RECEIVED by MSC 8/28/2025 11:53:36 AM

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 AND COMPANY,

Defendant-Appellee.

Supreme Court No. 165961

Court of Appeals No. 362272

Ingham Circuit Court No. 2022-000058-CZ

SUPPLEMENTAL AMICUS CURIAE BRIEF ON BEHALF OF THE MICHIGAN CHAMBER OF COMMERCE, ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN, MICHIGAN AUTOMOBILE DEALERS ASSOCIATION, INSURANCE ALLIANCE OF MICHIGAN, MICHIGAN ASSOCIATION OF CERTIFIED PUBLIC ACCOUNTANTS, MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION, MICHIGAN FARM BUREAU, MICHIGAN GROUND WATER ASSOCIATION, MICHIGAN MANUFACTURERS ASSOCIATION, MICHIGAN RETAILERS ASSOCIATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC., SMALL BUSINESS ASSOCIATION OF MICHIGAN, AMERICAN TORT REFORM ASSOCIATION, MICHIGAN BANKERS ASSOCIATION, AND MICHIGAN DENTAL ASSOCIATION

APPENDIX OF EXHIBITS

Appendix	Description	Page
1	*Am Auto Ass'n, Inc v Advanced Am Auto Warranty Services, Inc.*	Appx. 0002-0008
2	*Brownlow v McCall Enterprises Inc.*	Appx. 0010-0014
3	2000 Public Act 432	Appx. 0016-0017
4	2003 Public Act 216	Appx. 0019-0020
5	House Fiscal Analysis, Credit Union Act	Appx. 0022
6	2014 Public Act 251	Appx. 0024-0025

RECEIVED by MSC 8/28/2025 11:53:36 AM

EXHIBIT 1

RECEIVED by MSC 8/28/2025 11:53:36 AM

2009 WL 3837234
Only the Westlaw citation is currently available.
United States District Court,
E.D. Michigan,
Southern Division.

AMERICAN AUTOMOBILE ASSOCIATION, INC., Plaintiff,
v.
ADVANCED AMERICAN AUTO WARRANTY SERVICES, Inc., Defendant.

Civil Action No. 09–CV–12351.
|
Nov. 16, 2009.

Attorneys and Law Firms

Michael A. Sneyd, Kerr, Russell, Detroit, MI, for Plaintiff.

Hattem A. Beydoun, Jeffrey P. Thennisch, Dobrusin and Thennisch, Pontiac, MI, for Defendant.

OPINION AND ORDER (1) DISMISSING COUNT V OF THE COMPLAINT, (2) DENYING DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6), and (3) DENYING PLAINTIFF'S REQUEST FOR AN ORDER UNDER FED. R. CIV. P. 11(c)(3)

PAUL D. BORMAN, District Judge.

I. INTRODUCTION

***1** This is a trademark infringement case. Plaintiff American Automobile Association, Inc. ("AAA" or "Plaintiff") claims that Defendant Advanced American Auto Warranty Services, Inc. ("Defendant") knowingly and willfully infringed on its trademarks in a manner that has caused consumers to falsely believe that Plaintiff is affiliated with Defendant or has endorsed Defendant's products and services.

Plaintiff is a not-for-profit corporation providing over 50 million members throughout the United States, including Michigan, with products and services such as insurance and warranty coverage, travel, vacation, and automobile products and services, financial advice, and discounts. Defendant is a corporation that advertises and sells automobile-related roadside assistance and warranty products and services.

The Complaint, which was filed on June 17, 2009, contains six counts as follows:

Count I: Federal Trademark Infringement, 15 U.S.C. § 1114

Count II: Federal Trademark Infringement and Unfair Competition, 15 U.S.C. § 1125(a)

Count III: Federal Trademark Dilution, 15 U.S.C. § 1125(c)

Count IV: Federal Trademark Cyberpiracy, 15 U.S.C. § 1125(d)

Count V: Trademark Infringement, Mich. Comp. Laws § 429.42

Count VI: Unfair Competition, Mich. Comp. Laws § 445.901

In its response to Defendant's Motion to Dismiss, Plaintiff states that it will not pursue Count V. *See* Pl.'s Resp. at 1 n. 1. Plaintiff also stated at oral argument that it was withdrawing this claim. Therefore, the Court will summarily dismiss Count V.

Now before the Court is Defendant's Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) [docket entry 14]. Plaintiff filed a response and Defendant filed a reply. The Court heard oral argument on November 5, 2009. In its response brief, Plaintiff argues that the filing of Defendant's motion violates Fed.R.Civ.P. 11(b) and asks the Court to issue an order pursuant to Rule 11(c)(3) requiring Defendant to show cause why it has not violated Rule 11. [1] For the reasons that follow, the Court will deny Defendant's Motion to Dismiss but decline to issue an order under Rule 1 1(c)(3).

II. BACKGROUND

Plaintiff has registered more than 70 trademarks with the United States Patent and Trademark Office. Compl. at ¶ 18. This case arises out of Defendant's alleged infringement of certain of these trademarks. Specifically, the trademarks that are "particularly relevant to this action" include those eight that are listed in the chart contained in paragraph 18 of the Complaint. *See id.* Plaintiff has used these marks "in interstate commerce to identify a wide range of products and services for decades." *Id.* at ¶ 15. Moreover, as stated in the Complaint,

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

> [o]nly AAA member clubs and those entities that are part of AAA's network of approved service providers are authorized to use or display the AAA Marks. AAA has been selective in authorizing entities to use the AAA Marks in connection with their own products and services. Consequently, AAA members and the public know that any business or website that displays the AAA Marks has been granted permission to do so only because the business maintains an excellent reputation for quality, integrity, reliability, and service.
>
> ***2** 16. As a result of AAA's history and experience providing high quality products and services through the AAA local clubs, and as a result of the continuous and extensive advertising, promotion, and sale of products and services under the AAA Marks, those trademarks have acquired substantial value and fame in the United States and in other countries.
>
> 17. Further, the AAA Marks are widely recognized by consumers in this country and abroad and have acquired enormous goodwill as trademarks identifying high quality and reliable products and services. Indeed, the AAA Marks are distinctive such that consumers recognize that goods and services marketed under the AAA Marks originate, or are approved or endorsed by, AAA and the AAA local clubs.

Id. at ¶¶ 15–17.

Defendant advertises and sells its products and services under, among others, the marks "AAA Warranty Services, Inc.," "A.A.A. Warranty Service, Inc.," "AAA Warranty Service," "AAA Warranty," and "AAA Advanced American Auto & Leasing." *Id.* at ¶ 7. Additionally, Defendant, at one time, has used the following domain names: AAA–WARRANTY.COM, AAAWARRANTY.NET, AAAWARRANTYBYNET.COM, THEAAAWARRANTY.COM, THEAAA–WARRANTY.COM, AAA–WARRANTIES.COM, WARRANTYAAA.COM, WARRANTY–AAA.COM, AAA–WS.COM, AAA–GCC.COM, and AAA–ASIA.COM. *Id.* at ¶¶ 1, 22, 25–26. Defendant apparently continues to use some of these domain names while others are no longer in use. *See id.* at ¶ 28.

According to Plaintiff, it never authorized Defendant to use its trademarks and Defendant's use of the above-listed marks and domain names is "confusingly similar to AAA's famous and distinctive marks ." *Id.* at ¶¶ 2, 20. As stated in the Complaint,

> 22. In or around February 2008, AAA began receiving reports from consumers confused by a company named "AAA Warranty" selling automobile warranties. Immediately upon learning of these reports, AAA investigated the matter and contacted Defendant regarding its use of the infringing business name and unlawful registration and use of the domain name AAA–WARRANTY.COM.
>
> 23. On or about March 5, 2008, AAA sent Defendant a letter to Defendant's business address, requesting that Defendant cease use of the AAA Marks in connection with its business and that it cancel its registration for the domain name AAA–WARRANTY.COM.
>
> 24. Defendant's counsel responded in a letter dated April 1, 2008, denying that Defendant had infringed AAA's Marks or that the website had been registered in bad faith. Thereafter, the two parties entered into extensive and detailed negotiations in an attempt to reach an amicable resolution of the matter. Despite these extensive efforts over a period of months, Defendant ultimately declined to settle and refused to cease the Infringing Uses.

Id. at ¶¶ 22–24. Moreover,

> 29. Despite having been notified repeatedly that its continued, unauthorized Infringing Uses constitute actionable trademark infringement, trademark dilution, cyberpiracy, and unfair competition, Defendant persists in its unlawful use of the AAA Marks, both in actively advertising its business and through using and registering the Infringing Domain Names.
>
> ***3** 30. On information and belief, Defendant's Infringing Uses have been and continue to be of commercial value to Defendant.
>
> 31. On information and belief, at the time Defendant began its Infringing Uses, and at all times thereafter, it was aware, or had reason to know, of AAA's rights in the AAA Marks and knew that those trademarks are distinctive and have become famous and valuable.
>
> 32. Defendant's Infringing Uses lessen the capacity of the AAA Marks to identify and distinguish the produces and services provided or endorsed by, or affiliated

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

> with, AAA under the AAA Marks and, thus, dilute the distinctive quality of the AAA Marks and damage the reputation, recognition, and goodwill consumer's associate with AAA's products and services.

Id. at ¶¶ 29–32.

Plaintiff seeks injunctive relief and monetary damages. *See* Compl. at pp. 14–16.

III. LEGAL STANDARD UNDER FED. R. CIV. P. 12(b)(6)

Fed.R.Civ.P. 12(b)(6) provides for the dismissal of a case where the complaint fails to state a claim upon which relief can be granted. When reviewing a motion to dismiss under Rule 12(b)(6), a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *DirectTV, Inc. v. Treesh,* 487 F.3d 471, 476 (6th Cir.2007). But the court "need not accept as true legal conclusions or unwarranted factual inferences." *Id.* (quoting *Gregory v. Shelby County,* 220 F.3d 433, 446 (6th Cir.2000)). "[L]egal conclusions masquerading as factual allegations will not suffice." *Eidson v. State of Tenn. Dep't of Children's Servs.,* 510 F.3d 631, 634 (6th Cir.2007).

As stated by the Supreme Court,

> [t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." [*Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 556, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)]. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.,* at 556, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.' " *Id.,* at 557, 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 929 (brackets omitted).

Ashcroft v. Iqbal, —— U.S. ——, ——, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). A plaintiff's factual allegations, while "assumed to be true, must do more than create speculation or suspicion of a legally cognizable cause of action; they must show *entitlement* to relief." *League of United Latin Am. Citizens v. Bredesen,* 500 F.3d 523, 527 (6th Cir.2007) (emphasis in original). Thus, "[t]o state a valid claim, a complaint must contain either direct or inferential allegations respecting all the material elements to sustain recovery under some viable legal theory." *Bredesen,* 500 F.3d at 527.

IV. ANALYSIS

A. Defendant's Position

***4** Defendant argues that each count in Plaintiff's Complaint should be dismissed under Fed.R.Civ.P. 12(b)(6). Defendant's principal argument is that each count fails to state a claim upon which relief can be granted because, although Plaintiff states in its Complaint that "AAA has registered with the United States Patent and Trademark Office more than 70 of its AAA Marks," Compl. at ¶ 18, it does not "identify which *particular* mark of the 'AAA Marks,' serves as a basis for each count of the Complaint" (emphasis added). In other words, Defendant claims that it is unclear from the Complaint which of the "more than 70 ... AAA Marks" are "actually be asserted against the Defendant in this action." Defendant contends that all six counts contained in Plaintiff's Complaint should be dismissed on this basis.

Defendant also advances three additional arguments, one relating specifically to Count II and two relating specifically to Count VI. With respect to Count II, Defendant contends that Plaintiff's federal unfair competition claim fails to state a claim upon which relief can be granted because Plaintiff has not alleged, as it must, that "the false designation [has] a substantial economic effect on interstate commerce." *Johnson v. Jones,* 149 F.3d 494, 502 (6th Cir.1998). According to Defendant, "Plaintiff does not allege *any* effect, substantial or otherwise, that Defendant's alleged false designation of origin has resulted in an effect on interstate commerce" (emphasis added).

Additionally, Defendant argues that Count VI, Plaintiff's unfair competition claim under the Michigan Consumer Protection Act ("MCPA"), is barred by a statutory provision that provides an exemption for regulated conduct or transactions. *See* Mich. Comp. Laws § 445.904(1)(a) (stating that the MCPA does not apply to any "transaction or conduct specifically authorized under laws administered by

RECEIVED by MSC 8/28/2025 11:53:36 AM

a regulatory board or officer acting under statutory authority of this state or the United States"). Defendant also contends, for the first time in its reply brief, that Count VI should be dismissed because the MCPA does not regulate the conduct complained of in this case. [2]

B. Discussion

Defendant's three arguments are addressed, in turn, below.

1. Defendant's First Argument

First, Defendant argues that it is unclear which particular mark serves as the basis for each count of the Complaint. As Defendant correctly points out, each cause of action asserted by Plaintiff in this case requires an allegation that a particular mark has been infringed. For example, Plaintiff's federal trademark infringement claim (Count I) is governed by 15 U.S.C. § 1114(1), which states that trademark infringement occurs if a person, acting without the permission of a trademark's owner, "use[s] in commerce any reproduction, counterfeit, copy, or colorable imitation of *a registered mark* in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive" (emphasis added). In order to demonstrate that confusion is likely, courts in this circuit consider eight factors: (1) strength of the plaintiff's mark; (2) relatedness of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5) marketing channels used; (6) likely degree of purchaser care; (7) defendant's intent in selecting the mark; (8) likelihood of expansion of the product lines. *See Frisch's Rests., Inc. v. Elby's Big Boy of Steubenville, Inc.*, 670 F.2d 642, 648 (6th Cir.1982). Defendant argues that while Plaintiff alleges that it has over 70 registered marks and that eight such marks are "particularly relevant to this action," it does not allege that any of these marks are infringed or that any of them serve as the basis underlying the counts contained in the Complaint. As such, Defendant contends that the Court will be unable to perform the eight-factor "likelihood of confusion" test as to factors (1) and (3), above, because these factors require an examination of the particular mark allegedly infringed, which, again, Defendant contends is not stated in the Complaint.

***5** In its Complaint, Plaintiff states that "[t]his action arises out of Defendant's knowing and willful violation of Plaintiff's rights in its famous and distinctive AAA trademarks ('AAA Marks')." Compl. at ¶ 2. Later in the Complaint, Plaintiff states that eight such marks are "particularly relevant to this action" and lists them in the chart contained in paragraph 18 of the Complaint. *Id.* at ¶ 18. Plaintiff then "repeats and realleges the[se] allegations" in each count of the Complaint. Based on these averments, and having closely examined the Complaint in the aggregate, it is clear that (1) Plaintiff is alleging that the eight marks contained in the chart have been infringed and (2) it is these marks that are being asserted in this case, providing the basis for the claims contained in the Complaint. Although Defendant could have pled its case more clearly, the Court finds that the Complaint survives the plausibility standard of *Twombly* and *Iqbal,* discussed in Section III.

2. Defendant's Second Argument

Defendant's second argument is directed at Count II only. Defendant contends that Plaintiff's federal unfair competition claim fails to state a claim upon which relief can be granted because Plaintiff has not alleged, as it must under *Johnson,* quoted above, that the false designation has a substantial economic effect on interstate commerce.

The plaintiff in *Johnson,* an architect licensed to practice in three states including Michigan, brought suit against another architect and others alleging that his architectural plans and drawings were altered and used without his permission in violation of 15 U.S.C. § 1125(a). *See* 149 F.3d at 496. The plans and drawings at issue concerned the construction of a house located in Michigan. *See id.* at 497. One of the defendants argued that the plaintiff failed to satisfy the "substantial economic effect on interstate commerce" requirement because "the ... house is located in Michigan" and is "bought and sold only in Michigan ... and, therefore, a false designation as to the designing architect cannot affect interstate commerce." *Id.* at 502. The Sixth Circuit rejected this argument, stating that the defendant "fundamentally misperceive[d] the nature of th[e] case." *Id.* The court explained that "the house is only part of the 'goods or services' at issue" and that "[the parties'] *services as architects* are the more relevant 'goods or services.' " *Id.* (emphasis added). Because the plaintiff was licensed to practice, and actually did practice, in three separate states, the court determined that the "substantial economic effect on interstate commerce" requirement was satisfied, holding that if a defendant's "false

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

designation hinders [the plaintiff's] ability to conduct his interstate ... business, it affects interstate commerce." *Id* .

Applying *Johnson* to the present case, it is clear that Plaintiff has sufficiently alleged a "substantial economic effect on interstate commerce." In its Complaint, Plaintiff states that it "provides its over 50 million members with products and services throughout the United States," Compl. at ¶ 6, that it "use[s] [its] Marks ... in interstate commerce to identify a wide range of products and services," *id.* at ¶ 15, that its "trademarks have acquired substantial value and fame in the United States and in other countries," *see id.* at ¶ 16, and that "Defendant has ... profited from [the] unauthorized use of the AAA Marks ... to the detriment of AAA and its customers." *See id.* at ¶ 5. Boiled down, then, Plaintiff alleges that its "ability to conduct [its] interstate ... business" has been hindered. *See Johnson,* 149 F.3d at 502. Accordingly, Plaintiff has sufficiently alleged a "substantial economic effect on interstate commerce" and Defendant's second argument is therefore unpersuasive.

3. Defendant's Third Argument

***6** Defendant's third argument is directed at Count VI only. Defendant argues that Plaintiff's state law claim for unfair competition under the MCPA should be dismissed pursuant to Mich. Comp. Laws § 445.904(1)(a). Defendant relies solely upon *Smith v. Globe Life Ins. Co.,* 460 Mich. 446, 597 N.W.2d 28 (1999), discussed below, in support of its argument.

The MCPA prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." Mich. Comp. Laws § 445.903. Under Mich. Comp. Laws § 445.904(1)(a), the exemption on which Defendant relies in this case, 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." As stated by the Michigan Supreme Court, "the relevant inquiry is not whether the *specific* misconduct alleged by the plaintiffs is 'specifically authorized.' Rather, it is whether the *general* transaction is specifically authorized by law." *Smith,* 460 Mich. at 465, 597 N.W.2d 28 (emphasis added). For example, in *Smith,* a case involving allegedly fraudulent insurance practices in connection with the sale of a credit life insurance policy, the Court determined that the relevant "transaction or conduct" (i.e., the "general transaction") was the sale of credit life insurance and not the *fraudulent* sale of credit life insurance (i.e., the "specific transaction"). *See id.* at 465–466, 597 N.W.2d 28.

Defendant argues that § 445.904(1)(a) applies in the present case because its business is regulated by the Office of Financial and Insurance Regulation and the Michigan Department of Energy, Labor & Economic Growth. As stated by Defendant,

> Plaintiff's allegations arise out of Defendant's sale of automobile insurance and warranties. In Michigan the sale of automobile insurance is regulated by The Office of Financial and Insurance Regulation .... In regards to warranties, the Michigan Department of Energy, Labor & Economic Growth regulates the warrantors of aftermarket vehicle protection devices, systems and services sold in Michigan. Therefore, Defendant's alleged activates [sic] are exempt from liability under the MCPA.

(certain citations omitted).

This argument is clearly without merit. As Plaintiff correctly notes, the allegations in this case do not "arise out of Defendant's sale of automobile insurance and warranties," as Defendant argues. In fact, the nature of Defendant's business is irrelevant. What is relevant is Defendant's registration of business and domain names. Put differently, while the MCPA does not apply to "[a] transaction or conduct specifically authorized under laws administered by a regulatory board," the relevant "transaction or conduct" in this case is the registration of business and domain names, not the sale of insurance and warranties.[3] By contrast, the relevant "transaction and conduct" in *Smith,* the sole case on which Defendant relies, was the sale of a credit life insurance policy, which is a practice that is "specifically authorized under laws administered by a regulatory board." Therefore, Defendant's argument that § 445.904(1)(a) is relevant here simply because its business—the sale of car insurance and warranties—is regulated by the state is inconsistent with the plain language of the exemption and must be rejected.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

V. PLAINTIFF'S REQUEST FOR AN ORDER UNDER RULE 11(c)(3)

***7** Plaintiff argues that the filing of Defendant's motion constitutes a violation of Rule 11(b)[4] and that the Court should issue an order under Rule 11(c)(3)[5] requiring Defendant to show cause why it has not violated Rule 11. The Court will decline to issue such an order because the arguments advanced by Defendant in its motion, although "wobbly," are not clearly frivolous, and the Court will decline to find a Rule 11 violation.

VI. ORDER

For the reasons stated above,

IT IS ORDERED that Count V of the Complaint is dismissed.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss [docket entry 14] is denied.

IT IS FURTHER ORDERED that Plaintiff's request for an order under Fed.R.Civ.P. 11(c)(3) is denied.

All Citations

Not Reported in F.Supp.2d, 2009 WL 3837234

Footnotes

1 Plaintiff's Rule 11 argument is addressed in Section V of this Opinion and Order.

2 The Court will not address this argument because it was raised for the first time in Defendant's reply brief. *See, e.g., United States v. Crozier,* 259 F.3d 503, 517 (6th Cir.2001) ("[w]e will generally not hear issues raised for the first time in a reply brief").

3 As Plaintiff notes, the registration of business names is governed by Michigan's Business Corporation Act, which states, in relevant part, that a corporate name "[s]hall not contain a word or phrase, an abbreviation, or derivative of a word or phrase, the use of which is prohibited or restricted by any other statute of this state, unless in compliance with that restriction." Mich. Comp. Laws § 450.1212(1)(c). The Act also provides that "[t]he fact that a corporate name complies with this section does not create substantive rights to the use of that corporate name." *Id.* at § 450.1212(3).

> These provisions demonstrate that the Michigan legislature intended to link the conduct in this case—the registration of business names—to other laws, such as the MCPA. Therefore, Plaintiff is correct that "[t]he MCPA's prohibition on '[u]nfair, unconscionable, or deceptive methods, acts, of practices in the conduct of trade or commerce' ... restricts the [Business Corporation Act's] naming provision" and, accordingly, "Michigan ... law does not ... authorize Defendant's [alleged] use of infringing or confusingly similar AAA-related business names."

4 Rule 11(b) reads as follows:

> **(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

5 Rule 11(c)(3) reads as follows: "On its own, the court may order an attorney, law firm, or party to show cause why conduct ... has not violated Rule 11(b)."

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

RECEIVED by MSC 8/28/2025 11:53:36 AM

EXHIBIT 2

RECEIVED by MSC 8/28/2025 11:53:36 AM

2013 WL 514598
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

Ronald BROWNLOW and Susan Travis, Plaintiff–Appellant,
v.
McCALL ENTERPRISE INC, d/b/a Paul Davis Restoration of Washtenaw County, Defendant–Appellee.
and
State Farm Fire & Casualty Co, Defendant.

Docket Nos. 306190, 307883.
|
Feb. 12, 2013.

Washtenaw Circuit Court; LC No. 10–000049–NZ.

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

Opinion

PER CURIAM.

***1** In this consolidated appeal, plaintiffs appeal two orders. In docket no. 306190, plaintiffs appeal the order granting summary disposition in favor of defendant McCall Enterprise Inc. (McCall). In docket no. 307883, plaintiffs appeal the order granting attorney fees and costs as case evaluation sanctions. We reverse the order granting summary disposition because the Michigan Consumer Protection Act (MCPA) does apply and plaintiffs have presented sufficient evidence to create a question of fact for a jury regarding whether defendant's actions resulted in damage to plaintiffs' home. We therefore also reverse the trial court's award of attorney fees and costs as case evaluation sanctions.

I. FACTS AND PROCEDURAL HISTORY

A small fire occurred in plaintiffs' microwave on March 12, 2007. The fire filled plaintiffs' house with smoke. Plaintiffs reported the claim to their insurer, State Farm Fire & Casualty Co. who a few days later, retained defendant McCall to remove the lingering smoke odor from plaintiffs' home. Defendant placed an ozone generator [1] in plaintiff's kitchen, turned it on and let it run for more than HOW LONG?24 hours. Plaintiffs stayed elsewhere during this time, and when they returned, the ozone generator was removed and their house was aired out. According to plaintiffs, the smoke odor was gone, but there was significant damage to the inside of the house, particularly to tile and rubber surfaces. They also alleged health problems resulting from the level of ozone and the products of ozone reactions.

Plaintiffs filed a complaint against State Farm and McCall, alleging personal injuries and property damage from excessive ozone exposure. Plaintiffs asserted claims of negligence against State Farm and McCall. Additionally, plaintiffs asserted a claim against McCall under the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* Plaintiffs' negligence claims against State Farm and McCall were dismissed and plaintiffs do not appeal that dismissal.

Subsequently, McCall filed a motion for summary disposition on plaintiffs' MCPA claim, arguing that plaintiffs could not prove causation and that McCall was exempt from the act under MCL 445.904(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." The trial court agreed, concluding that the transaction was specifically authorized by McCall's contractor license. McCall then filed a motion for case evaluation sanctions, which was granted. Plaintiffs were ordered to pay costs and fees in the amount of $52,543. Plaintiffs now appeal the summary disposition of their MCPA claim against McCall as well as the case evaluation sanctions.

II. MICHIGAN CONSUMER PROTECTION ACT

In docket no. 306190, plaintiffs argue that that the trial court erred when it granted summary disposition on their claim under the MCPA. A trial court's decision on a motion for summary disposition is reviewed de novo. *Latham v. Barton Malow Co,* 480 Mich. 105, 111; 746 NW2d 868 (2008). When reviewing a motion under MCR 2.116(C)(10), we "consider[ ] the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v. Taylor,* 263 Mich.App 618, 621; 689 NW2d 506 (2004). We

RECEIVED by MSC 8/28/2025 11:53:36 AM

"also review[ ] de novo as a question of law the interpretation and application of a statute." *Attorney General v. Merck Sharp & Dohme Corp,* 292 Mich.App 1, 8–9; 807 NW2d 343 (2011).

***2** Under the MCPA, "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful." MCL 445.903(1). However, MCL 445.904(1)(a) 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." In *Smith v. Globe Life Ins Co,* 460 Mich. 446, 465; 597 NW2d 28 (1999), our Supreme Court explained that

> when the Legislature said that transactions or conduct "specifically authorized" by law are exempt from the MCPA, it intended to include conduct the legality of which is in dispute.... [W]e conclude that the relevant inquiry is not whether the specific misconduct alleged by the plaintiffs is "specifically authorized." Rather, it is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.

Smith was reaffirmed by the Supreme Court in *Liss v. Lewiston–Richards, Inc,* 478 Mich. 203; 732 NW2d 514 (2007), where the Court stated: "Applying the *Smith* test, the relevant inquiry 'is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.' " *Id.* at 212, quoting *Smith,* 496 Mich. at 465.

In this case, McCall was hired to clean the air in plaintiffs' home of the odor of smoke. The inquiry is thus whether the general transaction of cleaning a home is specifically authorized by the statute governing McCall's licensure as a residential builder.

> "Residential builder" means a person engaged in the construction of a residential structure or a combination residential and commercial structure who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair, alteration, or an addition to, subtraction from, improvement, wrecking of, or demolition of, a residential structure or combination residential and commercial structure; a person who manufactures, assembles, constructs, deals in, or distributes a residential or combination residential and commercial structure which is prefabricated, preassembled, precut, packaged, or shell housing; or a person who erects a residential structure or combination residential and commercial structure except for the person's own use and occupancy on the person's property. [MCL 339.2401(a).]

The language of the statute makes no reference to cleaning a home. McCall argues that the when it undertook the remediation of smoke odor, it was engaged in repair and alteration of plaintiffs' home. We disagree. "Repair" and "alteration" are specifically authorized activities under MCL 339.2401(a), but neither term is statutorily defined. Therefore, these terms must be accorded their plain and ordinary meanings, informed by the context of the surrounding statute. *Grifith v. State Farm Mut Automobile Ins Co,* 472 Mich. 521, 533; 697 NW2d 895 (2005). The statute as a whole defines a residential builder as someone engaged in "construction," and the terms "repair" and "alteration" fall within a list of types of construction—erection, demolition, addition to, etc—that all involve changes to the physical structure of a building.

***3** Therefore, in the context of MCL 339.2401(a), "repair" means to restore the physical structure of a residential structure after decay or damage. And "alteration" means to "modify" the physical structure of a residential building. Here, the ozone generator was not meant to modify or restore

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

the physical structure of plaintiffs' home. Rather, it was supposed to remove the smell of smoke from the house. Defendant conceded that operation of the ozone generator required no special knowledge or skill. The fact that removing the odor was done with an ozone generator rather than a can of room deodorizer does not bring the transaction within the ambit of the licensing requirements for residential builders. McCall argues that the machine removed smoke from the structure of the house, but if that were sufficient to bring this activity within the scope of the statute, so would use of a broom or mop as they remove dirt from the structure of a building. Michigan does not require a license for cleaning or janitorial services, but McCall's argument would practically require providers of such services to be licensed as builders. We decline to distort the law in this manner. Therefore, the trial court erred when it determined that the transaction at issue in this case was exempt from the MCPA.

III. CAUSATION UNDER THE MCPA

McCall also argues that summary disposition was appropriate because plaintiffs could not establish causation under the MCPA. Plaintiffs have not appealed the dismissal of their negligence claims and so the only causation issue relevant on appeal concerns the claim for property damage under the MCPA. However, at the trial level the question of causation as to bodily injury was part and parcel of the causation issue and much of the proofs were addressed to those injuries.

McCall[2] requested that the court bar plaintiffs from "relying upon proofs of claimed ozone exposure" and dismiss the complaint or set the matter for a *Daubert*[3] hearing "at which point the court shall makes [sic] its determination as to the admissibility of expert opinions supporting plaintiffs' contentions regarding alleged injuries and damages caused by exposure to ozone."

At the conclusion of the hearing, the trial court dismissed the negligence claims, but not the claims under the MCPA, which included only damages to plaintiffs' home and not for personal injury. Subsequently, defendant sought summary disposition on the MCPA claim, the trial court granted the motion and plaintiff appealed.

We "consider[ ] the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh,* 263 Mich.App at 621.

A review of the record reveals that plaintiffs submitted a substantial amount of scientific literature regarding ozone exposure to the trial court. One article references the reactivity of household products to ozone exposure and states: "these heterogeneous reactions have been noted to cause material aging, damage to pigments and damage to cultural artifacts." Poppendieck, et al, *Ozone Reactions with Indoor Materials during Building Disinfection,* 41 Atmospheric Environment 3166–3176 (2007). Another article states, "Heterogeneous reactions involving ozone have a number of undesirable consequences, including cracking of stressed rubber, fading of dyes, damage to photographic materials and deterioration of books. Weschler, *Ozone in Indoor Environments: Concentration and Chemistry,* 10 Indoor Air 269–288 (2000) The articles explain that the damage is a result of reactions that also release chemicals into the air. Other articles noted that ozone interacted with household materials, causing them to release chemicals including formeldahyde into the air, but did not specifically reference any degradation in the function or appearance of the household materials. Moriske, et al, *Concentrations and Decay Rates of Ozone in Indoor Air in Dependence on Building and Surface Materials,* 96, 97 Toxicology Letters 319–323 (1998); Nicolas, et al, *Reactions Between Ozone and Building Products: Impact on Primary and Secondary Emissions,* 41 Atmospheric Environment 3129–3138 (2007). While these latter articles do not directly support plaintiff's position, they tend to confirm that ozone interacts with household materials in a manner that can change the basic chemical structure of the materials.

***4** Plaintiffs also submitted reports from lay and expert witnesses. Daniel Smith wrote that he installed tile and trim work in plaintiffs' home in 2005, and during a walkthrough on May 29, 2007, after the ozone exposure, noted extensive damage to many surfaces and materials that would require repair or replacement. He did not opine regarding the cause of the damages, but estimated repair costs at $150,000–280,000. Verne Brown stated that, if McCall had done its work properly, the ozone levels in the house would not have been high enough to cause structural damage. In a later affidavit he explained how he concluded that the ozone levels in the house were in fact high enough to cause such damage. Roger Wabeke, while focusing mainly on the health risks of ozone, did opine that McCall should have warned plaintiffs of possible damage to materials from ozone exposure.

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

In addition, plaintiffs provided deposition testimony from defendant's employee that the ozone generator placed in their home by McCall had been set at level "8" on a scale of 0 to 10. Defendant's owner testified that he was aware of the possibility of harm from ozone to humans and building materials, but did not know what levels could cause such harm. Finally, Norbert Schiller testified during the *Daubert* hearing that a study done in the home some time after the incident did find levels of formaldehyde that were "fairly high, above what one would expect in a normal residence."

In response to McCall's final motion for summary disposition, the trial court held that because plaintiffs could not establish the amount of ozone that had been in their home, they could not prove there had been enough ozone to cause the alleged damages. Under these circumstances, however, plaintiffs do not need to establish the precise amount of ozone that McCall released into their home in order to establish that the ozone caused the damage. The trial court found that there was sufficiently reliable information to allow testimony that ozone can cause damage to building materials, stating "it was clear that ozone might have a deleterious effect if it reaches a certain level. And, there was certainly identification of literature that would identify that." The literature and expert reports provided by plaintiffs certainly support the conclusion that ozone can damage household materials. McCall does not dispute that ozone can cause damage to building materials. It is also undisputed that McCall placed an ozone generator in plaintiffs' home, turned it on at a high setting, and left it running for a weekend. Plaintiffs further allege that when they left at the beginning of the weekend in question their home was in good condition, but after it had been exposed to ozone over the weekend a variety of exposed surfaces—including carpet, upholstery, wood, brick, and plastic—had been damaged. Among other things, finish had come off of wood, furniture changed color, bricks were crumbling, plastic had aged, and carpets were sticky. Verne Brown's affidavit states that these deteriorations of materials are consistent with ozone exposure, and one of the articles submitted by plaintiff[4] states that ozone reactions "have been noted to cause material aging, damage to pigments, and damage to cultural artifacts," which is entirely consistent with the damages alleged by plaintiffs. In his affidavit, Verne Brown also calculated the ozone concentrations produced in plaintiffs' home, and concluded that the concentration was extremely high. The record does not contain any evidence contrary to plaintiffs' testimony, and defendants do not directly challenge the existence of these physical changes on appeal, though they do not concede that any damages occurred over the weekend. [5]

***5** Thus, plaintiffs have provided scientific evidence that high levels of ozone damage building materials, that there was a high level of ozone in their house, and that their house suffered damages consistent with exposure to high levels of ozone during the time the exposure occurred. Further, no witness, lay or expert, has advanced any possible cause of the alleged property damages other than the ozone exposure. Therefore, there is sufficient evidence for a jury to conclude that the ozone generator caused the damage to plaintiffs' house without resort to speculation.

IV. CONCLUSION

In Docket No. 306190, we conclude that the trial court erred when it granted summary disposition in favor of McCall on plaintiffs' MCPA claim for damages to their house. We therefore also reverse the award of case evaluation sanctions in Docket No. 307883.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

All Citations

Not Reported in N.W.2d, 2013 WL 514598

Footnotes

1 The "use of ozone for the removal of indoor contaminants, including odors, evidentially was conceived originally more than 100 years ago. The presumption made to promote ozone for this purpose is that it will oxidize organic compounds to the extent that only carbon dioxide and water vapor remain." Boeniger, *Use of Ozone Generating Devices to Improve Indoor Air Quality,* 56 Am Ind Hyg Assoc J 590–8 (1995).

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

2 State Farm was dismissed earlier in the case.

3 *Daubert v. Merrell Dow Pharmaceuticals, Inc,* 509 U.S. 579; 113 S. Ct 2786; 125 L. Ed 2d 469 (1993).

4 Poppendieck, et al, *Ozone Reactions with Indoor Material During Building Disinfection,* 41 Atmospheric Environment, 3166–3176 (2007).

5 Defendant McCall suggests that the trial court's ruling on the motion in limine, which was not appealed by plaintiff, precludes any finding that plaintiffs have established causation. However, the trial court only barred testimony regarding the level of ozone in the house *after plaintiffs returned* to their home, which was after the ozone generation had ended and the home had been aired out. The court correctly concluded, “There's been no evidence on this record to support a claim that any hazardous or dangerous levels of ozone remained in the home after the ozone generator was in fact turned off.” However, the court did not bar testimony that ozone can cause the type of property damages alleged in this case or that there was a sufficient concentration of ozone during the period the generator was operating to cause such damages.

End of Document © 2024 Thomson Reuters. No claim to original U.S. Government Works.

RECEIVED by MSC 8/28/2025 11:53:36 AM

RECEIVED by MSC 8/28/2025 11:53:36 AM

EXHIBIT 3

RECEIVED by MSC 8/28/2025 11:53:36 AM

Act No. 432
Public Acts of 2000
Approved by the Governor
January 9, 2001
Filed with the Secretary of State
January 9, 2001
EFFECTIVE DATE: March 28, 2001

STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000

Introduced by Rep. Bisbee

ENROLLED HOUSE BILL No. 5332

AN ACT to amend 1976 PA 331, entitled "An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties," by amending section 4 (MCL 445.904), as amended by 1993 PA 10.

The People of the State of Michigan enact:

Sec. 4. (1) This act does not apply to either of the following:

(a) 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.

(b) An act done by the publisher, owner, agent, or employee of a newspaper, periodical, directory, radio or television station, or other communications medium in the publication or dissemination of an advertisement unless the publisher, owner, agent, or employee knows or, under the circumstances, reasonably should know of the false, misleading, or deceptive character of the advertisement or has a direct financial interest in the sale or distribution of the advertised goods, property, or service.

(2) Except for the purposes of an action filed by a person under section 11, this act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by any of the following:

(a) The banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(b) 1939 PA 3, MCL 460.1 to 460.10cc.

(c) The motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(d) The savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804.

(e) 1925 PA 285, MCL 490.1 to 490.31.

(3) This act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093.

(4) The burden of proving an exemption from this act is upon the person claiming the exemption.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.

RECEIVED by MSC 8/28/2025 11:53:36 AM

RECEIVED by MSC 8/28/2025 11:53:36 AM

EXHIBIT 4

RECEIVED by MSC 8/28/2025 11:53:36 AM

Act No. 216
Public Acts of 2003
Approved by the Governor
December 1, 2003
Filed with the Secretary of State
December 2, 2003
EFFECTIVE DATE: December 2, 2003

STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003

Introduced by Senators Hammerstrom, Basham, Cassis, Leland, Cherry, Van Woerkom, Sanborn, Kuipers, Barcia, Schauer, Thomas, Clark-Coleman, Brater, Clarke, Scott, Switalski, Toy, Jacobs and Jelinek

ENROLLED SENATE BILL No. 493

AN ACT to amend 1976 PA 331, entitled "An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties," by amending section 4 (MCL 445.904), as amended by 2000 PA 432.

The People of the State of Michigan enact:

Sec. 4. (1) This act does not apply to either of the following:

(a) 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.

(b) An act done by the publisher, owner, agent, or employee of a newspaper, periodical, directory, radio or television station, or other communications medium in the publication or dissemination of an advertisement unless the publisher, owner, agent, or employee knows or, under the circumstances, reasonably should know of the false, misleading, or deceptive character of the advertisement or has a direct financial interest in the sale or distribution of the advertised goods, property, or service.

(2) Except for the purposes of an action filed by a person under section 11, this act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by any of the following:

(a) The banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(b) 1939 PA 3, MCL 460.1 to 460.10cc.

(c) The motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(d) The savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804.

(e) The credit union act.

(3) This act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093.

(4) The burden of proving an exemption from this act is upon the person claiming the exemption.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 496 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gary E. Randall

Clerk of the House of Representatives

Approved _____

_____

Governor

RECEIVED by MSC 8/28/2025 11:53:36 AM

RECEIVED by MSC 8/28/2025 11:53:36 AM

EXHIBIT 5

Fiscal Analysis
CREDIT UNION ACT

RECEIVED by MSC 8/28/2025 11:53:36 AM

Bill/Sponsor

SENATE BILL 490 as passed by the Senate, Sen. Alan Sanborn
SENATE BILL 493 as passed by the Senate, Sen. Beverly Hammerstrom
SENATE BILL 494 as passed by the Senate, Sen. Burton Leland
SENATE BILL 495 as passed by the Senate, Sen. Gerald Van Woerkom
SENATE BILL 496 as passed by the Senate, Sen. Shirley Johnson

House Committee

Commerce

Analysis

Summary

Senate Bill 496 (S-4) would create the Credit Union Act and repeal Public Act 285 of 1925, which currently regulates credit unions. The bill would establish how credit unions would be created, how they would operate and how they would be regulated.

Senate Bills 490, 493, 494 and 495 would amend various laws replacing references to Public Act 285 0f 1925.

Fiscal Impact

The bills would have no fiscal impact on State or local units of government.

Analyst(s)

Steve Stauff

FLOOR ANALYSIS - 10/21/03

Mitchell Bean, Director – House Fiscal Agency
124 N. Capitol Avenue, Lansing, MI 48909
Phone: (517)373-8080, Fax: (517)373-5874
http://www.house.mi.gov/hfa

RECEIVED by MSC 8/28/2025 11:53:36 AM

EXHIBIT 6

RECEIVED by MSC 8/28/2025 11:53:36 AM

Act No. 251
Public Acts of 2014
Approved by the Governor
June 21, 2014
Filed with the Secretary of State
June 27, 2014
EFFECTIVE DATE: 91st day after final adjournment of 2014 Regular Session

STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014

Introduced by Reps. Leonard, LaFontaine and Cotter

ENROLLED HOUSE BILL No. 5558

AN ACT to amend 1976 PA 331, entitled "An act to prohibit certain methods, acts, and practices in trade or commerce; to prescribe certain powers and duties; to provide for certain remedies, damages, and penalties; to provide for the promulgation of rules; to provide for certain investigations; and to prescribe penalties," by amending section 4 (MCL 445.904), as amended by 2003 PA 216.

The People of the State of Michigan enact:

Sec. 4. (1) This act does not apply to either of the following:

(a) 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.

(b) An act done by the publisher, owner, agent, or employee of a newspaper, periodical, directory, radio or television station, or other communications medium in the publication or dissemination of an advertisement unless the publisher, owner, agent, or employee knows or, under the circumstances, reasonably should know of the false, misleading, or deceptive character of the advertisement or has a direct financial interest in the sale or distribution of the advertised goods, property, or service.

(2) Except for the purposes of an action filed by a person under section 11, this act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by any of the following:

(a) The banking code of 1999, 1999 PA 276, MCL 487.11101 to 487.15105.

(b) 1939 PA 3, MCL 460.1 to 460.11.

(c) The motor carrier act, 1933 PA 254, MCL 475.1 to 479.43.

(d) The savings bank act, 1996 PA 354, MCL 487.3101 to 487.3804.

(e) The credit union act, 2003 PA 215, MCL 490.101 to 490.601.

(3) This act does not apply to or create a cause of action for an unfair, unconscionable, or deceptive method, act, or practice that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, if either of the following is met:

(a) The method, act, or practice occurred on or after March 28, 2001.

(b) The method, act, or practice occurred before March 28, 2001. However, this subdivision does not apply to or limit a cause of action filed with a court concerning a method, act, or practice if the cause of action was filed in a court of competent jurisdiction on or before June 5, 2014.

(4) The burden of proving an exemption from this act is upon the person claiming the exemption.

Enacting section 1. This amendatory act is retroactive and is effective March 28, 2001.

Enacting section 2. This amendatory act is curative and intended to prevent any misinterpretation that this act applies to or creates a cause of action for an unfair, unconscionable, or deceptive method, act, or practice occurring before March 28, 2001 that is made unlawful by chapter 20 of the insurance code of 1956, 1956 PA 218, MCL 500.2001 to 500.2093, that may result from the decision of the Michigan supreme court in Converse v Auto Club Group Ins Co, No. 142917, October 26, 2012.

Clerk of the House of Representatives

Secretary of the Senate

Approved .....

.....
Governor

RECEIVED by MSC 8/28/2025 11:53:36 AM