these things?" she said.

The courts as failsafe

At the end of the day, another source of comfort for attorneys is that the courts will rein in the EEOC, if necessary.

While the EEOC has the authority to investigate, its remedy would be to file a complaint in court. The courts will then have an opportunity to assess whether the evidence on which the EEOC relies actually establishes a violation of the statutes that the EEOC enforces, Reuben said.

"There is a stopgap here, if the concern or the fear is that the enforcement is going to be overly aggressive," she said.

Mitzel noted that court rulings will likely vary.

"You're going to get a patchwork, where an Eastern District of Michigan judge might say one thing, a Western District of Michigan judge might say another [and] Ohio might say something [else]," he said.

There is an interesting wrinkle to those court challenges to come, Marblehead, Massachusetts attorney Mark M. Whitney noted. Last year, in the case Loper Bright Enterprises v. Raimondo, the U.S. Supreme Court ended the doctrine known as "Chevron deference," empowering courts to interpret statutes independently rather than defer to federal agencies' interpretations of ambiguous laws.

"That's going to cut against the EEOC trying to … push the envelope on these DEI proclamations," he said.

Reuben's colleague, Sophie A. Levine, encourages employers to have their counsel conduct a privileged review of their policies to point out what could be problematic under the EEOC's new guidance.

"The definition of what constitutes 'illegal DEI' involves employment actions that are 'motivated in whole or in part by an employee's, race, sex, or another protected characteristic,'" Crockett said. "As a result, I often recommend that employers conduct equity audits to review and assess their DEI programming through this lens."

Those audits, she noted, may include reviewing processes associated with recruiting, hiring, and interviewing as well as selections or decisions related to promotions, terminations and compensation, among other company policies.

"These audits and a subsequent assessment of risk is imperative to identify what, if any, DEI programming may run afoul of EEOC guidance," Crockett said.

Samolis believes Trump's executive orders and the related EEOC guidance will result in less DEI in the workplace. That's not out of fear but because businesses will be prompted to reevaluate their programs to ensure they are worth the effort.

There was a time when employers saw DEI initiatives as nothing but "upside," like giving employees Fitbits to encourage them to stay active and healthy, Samolis said.

Now, even if all an employer's initiatives are 100 percent legal, there will be employees who will experience them in a negative way — either because they feel discriminated against or because they are frustrated that an ERG's powers are limited and cannot advocate for things like additional training opportunities for employees of color. Lawsuits will continue to be filed.

"I do think that the likely outcome of this sort of discussion is going to be less DEI efforts, not just somewhat modified [efforts] and people being more careful to follow the law," Samolis said. "I do think that more companies will think, 'Is it really worth it in the end?' MiLW

OPINIONS FROM THE COURTS

MICHIGAN COURT OF CLAIMS

must be dismissed because the plaintiffs failed to disclose the number of prior civil actions initiated by them as required by the Prison Litigation Reform Act.

"Plaintiffs challenge prison policies forcing them to complete tasks without pay and despite medical restrictions. These are conditions of confinement within the PLRA. To file suit, plaintiffs ere required to disclose the number of civil actions and appeals they have initiated in the past. Plaintiffs failed to do so and the Court is bound to dismiss their action."

Upchurch v. Michigan Dep't of Corr.; MiLW No. 04-109036, 2 pages; Court of Claims; Redford, J.

Social Services

Private foster care - Per diem

Where plaintiffs have brought suit to prevent the Department of Health and Human Services from paying private foster care service providers less than $60.20 per diem as designated in the state's 2025 appropriations act, the plaintiffs' motion for summary disposition should be allowed the 2025 act requires the defendants to pay the plaintiffs $60.20 per diem.

"On December 19, 2024, the Court denied plaintiffs' emergency motion for a temporary restraining order (TRO) and preliminary injunction to prevent defendants—the Department of Health and Human Services (DHHS) and Director Elizabeth Hertel—from paying private foster care service providers less than $60.20 per diem as designated in the state's 2025 appropriations act (2025 Act). The Court reserved consideration of defendants' motion for summary disposition at that time. Following the Court's order, plaintiffs filed a countermotion for summary disposition. The Court now GRANTS plaintiffs' motion for summary disposition and DENIES defendants' motion. Through this judgment, the Court declares that the 2025 Act requires defendants to pay plaintiffs $60.20 per diem, and that the amended master agreements providing split per diem and incentive rates violates the Act. The Court enjoins defendants from withholding the full administrative rate selected by the Legislature.

"Ultimately, the individual agency plaintiffs signed the 2025 amended master agreements 'under protest' and reserved the right to challenge the incentive-rate provision. When communications with the DHHS broke down, plaintiffs filed suit, contending the DHHS lacked authority under the 2025 Act to pay less than $60.20 as a per diem rate. They seek a declaratory judgment regarding the language of the 2025 Act and a permanent injunction requiring defendants to pay the $60.20 administrative rate required in the 2025 Act.

"Plaintiffs have standing to file this suit.

"The plain language of §546 requires defendants to pay a minimum administrative rate to plaintiffs of $60.20.

"Defendants' amendment of the administrative rate structure in Fall 2024 violates §546 of the 2025 Act by only guaranteeing payment below the statutorily mandated floor of $60.20. That provision in the amended master agreements is invalid and must be struck from the contracts. Defendants are not permitted to pay plaintiffs an administrative rate less than the mandatory minimum rate set by the Legislature."

Michigan Fed'n for Children & Families v. Michigan Dep't of Health & Human Serv.; MiLW No. 04-109033, 13 pages; Court of Claims; Patel, J.

Website establishes personal jurisdiction in trademark suit

Continued from page 1

John A. VanOphem of VanOphem IP Law in Milford Charter Township, who represented the defendant, declined to comment.

But IP litigator Anita C. Marinelli of Miller Canfield said that the ruling reflects the times because consumers can buy products online from anywhere.

The decision also helps trademark holders keep their costs down, she added, because they can use a local attorney and participate in hearings in person, rather than having to chase down an e-commerce operator in another jurisdiction.

"If you're a mainly Michigan company and you want to bring a suit in Michigan, this opinion makes it pretty clear that you could sue anybody in Michigan as long as they had that interactive website that would sell to Michigan [consumers]," the Detroit attorney said.

Because e-commerce operators with only a website presence may expose themselves to liability in Michigan, Marinelli said, information about a website's sales important could become important earlier in the process.

"You usually only get to that information when you're getting into full-blown discovery," she noted. "What might start happening is you have defendants … submitting those records early saying 'Look, all our sales are in California, or all our sales are in Ohio, we shouldn't be in Michigan.'"

> If you're a mainly Michigan company and you want to bring a suit in Michigan, this opinion makes it pretty clear that you could sue anybody in Michigan as long as they had that interactive website that would sell to Michigan [consumers].
>
> **— Anita C. Marinelli, Detroit**

Interactive website

The plaintiff filed suit against Handelnine Global on February 2, 2024, claiming that the defendant's website, navafresh.com, "'offers to sell goods under the infringing YOGA TOES, gemstone handle and color blue trademarks' and 'displays copies of [Plaintiff's] registered copyrighted works.'"

When the defendant failed to respond, the plaintiff requested entry of default. Three months later, it sought a default judgment.

The defense filed a motion to dismiss, asking that the entry of default be set aside and the case dismissed for lack of personal jurisdiction.

The plaintiff opposed the motion, arguing that the defendant's website was interactive and sold directly into Michigan. It provided receipts and declarations to show that at least two such sales were made via the website.

The defense argued that it did not purposefully avail itself of the privilege of doing business in Michigan because another company owned and operated the website. Further, it claimed the two sales were too minimal to form the basis for jurisdiction and were instigated by the plaintiff.

But the court found that FenF had satisfied the three-prong burden for establishing personal jurisdiction.

"As to the first prong, a plaintiff can establish purposeful availment by alleging that the defendant has an interactive website that conducts sales in the state, if those sales occur in the defendant's 'regular course of business.'" the court said.

Here, the court found it persuasive that "Defendant's sales, if even [sic] to Plaintiff's affiliates, establish that Defendant fully intended to do business with customers in Michigan by selling products that infringe [Plaintiff's] three registered trademarks and by displaying [Plaintiff's] registered photographs to customers in Michigan."

Further, the court noted that plaintiff did not rely solely on the two sales, but "alleges … the website is accessible to Michigan consumers to buy goods; the website displays infringing copyrighted photographs to consumers in Michigan; and [that] Defendant purchased, used, and displayed the Plaintiff's protected name in its advertisement that is shown to Michigan consumers."

The court also found that FenF had satisfactorily alleged that the case arose out of the defendant's activities in Michigan.

Here, "[s]ince Plaintiff shows sales in Michigan and asserts that 'Plaintiff resides in Michigan,' the injury occurred in Michigan."

Finally, the judge concluded that FenF established that the defendant had a substantial enough connection with Michigan to make the exercise of jurisdiction reasonable.

Levy acknowledged that it would be a burden for the defendant to defend the action in Michigan. But, she said, "It would be burdensome for Plaintiff to litigate the case in another forum, and Michigan 'has an obvious interest in hearing the dispute given the alleged injury's location.'"

Therefore, "[o]n balance, and considering [Plaintiff's] light prima facie burden, Defendant['s] arguments [about a significant burden to litigate in the forum] do not overcome the inference of reasonableness arising from [Plaintiff's] satisfaction of the first two . . . elements."

While the judge sided with the plaintiff on the personal jurisdiction question, she granted the defense motion to set aside the clerk's entry of a default judgment, noting that the plaintiff hadn't shown that would suffer prejudice if the default were set aside and that the defense had provided sufficient explanations for its delays. MILW

Highly paid inspector misclassified as salaried employee

Continued from page 1

would be to use 480 minutes as the basis for its weekly salary."

The 34-page decision is *Pickens v. Hamilton-Ryker IT Solutions, LLC*, Lawyers Weekly No. 01-109132. The full text of the ruling can be found at milawyersweekly.com.

An important decision

Lead plaintiffs' counsel Richard J. "Rex" Burke of Houston said this was an important decision because millions of Americans depend on the security provided by the salary basis test.

"For it to mean anything, it has to reflect something about what you typically earn," Burke said. "And the lower court decision, respectfully, was far outside the norm and essentially gutted one of the most important protections American workers have."

Burke added that another purpose behind the FLSA's overtime provisions is to place a ceiling on the number of hours each employee works, which is especially important in a case involving someone in Pickens' line of work.

"If the pipes don't work well, they can blow up," he said. "Besides, they're putting their bodies on the line, dedicating themselves to work that is dangerous and dirty and they deserve to be compensated for it because of the wear and tear on their bodies and what they're giving up with their lives."

Houston attorney Ashlee Cassman Grant, who represented Hamilton-Ryker, did not respond to requests for comment.

But Matthew S. Disbrow, a management-side attorney in Detroit, said the decision favors form over substance – something he sees all too frequently in the FLSA arena.

"If the employee is receiving a guarantee and that guarantee is being paid weekly, then let's not play semantic games," he said. "It meets the unambiguous language of the act and the prevailing regulation and we need go no further afield than that. Otherwise we're creating hurdles contrary to the intent of the act itself."

On the other hand, Noah S. Hurwitz of Ann Arbor, who represents employees in wage-and-hour cases, said that after a string of 6th Circuit rulings in recent years that made it harder for employees to receive fair compensation under the FLSA, it was a relief to see the court require that overtime-exempt employees be paid a fixed weekly salary and not just a minimum amount for less than a full week.

He also found noteworthy the 6th Circuit's statement in the decision that the U.S. Supreme Court's 2024 Loper Bright Enterprises v. Raimondo decision – which did away with the Chevron doctrine that allowed federal courts to defer to agency interpretations of ambiguous statutes – has not completely eliminated courts' reliance on federal agency interpretation of federal laws.

"Agency interpretations over the years have largely bolstered employee rights when it comes to adequate compensation, and the Sixth Circuit emphasized that such regulations are still very instructive and can be followed if they comport with the statutory law," Hurwitz said.

A weekly salary

Pickens worked for Hamilton-Ryker, an employment agency headquartered in Tennessee, from 2018 to 2019.

During this time, he was assigned to a natural-gas export terminal in Texas.

For any week in which he worked, Pickens received a "guaranteed weekly salary" of $800, a figure based on eight hours of pay at his $100 hourly rate.

If Pickens worked more than eight hours in a week, which he did during every week of his employ, he received additional compensation of $800 per hour.

Over the course of his employment, he worked 28 hours in his slowest week, for which he received $2,800. During his busiest week, he worked 84 hours and received $8,300.

On average, Pickens worked just under 52 hours a week, generating usual weekly earnings of approximately $5,200.

This resulted in annual earnings of $270,400.

During weeks where Pickens worked more than 40 hours, Hamilton-Ryker did not pay him overtime because it classified him as a salaried worker exempt from the FLSA.

Pickens, however, believed he was entitled to overtime at one-and-a-half times his pay rate, or $150 per hour. Accordingly, in 2020, he brought a FLSA claim against the company in the Middle District of Tennessee.

Fourteen co-workers opted into the suit, which was filed as a collective action under the statute.

U.S. District Judge William Lynn Campbell Jr. granted summary judgment to the employer, finding that Pickens indeed was a salaried employee, and dismissed Pickens' coworkers on grounds that the court hadn't determined that they were similarly situated.

The plaintiffs' appeal followed.

A salary basis test

Addressing the appeal, Sutton noted that under the salary basis test, as defined by the relevant regulations, an employee is salaried if they are paid a "predetermined amount" on a weekly or less frequent basis.

Additionally, the judge pointed out, an employee must receive their full salary for any week in which they perform any work and their pay may not be docked for time when work isn't available, if they call in sick or if they take a few hours off for personal reasons.

Sutton additionally emphasized that the fact that a payment is weekly may not be merely incidental to the payment; the week must serve as the fundamental unit around which the payment is structured.

In this context, Sutton likened Hamilton-Ryker's compensation scheme to the payment of rent.

"If someone said that he pays a predetermined amount for rent 'on a weekly basis,' he would be understood to mean that the amount he pays is calculated based on occupancy for a full week," the judge commented. "No one would say that he pays a predetermined amount for rent 'on a weekly basis' and by that mean that he pays a fixed sum each Monday for one day's use, but needs to pay extra if he wants to occupy the property from Tuesday through Sunday. So also for a salary."

Sutton looked to *Helix* to reinforce this analysis.

In that case, the defendant company guaranteed an oil rig supervisor a minimum amount of $963 – an amount that happened to be his daily rate – for any week in which he performed work. If he worked for two days, he received double that amount and if he worked three days, he received triple, and so on.

The Supreme Court concluded that this was a "high day rate," but not a "salary," since the worker's biweekly take-home pay could be as little as $963 or as much as $13,482, depending on how many days he worked.

"How does all of this apply here? This case could be captioned *Helix* II," Sutton said, emphasizing that just like the employee in *Helix*, Pickens was guaranteed payment for a single day's work. "Unlike a weekly rate, which compensates an employee for a week's work, no matter the number of hours worked, the rate Pickens received compensated him for either an hour's work or eight hours' work. Pickens' eight-hourly 'salary' did not come close to compensating him for his regular 52-hour workweek."

Accordingly, the majority concluded, the lower court ruling should be reversed.

'What the law allowed'

In a dissenting opinion, Judge Eric E. Murphy said that while he agreed the employer structured Pickens' compensation in a "strange way" solely to exempt him from the FLSA, a regulatory exemption for highly compensated employees gave it every right to do so.

"In that respect, Hamilton-Ryker's compensation package resembles a company's lawful transaction designed solely to avoid its taxes," Murphy said.

Murphy added that even if the U.S. Secretary of Labor exempted Hamilton-Ryker's compensation package through an oversight, it makes no difference – it's what the law allowed.

"And if the Secretary does not like this result, she 'should fix the problem' by amending the regulation," he said. MILW