

## MSC Order List: December 7, 2011

8. December 2011 By Julie Lam

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On December 7, 2011, the Michigan Supreme Court granted four applications for leave to appeal:

In *People v. Trakhtenberg*, No. 143386, the parties shall address: (1) whether the “attorney judgment rule” can be applied under a collateral estoppel theory to bar substantive review of evidence to determine whether the defendant was denied effective assistance of counsel and, if not, (2) whether the defendant is entitled to a new trial on the ground he was denied his constitutional right, and (3) whether the defendant is entitled to a new trial on the basis of newly discovered evidence. The Court invited the Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan to file briefs amicus curiae.

In *People v. Rapp*, No. 143343-4, the parties shall include among the issues to be briefed: (1) whether Michigan State University Ordinance 15.05 is facially unconstitutional; and (2) whether MCR 7.101(O) allows taxation of costs in criminal cases appealed in the circuit court.

In *Douglas v. Allstate Ins Co*, No. 143503, the parties shall include among the issues to be briefed: (1) whether the Court of Appeals erred in remanding this case for further proceedings regarding the amount of incurred expenses for attendant care; (2) whether the plaintiff presented sufficient proofs at trial to support award of attendant care benefits; (3) whether activities constituted attendant care; and (4) whether the trial court clearly erred in awarding benefits at the rate of \$40 per hour.

In *Johnson v. Recca*, No. 143088, the application was granted limited to the issue of whether the cost of replacement services rendered more than three years after the date of the motor vehicle accident is included within the scope of MCL 500.3135(3)(c).

In lieu of granting leave in *Dep’t of Civil Rights v. Michigan High School Athletic Ass’n*, No. 143798, the Michigan Supreme Court remanded the case to the Court of Appeals for consideration as on leave granted of whether the trial court abused its discretion by granting plaintiff’s preliminary injunction motion, after considering the following threshold issues: (1) whether the Michigan High School Athletic Association (MHSAA) is a “state actor” for purposes of the Fourteenth Amendment and 42 USC § 1983; (2) whether under the Elliott-Larsen Civil Rights Act, the MHSAA provides a “public service” or constitutes a “place of public accommodation”; and (3) whether the MHSAA’s rules categorize persons on the basis of an inherently suspect characteristic or jeopardize the exercise of a fundamental right; and if not, whether there is a rational basis for the MHSAA’s rules. Justices Marilyn Kelly and Hathaway would deny leave to appeal.

In lieu of granting leave in *Torres v. Ferrous Processing & Trading Co*, No. 143408, the Michigan Supreme Court remanded the case to the Michigan Compensation Appellate Commission to address the defendant’s motion to dismiss, and denied leave in all other respects. Justices Marilyn Kelly and Hathaway would deny leave to appeal.

The Michigan Supreme Court ordered that the application for leave to appeal in *People v. Taylor*, No. 143603, be held in abeyance pending the decision in *People v. Vaughn*, No. 142627.

The Court denied three applications for leave to appeal. Justices Marilyn Kelly and Hathaway would reverse the judgment of the Court of Appeals in *Estate of Joseph A Clock v. Neal Kemp*, No. 143637, for the reasons stated in the Court of Appeals dissenting opinion.

Justice Markman issued a statement recusing himself from *People v. Winburn*, No. 143914.