

SUMMARY OF MDTC AMICUS INVOLVEMENT
2008/09

CLOSED CASES:

Henry v Dow Chemical (MSC No. 266433) (closed)

- Issue: proper standards for class certification under Michigan Court Rules and whether court must conduct “rigorous analysis”
- Author(s): Plunkett Cooney (M. Massaron Ross/H. Ballentine)
- Status: Amicus brief filed on 2/17/09; non-unanimous decision issued 7/31/09
 - Did not adopt federal court’s “rigorous analysis” standard, but held that Michigan court rule on class certification requires a greater analysis than simply accepting a party’s assertion that the prerequisites of class certification have been met.
 - When looking beyond the party’s assertions in order to these prerequisites, court should do so without delving into the merits of the underlying claims involved
 - Remanded case to circuit court for clarification of its reasoning for ruling that the class certification factors were met

Benefiel v Auto-Owners Insurance Company (MSC No. 135778) (closed)

- Issue: whether review of a plaintiff’s “whole life” in order to determine the plaintiff’s “normal lifestyle” should include the time period before the onset of pre-existing, non-permanent impairments.
- Author(s): Warner Norcross & Judd Nelson (J.Bursch and G. Gerville-Reache)
- Status: Michigan Supreme Court issued order on 12/12/08 vacating the 12/27/07 MCOA judgment; MSC stated that “plaintiff must prove that his preexisting impairment is temporary in order to have his pre-impairment lifestyle considered as his “normal life.” It follows that, in this situation, the plaintiff must show either that his preexisting impairment was exacerbated or that his recovery was prolonged *as a result of* the subsequent accident for which he seeks noneconomic damages. Furthermore, this *subsequent* impairment must meet the

statutory threshold in order for the plaintiff to recover noneconomic damages.”

MDEQ v Waterous Company (MSC No.) (closed)

- Issue: whether prior owner of property is bound by environmental cleanup responsibilities that go beyond that owner’s historical use of that site
- Author(s): Butzel Long (M. Smith, K. Horsley Allen, S. Johnson)
- Stage: amicus brief in support of app for leave to Michigan Supreme Court
- Status: Michigan Supreme Court denied leave on 2/6/09

Jackson-Ruffin v Metro Cars, Inc. (MSC No. 136694) (closed)

- Issue: whether open and obvious danger doctrine applies to slip and fall on icy steps while disembarking from defendant’s passenger shuttle
- Author: Kitch Drutchas Wagner Valitutti & Sherbrook (B. Wittmann)
- Stage: amicus brief in support of app for leave to Michigan Supreme Court
- Status: Michigan Supreme Court denied leave on 10/22/08

Romain v Frankenmuth (MSC No. 135546) (closed)

- Issue: whether Legislature’s use of term “proximate cause” in MCL 600.6304 conflicts with other statutory provisions, whether the legislature intended to impose a legal duty requirement as a precondition for allocating fault under MCL 600.2957 and MCL 600.6304
- Author: Dickinson Wright (P. DeRosier)

- Stage: amicus brief in support of app for leave to Michigan Supreme Court
- Status: Michigan Supreme Court issued order on 3/31/09 affirming MCOA decision, but wrote to clarify conflict between two published Court of Appeals opinions, *Kopp v Zigich*, and *Jones v Enertel, Inc.*

Alfano v Sysco Food Services of Detroit (MSC No. 137314) (closed)

- Issue: failure-to-hire age discrimination case where issue was whether slight difference between age of plaintiff and an allegedly similarly-situated individual is sufficient to give rise to an inference of age discrimination
- Author: Warner Norcross & Judd (M. Nelson and A. Fielder)
- Stage: amicus brief in support of app for leave to Michigan Supreme Court
- Status: application dismissed via stipulation of the parties on 4/15/09

Brown v Cassens (Supreme Court No. 08-1375)

- Issue: whether injury claim adjustment activities (which in this instance occurred pursuant to the Michigan Worker's Disability Compensation Act and involved the selection of IME physicians) are subject to RICO, thus entitling plaintiffs to triple damages and attorney fees.
- Author: John Bursch and Matt Nelson, Warner Norcross Judd
- Stage: amicus brief in support of petition for writ of certiorari in U.S. Supreme Court
- Status: Amicus brief filed June 5, 2009; petition for writ of certiorari denied 12/7/09

Slaughter v Blarney Castle Oil Co. (MSC No. 137794) (closed)

- Issue: whether black ice, without presence of snow, is open and obvious
- Author: MMR and HD

- Stage: amicus brief in support of application for leave to appeal to Michigan Supreme Court
- Status: Michigan Supreme Court denied leave on 4/29/09

ADDITIONAL CLOSED CASES:

- *Zahn v Kroger/Martin*
- *Davis v Forest River, Inc*
- *Lane v Magnum*

OPEN CASES

Pellegrino v Ampco System Parking (MSC No. 137111)

- Issue: whether defendant is entitled to a new trial based on trial court's violation of MCR 2.511(F)(2) where the trial court denied defendant's peremptory challenge to a prejudiced juror because of its desire for a racially balanced jury
- Author: Clark Hill (J. Brenner)
- Stage: leave granted in 5/09, currently on briefing in Michigan Supreme Court
- Status: brief filed 10/23/09; oral arguments held 3/9/10; decision pending.

O'Neal v St. John Hospital (MSC No. 138180)

- Issues: whether claims in this medical malpractice case constitute loss of opportunity to which MCL 600.2912a(2) applies, whether *Fulton v William Beaumont Hosp*, 253 Mich App 70 (2002) was correctly decided, and whether different approach is required to correctly implement § 2912a(2)

- Author: Ottenwess & Associates (S. Ottenwess)
- Stage: leave granted on 9/30/09, currently on briefing in Michigan Supreme Court
- Status: amicus brief filed 12/15/09; oral argument held 1/12/10; decision pending.

Brightwell v Fifth Third Bank of MI (MSC No. 138920)

- Issue: in Elliott-Larsen Civil Rights Act case, what is the proper place where the alleged violation “occurred”
- Author(s): Warner Norcross & Judd (M. Nelson, G. Kilby, A. Fielder)
- Stage: leave granted 9/3/09; currently on briefing in Michigan Supreme Court
- Status: amicus brief filed 12/16/09; oral argument held 1/12/10; decision pending.

Mawri v City of Dearborn (MSC No. 139647)

- Issue: case involves MCL 691.1402(1) (the highway exception to governmental immunity), the degree of specificity that must be given to comply with the notice provision of § 1404, and particularly, “nature of the defect”
- Author: Hackney Grover Hoover & Bean PLC (S. Lake)
- Stage: leave granted 12/18/09; currently on briefing in Michigan Supreme Court
- Status: amicus brief to be filed by 3/29/10

RECOMMENDATIONS PENDING

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