

Negligence Law Section

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“Message from the Chair”

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It is fitting (but totally coincidental) that the theme of my most recent Message from the Chairⁱ puts a bow on the themes from the first two and that my final column ties them all together. The Michigan Supreme Court’s 2023-2024 term confirms that the uptick of jury trials in Michigan is here to stayⁱⁱ and the Court’s most important decisions for negligence practitioners are equally balanced between “wins” for the plaintiff and defense bars.ⁱⁱⁱ This is not the outcome many expected.

Around this time last year, I participated in a webinar hosted by MDTC that reviewed the opinions of the previous Supreme Court term. The title of the program was “An Uphill Battle,” a suggestion that the defense perspective would not be well-received in the Michigan Supreme Court. That predictive description proved to be completely inaccurate: the most important opinions issued by the Supreme Court this past term were a mixed bag with plaintiffs and defendants securing victories for themselves and their constituencies.^{iv}

In my view, the most consequential decision of the 2023-2024 term of the Michigan Supreme Court was a unanimous win for the defense. The Court’s landmark decision in *Daher v Prime Healthcare*^v decided one narrow issue regarding the availability of wage loss damages for the estate of a minor with no work history or dependents in a medical malpractice case, but the impact of the decision goes far beyond the medical malpractice context and the parties to the case.

In a 7-0 decision, the Court reversed the Court of Appeals’ Opinion that improperly afforded an expansive view of the damages provision of the Wrongful Death statute in favor of a narrow construction that only allows specifically enumerated damages.^{vi} The Court’s unanimous opinion did not merely reverse the Court of Appeals Opinion in the captioned case, but the Court also reversed two other opinions that allowed for “Denney” damages in Wrongful Death cases.^{vii} Although the *Daher* case sounded in medical malpractice, the opinion address damages available in all wrongful death actions regardless of the underlying theory of liability.

The Court also ruled in favor of the defense perspective in *Williamson v AAA*^{viii} and *McLain v Diocese of Lansing*.^{ix} So much for the “uphill battle” narrative.

On the flip side, the plaintiff’s position prevailed in a number of cases, including *Danhoff v Fahim*,^x an opinion that recognized the flexible nature of expert witness admissibility standards

under MRE 702 (a ruling that applies equally to all litigants). In two other cases, the Court issued rulings that will allow the plaintiff's claim to continue after premature dismissals by the lower courts in *El-Jamaly v Kirko Manix*^{xi} and *Marion v Grand Trunk Western Rail*.^{xii} Similar to *Daher*, although these two cases arose out of narrow circumstances, the Court's rulings on the defendants' legal duties make it more likely a jury, rather than a judge, will decide the merits of those and other claims.

It has been a privilege to serve as Chair of the Negligence Law Section over the past year. And as much as I would enjoy the opportunity to pen another chair report, my term is ending at the end of the month when Donna MacKenzie takes the reins of the section with an impressive roster of council members and officers to support her. Donna set an ambitious agenda at the council's recent strategic planning meeting and I look forward to seeing what Donna and the incoming leaders of the section have in store for negligence practitioners.

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ⁱchrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://higherlogicdownload.s3.amazonaws.com/MICHBAR/8d29d9a3-9803-4628-98f8-80a37ad6f9d5/UploadedImages/pdf/newsletter/spring24.pdf.

ⁱⁱchrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://higherlogicdownload.s3.amazonaws.com/MICHBAR/8d29d9a3-9803-4628-98f8-80a37ad6f9d5/UploadedImages/pdf/newsletter/fall23.pdf

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^{iv} The Negligence Section's recent Supreme Court Update webinar wrapped up the term in greater detail. A recording can be viewed here: <https://youtu.be/NgcmKnqgtC8?si=ujlheHLo21oZp898>

^vhttps://www.courts.michigan.gov/4a4bf7/siteassets/case-documents/uploads/opinions/final/sct/165377_117_01.pdf

^{vi} MCL 600.2922(6).

^{vii} *Denney v Kent Co Rd Comm*, 317 Mich App 727; 896 NW2d 808(2016); *Palomo v Dean Transcp, Inc*, --- Mich App --; --- NW3d --- (2023). The Supreme Court has not yet issued orders in other cases that were held in abeyance pending *Daher*, including a case that was decided by the same Court of Appeals Panel that decided *Daher*, but implementation of the opinion will result in the same holding that disallows future earnings capacity damages for a minor with no work history or dependents, e.g., *Vasquez v Nugent*, --- Mich App ---; --- NW3d --- (2022).

^{viii}https://www.courts.michigan.gov/4a4be0/siteassets/case-documents/uploads/opinions/final/sct/165131_79_01.pdf

^{ix}https://www.courts.michigan.gov/4a1a36/siteassets/case-documents/uploads/opinions/final/sct/165741_87_01.pdf

^xhttps://www.courts.michigan.gov/4a1657/siteassets/case-documents/uploads/opinions/final/sct/163120_73_01.pdf

^{xi}https://www.courts.michigan.gov/4a1657/siteassets/case-documents/uploads/opinions/final/sct/163120_73_01.pdf

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