

STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPLICATION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS

CHATAPURAM S. RAMANATHAN,

Plaintiff-Appellee,

v.

Court of Appeals #266238
Lower Court No. 98-810999 NO
Circuit Court Judge Michael F. Sapala

**BOARD OF GOVERNORS OF WAYNE
STATE UNIVERSITY and LEON CHESTANG,**
Jointly and Severally,

Defendants-Appellants.

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**PLAINTIFF'S-APPELLEE'S OBJECTIONS TO
BLUE CROSS BLUE SHIELD OF MICHIGAN'S
MOTION TO FILE AMICUS CURAE BRIEF IN SUPPORT
OF DEFENDANTS'-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL**

PROOF OF SERVICE

FILED

JUN 6 2007

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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PLAINTIFF'S ANSWER AND OBJECTIONS TO BLUE CROSS BLUE SHIELD OF MICHIGAN'S MOTION TO FILE BRIEF AS AMICUS CURIAE

NOW COMES plaintiff CHATHAPURAM RAMANATHAN and files these Objections to Blue Cross Blue Shield's Motion to File Amicus Curiae Brief in Support of Defendant's Application for Leave to Appeal. In response to this motion and in support of his objections, plaintiff states:

1. Plaintiff has no doubt that BCBSM, as an employer, has in the past and will in the future be sued for discrimination and retaliation. However, like defendant WSU's Application that BCBSM supports, BCBSM misstates the holding of *Garg v Macomb Co Comm Mental Health Servs*, 472 Mich 263; 696 NW2d 646, as amended. BCBSM also incorrectly states that the holding of this Court's amended opinion in *Garg*, as misstated by BCBSM, has been "consistently and uniformly applied by the trial courts of this state and by the Court of Appeals".

2. BCBSM takes issue with the Court of Appeals' decision below to the extent that it holds *in part* that the admission of evidence is within the trial court's discretion. In this the Court of Appeals is hardly breaking new ground. Since time immemorial, the Rules of Evidence have always left it to the discretion of the trial court to admit evidence, subject to its relevance, probity and reliability. Insofar as the Court of Appeals below was called upon to interpret this Court's decision in *Garg*, the Court held that *Garg*, following the removal of footnote 14, does not alter this long-standing Law of Evidence and does not *prohibit* the admission of evidence as "relevant background evidence" notwithstanding its age, provided that it is relevant and reliable and probative of issues for which it is offered. The Court of Appeals' decision below does nothing to "jeopardize" any employer's "protection against stale *claims*" because employers are otherwise fully protected from any claim filed more than

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three years prior. The Court of Appeals' decision below does nothing to alter the additional protection from stale claims that this Court also granted employers by abolishing the continuing violations doctrine.

3. The Amicus Brief offered by BCBSM does nothing to assist defendant WSU's efforts to "demonstrate error" below or to establish the necessity of a "bright line rule" because it offers no arguments beyond those fully set forth in defendant's Application.

4. Plaintiff has no direct knowledge regarding defendant WSU's consent to BCBSM's motion, but has no reason to question it.

5. This Court's rules do not authorize or permit motions to appear as Amicus Curiae in any context other than appeals. Plaintiff has no knowledge whether this Court otherwise permits or encourages such motions at the application stage.

WHEREFORE for the reasons advanced above, as will be described in the attached Brief in Support of Objections to BCBSM's Motion and has been fully stated previously in Plaintiff's Brief in Opposition to Defendant's Application for Leave to Appeal, plaintiff **CHATHAPURAM RAMANATHAN** respectfully requests this Honorable Court to deny BCBSM's motion in its entirety.

Respectfully submitted,

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Dated: June 5, 2007

**PLAINTIFF'S BRIEF IN SUPPORT OF OBJECTIONS
TO BCBSM'S MOTION TO FILE AS AMICUS
CURIAE IN SUPPORT OF DEFENDANT'S APPLICATION**

COUNTER-STATEMENT OF QUESTION INVOLVED

WHETHER THIS COURT'S OPINION IN *GARG* PERMITS THE ADMISSION OF RELEVANT, RELIABLE AND PROBATIVE EVIDENCE WITHIN THE DISCRETION OF THE TRIAL COURT, AS THE LAW OF EVIDENCE HAS ALWAYS PERMITTED, NOTWITHSTANDING ITS RELATION TO A PERIOD OF TIME OUTSIDE THE STATUTE OF LIMITATIONS?

Plaintiff-Appellee respectfully submits that answer is "Yes".

The Court of Appeals correctly held that this Honorable Court's amended decision in *Garg*, only prohibits recovery of *damages* for acts occurring outside of the statute of limitations period, but did not bar evidence of those same acts as *relevant background evidence*, and its decision is not in conflict with those of any other lower courts.

COUNTER-STATEMENT OF FACTS

Plaintiff reiterates the Counter-Statement of Facts as set forth in Plaintiff's Brief in Opposition to Defendants'-Appellants' Application for Leave to Appeal as though fully reiterated herein. [*See* Plaintiff's Brief at pp. 1-12].



I. INTRODUCTION

It is plaintiff's position that the Motion by Blue Cross Blue Shield of Michigan to File Brief Amicus Curiae in support of defendant WSU's Application for Leave to Appeal should be denied on the ground that it adds nothing new that is relevant to resolution of defendant's Application. BCBSM's Motion and Brief merely reiterate the same arguments advanced by defendant WSU in its Application and those arguments suffer from the same problems and defects. Because plaintiff has previously responded to these arguments in depth in his Brief in Opposition to Defendant's Application for Leave to Appeal, plaintiff will respond to BCBSM's motion and brief only in summary form with reference to the pages in Plaintiff's Brief in Opposition where the issues are discussed and described in greater detail.

A. **BCBSM Misstates the Holding of this Court's Opinion in *Garg* as Amended.**

BCBSM's contention that this Court's *Garg* opinion "unambiguously holds" that evidence of acts occurring outside the statute of limitations is inadmissible is patently wrong. Were that the case, we would not be having this discussion. The cases BCBSM cites in its n.1, however germane they might be to interpreting contracts and other written instruments, are simply inapposite to interpreting the judicial opinions of this State's courts. As with any judicial opinion, it must be read for what it holds, not for what a litigant *wishes* it held. [*See also* discussion – Plaintiff's Brief in Opposition at pp.19-21].

BCBSM's reiterates defendant's argument that footnote 14 was mere surplusage, the removal of which is of no consequence, without offering any cogent reason why this Court would have otherwise taken such an action. The premise asserted would certainly astonish the eminent law professors who filed as Amicus Curiae brief in support of rehearing, requesting as specific relief the withdrawal of footnote 14. Moreover, the argument leads



directly to the absurd proposition that this Court amended its opinion for capricious reasons or for no reason at all. In this regard, BCBSM adds nothing to defendant's position advanced in its application and contains the same factual and logical defects as discussed in plaintiff's Brief in Opposition, filed in March 2007. [See Plaintiff's Brief in Opposition at p. 19].

In further support of its argument about *Garg's* "unambiguous holding," BSBSM pulls the same isolated quotes out of the *Garg* opinion as did defendant WSU, and plaintiff makes the same responses. [See Plaintiff's Brief in Opposition at pp.16-18; see also n.14, n.15 and n.16]. Without footnote 14, there remains only one binding "holding" in this Court's *Garg* amended Opinion: The continuing violations doctrine is abolished and damages cannot be recovered for causes of action accruing outside the statute of limitations.

B. BCBSM Cites the Identical Cases as Defendant in a Failed Attempt to Establish that Post-*Garg* Decisions Apply *Garg* to Bar "Evidence" outside the Statute Period.

BCBSM erroneously contends, as did defendant WSU, that the holding of *Garg* (as incorrectly stated by BCBSM) has been "consistently and uniformly applied by the trial courts of this state and by the Court of Appeals". Plaintiff's Brief in Opposition to Defendant's Application analyzes in detail each and every one of these cited cases; none stand for the proposition asserted. [See Plaintiff's Brief in Opposition at pp. 23-29].

C. BCBSM Fails to Establish, as did Defendant, that a Bright Line Exclusion of Relevant Evidence is either Necessary or Supported by Sound Policy.

BCBSM dismisses with disdain the concept of "relevant background evidence," as if it without intelligible independent meaning, except to pose the danger of recovery for stale claims. Relevant background evidence is, however, fundamental to the evidentiary rules and has always been admissible as proof of many things, *i.e.*, such things as pattern and practice, motivation or intent, or simply because background facts are frequently essential to



understanding the ultimate facts. And, even more importantly, it is fundamental to the trial of a case that juries are *presumed*, with cautionary instruction from the trial judge where indicated, to *understand the differences*. [See also discussion – Plaintiff’s Brief in Opposition at p. 18]. The Law of Evidence is replete with rules that admit evidence for one purpose, and the jury is told that it cannot consider that same evidence for any other purpose. The Hearsay rules are classic examples. Evidence that would otherwise be excluded as hearsay may be admitted to show motivation, intent, mental or sensory perceptions and so forth; and jurors are instructed that it may not be considered to prove the truth of the facts asserted.

The bright line evidentiary exclusion of all evidence outside the limitations period that defendant and BCBSM argue for is nonsensical in the real world of trial work. It would in fact wreck havoc on the entire judicial process. It would not apply just to *employment* cases, but to *all cases*. It would bar not only *plaintiffs*, but would bar *all parties*, including defendants - employers and insurance companies from laying out their claims, issues and defenses in an orderly fashion so that the entire genesis of a dispute can be put before the fact finder. Putative defendants need be mindful of what they wish for because the policy implications of such a rule are enormous and do not run only in one direction. [See also discussion – Plaintiff’s Brief in Opposition at pp. 22-23].

II. CONCLUSION

BCBSM’s Motion to File Amicus Curiae Brief in Support of Defendant’s-Appellant’s Application for Leave to Appeal should be denied. The position for which defendant advocates, and which BCBSM supports, ignores the significance of this Court’s removal of footnote 14 in the amended *Garg* opinion; obscures *Garg’s* one and abundantly clear holding; raises *in terrorem* arguments that belie centuries of jurisprudence relating to the

process of proving cases through the orderly admission of relevant, probative and reliable evidence; and, argues for a broad exclusionary rules that rests on poor to shaky policy grounds that would redound to *everyone's* detriment.

Respectfully submitted,

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Dated: June 5, 2007

PROOF OF SERVICE

Cindy Bromberg, certifies that the foregoing Plaintiff-Appellee's Objections to BCBSM's Motion to File Amicus Curiae Brief in Support of Defendants'-Appellants' Application for Leave to Appeal and Brief in Support of Objections were served upon all parties to the above cause to each attorney of record at their respective addresses disclosed on the pleadings on June 5, 2007, by First Class U.S. Mail.


CINDY BROMBERG

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June 5, 2007

Via Federal Express
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RE: Chatapuram S. Ramanathan vs Board of Governors of Wayne State University, et al
Court of Appeals #266238
Lower Court No.: 98-810999 NO

Dear Clerk:

Enclosed please find original and seven copies of Plaintiff's-Appellee's Objections to Blue Cross Blue Shield of Michigan's Motion to File Amicus Curae Brief in Support of Defendants'-Appellants' Application for Leave to Appeal and Proof of Service in the above-entitled matter.

Very truly yours,


ANN CURRY THOMPSON
(Direct Dial Extension 234)

ACT:reh
enclosure

cc: Sean P. Fitzgerald-Regular Mail
Susan Healy Zitterman-Regular Mail

