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STATE OF MICHIGAN
IN THE SUPREME COURT

PORTIA WILLIAMSON and LATESHA WILLIAMSON, as personal representative for the Estate of CHARLES WILLIAMSON (deceased),	Supreme Court No. 165131 Court of Appeals No. 357070
Plaintiff-Appellees,	Wayne County Circuit Court Case No. 19-014047-NF
-v-	
AAA-MICHIGAN,	
Defendant-Appellant,	

Brief of *Amicus Curiae*
Insurance Alliance of Michigan

Michael J. Cook (P71511)
Collins Einhorn Farrell PC
Appellate Counsel for Amicus Curiae
Insurance Alliance of Michigan
4000 Town Center, 9th Floor
Southfield, MI 48075
(248) 355-4141
michael.cook@ceflawyers.com

Dated: February 23, 2024

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Attachment	*Title*
1	Logeman, No-Fault Automobile Law and Practice in Michigan, Form 8.17
2	*Candler v Farm Bureau* Summary-Disposition Motion, Dovitz Letter to Jennings, dated Nov. 17, 2015 in Exhibit E to Motion

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Statement of Interest[1]

Insurance Alliance of Michigan is the principal state government-affairs and public-information association consisting of insurers, groups, and related organizations operating in Michigan. Its members include property/casualty insurers representing approximately 94% of the Michigan auto-insurance market, 90% of the Michigan home-insurance market, and 60% of the Michigan commercial-insurance market. Its purpose is to serve the industry and consumers by providing educational, media, legislative, and public information on significant issues affecting the insurance business in this state.

This appeal involves a claim made through the Michigan Assigned Claims Plan (MACP), which the Michigan Automobile Insurance Placement Facility (MAIPF) administers. All Michigan no-fault insurers and self-insurers under the no-fault act participate in the assigned claims plan. MCL 500.3171. Six Michigan no-fault insurers service the plan, handling the claims that the MAIPF assigns them. MCL 500.3173a(3). Four of those servicing insurers are IAM members.

IAM's members handle the vast majority of MACP claims and, therefore, have considerable expertise and knowledge about MACP claims handling and the costs that are ultimately passed on to all of the MACP members' insureds. MCL 500.3176.

[1] None of the parties or their counsel contributed monetarily or to the authorship of this brief. Insurance Alliance of Michigan made the only monetary contribution to preparing this brief.

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Statement of Question Presented

> Whether MCL 500.3173a(4), the statutory provision governing fraudulent insurance acts in the filing of a claim for no-fault benefits, applies to misrepresentations offered during discovery?

The trial court answered, yes.

The Court of Appeals answered, no.

Plaintiffs-appellees answers, no.

Defendant-appellant answers, yes.

Amicus curiae Insurance Alliance of Michigan answers, yes.

This Court should answer, yes.

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Introduction

A claim in litigation is still a claim. That concept is obvious. Yet, the Court of Appeals, plaintiffs, and an amicus aim to debunk it. They try to limit the term "claim" to pre-litigation. But their arguments don't reconcile with the statute at issue, this Court's precedent, binding Court of Appeals precedent, nor with how claims for no-fault personal protection insurance (the claim at issue here) are litigated. This Court should reverse the Court of Appeals for a simple reason: a claim in litigation is still a claim.

The Michigan Assigned Claims Plan (MACP) provides personal protection insurance benefits to people injured in auto accidents who have no other coverage under Michigan's no-fault act. The Michigan Automobile Insurance Placement Facility (MAIPF) administers the MACP and its costs are shouldered by everyone who is compelled to buy Michigan no-fault insurance. Not surprisingly, then, the Legislature decided to not tolerate fraud in MACP claims. An MACP claim is ineligible for payment of benefits when a person makes a fraudulent statement in support of the claim. It's a simple rule captured in an unambiguous statute. Nevertheless, the Court of Appeals held that the statute permits fraudulent statements supporting an MACP claim if the statement occurs during litigation.

The Court of Appeals' holding insulates a stunning number of claims supported by fraud from the legislated consequence. In 2023, for example, the MAIPF received over 5,400 claims. Claimants also put over 2,000 MACP claims in suit. A substantial majority of the new lawsuits (over 60%) were not yet assigned to a servicing insurer. And a hefty chunk of those claims (over 20%) were filed before the MAIPF even received an

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application for benefits. Under the Court of Appeals' holding, over 2,000 MACP claims (in just one year) can rely on fraud without becoming ineligible and hundreds of cases are completely sheltered from the Legislature's remedy for fraudulent statements supporting them.

The Court of Appeals' holding is premised on the term "claim" referring only to a pre-litigation claim. Nothing in the no-fault act supports that limitation. The act doesn't tolerate fraud in MACP claims simply because the claimant filed an action. Nor should it. This Court should reverse the Court of Appeals' published opinion in this case.

Statement of Facts

IAM accepts the facts stated in defendant-appellant AAA-Michigan's supplemental brief, which plaintiffs-appellees Portia Williamson and Latesha Williamson, as personal representatives of the estate of Charles Williamson (deceased), don't appear to dispute in any way material to the issue in this appeal.

Discussion

A. Michigan's no-fault act doesn't permit fraud in support of MACP claims.

In Michigan, people injured in auto accidents are generally entitled to personal protection insurance (PIP)[2] benefits. MCL 500.3105. Those benefits include medical expenses, work-loss, and replacement services. MCL 500.3107. An injured person typically receives PIP benefits from

[2] "Personal protection insurance benefits are abbreviated PIP by convention, with the abbreviation PPI being used for property protection insurance benefits." *McKelvie v Auto Club Ins Ass'n*, 459 Mich 42, 44 n. 1; 586 NW2d 395 (1998).

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their or a relative's insurer. MCL 500.3114.[3] But when no other PIP coverage is available, the MACP fills the gap. MCL 500.3115; MCL 500.3172(1)(a).

Though a significant number of MACP claims start with the claimant filing an action against the MACP, most MACP claims start with an application. MCL 500.3172(3). The MAIPF reviews each application and, if it determines that the claimant is initially eligible, it assigns the claim to a servicing insurer. MCL 500.3173(1), (3). The assigned servicing insurer handles the claim, including a final determination of eligibility, and the MAIPF reimburses its payments and costs. MCL 500.3175.

The MACP's costs are ultimately borne by the public that is compelled to buy no-fault insurance. MCL 500.3176; MCL 500.3101(1). Because the public shoulders MACP costs, the no-fault act takes a strong stand against fraud in MACP claims.

An otherwise eligible MACP claim becomes ineligible for payment if a person presents knowingly false, material information in support of the claim:

> A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility, or to an insurer to which the claim is assigned under the assigned claims plan, for payment or another benefit knowing that the statement contains false information concerning a fact or

[3] Though the Legislature amended the priority statutes in 2019, the amendments aren't relevant here because no policies provided coverage for Charles Williamson under the pre- or post-2019 versions of the priority statutes.

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> thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment of personal protection insurance benefits under the assigned claims plan. [MCL 500.3173a(4).]

Here, the Court of Appeals held that a claimant can submit knowingly false, material information in support of an MACP claim while litigating the claim. It reasoned that, because the statute concerns statements made supporting a "claim," it only penalizes statements made during "the prelitigation insurance claims process." *Williamson v AAA of Mich*, 343 Mich App 496, 500; 997 NW2d 296 (2022). "False statements submitted during discovery, after an *action* for recovery has been filed, are not statements offered in support of a *claim* to the MAIPF or the assigned insurer." *Id.* at 509.

B. Claims are part of actions.

The Court of Appeals analysis centered on an effort to distinguish a "claim" from an "action." This Court has addressed the relationship between a "claim" and an "action" before. They are certainly different words with different meanings. But, as this Court has recognized, they're also related. And the relationship confirms that the concept of a "claim" isn't as narrow as the Court of Appeals portrayed.

In *CAM Constr v Lake Edgewood Condo Assn'*, 465 Mich 549; 640 NW2d 256 (2002), the parties accepted a case-evaluation award, but the plaintiff then tried to appeal a prior partial-summary-disposition ruling. The case-evaluation rule stated that, when both parties accept, the court enters a judgment that "shall be deemed to dispose of all claims in the

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action ….” MCR 2.403(M)(1). This Court defined the terms “claim” and “action.” *Id.* at 554. And it held that, “according to the plain meaning of these words, a claim consists of facts giving rise to a right asserted in a judicial proceeding, which is an action. In other words, the action encompasses the claims asserted.” *Id.* at 555. This Court concluded that the plaintiff couldn’t appeal because acceptance of case evaluation disposed of all claims in the action. *Id.*

Fourteen years later, this Court reached the same conclusion when interpreting the same words in an entirely different context—the Construction Lien Act. In *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544; 886 NW2d 113 (2016), a contractor prevailed on its breach-of-contract claim against a condominium, but not its construction lien claim. The act provided that, “In an action to enforce a construction lien through foreclosure, the court shall examine each claim and defense” to determine the amount due and “The court may allow reasonable attorneys’ fees to a lien claimant who is the prevailing party.” MCL 570.1118(2). Because the act used the terms “claim” and “action,” this Court defined those terms. *Ronnisch*, 499 Mich at 559. Again, this Court held that “‘a claim consists of facts giving rise to a right asserted in a judicial proceeding, which is an action. In other words, the action encompasses the claims asserted.’” *Id.*, quoting *CAM Constr*, 465 Mich at 555. Because the contractor prevailed in the action, the fact that it didn’t obtain judgment on the foreclosure claim was inconsequential and it could recover attorney fees under the act. *Id.* at 560-561.

Ronnisch and *CAM Constr* demonstrate a fundamental flaw in the Court of Appeals’ analysis: claim and action are not mutually exclusive terms. A claim is part of an action. Or, as this Court said twice, “‘the action

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encompasses the claims asserted.'" *Ronnisch*, 499 Mich at 559, quoting *CAM Constr*, 465 Mich at 555.

C. In a PIP action, the claim, which often involves benefits that accrue during an action, is processed throughout the litigation.

The Court of Appeals adopted an overly narrow view of the term "claim." A claim is, as the panel said, "a request for insurance benefits." *Williamson*, 343 Mich App at 508. But claims are *not* limited to "prelitigation." A complaint is a request for insurance benefits, too. *Ronnisch* and *CAM Constr* establish that claims are part of actions; they are the facts giving rise to the asserted right. And PIP claims, in particular, often develop throughout litigation.

PIP claims don't become static or fixed at the courtroom door. The Court of Appeals, leading commentators, and (most important) this Court have recognized that the claim process continues into and is part of the litigation.

For example, in *Allard v State Farm Ins Co*, 271 Mich App 394; 722 NW2d 268 (2006), an insured filed a PIP action against his insurer and both parties rejected a case-evaluation award. *Id.* at 397. The insurer obtained a no-cause verdict. *Id.* But the trial court denied case-evaluation sanctions based on the insured's argument that accepting case evaluation could have precluded him from seeking future PIP benefits. *Id.* at 397-398. The Court of Appeals reversed. PIP benefits accrue when the expense is incurred. *Id.* at 400, citing MCL 500.3107(1), .3110(4). The court explained that, "[h]ad both parties here accepted the case evaluation, [the insurer] would have been deemed liable to pay $55,000 of PIP benefits, which had accrued *up to* the time of the case evaluation." *Id.* at 400 (emphasis in

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original). The plaintiff could have filed a separate action for expenses incurred after case evaluation. *Id.*

Allard recognized that PIP benefits incurred *during* an action are part of the claim. This Court codified that principle when it amended the case-evaluation rule in 2012.

When *Allard* was decided, the MCR 2.403(M)(1) provided:

> If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered ....

In May 2012, this Court amended the court rule to specifically address PIP claims, adding the emphasized text below:

> If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered, *except for cases involving rights to personal protection insurance benefits under MCL 500.3101 et seq., for which judgment or dismissal shall not be deemed to dispose of claims that have not accrued as of the date of the case evaluation hearing*.

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So, this Court expressly recognized that acceptance of a case-evaluation award disposes of the claim, including benefits that accrued *during* the action. In other words, this Court recognized that the claim process continues throughout the litigation.

The Court of Appeals applied the amended rule in *Vandercook v Auto-Owners Ins Co*, 325 Mich 195; 923 NW2d 921 (2018). The *Vandercook* parties accepted the case-evaluation award, but the plaintiff tried to limit the acceptance to certain unpaid bills and exclude wage loss. The Court of Appeals held that the plaintiff couldn't limit his acceptance. The complaint didn't limit the scope of the claim to specific benefits. *Id.* at 204. So "*all claims which have accrued at the time of the case evaluation* are, as a matter of law, disposed of pursuant to MCR 2.403(M)(1)." *Vandercook*, 325 Mich at 205 (emphasis added).

This Court has good company in its view that PIP claims continue to develop during an action. The Institute of Continuing Legal Education's treatise "No-Fault Automobile Law and Practice in Michigan" is authored and edited by many of Michigan's most experienced and knowledgeable no-fault attorneys. See Adrienne D. Logeman et al, No-Fault Automobile Law and Practice in Michigan (ICLE 4th ed 2020). And it repeatedly expresses the view that PIP-claim processing doesn't end or freeze with the filing of a complaint.

For example, the treatise instructs practitioners to "estimate the amount of benefits and interest that may accrue during the lawsuit's pendency" when deciding whether to file in district court or circuit court. *Id.*, §8.23. It tells attorneys to "draft the no-fault complaint broadly enough to cover additional or unexpected claims or benefits that might arise during the pendency of the suit." *Id.*, §8.25. It adds: "Because the jury may

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award benefits for expenses that are proved as late as the time of trial, the complaint should be broad enough to cover claims or issues that may develop in the future." *Id.* The treatise also warns defense counsel about independent medical examinations "early in the litigation process" because they may find themselves "factually unprepared to address the next year or two of benefit claims without a second examination," which courts can deny. *Id.*, §9.3.

Allard, this Court's amendment of MCR 2.403(M)(1), *Vandercook*, and the editors and authors of ICLE's no-fault treatise share the same view: PIP-claim processing continues into and is part of the litigation. The Court of Appeals' contrary holding in this case is a mistaken outlier.

D. The Estate made a fraudulent statement in support of its claim.

The ICLE authors' advice to broadly couch a claim for PIP benefits in a complaint has particular relevance here. ICLE's treatise provides a sample PIP complaint. Logeman, No-Fault Automobile Law and Practice in Michigan, Form 8.17 (**Attachment 1**). The complaint in this case is substantially similar to ICLE's sample. (Defendant-Appellant Appendix 29-33, Complaint). Neither limits the scope of the claim to specific benefits. See also *Vandercook*, 325 Mich at 204.

Identifying the services at issue is important with broadly framed complaints. AAA sent standard, targeted discovery to determine the type of benefits at issue. Notably, it requested information on "services claimed *through the date you answer these Interrogatories*." (Defendant-Appellant Appendix 46, Interrogatory Answers (emphasis added)). AAA's interrogatories also weren't a far-reaching demand for all documents in the Estate's possession. It requested information on specific types of

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services, including when the services were provided. (Defendant-Appellant Appendix 44, Interrogatory Answers). And it only requested "documents … *in support of* this claim." (*Id.* (emphasis added)).

The personal representatives' response was reflective of fraud too-often seen in the no-fault system—they sought benefits for services that were never provided. The personal representatives' February 2020 interrogatory responses provided calendars for attendant care and replacement services provided in November and December 2019. Charles Williamson died in October 2019. The services reflected in the calendars were not and could not have been provided. Yet Latesha Williamson (a personal representative of Charles Williamson's estate) signed the interrogatory answers, confirming that the calendars were submitted "in support of this claim." (Defendant-Appellant Appendix 44, 53, Interrogatory Answers).

The Estate did exactly what MCL 500.3173a(4) prohibits. It presented a written statement in support of its claim to AAA for payment knowing that the statement contained false information concerning a material fact. MCL 500.3173a(4). The Court of Appeals excused the estate's fraud because it occurred after it filed an action. But the claim never stopped being a claim. There is no textual basis for the Court of Appeals' pre- and post-litigation distinction. A claim is part of an action and PIP-claim processing, in particular, continues during litigation. The Court of Appeals erred. This Court should reverse.

E. *Candler* is controlling authority.

In *Candler v Farm Bureau Mut Ins Co of Mich*, 321 Mich App 772; 910 NW2d 666 (2017), the court reversed and ordered summary disposition

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because the plaintiff submitted false replacement-services calendars in support of his MACP claim during litigation.

Here, the Court of Appeals said that that *Candler* is "consistent" with its holding. *Williamson*, 343 Mich App at 510 & n. 7. It didn't say why. See *id.* Amicus curie Coalition Protecting Auto No-Fault (CPAN) tries to fill the gap, suggesting that the *Candler* plaintiff may have "continu[ed] to submit claims forms directly to Farm Bureau."[4] (CPAN *Amicus* Brief, p. 8 & n. 3). The panel and CPAN are wrong.

Candler is on all fours with this case. Like here, the *Candler* plaintiff sent calendars to counsel for the assigned insurer during litigation. (**Attachment 2,** *Candler v Farm Bureau* Summary-Disposition Motion, pp. 163-164,[5] Dovitz Letter to Jennings, dated Nov. 17, 2015 in Exhibit E to Motion).[6] The calendars were expressly sent "regarding the above referenced matter," which was described as "Kalvin Candler –vs- Farm Bureau Mutual Insurance Company of Michigan Case No. 15-011245-NF." (*Id.*).[7] The calendars were for services supposedly provided *after* the

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[4] Speculating on what the facts may have been is not a valid way to distinguish precedent.

[5] Page references for this attachment are to the bates stamp number in the lower right-hand corner.

[6] This Court can take judicial notice of records in other Michigan cases. See *Belfiori v Allis-Chalmers, Inc*, 107 Mich App 595, 601; 309 NW2d 682 (1981) (courts may properly take judicial notice of files in other cases), citing *People v Fleisher*, 322 Mich 474, 486; 34 NW2d 15 (1948) and *Wilkins v Conaty*, 65 Mich 614, 620-621; 32 NW 841 (1887); *People v Snow*, 386 Mich 586, 591; 194 NW2d 314 (1972) (holding that appellate courts can take judicial notice of court records in other cases under the "one court of justice doctrine").

[7] This also shows that claims are processed throughout the litigation.

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plaintiff filed the complaint. (*Id.*, p. 025 (Exhibit B to Motion, Complaint, dated Aug. 31, 2015); *id.*, p. 163 (Exhibit E to Motion); *id.*, pp. 208-209 (Exhibit F to Motion, September and October 2015 Calendars); see *Candler*, 321 Mich App at 776. And, like this case, the services were never provided. *Candler*, 321 Mich App at 776.

In short, *Candler* did not involve pre-litigation statements. The panel in this case and CPAN are wrong in suggesting that it's consistent with the panel's pre-litigation limitation or distinguishable. *Candler* admits no pre-litigation limitation and it's controlling. MCR 7.215(J)(1). The panel in this case should have followed it or declared a conflict. MCR 7.215(J)(2). Because it did not declare a conflict, *Candler* is still the controlling precedent. *Romain v Frankenmuth Mut Ins Co*, 483 Mich 18, 20; 762 NW2d 911 (2009). The panel in this case clearly erred in failing to follow it.

F. Fraud makes the claim ineligible for payment.

The no-fault act is unambiguous about the remedy for fraud in a MACP claim: the claim "is ineligible for payment of personal protection benefits under the assigned claims plan." MCL 500.3173a(4). CPAN suggests that ineligibility should only apply to the fraudulent service. It's yet another attempt to artificially narrow the term "claim" with no basis in the statutory text.

A PIP claim has multiple components—medical expenses, wage loss, and replacement services. MCL 500.3107. CPAN would parse each component into numerous individual "claims." The act doesn't contain such artificial limitation or micro-parsing of "claim."

The act consistently uses the term "claim" to refer to a request for coverage under the act, including all of its constituent parts. The claim is a

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"demand to an insurer by its insured or a third party for payments that are believed to be due" or "a request for insurance benefits." *Griffin v Trumbull Ins Co*, 509 Mich 484, 498; 983 NW2d 760 (2022); *Williamson*, 343 Mich App at 508; see also *CAM Constr*, 465 Mich at 554 (defining "claim" as "The *aggregate* of operative facts giving rise to a right enforceable by a court." (emphasis added)). Whether through an application or a complaint, the claim is a singular demand or request for coverage. There is no statutory support to parsing a claim into hundreds of separate claims for various line-item benefits.

CPAN's argument would also make section 3173a(4) a *pro*-fraud provision. CPAN's interpretation would encourage insureds to at least try defrauding the MAIPF. If CPAN is right, claimants could seek payment for anything and everything, content knowing that the MAIPF must pay the non-fraudulent benefits even if the bulk of the claim was fraudulent. Under CPAN's unsupported theory, MACP claimants would have nothing to lose and could only gain by attempting fraud. Nothing suggests the Legislature intended to be so accommodating for fraud.

Just like a claim that is deemed ineligible at the outset, a claim that is supported by a material fraudulent statement is ineligible for payment. MCL 500.3173a(4). There is no statutory basis to separate benefits within the claim to allow payment of some but not others.

Conclusion

A claim is a claim, regardless whether it's asserted in an application for benefits or in a complaint. It's "a demand to an insurer by its insured or a third party for payments that are believed to be due after a motor vehicle accident." *Griffin*, 509 Mich at 498.

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The Court of Appeals' holding that section 3173a(4) only addresses pre-litigation fraud has no basis in the statutory text. The difference between a claim and an action doesn't support it; an "action encompasses the claims asserted." *Ronnisch*, 499 Mich at 559, quoting *CAM Constr*, 465 Mich at 555. And the panel's holding has no basis in how PIP claims are litigated; the claim continues to develop and is processed throughout the litigation.

The panel clearly erred in failing to follow established, binding precedent—*Candler*. Accordingly, this Court should reverse and reinstate the trial court's order granting summary disposition. Alternatively, this Court should grant leave to appeal.

Collins Einhorn Farrell PC

BY: */s/ Michael J. Cook*

MICHAEL J. COOK (P71511)
Appellate Counsel for Amicus Curiae
Insurance Alliance of Michigan
4000 Town Center, 9th Floor
Southfield, MI 48075
(248) 355-4141
Michael.Cook@ceflawyers.com

Dated: February 23, 2024

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Certificate of Compliance

I certify that the Brief of Amicus Curiae, Insurance Alliance of Michigan complies with the type-volume limitation set forth in MCR 7.212(B). I am relying on the word count of the word-processing system used to produce this document. This brief uses a 12-point proportional font (Book Antiqua), and the word count for this brief is 3,660.

Collins Einhorn Farrell PC

BY: */s/ Michael J. Cook*

MICHAEL J. COOK (P71511)
Appellate Counsel for Amicus Curiae
Insurance Alliance of Michigan
4000 Town Center, 9th Floor
Southfield, MI 48075
(248) 355-4141
Michael.Cook@ceflawyers.com

Dated: February 23, 2024