STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

CONSUMERS ENERGY COMPANY,

Plaintiff-Appellant,

v.

BRIAN STORM and ERIN STORM,

Defendants-Appellees,

Supreme Court Docket No. 162416

Court of Appeals Docket No. 350617

Lower Court Case No.: 2019-0160-CC
Kalamazoo County Circuit Court

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Defendants-Appellees' Response In Opposition To Consumer Energy Company's Application For Leave To Appeal

****ORAL ARGUMENT REQUESTED****

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INTRODUCTION

As explained in the Storms' separate application for leave to appeal under MCR 7.307(A), the Court of Appeals incorrectly construed MCL § 213.56(2). That error has significant consequences for landowners, who now cannot recover attorneys' fees under the statute even when they defeat an attempted condemnation on the merits—a result that the Court of Appeals admitted was contrary to the legislative intent.

Consumers' application for leave, however, addresses an issue that has a much more limited impact and that the Court of Appeals, in any event, construed correctly. Under MCL § 213.56(6), trial court orders "upholding or determining public necessity" are not appealable as a matter of right. Orders "upholding" and orders "determining" public necessity are two different things. An order "upholding" necessity is an order that upholds the determination by a *public* agency that a particular taking is necessary, as noted in MCL § 213.56(2). An order "determining" public necessity, on the other hand, is an order in which the trial court decides whether or not public necessity supports a *private* agency's attempted condemnation, as noted in MCL § 213.56(3).

In this case, the trial court entered an order "determining public necessity" when it entered its determination that public necessity did not support Consumers' proposed condemnation. Because this was an order "determining public necessity," it was appealable only by leave, not as a matter of right, under MCL § 213.56(6). Consumers, however, did not file an application for leave to appeal; it filed only a claim of appeal. The Court of Appeals did not err in determining that it lacked jurisdiction over Consumer's challenge of the trial court's determination of necessity.

The issues raised in the Storms' application for leave in this Court have a much wider impact on Michigan condemnation jurisprudence than the narrow jurisdictional issue that

Consumers presents here. Moreover, the Court of Appeals correctly rejected Consumers' argument. Thus, even though the Storms' application for leave should be granted, Consumers' application should be denied.

STATEMENT OF FACTS

The Storms have provided a full recitation of the facts in their application for leave to appeal under MCR 7.307(A). For purposes of Consumers' application for leave to appeal, the relevant facts are as follows:

A. The trial court concludes that there is no necessity for Consumers' attempted condemnation.

In 2019, Consumers filed a complaint to condemn real estate owned by Brian and Erin Storm. The Storms filed a motion to review the necessity of Consumers' proposed condemnation. After an evidentiary hearing on June 28, 2019, the trial court determined that Consumers lacked necessity for the proposed condemnation.

On August 26, 2019, the trial court entered an order granting the Storms' motion to review necessity, dismissing Consumers' complaint, and awarding attorneys' fees and costs to the Storms. (Storm App. 162a).[1]

B. Consumers files a claim of appeal.

MCL § 213.56(5) provides that "[t] he court's determination of a motion to review necessity is a final judgment." *Id*. Nevertheless, MCL § 213.56(6) provides that such an order may be appealed only by leave of the Court of Appeals, not by right:

> [A]n order of the court upholding or determining public necessity or upholding the validity of the condemnation proceeding is appealable to the court of appeals only by leave of that court pursuant to the general court rules. . . .

[1] The appendix submitted in this Court by the Storms is cited in this brief as "Storm App. __."

Id. (emphases added).

Notwithstanding § 213.56(6), Consumers filed a claim of appeal. Consumers challenged two aspects of the trial court's ruling: (1) the trial court's determination that Consumers had failed to prove necessity for its proposed exertion of eminent domain power, and (2) the trial court's award of attorneys' fees and costs to the Storms.

C. The Court of Appeals dismisses Consumers' challenge to the trial court's necessity ruling.

The Storms, after identifying the jurisdictional issue posed by § 213.56(6), filed a motion to dismiss the portion of Consumers' appeal that challenged the trial court's determination that the proposed condemnation lacked necessity. Consumers opposed the motion.

Ultimately, the Court of Appeals agreed that it lacked jurisdiction over Consumers' challenge to the trial court's necessity finding. In Part II of its opinion, the Court of Appeals dismissed this portion of Consumers' appeal. (Storm App. 164a-168a).

Consumers filed in this Court an application for leave to appeal Part II of the Court of Appeals' opinion.

In Part III of its opinion, the Court of Appeals vacated the trial court's award of attorneys' fees and costs to the Storms. (Storm App. 168a-171a). The Storms have filed a timely application for leave to appeal Part III of the Court of Appeals' opinion under MCR 7.307(A).

ARGUMENT

The relevant question for purposes of Consumers' application for leave is whether Consumers was attempting to appeal an order "determining public necessity" within the meaning of MCL § 213.56(6). The Court of Appeals properly concluded that an order in which a court determines that there is no necessity for a proposed taking is an order "determining" public necessity within the meaning of MCL § 213.56(6).

I. The Court of Appeals correctly construed the statutory language.

A. The statutory text plainly provides that an order "determining" public necessity includes an order in which the trial court determines that necessity is lacking for a particular taking.

MCL § 213.56(6) provides:

> "Notwithstanding section 309 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.309 of the Michigan Compiled Laws, an order of the court upholding or determining public necessity or upholding the validity of the condemnation proceeding is appealable to the court of appeals only by leave of that court pursuant to the general court rules. In the absence of a timely filed appeal of the order, an appeal shall not be granted and the order is not appealable as part of an appeal from a judgment as to just compensation."

Id. (emphasis added).

The emphasized portion of the statutory language is disjunctive, meaning that it refers to two different alternatives. *See Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010). A party may not appeal as of right an order of a court "upholding" public necessity, nor may a party appeal as of right an order of a court "determining" public necessity.

The Court of Appeals properly explicated the difference, observing that the two alternatives reflect the fact that the Uniform Condemnation Procedures Act ("UCPA") establishes rules governing condemnations by a *public* agency that are different than the rules governing condemnations by a *private* agency. When a public agency attempts to condemn land, the public agency makes the determination of whether necessity exists, and that determination is binding upon the trial court under MCL § 213.56(2). Because the trial court is not the entity "determining" the issue of necessity, an order confirming the public agency's determination that public necessity exists is an order "upholding . . . public necessity." MCL § 213.56(6).

By contrast, when a private agency attempts to condemn land, the trial court "shall determine the public necessity of the acquisition of the particular parcel" under MCL § 213.56(3). Because the trial court is the entity that makes the determination in the first instance, an order containing the trial court's determination about whether necessity exists is an order "determining public necessity." MCL § 213.56(6).

As the Court of Appeals properly observed, this view of the statutory structure is consistent with the plain meaning of the statutory language. Unambiguous statutes must be interpreted consistent with the ordinary meaning of their plain language. *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014). A court may consult dictionary definitions to ascertain the plain meaning of the term "determine," *see Wardell v Hincka*, 297 Mich App 127, 132; 822 NW2d 278 (2012), and the ordinary meaning of "determine" confirms that an order "determining" public necessity is an order in which a trial court determines whether a particular taking is necessary or not. As noted by the Court of Appeals, Merriam-Webster's Dictionary defines "determine" as "'to find out or come to a decision about by investigation, reasoning, or calculation,' for example, '*determine* the answer to the problem.'" (Storm App. 167a).

That is how the term "determining" is employed in § 213.56(6). An order "determining public necessity" is one in which the trial court decides whether or not necessity exists for the proposed taking. In either case—that is, if the trial court either finds that necessity exists or that it does not exist—appeal is by leave only, not by right. MCL § 213.56(6).

B. The statutory context confirms the Court of Appeals' ruling.

Consumers argues that the Court of Appeals should have adopted a different definition of the term "determining," contending that the term as used in subsection (6) means "to fix conclusively or authoritatively." But subsection (6)'s context—in particular, the use of the term "determine" in the other subsections of § 213.56—illustrates why Consumers is incorrect.

Statutory context is a relevant consideration in determining the plain meaning of statutory terms. See *Sweatt v Dep't of Corr*, 468 Mich 172, 179–80; 661 NW2d 201 (2003). Contrary to Consumers' arguments, however, the court should not look to the generalized intent of a legislative framework to provide an amorphous "context" for a particular statutory provision, nor should it look for guidance from statutory provisions that are far afield from the provision that is at issue. Instead, "for an interpretation that seeks the ordinary meaning of the statute, it is the narrower context drawn from neighboring provisions within a statute that is most appropriate to consider." *TOMRA of N Am, Inc v Dep't of Treasury*, 505 Mich 333, 349 (2020). The court should "turn to neighboring statutory provisions for additional context," but no farther. *In re Estate of Erwin*, 503 Mich 1, 11; 921 NW2d 308 (2018). *See also Rock v Crocker*, 499 Mich 247, 262; 884 NW2d 227 (2016) (looking to the immediately "surrounding" provisions).

Derivations of the word "determine" are used in four other places in § 213.56, and each use of the term confirms the Court of Appeals' interpretation of the term "determining" as used in subsection (6).

1. MCL § 213.56(3) (first sentence).

The first sentence of subsection (3) of MCL § 213.56 provides, "Except as otherwise provided in this section, with respect to an acquisition by a private agency, the court at the hearing shall determine the public necessity of the acquisition of e particular parcel. . . ." MCL § 213.56(3) (emphasis added). The term "determine" as used here clearly does not mean that the trial court must necessarily find that necessity exists; it simply means that the court shall "find out or come to a decision about" whether necessity exists. After all, subsection (3) goes on to state that, at the hearing in which the trial court is "determin[ing]" public necessity, the granting of a certificate of necessity by a public agency establishes a prima facie case of necessity. *Id.*

Subsection (3) therefore contemplates the possibility that, when the trial court is "determining public necessity," the trial court could conclude that a particular taking is not necessary.

Consumers agrees with the Storms and the Court of Appeals that the use of "determine" in subsection (3) allows a court to decide either that public necessity exists or that public necessity does not exist. (Consumers Br. at 22). In other words, when subsection (3) directs the court to "determine the public necessity" of a particular taking, the court is not being told simply to enter an order that the taking is necessary without adjudicating the dispute; instead, the court is being directed to ascertain whether the taking is necessary or not.

This admission largely resolves this appeal. After all, subsection (6)'s reference to an order "determining" public necessity refers to the decision of a court made under subsection (3). And as Consumers admits, a court that is "determin[ing]" public necessity under subsection (3) can decide either that necessity exists or that it does not exist. Thus, the Court of Appeals correctly reasoned that that an order "determining" public necessity for purposes of subsection (6) can include an order in which the trial court—exercising its discretion under subsection (3)—concludes that the taking is not necessary.

2. MCL § 213.56(5).

Subsection (5) provides, "The court's determination of a motion to review necessity is a final judgment." MCL § 213.56(5) (emphasis added). The term "determination" as used in subsection (5) refers to the decision rendered by the trial court under subsection (3). *Id*. Thus, in subsection (5), a trial court's "determination" of a motion to review necessity encompasses both orders in which the trial court concludes that necessity exists, as well as orders in which the trial court concludes that necessity does not exist.

Consumers, again, appears to agree with this interpretation of subsection (5). After all, Consumers cites subsection (5) as giving Consumers the right to appeal the trial court's order

concluding that its proposed condemnation lacked necessity. (Consumers Br. at 19 (citing MCL § 213.56(5) as support for the proposition that the trial court's order "is a final judgment appealable by right")). Thus, like the term "determine" in subsection (3), the term "determination" in subsection (5) does not exclude orders finding that necessity is lacking, either. This further supports the Court of Appeals' conclusion that subsection (6)—just like subsections (3) and (5)—uses the term "determining" to similarly encompass orders that conclude that necessity is lacking.

3. MCL § 213.56(3) (second sentence)

The second sentence of subsection (3) uses the term "determinations" to refer to an agency's power to ascertain whether—or not—necessity supports a proposed taking:

> . . . The granting of a permanent or temporary certificate by the public service commission or by a federal agency authorized by federal law to make determinations of public convenience and necessity as to condemnation constitutes a prima facie case that the project in furtherance of which the particular parcel would be acquired is required by the public convenience and necessity. . . .

MCL § 213.56(3) (emphasis added).

Just as in the first sentence of subsection (3), the power to make a "determination" that necessity exists includes the power to make a "determination" that necessity does not exist. This language refers to agencies that have the power not merely to decide that necessity exists, but also to decide that necessity does not exist. Thus, the use of the term "determinations" in the second sentence of subsection (3) does not merely describe situations in which necessity supports a proposed taking but also encompasses determinations that necessity does not exist for a particular taking.

4. MCL § 213.56(2).

Subsection (2) provides, "With respect to an acquisition by a public agency, the determination of public necessity by that agency is binding on the court in the absence of a showing

of fraud, error of law, or abuse of discretion." MCL § 213.56(2) (emphasis added). Like the second sentence of subsection (3), the term "determination" as used here refers to the agency's power to decide whether—or not—necessity exists for a particular proposed condemnation.

Thus, contrary to Consumers' argument, this language means that a public agency's determination that public necessity is lacking is binding on the court, just as a public agency's determination that public necessity exists is also binding on the court. In other words, the term "determination" refers to both the public agency's decisions that necessity exists, as well as the public agency's decisions that necessity does not exist.

Each time that it uses a derivation of the term "determine," therefore, MCL § 213.56 is consistent. On none of the occasions on which the term is used in the statute does it exclude decisions that conclude that necessity is lacking for a particular condemnation. The term "determine" and its derivations always encompass both orders that conclude that necessity is lacking, as well as orders that conclude that necessity exists.

The Court of Appeals appropriately looked to the immediate context of subsection (6) and concluded that the phrase "determining public necessity" refers to a "determination" that is made by the court under subsections (3) and (5) of the statute. There is no dispute that a "determination" by the court under subsections (3) and (5) is not limited to an order concluding that necessity exists but can also include an order concluding that necessity is lacking. The same is true of an order "determining public necessity" under subsection (6).

C. Consumers' arguments to the contrary are incorrect.

Consumers nevertheless argues that the two virtually identical statutory phrases—"determine the public necessity" (subsection (3)) and "determining public necessity" (subsection (5))—have "entirely different plain meaning[s]." (Consumers' Br. at 19). According to

Consumers, "determine the public necessity" encompasses a finding that necessity is lacking, but "determining public necessity" does not. Consumers' counter-intuitive interpretation is mistaken.

First, Consumers argues that the word "determining" takes on an entirely different meaning for purposes of subsection (6) because it is functioning as part of a noun phrase, instead of as the verb of the sentence. But there is no support for the notion that the word "determining" automatically cannot mean "deciding" whenever it is used as part of a noun phrase. This is a rule of Consumers' own invention.

Moreover, other portions of § 213.56 demonstrate that the use of "determine" in noun form does not automatically alter the term's ordinary meaning. For example, Consumers' argument ignores subsection (5), which provides, "The court's determination of a motion to review necessity is a final judgment." MCL § 213.56(5). The word "determination" functions as the noun that is the subject of that sentence, yet it clearly encompasses a trial court's decision that necessity is lacking for a particular condemnation. There is no rule that derivations of the word "determine" automatically do not mean "decide" whenever they are part of a noun phrase.

Consumers tries to bolster its position by pointing to various other statutes that use the phrase "determination of . . ." (Consumers Br. at 30). But it is improper to hunt for statutory context beyond the immediately neighboring statutory provisions. See *TOMRA*, 505 Mich at 349. It is also unnecessary. The subsections immediately surrounding subsection (6) use the word "determine" and "determination" repeatedly. Subsection (5), in fact, uses the same linguistic construction—"determination of . . ."—that Consumers highlights in unrelated statutes. Subsections (3) and (5) of § 213.56 are the relevant places to look to inform the meaning of subsection (6), and they illustrate the opposite of what Consumers contends.

Consumers complains that the Court of Appeals failed to consider the UCPA as a whole and instead reviewed subsection (6)'s terms in isolation. But the Court of Appeals properly assessed the context of subsection (6) and determined the meaning of "determining public necessity" in light of virtually identical phraseology elsewhere in the same statute. (Storm App. 165a-167a). This analysis appropriately considered near-similar terms used in the immediate context of the determinative statutory language. See *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 313 (2020) (looking "to other provisions of the statute" with the same or similar language to define statutory term).

Next, Consumers argues that the Court of Appeals' interpretation is inconsistent with the last sentence of subsection (6). But the Court of Appeals explained why that argument is incorrect. (Storm App. 167a). The last sentence of subsection (6) provides, "In the absence of a timely filed appeal of the order, an appeal shall not be granted and the order is not appealable as part of an appeal from a judgment as to just compensation." MCL § 213.56(6). This provision merely explains the consequences of an untimely appeal. The fact that there are additional reasons why some orders are not appealable as part of an appeal from a judgment as to just compensation does not mean that this portion of the statute is ineffective. It simply means that there may be more than one reason why such an order is not appealable.

Consumers also argues that the Court of Appeals' ruling conflicts with the overall intent of the UCPA, which is generally intended to facilitate a quick-take of property for purposes of condemnation. But "only where the statutory language is ambiguous may we look outside the statute to ascertain legislative intent." *People v Holder*, 483 Mich 168, 172; 767 NW2d 423 (2009). And in any event, the UCPA's intent to facilitate a quick-take of property is not implicated when necessity is in dispute:

> The Michigan condemnation act, MCL 213.361 et seq.; MSA 8.261(1) et seq., represents an attempt by the Legislature to enable various condemning governmental agencies, in the absence of any controversy as to the necessity of the taking, to quickly obtain title and possession of condemned real property without the inherent delay found in a normal civil action.

Goodwill Cmty Chapel v Gen Motors Corp, 200 Mich App 84, 88; 503 NW2d 705 (1993) (citation omitted) (emphasis added). In cases like the Storms', where the trial court has concluded that the condemning agency lacks necessity for the proposed condemnation, there clearly is a controversy over necessity. The Legislature did not intend to provide the condemnor with quick-take authority for a condemnation that the condemnor does not actually need.

Moreover, if Consumers is correct that the Legislature was aiming with the UCPA at obtaining quick resolution of condemnation proceedings, eliminating the right to appeal certainly facilitates that goal. Consumers, however, wants this rule to operate only in its favor. Consumers appears to endorse the rule when it applies to homeowners who lose in the trial court. It is only when Consumers has lost in the trial court that Consumers claims that the absence of a right to appeal is unfair or otherwise inappropriate.

Consumers fares no better in arguing that allowing appeal only by leave imposes "a time-consuming obstacle in the way of legitimate and necessary projects." (Consumers Br., at 17). As the Court of Appeals pointed out, it is not clear why an application for leave would be substantially more time-consuming than a claim of appeal. (Storm App. 167a). Nor would a claim of appeal entitle a condemnor to interim relief; in either scenario, the condemning agency would be bound by the trial court's order prohibiting the condemnation while the appeal was pending. See MCR 7.209(A)(1). And in any event, Consumers' argument that an application for leave is merely an obstacle that stymies "legitimate and necessary projects" prejudges the merits. Consumers' argument is predicated upon the assertion that it should always win in the trial court

and should always prevail on appeal, such that any procedural hurdle is an unnecessary obstacle that frustrates Consumers' ultimate victory.

Absent that faulty assumption, Consumers' argument has no more traction than a homeowner's contention that homeowners, too, should have the right to appeal as of right. The Legislature's decision to eliminate an appeal as of right for both homeowners and condemnors with respect to orders "determining public necessity" has similar trade-offs for both. There is nothing inherently suspicious with the Legislature's decision not to permit an appeal as of right in either circumstance.

II. The Court of Appeals did not err in denying leave to appeal.

Consumers also argues that, even if Consumers lacked the ability to appeal as of right, the Court of Appeals erred in declining to exercise its discretion to grant leave to appeal.

The decision whether to construe an improper claim of appeal as an application for leave to appeal is subject to review only for an abuse of discretion. See *Teddy 23, LLC v Mich Film Office*, 313 Mich App 557, 568; 884 NW2d 799 (2015) (reviewing for abuse of discretion circuit court's denial of delayed leave for application); *S & M Mach, Inc v Paravis Indus, Inc*, unpublished opinion per curiam of the Court of Appeals, issued Feb. 15, 2007 (Docket No. 266316), 2007 WL 490951, at *4 (reviewing for abuse of discretion circuit court's decision not to construe claim of appeal as application for leave) (Storm App. 194a). There was no such error here.

First, there is no dispute that MCL § 213.56(6) both (1) permits appeals only by leave granted and (2) prohibits even an appeal by leave if it is not timely filed. *Id*. Consumers did not file an application for leave to appeal. And if it tried to file such an application now, it would be barred as untimely. This is a harsh rule, but it is nonetheless required by the statutory text. *City of Detroit v Lucas*, 180 Mich App 47, 50; 446 NW2d 596 (1989).

Consumers argues that the Court of Appeals should have exercised its discretion to transform Consumers' claim of appeal into an application for leave. But Consumers is incorrect to argue that this is merely a procedural matter than can be overlooked. "In contrast with the Supreme Court and the circuit court, the jurisdiction of the Court of Appeals is entirely statutory." *People v Milton*, 393 Mich 234, 245; 224 NW2d 266 (1974). The statute unambiguously requires an application for leave, not a claim of appeal. Without a timely filed application for leave, the requirements of MCL § 213.56(6) are unmet.

Moreover, the Court of Appeals has traditionally construed improper claims of appeal as applications for leave "in the interest of judicial economy." *Pierce v City of Lansing*, 265 Mich App 174, 182–83; 694 NW2d 65 (2005). See also *City of Detroit v State*, 262 Mich App 542, 545–46; 686 NW2d 514 (2004). The basis for this approach is that, if the claim of appeal is denied, the appellant will simply refile the same arguments as a delayed application for leave under MCR 7.205(A)(4)(b). Thus, it is more efficient for the Court of Appeals to construe the defective claim of appeal as an application for leave so that the court does not need to consider the same issues twice.

That rationale, however, does not apply here. MCL § 213.56(6) prohibits a delayed application for leave, so no such application can be filed. In this context, therefore, construing a defective claim of appeal as an application for leave to appeal does not serve the interests of judicial economy.

Finally, Consumers' argument amounts to a request that this Court require the Court of Appeals to exercise its discretion in a particular direction—namely, to construe the defective claim of appeal as an application for leave and to grant leave. But if this Court mandates that the Court of Appeals' discretion be exercised in this manner, then the limitations of MCL § 213.56(6)

would be largely circumvented. If every homeowner and condemnor who filed a defective claim of appeal was entitled to have its defective filing construed as an application and to have leave granted, then the Court of Appeals could not decline to grant leave to timely applications for leave, either. In other words, leave would be granted with respect to every appellate challenge filed to every determination of necessity. That approach would be virtually identical to giving every challenger an appeal as of right—which § 213.56(6) specifically rejects. This Court should not compel the exercise of the Court of Appeals' discretion on this matter in any specific direction, particularly in view of § 213.56(6).

III. Consumers failed to preserve many of its merits arguments.

Finally, Consumers presents various arguments that it claims the Court of Appeals should have reviewed on the merits. But Consumers failed to assert most of those arguments in the Court of Appeals.

The only issue that Consumers raised in its initial brief on appeal was the argument that the trial court committed clear error in finding, as a matter of fact, that the proposed condemnation lacked necessity. All of the other arguments that Consumers now raises showed up for the first time in its reply brief. In fact, Consumers' argument that the trial court improperly placed the burden of proof on Consumers contradicts the position that Consumers expressly took in the trial court:

> The burden of proof in this case is not very tricky. We have never argued that we don't have the burden of proof in this case.
>
> * * *
>
> Does the risk of non-persuasion remain with Consumers Energy? Yes, it does. We've never argued otherwise.

(CE App. 128).[2]

At minimum, therefore, Consumers' arguments on the merits are unpreserved. See MCR 7.212(G); *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 174; 744 NW2d 184 (2007); *Blazer Foods, Inc v Rest Props, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003).

The Court of Appeals agreed that Consumers failed to preserve at least one of its newfound arguments on the merits. (Storm App. 170a, n.4). Thus, although Consumers argues that this Court should grant leave and reverse so that the Court of Appeals can consider the merits of Consumers' arguments, the Court of Appeals would not reach Consumers' current arguments, anyway.

CONCLUSION

Consumers' application for leave to appeal should be denied.

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Dated: January 27, 2021

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[2] The appendix submitted in the Court of Appeals by Consumers is cited in this brief as "CE App. __."