



**WEST MICHIGAN
CHAPTER OF THE
FEDERAL BAR
ASSOCIATION**

BAR & BENCH

NEWSLETTER

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President's Letter

Britt Cobb, President
Federal Bar Association, W.D. Michigan

My kids are away at college. If I call them and leave them a voicemail, I might never hear back from them. If I send them a text message, or communicate with them on one of their social media accounts, I will likely hear back from them within 60 seconds, and probably get a picture to go along with the message.

I had the good fortune of being on the faculty for the Hillman Advocacy Program this year. I gave all ten of our exceptional students my very traditional business card at the conclusion of the program and invited them to contact me. I got emails from two of the students and a handwritten note in the mail from one, but all of them found me on LinkedIn. I was so pleased to connect with all of them; it did not matter to me how.

There's no doubt that there are generational divides in how we connect and communicate today. We have members of our bar that have been practicing for more than 50 years and members of our bar that have been practicing for less than one year. The advances in technology that have occurred over time have completely changed when and how we communicate. While my generation prefers to talk on the phone or have an in-person meeting, younger people feel that most meetings or calls should be emails. My generation is more comfortable trying to resolve a case in the hallway before we walk into a courtroom to appear, while younger people tend to work it all out over email and then appear in court by Zoom. My generation looks for invitations to events or notices in the mail while younger people go to websites or follow social media pages to keep up to date on what is happening.

There is no right way or wrong way to do things, of course. It's just important that we all be able to connect with each other. But the best practice is to have some balance between digital and traditional communication. Not every conversation needs to happen in-person or over the phone but it is hard to have a true dialogue through email or other messaging. Not all court dates, meetings, and events need to be attended in person, but it is much harder to develop rapport and relationships through a computer screen.

Your FBA does its best to strike a balance. Our Lunch and Learn and other training events can be attended either in-person or by Zoom. We distribute our quarterly newsletter and send out event announcements by email.

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President's Letter

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The newsletter, videos of our training events, and the ability to join our chapter or pay your annual chapter dues (just \$50, renew now!) can all be accessed on our website: <https://westmichiganfederalbar.org/>. But many of our meetings and events can only be attended in-person.

If there are other ways that our chapter can communicate with, or accommodate, you more effectively, please do not hesitate to contact me or any of the officers with your suggestions. As with me and my kids and our Hillman students, your FBA just wants to make sure we stay connected and that you participate. We do not really care how!



***Britt Cobb** is the 2023 president of the West Michigan Chapter of the FBA. She is a partner at Willey & Chamberlain LLP in Grand Rapids, where she focuses on federal practice in Michigan, handling everything from serious drug trafficking and fraud offenses to more minor federal offenses.*

Postscript to the President's Letter— Farewell Don Davis

By Britt Cobb

Shortly after I finished my quarterly column and sent it off to our editor for publishing, I received the unexpected and terribly sad news of the passing of our dear friend and colleague, Don Davis. I would be surprised if there were anyone reading this newsletter who did not know Don Davis: he was a Marine veteran, an assistant United States Attorney in this district, United States Attorney in this district, and most recently, Of Counsel with SBBL Law, in addition to being a family man and involved with countless legal and community organizations. But Don was so much more to us than those things. He was one of the founding members of this organization and made it his purpose to mentor others and elevate the practice of law in our district. He was a baby boomer who had figured out how to make fresh, meaningful connections with every generation below him, including, and especially with, the youngest lawyers in our bar. He was unique in that way and was a great ambassador for the legal profession in our district.



Don Davis (1948-2023)

I know that there will be many, and more eloquent and detailed, pieces and memorials for Don, but I could not help but address his passing here in keeping with the theme of connections. Don was the master at connecting. He will be deeply missed.

Meet the Judges Panel and Reception a Success

Chief Judge Hala Jarbou, Judge Jane Beckering, and members of our chapter gathered at One Bourbon in Grand Rapids on November 30, 2022, to learn more about our district's newest Article III judges. Young Lawyers Division

chairs Emily Rucker and Rachel Frank moderated the discussion. Thank you Chief Judge Jarbou and Judge Beckering for participating in the event and sharing your stories with the group!



FBA Vice President of Programs Sean Tilton introduces Chief Judge Jarbou, Judge Beckering, Emily Rucker, and Rachel Frank (L-R).



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Judge Neff's Portrait Dedication Ceremony

On December 22, 2022, members of the bench and bar celebrated the unveiling of the Judge Janet Neff's portrait. Chief Judge Hala Jarbou presided over the ceremony, during which Judge Robert Jonker, Michigan Supreme Court Justice Elizabeth Welch, and Judge Neff's daughters, Meredith Neff and Genevieve Dormont, delivered remarks. Judge Neff's grandchildren proudly unveiled the portrait to a full courtroom of attendees. A reception sponsored by our FBA followed.



The ceremony was well attended by members of the bench and bar.



Judge Jonker recalled a young student in a school group looking at the then all-male wall of judicial portraits and asking whether a woman could serve as a judge. As Judge Jonker noted, there will be no such question with Judge Neff's portrait hanging on the wall.



Michigan Supreme Court Justice Elizabeth Welch reflected on getting to know Judge Neff from a young age, when her grandmother was Judge Neff's neighbor and friend.



Judge Neff reflected on her years of service on the court.



Judge Neff's portrait.

Upcoming Events

March 15, 12:00 pmTeaching the Rule of Law Abroad at Grand Rapids Federal Courthouse

April 11, afternoon Appellate Advocacy Program at MSU College of Law

June 24, 6:00 pm Kalamazoo County Bar Association Law Day Celebration with Jeff Daniels (ticket required; contact Chris Tracy (ctracy@wnj.com) for more info)

Appellate Roundup

Noteworthy Cases from the Sixth Circuit and Beyond

By Ashley Yuill

***Rop v. Federal Housing Finance Agency* 50 F.4th 562 (6th Cir. 2022)**

This appeal by shareholders of Fannie Mae and Freddie Mac presented a justiciability question. The shareholders sought to nullify an agreement that secured funding for the mortgage companies in exchange for their future profits. They alleged that the agreement was authorized by a government official—the Acting Director of the Federal Housing Finance Agency (“FHFA”)—serving in violation of the Appointments Clause because he was never confirmed by the Senate. Judge Maloney dismissed the action, finding that the Appointments Clause claim presented a nonjusticiable political question. The Sixth Circuit reversed in a published, split opinion.

According to the majority, the district court erred by evaluating the shareholders’ proposed *solutions* for the alleged constitutional violation, instead of whether a violation occurred at all. The majority considered the claim on the merits and held that the Acting Director was not serving in violation of the Appointments Clause when he signed the agreement. The Court remanded the case to the district court for further proceedings on the shareholders’ second Appointments Clause claim. Judge Thapar, while agreeing that the question was a justiciable one, dissented from the remainder of the majority’s decision on the merits.

Peter A. Patterson of Cooper & Kirk, PLLC represented the shareholders. Robert J. Katerberg of Arnold & Porter Kaye Scholer LLP represented the FHFA. Gerard Sinzidak of the Justice Department represented the Treasury Department.

***United States v. Mosley* 53 F.4th 947 (6th Cir. 2022)**

In this criminal appeal, the Sixth Circuit confronted a challenge to a drug conspiracy conviction that turned on whether the government offered sufficient evidence that defendant Stacey Gibson knowingly joined his co-defendant’s conspiracy. Employing a totality of the circumstances test, the majority found that it did. First, the majority noted, knowing entry into a drug conspiracy can be inferred when a buyer repeatedly purchases large quantities of drugs from a single seller. Here, Gibson purchased “an enormous amount of cocaine” from his co-defendant—equivalent to 7,650 individual doses. Other facts suggested that Gibson knowingly joined his co-defendant’s conspiracy, in the majority’s view; the “standardized” nature of their drug exchanges and the indicia of mutual trust between them, for example, supported the jury’s conclusion on this issue.

Judge Kethledge dissented on this ground and expressed his belief that the government’s proof was not enough to make this case an exception to the general rule that a buyer-

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Appellate Roundup

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seller relationship alone is insufficient to tie a buyer to a drug conspiracy. “Deferential review is review nonetheless,” Judge Kethledge pointed out. Because he believed the government proved only a buyer-seller relationship between Gibson and his co-defendant, Judge Kethledge would have reversed the conspiracy conviction.

Timothy F. Sweeney of Timothy F. Sweeney Law Office represented Gibson. AUSA Daniel T. McGraw represented the government.

Bachman Sunny Hill Fruit Farms, Inc. v. Producers Agriculture Insurance Co. 57 F.4th 536 (6th Cir. 2023)

In affirming Judge Neff’s dismissal of this apple insurance dispute, the Sixth Circuit refused to disturb the Federal Arbitration Act’s status as “the exclusive remedy” for challenging arbitration awards. The apple farm appellant argued that the Federal Crop Insurance Act created an alternative judicial remedy, but the Sixth Circuit disagreed in a published opinion.

When farmers and insurers enter into a federally reinsured crop-insurance contract like the one at issue in this case, they agree to terms set by the Federal Crop Insurance Corporation (FCIC)—including an arbitration requirement. After losing in arbitration with its insurer, the apple farm petitioned the district court to nullify the arbitration award.

But its petition did not comply with the substance or time limits of the Federal Arbitration Act (FAA). On appeal, the apple farm argued that the policy’s language granting “the right to judicial review of any decision rendered in arbitration” created a remedy outside the FAA. Not so, the Sixth Circuit held.

The FAA provides the exclusive remedy for challenging an arbitration once it is conducted, the Court reasoned, and nothing in the Federal Crop Insurance Act authorized the FCIC to create an alternative judicial remedy. “Because an agency may not create a right that Congress has not,” the Court concluded, “we will not assume that the FCIC sought to do just that by creating a new judicial remedy in the common policy.” Thus, it affirmed the petition’s dismissal for failure to comply with the FAA’s requirements.

Mark Granzotto of Mark Granzotto, PC represented the apple farm. Josephine A. DeLorenzo of Plunkett Cooney represented the insurer.



Ashley Yuill focuses on litigation and dispute resolution, including appeals, at Warner Norcross + Judd LLP.

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2022 Jury Trial Verdicts

United States District Court for the Western District of Michigan

VERDICT DATE	CASE NUMBER/NAME/TYPE	JUDGE	ATTORNEYS	JURY VERDICT (unless otherwise noted)
1/13/22	1:20-cr-24 USA v. Reynolds (Distribution of heroin and fentanyl resulting in death; distribution of heroin and fentanyl)	Maloney	Daniel McGraw, Alexis Sanford - USA Pedro Celis, Sean Tilton, James Fisher - D	Guilty
2/16/22	1:21-cr-96 USA v. Mann (Felon in possession of ammunition)	Jarbou	Kristin Pinkston, Alexis Sanford - USA James Fisher - D	Not Guilty
3/16/22	2:19-cv-175 Tucker #132271 v. Connor et al. (Prisoner civil rights / prison condition)	Jarbou (Marquette)	L T Tucker - Pro Se P Jessica Pelto - D	For Defendant
4/8/22	1:20-cr-183 USA v. Fox, et al. (Kidnapping conspiracy; conspiring to use weapon of mass destruction; possession of unregistered destructive device; possession of unregistered short-barreled rifle)	Jonker	Nils Kessler, Jonathan Roth - USA Christopher Gibbons, Karen Boer - D1 Joshua Blanchard, Melissa Freeman - D2 Julia Kelly - D5 Michael Hills - D6	Mistrial - D1, D2 Not Guilty - D5, D6
4/21/22	1:20-cr-189 USA v. Cartwright, Jr. (Conspiracy to distribute and possess with intent to distribute narcotics Cts 1, 4, 5; felon in possession of firearms Ct 6; possession of firearm in furtherance of drug trafficking Ct 7; conspiracy to commit concealment money laundering Ct 8)	Beckering	Austin Hakes, Erin Lane - USA Anthony Greene - D	Guilty - Cts. 1, 4, 5, 6 Not Guilty - Cts. 7, 8 Forfeiture verdict: 4/22/22
4/22/22	1:21-cr-75 USA v. Scott (Possession with intent to distribute controlled substance; possession of firearm in furtherance of a drug trafficking crime)	Jarbou	Daniel T. McGraw, Adam Townshend - USA Heath Lynch - D	Not Guilty

Continued on next page

VERDICT DATE	CASE NUMBER/NAME/TYPE	JUDGE	ATTORNEYS	JURY VERDICT (unless otherwise noted)
4/22/22	1:20-cr-99 USA v. Gray, et al. (Conspiracy to defraud the government; false statement to Veterans Administration; theft of government funds; false, fictitious, or fraudulent claim)	Jonker	David Reust, Lauren Biksacky - USA Scott Graham - D1 Jessica LaFond - D2	Guilty
4/27/22	2:21-cr-29 USA v. Deuman (Assault resulting in serious bodily injury; assault with dangerous weapon)	Maloney (Marquette)	Hannah Bobee, Theodore Greeley - USA Elizabeth LaCosse - D	Not Guilty
5/5/22	2:21-cr-27 USA v. Cobleigh (Misdemeanor assault by striking, beating or wounding)	Vermaat	Patrick Castle - USA Elizabeth LaCosse - D	Not Guilty
6/1/22	1:22-cr-19 USA v. Garcia (Conspiracy to escape from custody; attempted escape from custody and aiding and abetting)	Maloney	Daniel McGraw, Jonathan Roth - USA Brendon Basiga - D3	Not Guilty
7/7/22	1:20-cr-190 USA v. Darden-Mosby (Conspiracy to distribute and possess with intent controlled substances; possession with intent cocaine; possession of firearm in furtherance of drug trafficking)	Beckering	Austin Hakes, Erin Lane - USA Alvin Keel - D	Guilty - Cts 1, 2 Not Guilty - Ct 3
7/13/22	2:19-cv-159 Hill v. Wonch et al. (Civil Rights)	Jarbou (Marquette)	Phillip Toutant - P M. Sean Fosmire, Thomas Shimmel - D	For Defendants
7/14/22	2:19-cv-81 Green #189440 v Smith et al. (Prisoner civil rights/prison condition)	Jarbou (Marquette)	Virgil Green - Pro Se P Jessica Peltó, Sara Robbins - D	For Defendant
7/20/22	2:21-cr-8 USA v. Church (Aggravated sexual abuse of child under 12 years; abusive sexual contact of a minor)	Beckering (Marquette)	Hannah Bobee, Alexis Sanford - USA Nicole Becker - D	Not Guilty
8/3/22	2:20-cv-240 Gertcher v. Therrian (Civil rights)	Jonker (Marquette)	Amy DeRouin, Jonathan Abent, Christopher Trainor - P John Fedynsky, Ryan Wier - D	For Defendant

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VERDICT DATE	CASE NUMBER/NAME/TYPE	JUDGE	ATTORNEYS	JURY VERDICT (unless otherwise noted)
8/23/22	1:20-cr-183 USA v. Fox et al. (Kidnapping conspiracy; conspiring to use weapon of mass destruction)	Jonker	Nils Kessler, Christopher O'Connor - USA Christopher Gibbons, Karen Boer - D1 Joshua Blanchard, Melissa Freeman - D2	Guilty
8/25/22	1:22-cr-34 USA v. Rolling (Interference with commerce by robbery Cts 1-2; credit union robbery Cts 3-5; attempted interference with commerce by robbery Ct 6)	Jarbou	Daniel Mekaru - USA John Karafa - D	Guilty - Cts 3-6 Not Guilty - Cts 1-2
9/9/22	1:21-cr-168 USA v. Hulse (Distribution, receipt and attempted receipt, and possession of child pornography)	Beckering	Alexis Sanford, Patrick Castle - USA Matthew Borgula - D	Guilty
9/22/22	2:16-cv-231 Wolfe #275844 v. LaLonde (Prisoner civil rights / federal question)	Beckering (Northern case trial held in Grand Rapids)	Regan Gibson, Justin Allen - P John Thurber, Joshua Smith - D	For Defendants
9/28/22	2:19-cv-222 Good #197972 v. Goodell et al. (Prisoner civil rights / prison condition)	Maloney (Marquette)	Jonathan Good - Pro Se P Joshua Marcum, Scott Rothermel - D	Mistrial declared day 2 (plaintiff illness)
9/28/22	1:20-cv-449 Robinson #858448 v. Brege (Prisoner civil rights / prison condition)	Berens	Aaron Robinson - Pro Se P Gregory Crouch - D	For Defendant
9/29/22	1:18-cv-1163 Cantrell #397429 v. MDOC et al. (Prisoner civil rights / prison condition)	Beckering	Ian Cross, Laurence Margolis - P O.G. Joseph Reasons - D	For Defendants
10/7/22	1:19-cv-39 Lynn v Lansing, City of (Job discrimination-race)	Maloney	Scott Batey - P Amanda O'Boyle, Rhonda Stowers - D	For Plaintiff Damages awarded: \$800K state-law racial harassment claim; \$200K Title VII racial harassment claim

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VERDICT DATE	CASE NUMBER/NAME/TYPE	JUDGE	ATTORNEYS	JURY VERDICT (unless otherwise noted)
10/25/22	2:20-cv-7 Fawcett #183991 v. Fountain (Prisoner civil rights / prison condition)	Jonker (Marquette)	Anthony Fawcett - Pro Se P Jennifer Foster, Jessica Pelto - D	For Defendant
11/4/22	1:21-cr-169 USA v. Heard, et al. (Conspiracy to distribute methamphetamine, heroin and fentanyl Ct 1; possession with intent to distribute Ct 2-3; possession firearm in furtherance of drug-trafficking Ct 4)	Maloney	Steve Baker and Vito Solitro - USA Takura Nyamfukudza - D2 Brendon Basiga - D6	Guilty - D2 Ct 1 D6 Cts 1, 3, 4 Not Guilty - D2 Ct 2
11/17/22	2:19-cv-110 Webb #236602 v. Golladay (Prisoner civil rights / prison condition)	Beckering (Marquette)	Charles Webb - Pro Se P Joshua Marcum - D	For Defendant
12/2/22	1:20-cv-36 Jones (Personal Rep. of Estate of Wade Jones) v. Kent, County of, et al. (Prisoner civil rights / prison conditions)	Jarbou	Jennifer Damico - P Devlin Scarber, Jeffrey Bomber, Ronald Chapman-D	For Plaintiff Damages awarded: \$6.4 million (compensatory only)
12/7/22	1:20-cr-103 USA v Yang et al. (Wire fraud; computer intrusion causing damage)	Maloney	Davin Reust, Timothy VerHey - USA Patrick O'Keefe, II - D1 Mary Chartier-Mittendorf - D2	Not Guilty
12/15/22	1:17-cv-77 Magna Mirrors of America, Inc. v. SMR Automotive Mirrors UK Ltd., et al. (Patent infringement)	Beckering	D. Andrew Portinga, David Gass, Gwen Stewart, Julia Tabbat, Leif Peterson, II, Nathaniel Love, Stephanie Koh, Stephen van Stempvoort, Thomas Rein - P Allison Harms, Brett Sandford, Charles Sanders, Gregory Sobolski, Maximilian Grant, Michael Azzi, Sami Al-Marzoog, Sarah Cylkowski, Terra Reynolds - D	For Defendants



Help Wanted—Pro Bono Trial Attorneys for Prisoner Civil Rights Cases

Each year, members of our chapter represent prison inmates whose civil rights claims have survived summary judgment and are headed to trial. The district court is again looking for attorneys to accept pro bono appointments in this worthwhile program. The Western District's prisoner civil rights pro bono program presents an excellent opportunity for trial work, without lengthy discovery. We encourage our members—and especially our young lawyers, for whom trial experience can be hard to find—to participate. The link to the Court's Pro Bono Plan is: <https://www.miwd.uscourts.gov/sites/miwd/files/Pro%20Bono%20Guidelines.pdf>.

[gov/sites/miwd/files/Pro%20Bono%20Guidelines.pdf](https://www.miwd.uscourts.gov/sites/miwd/files/Pro%20Bono%20Guidelines.pdf).

Anyone interested, or with questions, can email stephanie_carpenter@miwd.uscourts.gov, and either Stephanie Carpenter or Judge Ray Kent can tell them about the process.



Reminder: Time to Renew Your FBA Membership

Thank you for your continued membership in the West Michigan Chapter of the Federal Bar Association! If you haven't yet renewed your membership for 2023, please do so today.

Membership in our local chapter of the FBA provides you exclusive access to events, our newsletter and email updates about the district, all providing unique opportunities to connect with members of the bench and bar. Our annual dues remain a great value at only \$50.00 for 2023.



You may renew your membership quickly and easily via PayPal on our website: <https://westmichiganfederalbar.org/annual-membership-checkout/>. If paying by check payable to the West Michigan Chapter of the Federal Bar Association, please mail it to the FBA, P.O. Box 2303, Grand Rapids, MI 49501-2303. Please include with your check a list of the names of all attorneys you are paying for along with your firm name, address, phone number, and email address.





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