

DAVID M. SHAFER - APPELLATE CASES

MICHIGAN SUPREME COURT:

In re Hon. Warfield Moore, 464 Mich 98; 626 NW2d 374 (2001) [The Supreme Court rejects in part the sanction recommended by the Judicial Tenure Commission for judge's actions demonstrating a lack of judicial temperament.]

Thomas v Stubbs, 455 Mich 853; 564 NW2d 463 (1997), *reversing* 218 Mich App 46; 553 NW2d 634 (1996) [A non-viable fetus expelled from the womb with a temporary heartbeat and respiration is not a "person" for whose "death" a medical malpractice cause of action may be pursued against a physician under Michigan's Wrongful Death Act.]

Orel v Uni-Rak Sales, 454 Mich 564; 563 NW2d 241 (1997) [Property owners are not exposed to premises liability while possession of their property has been temporarily loaned to another]

In re Louis F Simmons, 444 Mich 781; 513 NW2d 425 (1994) [The Supreme Court rejects the recommendation of the Judicial Tenure Commission to publicly censure a trial judge for abuse of contempt power]

Spaulding v Lesco Int'l Corp, 441 Mich 379; 491 NW2d 208 (1992) [The manufacturer of a simple product, such as an above-ground swimming pool, has no duty to warn of the product's dangers that are open and obvious to the average user.]

Woods v City of Warren, 439 Mich 186; 482 NW2d 696 (1992); *reversing* 183 Mich App 656; 455 NW2d 382 (1990) [The "fireman's rule" applies to bar a police officer's lawsuit against a property owner for injuries sustained in the course of duty due to the property owner's negligence]

MICHIGAN COURT OF APPEALS:

Spect Imaging, Inc v Allstate Ins Co, 246 Mich App 568; 633 NW2d 461 (2001) [The Court of Appeals reverses summary disposition granted to the plaintiff and enunciates the test to be applied by trial courts in determining whether medical services rendered to an insured by a health-care provider, such as SPECT imaging tests for mild traumatic brain injuries, are reasonably necessary

services under the Michigan no-fault act so as to require an insurer to pay for such tests.]

Hetrick v Friedman, 237 Mich App 264; 602 NW2d 603 (1999) [Arbitration agreement's incorporation of the rules of the American Arbitration Association, which include a provision that a circuit court can enter judgment on an arbitration award, renders the arbitration a "statutory arbitration" and not simply a common law arbitration, and thus the agreement could not be revoked unilaterally.]

Barrow v Pritchard, 235 Mich App 478; 597 NW2d 853 (1999) [Under the doctrine of crossover estoppel, and despite some semantic differences between the criminal standard for ineffective assistance of counsel and the civil standard for legal malpractice, a criminal-defense attorney cannot be sued for legal malpractice if a court has previously determined that the plaintiff was not deprived of the effective assistance of counsel by the attorney during the plaintiff's criminal trial.]

Hughes v PMG Building, 227 Mich App 1; 574 NW2d 691 (1997) [A general contractor is not liable for injuries sustained by a subcontractor's employee under the "common work area" exception to non-liability if the employee was injured while working on a unique project away from other workers.]

Kootsillas v City of Riverview, 214 Mich App 570; 453 NW2d 356 (1995), aff'd 456 Mich 615; 575 NW2d 527 (1998) [The landfill activities of a municipality can constitute a "proprietary function" under the state's governmental immunity act.]

Jodway v Kennametal, 207 Mich App 622; 525 NW2d 883 (1994), *lv den* 441 Mich 863; 490 NW2d 415 (1992) [Issues concerning exercise of limited personal jurisdiction over foreign defendant and sophisticated user defense in product-liability law.]

FEDERAL COURTS:

Grosse Ile Bridge Co v American Steamship Co, 302 F3d 616 (6th Cir 2002) [Issues concerning the maritime doctrines of permitting a vessel to proceed toward a closed drawbridge after timely giving a signal for the bridge to open, the

posting of a proper lookout onboard ship, the *in extremis* doctrine, and comparative negligence.]

Olsen v American Steamship Co, 176 F3d 891 (6th Cir 1999), *reh and reh en banc den* (1999) [Evidence of physician's negligence in treating plaintiff is not relevant in Jones Act case where plaintiff sought only direct liability for seaman's heart attack and not vicarious liability for physician's medical malpractice.]

Alholm v American Steamship Co, 144 F3d 1172 (8th Cir 1998) [Issues concerning comparative negligence, proximate causation, and improper comments by opposing counsel during admiralty trial.]

Cook v American Steamship, 134 F3d 771 (6th Cir 1998) [Affirmance of sanctions imposed against plaintiff's attorney pursuant to 28 USC §1927 due to attorney's unreasonable conduct at trial.]

Nagler v Gowing, 76 F3d 379 (6th Cir 1996) (table) [Issues concerning breach of contract and fraud/misrepresentation.]

Raddatz v Koselka, 72 F3d 130 (6th Cir 1995), *affirming* 880 F Supp 500 (WD Mi 1995), after dismissal, 124 F3d 199 (6th Cir 1997) [The *Rooker-Feldman* doctrine applies to deprive a federal court of jurisdiction over the plaintiff's claim which collaterally attacks a prior, unappealed state court judgment against the plaintiff.]

Cook v American Steamship, 53 F3d 733 (6th Cir 1995) [Test enunciated for determining the admissibility of an expert's scientific testimony and the standard of review applicable thereto]

Theunissen v Matthews, 935 F2d 1454 (6th Cir 1991) [A personal-injury plaintiff has the burden to make a prima facie showing under federal due-process law and state long-arm statute to establish that personal jurisdiction exists over a foreign defendant.]