

MSC Order List: April 23, 2010

24. April 2010 by Matthew Nelson

In *First Industrial, L.P. v. Department of Treasury*, No. 139748, the Michigan Supreme Court unanimously reversed the Court of Appeals' decision in lieu of granting the application for leave. The Court concluded that the Court of Appeals failed to give respectful consideration to the long-standing policy of the Department of Treasury regarding the carryover of business losses under the now-repealed Single Business Tax Act. The Court reinstated the decision of the Court of Claims which held, consistent with the Department of Treasury's published policy, that a business is only entitled to a carryover of a predecessor's entity's business losses after an asset transfer if the predecessor entity has ceased all operations and rejecting the plaintiff's argument that the cessation of operations in Michigan is sufficient.

The Court also denied leave to appeal in *Esselman v. Garden City Hospital*, No. 139288, a medical malpractice action. The case is noteworthy only for the unusual alignment of justices. The decision sparked a strongly worded dissent from Justice Young accusing the majority of countenancing a departure from the standard for Notices of Intent set forth in *Roberts v. Mecosta County Hospital*, 470 Mich. 679 (2004). Justice Young's dissent was joined by Justice Corrigan. Chief Justice Kelly replied with an equally strongly worded concurrence rejecting Justice Young's criticism. Interestingly, Justice Markman issued a concurrence in which he distinguished the Court of Appeals' decision from *Roberts*, but Justice Weaver indicated that she would have granted leave. Thus, Justices Corrigan, Weaver, and Young would have granted leave, but Justice Markman voted with Chief Justice Kelly and Justices Cavanagh and Hathaway to deny leave.