



## Down the Rabbit Hole with the Court of Claims

Have the Courts Saved Hastily Conceived Legislation from Its Own Excesses?

By Christopher G. Hastings

One of the more colorful stories in Michigan legislation in the last year was the hurried effort to wrest jurisdiction of the Michigan Court of Claims from the reliably Democratic Ingham County Circuit Court and deliver it to the Michigan Court of Appeals, where judicial appointment would be made by the Michigan Supreme Court. The legislation was controversial. As State Bar of Michigan President Brian Einhorn pointed out in his January 2014 President's Page column in this publication,<sup>1</sup> the legislation managed to dodge potential roadblocks to its passage by the simple expedient of avoiding real dialogue and open debate, setting what may well be a record for fastest time from first introduction (October 24, 2013) to enactment into law (November 13, 2013). Because the legislation moved out of Senate committee to the governor's desk in a scant 13 days, the State Bar—which, by Michigan Supreme Court administrative

order,<sup>2</sup> cannot take a position on legislation for 14 days after posting notice of the legislation on its website—was rendered mute on the proposed legislation.

The resulting Senate Bill 652, now Public Act 164, is codified at various places in Michigan's Revised Judicature Act, MCL 600.101 *et seq.*<sup>3</sup> Our membership was left scratching its metaphorical head and wondering about the wisdom and practicality of moving a trial court to an appellate bench that would now sit in appellate jurisdiction of its own decisions.

### Power grab?

The Supreme Court moved quickly to answer some of the most perplexing questions regarding the quixotic legislation. Concern that the jurisdictional *coup d'etat* was a naked Republican

power grab was quieted to an extent by the appointment of four well-regarded jurists: Michael Talbot and Pat Donofrio, original Engler appointees; and Amy Krause and Deborah Servitto, original Granholm appointees.<sup>4</sup> Significantly, and as pointed out on the new Court of Claims website, all four jurists have spent time on the bench in trial-level tribunals, a move designed to address criticism that appeals court judges might struggle to master trial-court skill sets.

### Broader representation?

The original professed rationale for the legislation—broader representation for claims against the state—was at least partially realized by the fact that these four jurists are drawn from three of Michigan's four appellate districts (only the Third District is not represented). Michael Talbot, named chief judge of the new Court of Claims, is known for his administrative acumen—he was the Supreme Court's choice to reform the troubled 36th District Court just last year and is the current chief judge-elect of the Court of Appeals.

### Jury trial rights?

By the time Senate Bill 652 was enacted, the state House of Representatives was already at work on legislation designed to address concern regarding one of its more esoteric excesses: that some of the actions coming to the new Court of Claims could include a Michigan constitutional right to trial by jury. Just which claims might enjoy a jury right is not clear. Preexisting Court of Claims actions did not come with a right to a jury trial.<sup>5</sup> This law is unchanged. While the new legislation directs toward the Court of Claims additional subject matter jurisdiction over cases involving declaratory or equitable relief, or seeking an extraordinary

writ,<sup>6</sup> these actions generally do not enjoy a jury trial right either. Nonetheless, critics of the new legislation gained traction by pointing out the simple fact that Court of Appeals courtrooms do not feature jury boxes. The result was the swift enactment of a trailer bill: House Bill 5156, now Public Act 205,<sup>7</sup> provides that any matters within the jurisdiction of the Court of Claims in which a jury trial is available shall be tried in a circuit or district court of appropriate venue. The trailer law provides, too, that such circuit or district courts may also exercise supplemental jurisdiction over nonjury claims with the consent of all parties.

#### Court of Claims Jurisdiction

All claims against the state or its departments or officers, as detailed in MCL 600.6419

#### Judges of the Court of Claims

Hon. Michael J. Talbot (Chief Judge)

Hon. Pat M. Donofrio

Hon. Deborah A. Servitto

Hon. Amy Ronayne Krause

#### Term of Office

Two years

#### Statutes Applicable to the Court of Claims

Michigan Court of Claims Act,  
MCL 600.6401 *et seq.*

#### Court Rules Applicable to Court of Claims Actions

Same as Circuit Court

Our membership was left scratching its metaphorical head and wondering about the wisdom and practicality of moving a trial court to an appellate bench that would now sit in appellate jurisdiction of its own decisions.

### Transfer of existing actions

By virtue of the new legislation, roughly 120 pending Court of Claims cases were transferred to the Court of Appeals on November 13, 2013. Upon the Supreme Court's selection of the new jurists for the court, each pending action was assigned to one of the four judges by random draw. An additional couple-dozen actions formerly in other district or circuit courts that fell within the court's expanded jurisdiction were transferred to the Court of Claims on

## Court of Appeals Chief Clerk Jerome Zimmer relates that business in the Court of Claims is much the same now as it was before the jurisdictional transfer.

receipt of notice from the state pursuant to the new statute.<sup>8</sup> Although the statute provides for random assignment of these transferred actions,<sup>9</sup> a January 9, 2014, administrative order of the Court of Claims transferred all tax-related proceedings to Chief Judge Talbot under the auspices of MCR 8.110(C)(3)(a).<sup>10</sup>

### Filing the Court of Claims action

Court of Claims actions may be filed at the clerk's offices of the Court of Appeals in any of the court's four districts—Detroit, Troy, Grand Rapids, or Lansing.<sup>11</sup> Rules regarding notices of claim,<sup>12</sup> verification of complaints,<sup>13</sup> and filing an additional copy of the complaint for service on the defendant by the court<sup>14</sup> are unchanged. At present, new filings are sent to Lansing for assignment and service, but the court is working to install a computerized case management system that will allow the clerk's office where the action is filed to perform this function.<sup>15</sup>

### Proceedings in the “new” Court of Claims

Court of Appeals Chief Clerk Jerome Zimmer relates that business in the Court of Claims is much the same now as it was before the jurisdictional transfer.<sup>16</sup> Although practitioners anticipate having to comply with appellate rules, the Michigan Court Rules applicable to circuit court actions and the circuit court fee structure still apply in the Court of Claims.<sup>17</sup> Word is that the Institute for Continuing Legal Education is organizing a webinar that will include as panelists Chief Judge Talbot and Chief Clerk Zimmer to educate Michigan lawyers regarding the jurisdictional transfer. A primary thrust of that webinar will be that the Court of Claims has been transferred to its new home under the Court of Appeals' aegis pretty much intact.

### Appeals?

Appeals of decisions of the Court of Claims will continue to go to the Court of Appeals, just as they always have.<sup>18</sup> No statute or court rule forbids a Court of Appeals judge from sitting in appeal of his or her own decision made on the Court of Claims, but this is at least implicitly forbidden by Canons 1 and 2 of the Michigan Code of Judicial Conduct.

### Whither the Court of Claims?

This article is not intended to bless the actions of the Michigan legislature or serve as an apology for them. The manner in which Senate Bill 652 was passed is an embarrassment to the democratic ideal and should not be repeated. On the other hand, the swift actions of our Supreme Court and Court of Appeals may have blunted the impact of the legislation. It should be business as usual in the Court of Claims. ■

---

*Christopher G. Hastings has been a member of the State Bar of Michigan since 1987. He is a professor of law at the Thomas M. Cooley Law School, teaching Civil Procedure I and II and Comparative Procedure—Michigan. Previously, he practiced in the areas of complex commercial and other civil litigation in Grand Rapids. He is a current member and former chair of the SBM Standing Committee on the Unauthorized Practice of Law.*

### ENDNOTES

1. Einhorn, *Diversity, civility, and dialogue*, 93 Mich B J 14 (January 2014), available at <<http://www.michbar.org/journal/pdf/pdf4article2316.pdf>>. All websites cited in this article were accessed June 19, 2014.
2. Administrative Order No. 2004-01.
3. See 2013 PA 164, available at <<http://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2013-PA-0164.pdf>>.
4. Administrative Order No. 2013-01, available at <[http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2013-01\\_2013-11-13\\_Court%20of%20Claims-appointments.pdf](http://courts.mi.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Adopted/2013-01_2013-11-13_Court%20of%20Claims-appointments.pdf)>.
5. MCL 600.6443.
6. Compare new language inserted into MCL 600.6419(1)(a-b) to language removed from MCL 600.6419(4).
7. 2013 PA 205, available at <<http://www.legislature.mi.gov/documents/2013-2014/publicact/pdf/2013-PA-0205.pdf>>.
8. See MCL 600.6404(3).
9. *Id.*
10. Court of Claims Administrative Order No. 2014-01, available at <<http://courts.mi.gov/Courts/COC/Documents/Court%20of%20Claims%20Administrative%20Order%202014-01.pdf>>.
11. MCL 600.6410(2).
12. MCL 600.6431.
13. MCL 600.6434(2).
14. MCL 600.6434(4).
15. Interview with Jerome Zimmer, chief clerk of the Court, Michigan Court of Appeals, April 18, 2014.
16. *Id.*
17. MCL 600.6422(1) and (3).
18. MCL 600.6446.