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STATE OF MICHIGAN
IN THE SUPREME COURT

In re ESTATE OF JENNIFER L. FOWLER

SHELLIE SPACIL, Personal Representative of the ESTATE OF JENNIFER L. FOWLER,

Appellant,

v

JULIE BROOKS, Personal Representative of the ESTATE OF HELEN FOWLER

Appellee,

and

SHELLIE SPACIL, Trustee for the JENNIFER L. FOWLER TRUST,

Appellant

v

JULIE BROOKS, Personal Representative of the ESTATE OF HELEN FOWLER

Appellee

MSC Docket Nos. 167501, 167502, and 167503
Court of Appeals Docket Nos. 365600, 36510, and 365610
St. Clair Probate Court Case Nos. 19-000085-DE & 2022-000259-CZ

SUPPLEMENTAL BRIEF OF *AMICUS CURIAE* PROBATE AND ESTATE PLANNING SECTION OF THE STATE BAR OF MICHIGAN

Submitted by:
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PROBATE & ESTATE PLANNING SECTION

Public Policy Position

In re Estate of Jennifer L. Fowler

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,471 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On July 10, 2025, the Section adopted its position after an electronic discussion and vote. 17 members voted in favor of the Section's position, 0 members voted against this position, 1 member abstained, 5 members did not vote.

Explanation:
The Section adopted the following public policy position: To determine whether the life insurance death benefit is accessible to Jennifer Fowler's creditors, it must be analyzed under MCL 700.7605(4) and, by extension, the Insurance Code. Under section 7605(4), the court should determine whether the death benefit constituted "property held or received by [the] trust . . . [that] would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section." After completing its analysis under section 7605(4), the Court should evaluate whether the death benefit was exempt from Jennier Fowler's creditor claims under the Insurance Code; it should find that no exemption exists under the Insurance Code, which means that the insurance death benefit is governed by MCL 700.7605(1) and accessible to Jennifer Fowler's creditors. (c) The Section adopts the following additional public policy position: To determine whether the 401k payout is accessible to the estate or trust's creditors, it must be analyzed under MCL 700.7605(2). Because the Fowler 401k payout constituted "payments from [a] . . . plan that is qualified under section 401 of the internal revenue code, 26 USC 401," the payout "shall not be considered to be a trust described in subsection (1)", and therefore is exempt from Jennifer Fowler's creditor claims.

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BASIS OF JURISDICTION

This Court has jurisdiction over this matter pursuant to MCR 7.303(B)(1) and this Court's Order of March 29, 2025, scheduling oral arguments and directing supplemental briefs as to Appellant's Application for Leave to Appeal. Appellant appeals from an Opinion of the Michigan Court of Appeals dated July 18, 2024.

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STATEMENT OF RELIEF SOUGHT

The State Bar of Michigan's Probate and Estate Planning Section (the "PEPS") files this supplemental *amicus curiae* brief pursuant to the Court's invitation in the March 28, 2025 Order. The PEPS respectfully requests that this Court determine that: (1) the 401(k) account funds at issue are exempt from attachment by Helen's Estate under MCL 700.7605(2) and (4); and (2) the life insurance proceeds at issue are subject to the claims by Helen's Estate to the extent that Jennifer's Estate lacks sufficient assets to satisfy the claims, under MCL 700.7605(4) and MCL 500.2207(2).

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QUESTIONS PRESENTED FOR REVIEW

1. Whether 401(k) proceeds left by beneficiary designation to a revocable living trust are protected against creditors of the settlor's estate under MCL 700.7605?

The Trial Court answered: Yes

The Court of Appeals answered: No

The Appellant answers: Yes

The Appellee answers: No

The Probate and Estate Planning Section answers: Yes

2. Whether life insurance proceeds left by beneficiary designation to a revocable living trust are protected against creditors of the settlor's estate under MCL 700.7605 and 500.2207?

The Trial Court answered: No

The Court of Appeals answered: No

The Appellant answers: Yes

The Appellee answers: No

The Probate and Estate Planning Section answers: No

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STATEMENT OF FACTS AND PROCEEDINGS

Pursuant to MCR 7.212(D)(3)(b), the Probate and Estate Planning Section ("PEPS") accepts the Statements of Facts presented by the Appellants and Appellee. The PEPS is not aware of any additional facts that it believes are relevant to this appeal. The PEPS is not aware that any of the presented facts are either inaccurate or deficient.

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STANDARD OF REVIEW

The Probate and Estate Planning Section adopts the standard of review presented by the Appellant.

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ARGUMENT

INTRODUCTION[1]

Creditor protection for assets funded into a revocable living trust is an important, and complicated, issue for probate and estate planning attorneys in the State of Michigan, and more importantly, their clients. Practitioners need certainty so they can properly and fully advise their clients. These clients include both those wishing to create revocable living trusts or other estate planning instruments for the futures of their families, and those who are in the position of serving as a trustee or personal representative and need to address creditor issues as a fiduciary. Rathen than relying primarily on case law from another state as the Court of Appeals did, the Probate and Estate Planning Section ("PEPS") of the State Bar urges the Supreme Court to focus its analysis on Michigan statutory law -- primarily, MCL 700.7605, but also statutory laws that address creditor protections for specific assets types, such as MCL 600.6023 for 401(k) assets and MCL 500.2207 for insurance policy proceeds.

Admittedly, this presents a complex analysis. Indeed, this case was debated at multiple meetings of the PEPS Council and different viewpoints were presented and favored by various PEPS members. But ultimately, the PEPS Council voted to submit this *amicus curiae* brief to advocate that the outcome of the Probate Court was correct, and the Court of Appeals erred in its failure to rely primarily on MCL 700.7605. In doing so, the PEPS believes that 401(k) proceeds

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[1] No counsel for a party authored this brief in whole or in part. No party, or counsel for a party, made a monetary contribution intended to fund the preparation or submission of this brief. No other person did so either, other than the PEPS, acting through its Council, and its members, all of whom submit dues that fund the PEPS, including amicus curiae briefs. It is not known if any counsel involved in this case is a member of the PEPS. MCR 7.312(H)(5).

should be shielded from creditors and the life insurance proceeds should not be.

Specifically, as to the collectability of 401(k) funds, those should be protected from the creditor under the facts of this case, both under the plain language of 700.7605(2) and secondarily, under 7605(4) and the law that it in turn implicates, MCL 600.6023(1)(k). In contrast, as to insurance policy proceeds, subsection (2) of 7605 does not apply, and it is entirely governed by subsection (4). That subsection in turn requires analysis of MCL 500.2207(2), which does not afford creditor protection in these circumstances, because the trust beneficiaries are neither spouses nor children.

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I. THE 401(K) ACCOUNT FUNDS ARE EXEMPT FROM ATTACHMENT BY HELEN'S ESTATE.

The Court of Appeals did not fully and adequately discuss the key statutes of the Estates and Protected Individuals Code, including the Michigan Trust Code, in determining whether the assets in a revocable living trust that passed through a 401(k) plan enjoy creditor protection. The starting point for this analysis is MCL 700.7506(1)(b), which states:

> After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

MCL 700.7506(1)(b).

That in turn requires analysis of MCL 700.7605, which states:

700.7605 Liability of trust for expenses, claims, and allowances.

> Sec. 7605. (1) The property of a trust over which the settlor has the right without regard to the settlor's mental capacity, at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to all of the following, but only to the extent that the settlor's property subject to probate administration is insufficient to satisfy the following expenses, claims, and allowances:
>
> (a) The administration expenses of the settlor's estate.
>
> (b) An enforceable and timely presented claim of a creditor of the settlor, including a claim for the settlor's funeral and burial expenses.
>
> (c) Homestead, family, and exempt property allowances.
>
> (2) A trust established as part of, **and all payments from**, an employee annuity described in section 403 of the internal revenue code, 26 USC 403, an individual retirement account described in section 408 of the internal revenue code, 26 USC 408, a Keogh, or HR-10, plan, or a retirement or other plan that is qualified under section 401 of the internal revenue code, 26 USC 401, shall not be considered to be a trust described in subsection (1).

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> (3) This section does not impair a right that an individual has under a qualified domestic relations order as that term is defined in section 414(p) of the internal revenue code, 26 USC 414.
>
> (4) For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate **if it had been paid** directly to a trust created under the settlor's will or **other than to the settlor's estate**, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1).
>
> MCL 700.7605 (emphasis added).

The Court of Appeals skipped past the critical language of this statue and instead relied on case law from the State of Kansas, whose statutory scheme does not appear to include a statute with substantially similar language to MCL 700.7605. Indeed, the Kansas version of that statute, KSA 58a-505, does not contain any language similar to either subsection (2) or (4) of MCL 700.7605. *See KSA 58a-505, attached hereto as Exhibit A.* Accordingly, the Court of Appeals' reliance on the Kansas Supreme Court case should be rejected in light of the different statutory framework of that state.

In addition to relying on Kansas state case law, the Court of Appeals further reasoned that while federal law protects 401(k) funds, that protection is lost once the funds are distributed out from the 401(k) plan administrator and received by the beneficiary. In doing so, it relied primarily on federal law and this Court's decision in *State Treasurer* v *Abbott*, 468 Mich 143, 149, 153-159; 660 NW2d 714 (2003). However, unlike MCL 700.7605, the underlying state statute in *Abbott* does not offer creditor protection. In fact, it does just the opposite and directs the payment of assets from an inmate to reimburse the State for expenses incurred housing the inmate. *Id*; discussing MCL 800.401 *et seq.*

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In contrast to both the Kansas statute and the prisoner reimbursement statute in Michigan, MCL 700.7605(2) not only exempts the 401(k) plan (or similar assets) from being considered a "trust", it also expressly exempts "all payments from" such a plan. MCL 700.7605(2). While under federal law analysis alone, the legal proposition may be true that creditor protection is lost once the proceeds are paid out from the 401(k) plan, that cannot be the case under this statute or the phrase "all payments from" would have no meaning. *See State Farm Fire and Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002) (Courts must "avoid an interpretation that would render any part of the statute surplusage or nugatory."). The Court of Appeals did not adequately discuss this specific statute and erred by relying on case law from another state and Michigan case law discussing a different statute, because neither of those statutes contained language similar to 7605(2).

Second, as an alternate basis for this conclusion, even if, *arguendo*, subsection (2) of 7605 would not shield 401(k) proceeds, subsection (4) does in light of the specific creditor protection statute applicable to this type of asset. As highlighted above, subsection (4) protects from collection property that "… would not have been subject to a claim against the settlor's estate if it had been paid … other than to the settlor's estate." MCL 700.7605(4). This means that – again, only if this Court finds that subsection (2) does not offer protection – the analysis would then turn on whether assets that passed from a settlor to a recipient other than through the settlor's estate enjoy creditor protection.

Accordingly, this analysis requires examination of the statutory framework for the specific asset at issue – here, 401(k) funds. Michigan has a statute directly on point, which was not discussed by the Court of Appeals. Specifically, MCL 600.6023(1) exempts certain

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"property of a judgment debtor" from collection. This includes subsection (k): "The right or interest of a person in a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code …". MCL 600.6023(1)(k).

As the Court of Appeals noted, a settlor and her revocable living trust are not separate legal entities. *In re Estate of Fowler*, _ Mich App _ (2024) (see slip op attached to Appellant's Supplement Brief at p 10). This is consistent with long-standing legal principles in the United States. "Traditionally, a trust was not considered a distinct legal entity, but a 'fiduciary relationship' between multiple people." *Americold Realty Trust* v *Conagra Foods, Inc*, 577 US 378, 383; 136 SCt 1012 (2016). As such, property held in the settlor's revocable living trust is still considered property of the "judgment debtor." This is especially true because subsection (k) of 6023 protects not only the right to 401(k) proceeds but the interest in those proceeds themselves.

Jennifer Fowler's Trust now owns the interest in the 401(k) plan and is expressly protected from the settlor's creditors under 600.6023. This statue results in the Trust property being protected from collection under 700.7605(4) because the property would have been similarly shielded if the property had passed "other than to the settlor's estate," i.e., directly to the designated, individual beneficiaries. Consequently, it is, once again, the specific language of 7605 that dictates the result, as contrasted to the Kansas statute and the prisoner reimbursement statute relied upon by the Court of Appeals.

The PEPS advocates for reversing the Court of Appeals as to the collectability of payments to the Trust from a 401(k) plan under 700.7605(2), and as an alternate basis, 7605(4).

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II. THE LIFE INSURANCE PROCEEDS AT ISSUE ARE SUBJECT TO THE CLAIMS BY HELEN'S ESTATE TO THE EXTENT THAT JENNIFER'S ESTATE LACKS SUFFICENT ASSETS TO SATISFY THE CLAIMS.

While a different outcome is required for life insurance proceeds, the analysis of whether creditor protection applies must again begin with MCL 700.7605. Unlike the analysis as to 401(k) proceeds, subsection (2) of 7605 does not apply because insurance policy proceeds are not among the asset types listed in that subsection. Rather, the analysis must focus on 7605(4). Just as with the 401(k) proceeds, the question turns on whether Michigan law would shield the property from creditors "if it had been paid … other than to the settlor's estate." In this case, collectability of insurance proceeds by creditors is governed by MCL 500.2207(2). As the Court of Appeals noted, had the ultimate beneficiaries of the proceeds been a spouse or children of the settlor, the proceeds would have been protected from collection. *See* MCL 500.2207(1) (protecting proceeds paid to a wife, husband, or children or to a trustee for the benefit of one of those individuals). In this case, however, because the ultimate beneficiaries are neither children nor a spouse, the operative language in 2207(2) is as follows:

> …[T]he beneficiary or assignee thereof (**other than the insured** or the person so effecting such insurance, **or his executors or administrators**) shall be entitled to the proceeds and avails (including the cash value thereof) against the creditors and representatives of the insured and of the person effecting the same …

MCL 500.2207(2) (emphasis added).

Unlike with the 401(k) proceeds, where the specific creditor protection statute shielded the right and interest of the debtor in the asset, this statute does the opposite. It excludes the insurance benefits when transferred either to the insured or his or her executors (i.e. personal representatives) or **administrators** from protection. This exclusion from protection would

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expressly apply to a trustee of revocable living trust, who is a type of administrator. In that regard, the Michigan Trust Code makes clear that one of the primary duties of a trustee is to administer the trust. *See, for example*, MCL 700.7108 (directing principal place of administration of a trust); MCL 700.7801 (requiring a trustee to administer a trust in good faith and under certain other duties); and MCL 700.7802 (requiring a trustee to administer a trust solely for the trust beneficiaries). Just as 2207 does not employ the recognized legal term for one who administers an estate (utilizing the term "executor" rather than "personal representative"), the less formal term of "administrator" still encompasses a person serving as "trustee." As such, because the trustee (i.e., settlor's "administrator") is the lawful beneficiary of the insurance proceeds, she cannot fit within the creditor protection pursuant to 2207, unless the trust that is being administered is for the benefit of a spouse or children.

Moreover, there is a statute in the Estates and Protected Individuals Code that corresponds to MCL 700.7605 and confirms this result: MCL 700.3805(3). In part, it provides that:

> If the personal representative is aware of other nonprobate transfers **that may be liable** for claims and allowances, then unless the will provides otherwise, the personal representative shall proceed to collect the deficiency in a manner reasonable under the circumstances so that each nonprobate transfer, **including those made under a trust described in section 7605(1)**, bears a proportionate share or equitable share of the total burden.
>
> MCL 700.3805(3) (emphasis added).

This section works in tandem with 7605 and requires the trustee to transfer to the personal representative such funds as are needed to share proportionately in satisfying a claim, if there is a deficiency due to insufficient assets in the estate. This statute has narrower application

for assets in a trust and only applies if 7605 permits the recovery to such assets. Further, as to any type of transfer, the statue only includes nonprobate transfers that **may be liable**. MCL 700.3805(3). As described in the preceding section, 401(k) proceeds are not liable because 7605(2) and (4) shield them from collection by creditors. Insurance proceeds, however, must be transferred from a trust to the personal representative under 3805(3) due to the language of 500.2207(2) when the insurance proceeds are paid to the executor (personal representative) or administrator (trustee) of the debtor, unless otherwise protected by 2207(1) for the benefit of a spouse or children.

As such, the PEPS advocates for affirming the Court of Appeals as to the collectability of insurance proceeds in this case.

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CONCLUSION

The Probate and Estate Planning Section of the State Bar of Michigan voted to advocate for the reversal of the Court of Appeals Opinion Section I (as to 401(k) proceeds) and to affirm Section II (as to life insurance proceeds). MCL 700.7605(2) and (4) govern this analysis and apply differently to the two types of properties. Subsection (2) clearly shields payments that a trust received from a 401(k) plan. Subsection (4) in turn requires analysis of the underlying statutes that address creditor protection for specific asset types and implicates how those assets are transferred. Again, those statutes mandate protection for 401(k) proceeds and no protection for life insurance proceeds payable to a revocable living trust where the beneficiaries do not include a spouse or children.

Respectfully submitted,

Counsel for Amicus Curiae Probate and Estate Planning Section of the State Bar of Michigan

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Dated: July 22, 2025

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitations of Michigan Court Rules 7.212(B)(1) and (3) because, excluding the parties of the document exempted, this document contains no more than 16,000 words. This document contains 3,569 words.

Dated: July 22, 2025

By: /s/ Andrew W. Mayoras
Andrew W. Mayoras (P54896)

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EXHIBIT A

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58a-505. Creditor's claim against settlor. (a) Except as provided by K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto, whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, the homestead, homestead allowance, the elective share rights of the surviving spouse pursuant to K.S.A. 59-6a209, and amendments thereto, and statutory allowance to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power;

(2) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in section 2041(b)(2) or 2514(e) of the federal internal revenue code of 1986, as in effect on December 31, 2002; or section 2503(b) of the federal internal revenue code of 1986, as in effect on December 31, 2002; and

(3) this subsection shall not apply to the lapse of powers held by the spouse of a person occurring upon the death of such person.

History: L. 2002, ch. 133, § 42; L. 2004, ch. 158, § 8; July 1.