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STATE OF MICHIGAN
IN THE SUPREME COURT OF APPEAL FROM THE COURT OF APPEALS
CAMERON, P.J., and HOOD and YOUNG.

JANICE SHERMAN,

Plaintiff-Appellant,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee,

and

JOHN DOE,

Defendant.

Supreme Court Case No:

Court of Appeals Case No: 364393
Lower Court Case No: 22-000075-NF
Washtenaw County Circuit Court

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PLAINTIFF-APPELLANT JANICE SHERMAN'S APPLICATION FOR LEAVE APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

Plaintiff-Appellant seeks appellate review pursuant to MCR 7.305(B)(5)(a) for a Court of Appeals decision that was both "clearly erroneous" and "will cause material injustice." This Court has jurisdiction over this appeal pursuant to MCR 7.303(B)(1) and 7.305. The Court of Appeals reversed a lower court ruling from the Washtenaw Circuit Court, and published its decision on September 5, 2024. The published opinion has far-reaching consequences for the State of Michigan's insurance system and therefore jurisdiction is also proper under MCR 7.305(B)(3).

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STATEMENT OF ORDER APPEALED

This Application for Leave to Appeal requests review of a for publication Court of Appeals opinion entered on September 5, 2024, on interlocutory leave granted, reversing the trial court's order denying Defendant-Appellee's (Defendant-Appellant in the Court of Appeals) Motion for Summary Disposition. (**Exhibit A– Second Published Opinion**).

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STATEMENT OF QUESTIONS PRESENTED

1. Did the lower court err in denying Defendant's Motion for Summary Disposition and ordering an alternative, and more proportionate, remedy?

   Plaintiff-Appellant: No.

   Defendant-Appellee: Yes.

   Trial Court: No.

   Court of Appeals: Yes.

2. Did the Court of Appeals err in concluding that the trial court abused its discretion by choosing to reform the No-Fault insurance policy in response to Plaintiff's alleged misrepresentation, rather than ordering rescission?

   Plaintiff-Appellant: Yes.

   Defendant-Appellee: No.

   Trial Court: Yes.

   Court of Appeals: No.

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I. STATEMENT OF MATERIAL PROCEEDINGS

On September 9, 2022, Defendant-Appellee Progressive Michigan Insurance (hereinafter "Defendant") filed a motion for summary disposition alleging fraud/misrepresentation in the procurement of the subject insurance policy. **(Exhibit B, MSD)** The primary allegation in the motion was that Plaintiff-Appellant Janise Sherman (hereinafter "Plaintiff") misrepresented her address and the potential existence of resident relatives in the policy application. *Id.* In denying the motion, the trial court agreed with Plaintiff that the alleged misrepresentation would not have been material to the binding of the policy, only to the premium amount. **(Exhibit C, Order Denying MSD)** Notably, the trial court explicitly declined to conclude that a misrepresentation had occurred. (**Exhibit D, Trial Court Transcript)** The trial court ordered the policy be reformed to reflect Plaintiff's Detroit address and that an adjusted premium amount be paid within 14-days. *Id.* The trial court equitably reformed the contract to ensure residents of Michigan are insured and to ensure that Defendant was "made whole" based on the insurance premium it believes it would have been entitled had Plaintiff listed Detroit as her residence. *Id.*

A motion for reconsideration filed by Defendant was denied on December 12, 2022. **(Exhibit E, Order Denying Motion for Recon)**. On January 3, 2023, Defendant-Appellee (Defendant-Appellant in the Court of Appeals) filed an Application for Leave to Appeal. On June 27, 2023, the Court of Appeals granted the application for leave. (**Exhibit F, CofA Order Granting Leave**). On June 20, 2024, after the parties submitted additional briefing on leave granted and having heard oral argument, the Court of Appeals issued a for publication opinion

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deciding the appeal, reversing and remanding the lower court's ruling. (**Exhibit G, First Published CofA Opinion**).

On July 11, 2024, Plaintiff-Appellant filed a Motion for Reconsideration with the Court of Appeals arguing that the Court of Appeals applied the incorrect standard on appeal, as it was reviewed entirely *de novo* instead of for an abuse of discretion. (**Exhibit H, Motion for Reconsideration**). The motion for reconsideration was granted as to the review standard. (**Exhibit I, CofA Order on Reconsideration**). However, the lower court's ruling was again reversed and remanded under the abuse of discretion standard (hereinafter "Second Published Opinion"). (**Exhibit A, CofA Second Published Opinion**). Plaintiff-Appellant now seeks leave of this Court to review the Court of Appeals Opinion.

II. GROUNDS FOR LEAVE

Plaintiff-Appellant seeks leave of this Court pursuant to MCR 7.305(B)(3), as the issues on appeal involve a legal principle of major significance to the state's jurisprudence. If allowed to stand, the Court of Appeals' published decision will erode the autonomy, independence, and discretion of trial courts to issue well-reasoned and equitable rulings. In the context of insurance contracts, this decision equates "innocent misrepresentations" with "fraud," leaving trial courts with only one course of action when faced with a misrepresentation: rescission and dismissal. Regardless of the significance of the misrepresentation or the intent behind it, the decision mandates automatic rescission and dismissal, imposing a rigid standard that disregards nuanced and equitable considerations.

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The Court of Appeals' one-size-fits-all ruling will unfairly penalize unsophisticated insurance consumers acting in good faith, causing undue hardship for those merely trying to obtain essential coverage. Misrepresentations on insurance applications are common, as these documents are complex and primarily designed to protect the interests of insurers. In this case, the trial court devised a logical and equitable solution that addressed the harm to the insurer without inflicting additional damage on the policyholder, ordering the payment of the difference in premium caused by the innocent misrepresentation. If the published decision stands, not only would trial courts be discouraged from pursuing such creative and balanced remedies, but they would be entirely barred from issuing such fair and nuanced rulings.

III. STANDARD OF REVIEW

A) Recission

The remedy of rescission is reviewed on appeal for abuse of discretion. *Pioneer State Mut Ins Co v Wright,* 331 Mich App 396, 952 NW2d 586 (2020). "[T]he trial court's factual findings are reviewed for clear error, and a finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*

B) Summary Disposition

Summary disposition is proper when a "claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action." MCR 2.116(C)(7). "A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. If such material is submitted, it must be considered. MCR 2.116(G)(5)." *Maiden v. Rozwood,* 461 Mich. 109, 119; 597 N.W.2d 817 (1999).

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Summary disposition is proper where "[t]he opposing party has failed to state a claim on which relief can be granted." MCR 2.116(C)(8). "Only the pleadings may be considered when the motion is based on subrule (C)(8) or (9)." MCR 2.116(G)(5). A motion brought under subrule (C)(8) tests the legal sufficiency of the complaint solely on the basis of the pleadings. *Corley v. Detroit Bd. of Ed.,* 470 Mich. 274, 277; 681 N.W.2d 342 (2004).

Summary disposition is proper where "except as to the amount of damages, there is no genuine issue as to any material fact." MCR 2.116(C)(10). "Under MCR 2.116(C)(10), the motion tests the factual support for a claim and must be supported by affidavits, depositions, admissions, or other documentary evidence." *Maiden v. Rozwood,* 461 Mich. 109, 120; 597 N.W.2d 817 (1999). "A court properly grants the motion when the proffered evidence, viewed in the light most favorable to the nonmoving party, fails to establish any genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *West v. Gen. Motors Corp.,* 469 Mich. 177, 183; 665 N.W.2d 468 (2003).

IV. STATEMENT OF FACTS

On or about January 19, 2022, Plaintiff-Appellee Janise Sherman ("Plaintiff") initiated this action for first-party benefits against Defendant-Appellant Progressive Michigan Insurance Company ("Defendant" or "Progressive") for No-Fault benefits owed after a July 14, 2021 motor vehicle accident. **(Exhibit J, Complaint)**

Approximately seven months before the accident, Plaintiff purchased a No-Fault insurance policy with Defendant Progressive. (**Exhibit K, Deposition of Sherman, pg. 14**) At the time she applied for the Progressive policy, Plaintiff was living with her daughter in Clinton Township. *Id.* at 14-16. Plaintiff lived with her daughter "on and off, but mostly on" for approximately a year

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and a half while her Detroit home was uninhabitable due to flooding. . *Id.* at 14-16. Plaintiff's driver's license listed her residence with her daughter in Clinton Township. . *Id.* at 14-16. Plaintiff had a place to sleep in her daughter's home as her basement was "fixed up like a room." . *Id.* at 14-16. Additionally, Plaintiff had mail coming to her daughter's address. . *Id.* at 14-16. She also depended on her daughter for physical assistance. . *Id.* at 67-68.

On September 9, 2022, Defendant filed a motion for summary disposition alleging fraud/misrepresentation in the procurement of the subject insurance policy. **(Exhibit B, MSD).** As discussed above, this motion was denied by the trial court and then subsequently reversed by the Court of Appeals. In the summary disposition motion, Defendant argued that Plaintiff's permanent address was actually in Detroit and not in Clinton Township where she had been staying. *Id.* at 7. It also argued that Plaintiff did not disclose she was living with her daughter at the time she purchased insurance. *Id.* Defendant argued that the premium for the purchased policy would have increased by 75.5% if these facts were disclosed. *Id.*

In response to the motion, the Plaintiff asserted that she had been unequivocally residing at the Clinton Township address for several months prior to purchasing the policy. Further, she argued that she had met with an insurance agent to procure the policy, and the application was completed by the agent based on her full disclosure of all relevant coverage information. (**Exhibit L, Response to MSD).** There was no attempt or intent to defraud Progressive, and the Defendant has not claimed otherwise. Instead, the Defendant argued that the policy could be rescinded

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irrespective of intent or whether the Plaintiff acted innocently. **(Exhibit B, MSD, pg. 11).**

The trial court ultimately denied the motion for summary disposition and, instead, ordered the Plaintiff to pay the difference in premiums that the Defendant claimed was lost due to the alleged misrepresentations. In doing so, the trial court weighed the interests of the defendant insurer, the injured claimant, and interest of the State of Michigan:

> *I would be **applying the Court's equitable power** and the State's interest in ensuring that folks are insured, and to the extent that the insurance company believes it was harmed by any potential misrepresentation. **I'm not making the finding that there was a misrepresentation,** but I am reforming the contract so that Progressive is made whole based on the – the – um – insurance premium that it believes it would have been entitled to had the insured listed Detroit as the residents.* **(Exhibit D, Trial Court Transcript)**

Despite the fact that the trial court engaged in thoughtful analysis and the proper balancing of equities, the Court of Appeals reversed the lower court and published its decision. For the reasons set forth below, the Court of Appeals must be reversed and the lower court's ruling must be reinstated.

V. ARGUMENT

In the Court of Appeals' Second Published Opinion, it held that the trial court erred when it denied Defendant's motion for summary disposition. The rationale behind the decision was, essentially, that Plaintiff engaged in alleged misconduct while Defendant did not. However, in coming to this conclusion the Court of Appeals engaged in improper fact-finding—a role outside its purview when rescission is involved—despite expressly acknowledging in the opinion that its review was limited to determining whether the trial court had abused its discretion. **(Exhibit A,**

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Second Published Opinion, pg. 3).

In reaching its conclusion, the Court of Appeals mistakenly equated an "innocent misrepresentation" with "fraud." *Id.* This was contrary to the trial court's explicit determination, which ruled out both fraud and misrepresentation. **(Exhibit D, Trial Court Transcript).** The Court of Appeals then compounded these errors by holding that the trial court failed to balance the equities, when in fact the trial court very meticulously weighed the interests of the Plaintiff, Defendant, *and also the State of Michigan. Id.* For these reasons, the Court of Appeals decision must be reversed and the trial court's decision reinstated.

A) The Court of Appeals utilized the wrong standard of review in *both* of its published decisions.

The Court of Appeals first published a decision in this case on June 20, 2024. In that opinion, it reviewed the trial court's ruling *de novo* and conducted its own fact-finding. (**Exhibit G, First Published CofA Opinion**). Plaintiff then filed a motion for reconsideration pointing out that, when rescission of an insurance policy is at issue, review must be for an abuse of discretion pursuant to *Pioneer State Mut Ins Co v Wright,* 331 Mich App 396, 952 NW2d 586 (2020). The Court of Appeals agreed, granted Motion for Reconsideration, and issued a subsequent opinion.

The Court of Appeals' Second Published Opinion notably recognizes that, when an insurer seeks rescission of a policy through summary disposition, the trial court's decision must be reviewed for an abuse of discretion. This recognition was significant enough to prompt the Court of Appeals to grant Plaintiff's motion for reconsideration to correct the standard of review. **(Exhibit A, Second Published Opinion, p. 4).**

However, despite this acknowledgment, the Court of Appeals once again engaged in

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improper fact-finding and failed to afford any deference to the trial court's thoughtful analysis. Remarkably, the Second Published Opinion is **nearly identical to the first**, with the exception of the added acknowledgment of the proper standard of review. In essence, while the Court of Appeals recognized the correct standard, it failed to apply it.

For example, on multiple occasions in both published opinions the Court of Appeals referenced misrepresentations made by Plaintiff even though the Judge Kuhnke in the lower court expressly stated she was "not making the finding that there was a misrepresentation." **(Exhibit D, Trial Court Transcript).** In essence, the Court of Appeals went well beyond a review of the fact-finding, analysis, and weighing of the equities conducted by the lower court. Instead, the Court of Appeals immediately sought to determine whether either party engaged in misconduct or made a mistake, when its role was to determine *whether the trial court* engaged in misconduct or made a mistake. This approach by the Court of Appeals not only exceeds its role as an appellate court but also undermines the foundational principle of appellate review: deference to the trial court's factual findings and equitable determinations. By improperly substituting its own fact-finding and analysis, the Court of Appeals compromised the integrity of the appellate process, casting doubt on the fairness and impartiality of its decision.

B) The Appellate Opinion's improper fact-finding resulted in sweeping conclusions that are inherently contradictory.

The failure to correct mistakes in the Second Published Opinion underscores the Court of Appeals' troubling determination to justify its conclusion, even at the expense of proper analysis and adherence to judicial standards. While the Court of Appeals acknowledges that its focus should be limited to evaluating whether there was an abuse of discretion, it strays into commentary on what it perceives as the unfairness of the facts. This overreach undermines the proper role of appellate review.

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For instance, the Court of Appeals initiates its analysis by *sua sponte* concluding that Plaintiff misrepresented facts on her policy application. "While we reject Progressive's argument for fraudulent misrepresentation, we agree there is no genuine question of fact of innocent misrepresentation." **(Exhibit A, Second Published Opinion, pg. 4)**. Again, the trial court made crystal clear that it did *not* find Plaintiff misrepresented on her policy application. **(Exhibit D, Trial Court Transcript).** The alleged innocent misrepresentation, which the Court of Appeals initially states is not fraudulent, inexplicably transforms into fraud in the conclusory paragraph of its Second Published Opinion: "By ordering the policy reformed, the trial court placed the financial burden of paying PIP benefits on Progressive, notwithstanding the fact that Sherman obtained those very same benefits by way of fraud."**(Exhibit A, Second Published Opinion, pg. 4)**. The ultimate conclusion - that Plaintiff committed fraud - is entirely inconsistent with the preceding four pages of the opinion.

In essence, the Court of Appeals' Second Published Opinion appears resolute in reaching a conclusion it had already decided upon. It disregards its proper role and responsibilities, neglects the standard of review, and manipulates both the facts and its analysis to support the conclusion it seeks - that Plaintiff engaged in "misconduct", while Progressive did nothing wrong. Moreover, the opinion is internally contradictory. At the outset, it explicitly states that Plaintiff did not commit fraud, yet later asserts the opposite, claiming that she did. Ultimately, it is the Court of Appeals—not the trial court—that erred and overstepped its authority.

C) The lower court engaged in the exact balancing of equities desired by the Court of Appeals.

The Court of Appeals held that the trial court should have balanced the equities and "examined Progressive's conduct related to the procurement of the policy." *Id.* Specifically, the Court of Appeals wanted the trial court to recognize that Progressive did nothing wrong. The

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implication is that the trial court could not have ordered reformation of the policy unless Progressive had done something wrong, as doing otherwise would be inequitable. However, this argument overlooks the need for proportionality in the remedies applied. Rescission and dismissal are among the most extreme and disproportionate remedies available, far exceeding what would be fair or just under the circumstances.

To be sure, this is *exactly* what the lower court considered when it decided on reformation over recission. Judge Kuhnke carefully and methodically reviewed the evidence, listened to arguments, and considered multiple options before settling on ordering reformation. She did so after balancing equities:

> *I would be* ***applying the Court's equitable power*** *and the State's interest in ensuring that folks are insured, and to the extent that the insurance company believes it was harmed by any potential misrepresentation.* ***I'm not making the finding that there was a misrepresentation,*** *but I am reforming the contract so that Progressive is made whole based on the – the – um – insurance premium that it believes it would have been entitled to had the insured listed Detroit as the residents.* **(Exhibit D, Trial Court Transcript)**

The Court of Appeals' critique of the trial court's decision fails to recognize the thoughtful and deliberate process Judge Khunke undertook in balancing the equities. The trial court carefully weighed the evidence, considered the interests of all parties, and prioritized the state's overarching policy of ensuring that individuals remain insured. Judge Khunke explicitly acknowledged Progressive's potential concerns while refraining from making a definitive finding of misrepresentation, instead opting for a fair and proportionate remedy: reformation of the contract. This approach not only made Progressive whole by adjusting the premium to reflect the insured's actual residence but also avoided the extreme and inequitable remedy of rescission. The trial court's decision exemplifies a proper exercise of equitable powers, tailored to achieve fairness without disproportionate punishment. There was absolutely no abuse of discretion here.

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i) The law supports the use of less harsh and more just remedies for immaterial misrepresentations.

There is no dispute that no-fault insurers are entitled to equitable remedies available under common law despite those remedies not being specifically incorporated into the No-Fault Act:

> "We granted leave to appeal to address whether an insurance carrier may avail itself of traditional legal and equitable remedies to avoid liability under an insurance policy on the ground of fraud in the application for insurance, when the fraud was easily ascertainable and the claimant is a third party. In accordance with this Court's precedent in *Keys v. Pace,* 358 Mich. 74, 99 N.W.2d 547 (1959), we answer this question in the affirmative." *Titan Ins. Co. v. Hyten*, 491 Mich. 547, 550; 817 N.W.2d 562 (2012) (emphasis added).

Several distinct factual circumstances may give rise to equitable remedies, including fraud perpetrated in the procurement of an insurance policy:

> "Michigan's contract law recognizes several interrelated but distinct common-law doctrines— loosely aggregated under the rubric of 'fraud' — that may entitle a party to a legal or equitable remedy if a contract is obtained as a result of fraud or misrepresentation. These doctrines include actionable fraud, also known as fraudulent misrepresentation; innocent misrepresentation; and silent fraud, also known as fraudulent concealment." *Id*., at 555.

While an insurer may be entitled to an equitable remedy if an innocent misrepresentation is established—which the trial court denied but the Court of Appeals concluded—rescission is not the sole available remedy. In fact, recission is an extreme remedy, and this Honorable Court has emphasized the importance of exercising caution in its application:

> "*Rescission is not a matter of right, but rests in the sound discretion of the court. Each case of rescission must be decided on its own particular facts*." *Schnitz v. Grand River Ave. Development Co.*, 271 Mich. 253, 257; 259 N.W. 900 (1935) (citations omitted, emphasis added).

> "'An application to a court of equity for the rescission, cancellation, or delivering up of agreements and securities is not founded on an absolute right, as in case of an action at law on a contract or in tort, but is rather an appeal to the sound discretion of the court, which in granting or refusing the relief prayed acts on its own notions of what is reasonable and just under all the surrounding circumstances.'" *Kavanau v. Fry*, 273 Mich. 166, 171; 262 N.W. 763 (1935), quoting 9 C.J. p. 1161 (emphasis added).

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In the instant case, the Court of Appeals seemingly failed to consider or evaluate any equitable alternatives beyond rescission and dismissal. Many less severe and more proportional remedies were available, including the remedy ordered by the lower court. In ordering reformation of the policy and payment of additional premiums, the lower court correctly assessed the facts and circumstances and determined an appropriate and proportionate remedy. The law provided the lower court ample discretion to cure any perceived deficiencies in the manner ordered by the lower court. No palpable error was made by the lower court. The Court of Appeals was wrong to reverse in light of the lower court's sound discretion.

ii) The lower court merely ordered the policy be reformed to Defendant's alleged facts

It should be noted that the policy "reformation" in this case did not significantly modify the rights or obligations of either party. The reformation ordered was merely a substitution of addresses. The only change caused by the reformation was that Plaintiff's premiums increased. The lower court's order to "reform" the policy merely changed information (the address) to conform to the contracting party's intentions and did not affect coverage or the decision to provide coverage.

iii) Reformation was proper regardless of whether plaintiff had unclean hands

While the lower court implicitly agreed with Defendant that Plaintiff's address associated with the policy must be changed to her Detroit address, it did not hold that Plaintiff committed fraud or had "unclean hands." Plaintiff was living with her daughter in Clinton Township at the time of the accident and continued to do so for approximately a year and a half (on and off) while her home was inhabitable due to flooding. (**Exhibit K, Deposition of Sherman, pg. 14**) Plaintiff's driver's license listed her legal residence with her daughter in Clinton Township. Plaintiff had a place to sleep in her daughter's home as her basement was "fixed up like a room".

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She also depended on her daughter for physical assistance. Additionally, she had some mail coming to her daughter' address. (**Exhibit K, Deposition of Sherman, pg. 22**)

There was never any intention to misrepresent or commit fraud. Defendant never provided evidence of intent. The lower court never found intent. There is simply no reason to believe Plaintiff has unclean hands. Irrespective of this, the policy "reformation" in this case did not significantly modify the rights or obligations of either party. The reformation was merely a substitution of addresses, which did not affect the rights or obligations of the party.

D) Allowing this decision to stand raises serious public policy concerns, including implications for the autonomy of trial courts and the state's ability to ensure that drivers maintain proper insurance coverage.

i) The decision to publish the Appellate Opinion will have far-reaching and harmful consequences.

The troubling publication of the Second Published Opinion will have far-reaching and harmful consequences, affecting millions of insurance applicants who innocently make mistakes on their applications. Under this precedent, even minor, unintentional errors could result in the denial of coverage after an accident—an outcome that could mean the difference between life and death. This is a profoundly unjust and devastatingly unfair result.

The Michigan Association for Justice ("MAJ") submitted an Amicus Brief in support of the Plaintiff, representing Michigan's citizens, insureds, and policyholders, to highlight the far-reaching and significant consequences of the publication of the subject opinion. (**Exhibit M, MAJ Brief**). The MAJ expressed deep concern over the erosion of trial court judges' autonomy and their ability to issue well-reasoned equitable decisions. Additionally, the MAJ emphasized the disproportionality of the remedy sought by the Court of Appeals, particularly in light of the balanced and equitable remedy already ordered by the lower court. The Supreme Court must take into account these broader, long-term implications and overturn the Court of Appeals' decision to

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preserve the integrity of equitable jurisprudence.

ii) Reformation in this case does not create an incentive to misrepresent information on insurance applications

Although not touched on by the Court of Appeals, Defendant's application for leave argued that the lower court's ruling will create an incentive for claimants to misrepresent information on insurance applications in order to get cheaper premiums. However, this is simply not true. The lower court's ruling was a very fact-specific decision based on the fact that Plaintiff was *actually* living at the Clinton Township address when she applied for insurance. The bigger concern for this court should be the negative reverberations from the appellate decision that are going to affect the insurance applicants that innocently make mistakes on their insurance applications. If you are not perfect on your application, you will not get coverage after an accident - that could mean life or death. This is a devastatingly unfair result.

Notably, MCL 500.2111(4)(f) was amended in 2019 to ban the use of the "postal zone in which the insured resides" as a factor in setting premium rates. Defendant openly argues in its brief that it wants to charge residents in Detroit higher premiums than residents elsewhere. Accordingly, the reverse public policy arguments can be made. Specifically, upholding the Court of Appeals' decision would put this Court's imprimatur on the use of the "postal zone in which the insured resides" in determining premium rates. This practice was expressly banned by the legislature in the 2019 No-Fault Amendments. *See* MCL 500.211(4)(f). Upholding the published Court of Appeals decision would incentivize insurers to violate MCL 500.2111(4)(f).

Finally, upholding the Court of Appeals decision would also incentivize insurers - the sophisticated party to the transaction that understands the process and the law - to stick their heads in the sand regarding easily ascertainable facts (e.g. running an ISO or similar public record search), then invite "misrepresentations" that were mere mistakes, just so they can collect

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premiums without the risk of ever having to pay out. The incentive for wrongdoing is much greater for the insurers than for policyholders. For these reasons, the Court of Appeals must be reversed and the lower court's ruling must be reinstated.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff-Appellant respectfully requests that this Court REVERSE the Court of Appeals' decision and reinstate the lower court's decision.

PROOF OF SERVICE
The Undersigned certifies that the forgoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on November 26, 2024.

☐ US Mail ☐ Fax
☐ Hand Delivered ☐UPS
☐ Fed.Express ☒E-File/E-Mail

Signature: /s/ Janel Savaya

Respectfully Submitted,

THE SEVA LAW FIRM

/s/ Pratheep Sevanthinathan

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[1] In accordance with MCR 7.212(B)(3), Plaintiff's Brief contains 4,408 words.