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STATE OF MICHIGAN

IN THE SUPREME COURT

DANA NESSEL, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, *ex rel* The People of the State of Michigan, Plaintiff-Appellant, v. ELI LILLY & COMPANY, Defendant-Appellee,	Supreme Court Docket No. 165961 Court of Appeals No. 362272 Ingham Circuit Court No. 2022-000058-CZ

***AMICUS CURIAE* BRIEF OF GENERAL MOTORS LLC**

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STATEMENT OF INTEREST

General Motors LLC ("GM") is an automotive manufacturer with deep roots in Michigan. Headquartered in Detroit, and with offices, testing facilities, and plants scattered throughout the State, GM is one of Michigan's largest and most visible companies.

GM's core business is vehicle sales. GM assembles vehicles and sells those vehicles to independent, authorized dealerships, which sell those vehicles to consumers. At every stage, these are highly regulated transactions. Federal law requires GM to certify compliance with detailed regulatory requirements and state law requires dealerships to obtain licenses, before either entity can sell a new vehicle. These certifications and licenses are just part of the extensive regulatory environment GM navigates to sell vehicles. In short, before, during, and after the vehicle sale, GM and its independent, authorized dealerships are highly regulated.

GM has relied on the balance struck by the Legislature—a balance confirmed for decades by this Court's precedent—that specifically authorized transactions like vehicle sales are exempt from the Michigan Consumer Protection Act ("MCPA"). Eliminating the MCPA's exemption for authorized transactions, as the Attorney General functionally seeks to do, would undercut that regulatory balance in GM's business and businesses across the State.

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INTRODUCTION[1]

Every day, consumers in this state engage in a broad range of transactions, from the sale and purchase of motor vehicles to the sale and purchase of medications, that are extensively regulated by both the federal and state governments. For example, federal law permits GM to sell vehicles only after certifying compliance with hundreds of detailed safety standards. And state law forbids GM from selling vehicles directly to consumers; rather, they may only be sold by authorized dealerships once the Secretary of State has granted the dealership a license to do so. GM and its dealerships operate within a labyrinth of laws, regulations, and standards that reach far beyond just these two examples.

From manufacture to sale, vehicle-sale transactions are "specifically authorized" by a wealth of laws designed to ensure industry-specific (and industry-wide) compliance. The same is true in many other industries across the state. The plain text of MCL 445.904(1)(a) therefore prevents consumers from bringing MCPA claims for these transactions. The Court of Appeals' holding in this case rests on this correct conclusion, and should be affirmed.

In challenging this conclusion, the Attorney General claims that existing precedent is unworkable, in that it leaves consumers vulnerable to misconduct. Not so. The laws and regulations that authorize GM and its dealerships to sell vehicles also govern their conduct in minute detail. Federal agencies and national standards

[1] In accordance with MCR 7.312(H)(5), GM discloses that its counsel is the sole author of this brief. Neither party nor their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

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regulate GM's actions, and dealerships must answer to the Secretary of State. Consumers remain free to bring product-liability claims if they allege physical injuries; fraud, warranty, contract, or lemon law actions if they allege economic damages; or to seek state or federal investigations if they believe they have a defective vehicle. Put differently, a consumer has a wealth of remedies available if he believes himself injured by any part of a vehicle-sale transaction. This landscape is eminently workable. This Court should therefore decline the Attorney General's invitation to rewrite the MCPA. It should affirm the Court of Appeals or dismiss this appeal.

ARGUMENT

The plain text of the MCPA is clear: it "does not apply to" actions based on "transaction[s] . . . specifically authorized" by law. MCL 445.904(1)(a).[2] GM writes to provide another example of how this text applies (to the sale of motor vehicles), which demonstrates the correctness of this Court's precedent and emphasizes the broad reliance interests at play.

I. Vehicle-sale transactions demonstrate why *Smith* and *Liss* were correctly decided.

The Attorney General's argument, distilled to its essence, is that a regulatory regime does not "specifically authorize[]" all aspects of all transactions conducted under it. As Eli Lilly has explained in detail, that position is directly contrary to this Court's holdings in both *Smith* and *Liss*. *Smith v Globe Life Ins Co*, 460 Mich 446, 465, 597 NW2d 28, 38 (1999); *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 215, 732

[2] Throughout, unless otherwise noted, all emphases and alterations are added, and all internal quotation marks, citations, and footnotes are omitted.

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NW2d 514, 521 (2007). In these cases, this Court conducted a simple, straightforward, and sound analysis of the text of § 904(1)(a), and both decisions correctly interpret that statutory language. Walking through its application to the sale of vehicles underscores the propriety of this conclusion.

GM (and its authorized dealerships) operate under a matrix of federal and state laws and regulations. Each and every transaction complies with many such rules, and only licensed entities may participate in the chain of transactions that takes a new vehicle from GM's production line to the consumer's driveway. This process is not, as the Attorney General's theory posits, governed merely by a general license with no guardrails. Nor does it categorically exempt regulated entities from MCPA claims. Rather, the regulatory regime provides specific authorization for each transaction. See, e.g., *Cyr v Ford Motor Co*, unpublished opinion of the Court of Appeals, issued Dec 26, 2019 (No. 345751), 2019 WL 7206100, p *2–3 (holding "the manufacture, sale, and lease of automobiles" are "all conduct that is specifically authorized under federal and state law"); *Jimenez v Ford Motor Credit Co*, unpublished opinion of the Court of Appeals, issued Dec 22, 2015 (No. 322909), 2015 WL 9318913, p *6–7 (similar as to "[t]he sale of a motor vehicle"). In turn, these specific transactions are exempt from claims brought under the MCPA.

A. From manufacture to sale, vehicle transactions are heavily regulated and specifically authorized.

Michigan law prevents GM from selling vehicles directly to consumers. See MCL 445.1574(i). Instead, GM designs in part, manufactures in part, and assembles a vehicle, and then sells that vehicle to an independent, authorized dealership. The

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dealership then sells the vehicle to consumers. At each step along the way, federal and state law impose myriad licensing and regulatory requirements as a precondition to specifically authorizing the sale of a vehicle.

Federal law authorizes GM to manufacture and sell its vehicles to dealerships. Under the Motor Vehicle Safety Act, to "manufacture for sale, sell, [or] offer for sale . . . any motor vehicle," GM must provide a "certification" that the vehicle complies with all federal safety standards. See 49 USC 30112(a)(1); 49 USC 30115(a). Those federal standards, set out by the National Highway Traffic Safety Administration (part of the Department of Transportation, and often referred to as "NHTSA"), impose hundreds of requirements. For example, GM's vehicles must comply with standards requiring vehicles to contain qualifying occupant restraint systems (e.g., seatbelts), 49 CFR 571.208 at S4.1.5.5, have a key ignition interlock, 49 CFR. 571.114 at S5.1.1, include an antilock braking system, 49 CFR 571.105 at S5.5.1, and satisfy detailed crash test standards, 49 CFR 571.208. These are just a handful of examples; there are many, many more safety requirements imposed by federal law. GM cannot issue the certificate—and thus cannot sell a vehicle—if it "has reason to know" it has not complied with any of these standards. See 49 USC 30115(a) ("A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect.").

Other federal regulations apply, too. The Environmental Protection Agency has promulgated regulations that dictate how GM must calculate vehicle fuel economy and provide that information to customers. 40 CFR 600.210-12(a) (requiring

automakers to test all new vehicles in an EPA-proscribed method, identify the vehicle's fuel economy, and provide that information on a window sticker at the time of sale). And federal law requires a "certification of conformity" as part of the sale, which is the EPA's certification that a vehicle complies with all federal emissions standards. 42 USC 7521(a).

Likewise, state law prevents GM from selling vehicles directly to consumers (see MCL 445.1574(i)); instead, Michigan law authorizes independent automotive dealerships to sell vehicles to consumers. Under MCL 257.248(5), a dealership, to sell "5 or more vehicles," must "obtain[] a dealer license from the secretary of state authorizing the carrying on or conducting of that business." MCL 257.248(5). To obtain a license, the dealership must apply through the Secretary of State's office, providing the secretary with details about "the make or makes of" new vehicles the dealer will sell, the dealer's "contract to act as a factory representative" or "distributor representative" of an automaker, and the dealer's history and record in the business. MCL 257.248(6). The secretary must then "conduct[] an investigation of the applicant's qualifications" and "prepare a report" detailing the secretary's findings. MCL 257.248(1). Only if a dealership meets the secretary's criteria can it obtain a license and engage in vehicle sales. MCL 257.248(5). This licensing regime is mandatory for dealerships; a dealer "shall not" sell vehicles without a license. *Id*. And, of course, the Secretary of State is involved in all vehicle transactions through its title and license requirements for individual owners and drivers. See, e.g., MCL 257.215–217.

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To hear the Attorney General tell it, these businesses "mere[ly] operat[e] within a regulated field"—the insinuation being that a business receives specific authorization once and never answers to a regulatory body again. Appt Br at 1. That could not be further from the truth, as the above recitation of regulatory requirements demonstrates. It is compliance with those regulations that gives rise to the authorization to engage in vehicle sales. That authorization rightly exempts vehicle sales—transactions—from the MCPA's scope, *not* the mere act of regulation.

B. Vehicle-sale transactions fall squarely within § 904(1)(a)'s specifically-authorized exception.

As the requirements above illustrate, GM and its dealerships could not sell vehicles without countless approvals from the relevant state and federal entities. Under the plain terms of the MCPA, these specific authorizations prevent consumers from pursuing MCPA claims against GM or its dealerships.

The truth of this conclusion is evident beginning with the text of § 904(1)(a), which provides that the MCPA does not apply to "[a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." MCL 445.904(1)(a). *Liss* and *Smith* simply track that plain text. *Liss* described the § 904(1)(a) exemption as applying to activities that are "permitted by [regulation] to be performed only by licensed" entities. *Liss*, 478 Mich at 215. As *Liss* explained, the question is whether the defendant's act is within the scope of the defendant's license; that is, an act that only a licensed entity can perform. *Id.* ("This case is unlike *Diamond Mortgage,* where the defendants engaged in activity, mortgage writing, that

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their real estate broker license simply did not permit them to do."). *Smith* also drew the line based on whether state law permitted the action only by a licensed entity. 460 Mich at 465 (stating the "sale of credit life insurance" was specifically authorized). This straightforward application of the MCPA's text has proven easily administrable in the courts. Courts routinely have interpreted these precedents the same way. See, e.g., *Gant v Ford Motor Co*, 517 F Supp 3d 707, 719 (ED Mich, 2021) (distinguishing *Smith* and *Diamond Mortgage* based on whether the defendants' transaction is permitted only by a licensed entity).

Moreover, the Court of Appeals has recognized the specific application of § 904(a)(1) to vehicle sale transactions multiple times. In *Cyr*, it rejected an MCPA claim because "the extensive regulatory and licensing framework of the automotive industry under state and federal law explicitly sanctions the manufacture, sale, and lease of automobiles[.]" *Cyr*, 2019 WL 7206100, p *3. So too in *Jimenez*, where the Court of Appeals recognized that "the Michigan Vehicle Code specifically requires that a dealer of motor vehicles obtain a dealer license and administration of the code is via the Secretary of State," so the transaction fell within the MCPA exemption. 2015 WL 9318913, p *6. Federal courts across the country have reached the same conclusion. See, e.g., *Gant*, 517 F Supp 3d at 719; see also *Bolton v Ford Motor Co*, No. CV 23-00632-GBW, 2024 WL 3328522, at *13 (D Del, July 8, 2024); *Tijerina v Volkswagen Group of Am, Inc*, No. 221CV18755BRMLDW, 2023 WL 6890996, at *29 (DNJ, October 19, 2023).

As these decisions make clear, *Smith* and *Liss* are faithful to the plain text of

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the statute: transactions specifically authorized, including the sale of a motor vehicle authorized by both the federal and state government, are exempt from actions brought under the MCPA.

II. *Stare decisis* compels adherence to *Smith* and *Liss*.

As explained in detail in Eli Lilly's brief on appeal, all three *stare decisis* factors counsel in favor of adhering to *Smith* and *Liss*. GM writes to emphasize two: that the law as it stands provides a wealth of remedies for aggrieved consumers, and that the reliance interests at play sweep broadly.

The first relevant stare decisis factor asks "whether the decision at issue defies practical workability." *Robinson v City of Detroit*, 462 Mich 439, 464; 613 NW2d 307 (2000). The Attorney General claims that § 904(a)(1), as interpreted by *Smith* and *Liss*, defy practical workability because they leave consumers without remedies should they encounter misconduct during a specifically authorized transaction. In the vehicle-sale space, that is simply untrue.

If, for example, NHTSA determines that a GM vehicle has a safety-related noncompliance or defect, federal law requires GM to take certain actions, including notifying consumers and remedying the defect without charge (and NHTSA's enforcement powers carry with them heavy potential fines). 49 USC 30118(a)–(c); see also 49 USC 30119(d); 49 USC 30120(a). Consumers may also petition the Secretary of Transportation to investigate a claimed defect, 49 USC 30162(a)(2), or seek further investigations and rulemaking, see 49 USC 30162(a). Likewise, the Magnuson Moss Warranty Act provides redress for a consumer claiming GM breached a warranty. See

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15 USC 2310. These remedies are just those set out in the United States Code. State law also allows for lemon-law claims, under MCL 257.1401, *et seq*. And consumers remain free to bring product-liability claims for personal injury, or contract-based claims for economic injury.

These many remedies provide redress for consumers should they need it. The parallel conclusion is that the Attorney General's claims that consumers are actively being harmed by not being able to pursue MCPA claims for specifically authorized transactions is simply not true. Rather, the law as it stands today is workable.

Finally, this Court must consider whether "reliance interests would work an undue hardship" as part of its stare decisis analysis. *Robinson*, 462 Mich at 464. GM, like businesses across the state that operate in varied industries and conduct thousands of authorized transactions each year, has relied on *Smith* and *Liss* for over 25 years. These deep-rooted reliance interests are evidenced by the wide array of industries that rely on their interpretation of the statute. Insulin sales and vehicle manufacturing have few similarities, yet entities involved in both transactions are now before this Court, advocating for adherence to *Smith* and *Liss*. Indeed, the Attorney General obliquely acknowledges this point in explaining that the goal of this lawsuit is to change the law to enable claims against other entities, ranging from "pet shops" to "auto dealership[s]." App Br at 53–54. GM is just one concrete example of a buisness that would be affected by the Attorney General's desired change in the law; its authorized dealerships provide hundreds more—just in one industry, with one

type of transaction. The broad reliance interest of businesses across the state counsels strongly in favor of applying stare decisis, and upholding *Smith* and *Liss*.

CONCLUSION

General Motors LLC, as *amicus curiae*, respectfully requests that this Court affirm the Court of Appeals, or dismiss this appeal.

Respectfully submitted,

Dated: August 28, 2025

/s/ Stephanie A. Douglas

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I hereby certify that this document complies with the formatting rules in MCR 7.305(A) and MCR 7.212(B). The document contains 2,652 words, one-inch page margins, the font is Century Schoolbook, and the text is 12-point type and double-spaced (except block quotations and footnotes which are single-spaced).

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2025, I electronically filed the foregoing papers with the Clerk of the Court using the Odyssey File and Serve system, which will send notification of such filing to all counsel of record and/or a copy will be sent via first class U.S. Mail to all counsel not listed on the Odyssey service list.

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