

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Court of Appeals
(Richard A. Bandstra, Donald S. Owens, and Alton T. Davis)

KEITH GAYLE DAVIS,

Plaintiff-Appellee,

v.

FOREST RIVER, INC.,
a foreign corporation,

Defendant-Appellant.

Supreme Court No. 136114

Court of Appeals No. 270478

Lower Court No. 04-64-CP
Hon. James R. Giddings

**CHRYSLER GROUP LLC'S AMICUS CURIAE BRIEF IN
SUPPORT OF DEFENDANT-APPELLANT**

CHERYL A. BUSH (P37031)
PATRICK G. SEYFERTH (P47575)
Bush Seyferth & Paige PLLC
Attorneys for Amicus Curiae
3001 W. Big Beaver Rd., Suite 600
Troy, MI 48084
(248) 822-7800

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JONATHON A. GREEN (P51461)
Attorney for Plaintiff-Appellee
30300 Northwestern Highway, Suite 345
Farmington Hills, MI 48334
(248) 932-3500

DONALD H. ROBERTSON (P30498)
RITA M. LAUER (P53075)
Attorneys for Defendant-Appellant
Forest River, Inc.
WINEGARDEN, HALEY, LINDHOLM &
ROBERTSON, PLC
G-9460 S. Saginaw Street, Suite A
Grand Blanc, MI 48439
(810) 579-3600

CHERYL A. BUSH (P37031)
PATRICK G. SEYFERTH (P47575)
Attorneys for Amicus Curiae Chrysler Group LLC
BUSH SEYFERTH & PAIGE PLLC
3001 W. Big Beaver Rd., Suite 600
Troy, Michigan 48084
(248) 833-7800

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TABLE OF CONTENTS

Index of Authorities.....ii

Interest of Amicus Curiae.....1

Statement of Jurisdiction.....2

Statement of Question Involved.....3

Statement of Facts.....4

Argument.....5

 A. This Court Needs To Decide the Privity Issue.....5

 B. Because Plaintiff’s Claims Arise Out Of The Sale Of Goods And He Is Seeking Only Economic Losses, The Economic Loss Doctrine Bars Plaintiff From Seeking Relief In Tort And He Must Seek His Remedies Under The MUCC. (Response To Question #5).....8

 C. Under The MUCC A Party Has No Claim For Breach Of Implied Warranty Against A Party With Whom He Is Not In Privity, And Without Standing To Assert Such A Claim The Remedy Of Revocation Of Acceptance Is Not Available To Him. (Response To Question #3).....9

 1. The Plain Wording Of The MUCC Requires Privity For Breach Of Implied Warranty Claims.....9

 2. Other State Courts Have Held That Privity Is Required For UCC Breach Of Implied Warranty Claims.....13

 3. Requiring Privity Will Not Leave Consumers Without Sufficient Recourse.....14

 D. Third-Party Beneficiary Status Does Not Eliminate The Privity Requisite Of Any UCC Breach Of Implied Warranty Claim. (Response to Question #4).....16

Conclusion and Request For Relief.....17

INDEX OF AUTHORITIES

Cases

Adirondack Combustion Technologies, Inc v Unicontrol, Inc, 17 AD3d 8 (NYApp 2005).....13

Auto Owners Ins Co v Chrysler Corp, 129 Mich App 38; 341 NW2d 223 (1983).....5

Baughn v Honda Motor Co, 727 P2d 655 (Wash 1986).....13

Blanco v Baxter Healthcare Corp, 158 CalApp4th 1039, 1058-59, 70 CalRptr3d 566 2008).....13

Bukowski v City of Detroit, 478 Mich 268; 732 NW2d 75 (2007).....11

Complex Int'l Co v Taylor, 209 SW3d 462 (Ky 2006).....13

Cova v Harley Davidson Motor Co., 26 Mich App 602; 182 NW2d 800 (1970).....5

Curl v Volkswagen of America, Inc, 871 NE2d 1141 (Ohio 2007).....13

Davis v Forest River, Inc, 278 Mich App 76; 748 NW2d 887 (2008) (Bandstra, J. dissenting).....6, 15

Davis v Homasote Co, 574 P2d 116 (Or 1978).....14

Ducharme v A&S RV Ctr, Inc, 321 F Supp2d 843 (ED Mich 2004), *aff'd* 127 Fed Appx 204 (6th Cir 2005).....6

Energy Investors Fund, LP v Metric Constructors, Inc, 525 SE2d 441 (NC 2000).....14

Flory v Silvercrest Indus, Inc, 533 P2d 383 (Ariz 1981).....13

Frankenmuth Mut Ins Co v Marlette Homes, Inc, 456 Mich 511; 573 NW2d 611 (1998).....12

Gusler v Fairview Tubular Products, 412 Mich 270; 315 NW2d 388 (1981).....17

In re MCI Telecomm, 460 Mich 396; 596 NW2d 164 (1999).....12

Kahn v Volkswagen of America, Inc, 2008 WL 590469 (Conn Super 2008).....13

Lorenz Supply Co v American Standard Inc, 100 Mich App 600; 300 NW3d 335 (1980).....10

<i>Mainline Tractor & Equip Co v Nutrite Corp</i> , 937 F Supp 1095 (D Vt 1996).....	14
<i>McQueen v Minolta Bus Solutions, Inc</i> , 620 SE2d 391 (Ga App 2005).....	13
<i>Michaels v Monaco Coach Corp</i> , 298 F Supp2d 642 (ED Mich 2003).....	6
<i>Mt Holly Ski Area v US Electrical Motors</i> , 666 F Supp 115, 120 (ED Mich 1987).....	6
<i>Neibarger v Universal Cooperatives, Inc</i> , 439 Mich 512; 486 NW2d 612 (1992).....	8
<i>Northridge Co v WR Grace & Co</i> , 471 NW2d 179 (Wis 1991).....	13
<i>Oats v Nissan Motor Corp</i> , 879 P2d 1095 (Idaho1994).....	13
<i>Pack v Damon Corp</i> , 434 F3d 810 (6 th Cir 2006).....	6
<i>Parsley v Monaco Coach Corp</i> , 327 F Supp2d 797 (WD Mich 2004).....	6
<i>Pitts v Monaco Coach Corp</i> , 330 F Supp2d 918 (WD Mich 2004).....	6
<i>Prentis v Yale Mfg Co</i> , 421 Mich 670; 365 NW2d 176 (1985).....	15
<i>Professional Lens Plan, Inc v Polaris Leasing Corp</i> , 67 P2d 887 (Kan 1984).....	13
<i>Rentas v DaimlerChrysler Corp</i> , 936 So2d 747 (Fla App 2006).....	13
<i>Rhodes v General Motors Corp</i> , 621 So2d 945 (Ala 1993).....	13
<i>Rothe v Maloney Cadillac, Inc</i> , 518 NE2d 1028 (Ill 1988).....	13
<i>Tomka v Hoechst Celanese Corp</i> , 528 NW2d 103 (Iowa 1995).....	13
<i>Walker Truck Contractors, Inc v Crane Carrier Co</i> , 405 F Supp 911, (ED Tenn 1975).....	14
<i>Wold Architects & Engineers . Strat</i> , 474 Mich 223; 713 NW2d 750 (2006).....	11
<i>Ysbrand v DaimlerChrysler Corp</i> , 81 P3d 618 (Okla 2003).....	7
Statutes	
MD. CODE ANN., COM. LAW. § 2-314.....	12
MCLA 257.1401, <i>et seq.</i>	15

MCLA 440.1101, <i>et seq.</i>	3, 5
MCLA § 440.1102.....	13
MCLA § 440.2103.....	9, 11
MCLA § 440.2106.....	10
MCLA § 440.2313.....	15
MCLA § 440.2314.....	6, 9-12, 14, 16
MCLA § 440.2318.....	16, 17
MCLA § 440.2712.....	14
MCLA § 440.2713.....	14
MCLA § 440.2715.....	14
MCLA § 440.2716.....	14
MCLA § 440.2608.....	14
MCLA § 440.2725.....	11
MCLA § 600.2945.....	15
Rules	
MCR 7.301.....	2
MCR 7.302.....	6

INTEREST OF AMICUS CURIAE

Chrysler Group LLC (“Chrysler Group”) is a world-wide manufacturer of automobiles, trucks and automotive parts. Chrysler Group, like virtually every other automobile manufacturer in this country, does not sell vehicles directly to the public. Rather, Chrysler Group manufactures vehicles and sells them to independent dealers throughout the world for re-sale to the public. Those vehicles are then frequently re-sold many times over the course of the vehicle’s life, and are subject to normal wear and tear and routine maintenance throughout their multiple ownerships.

As detailed below, whether privity is required to maintain a claim for breach of implied warranty under Michigan’s UCC is of critical importance to Chrysler Group, as well as to other American automotive manufacturers. Some federal and state courts, without any proclamation from this Court, have decided that privity is not required to maintain a claim for breach of implied warranty under Michigan’s UCC. These proclamations have, through the years, subjected automotive manufactures to not only excessive individual damage claims, but massive nationwide class actions as well. This Court’s ruling on whether privity is required to maintain a claim for breach of implied warranty seeking economic damages under Michigan’s UCC will significantly impact pending, and future, individual and class actions lawsuits in Michigan and throughout the country. Chrysler Group therefore submits this brief in support of Appellant Forest River, Inc.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to MCR 7.301(A)(2). Final Judgment was entered by the Circuit Court on March 23, 2006. A Motion for Remittitur was filed on April 12, 2006, and the Order denying that Motion was entered on May 10, 2006. The Court of Appeals, by Opinion dated February 21, 2008, denied Forest River's appeal, and affirmed the Circuit Court's judgment. This Court granted leave to appeal in an order dated June 25, 2008. On December 19, 2008, this Court entered an order reversing and remanding the case to the Court of Appeals. Each of the parties moved the court to reconsider, and on May 1, 2009, this Court vacated its order of December 19, and granted leave to appeal the February 21, 2008 judgment of the Court of Appeals.

STATEMENT OF QUESTION INVOLVED

1. Whether the economic loss doctrine and the UCC, MCL 440.1101 *et seq.*, apply to the plaintiff consumer's claims for breach of warranty?

Trial court did not directly address this issue.

Court of Appeals answered: No.

Amicus answers: Yes.

2. Whether the UCC requires privity to revoke acceptance of the purchase contract?

Trial court answered: No.

Court of Appeals answered: Yes (but held that the UCC did not apply to Plaintiff's claims against the manufacturer, and further held that the remedy of rescission was available to Plaintiff against the manufacturer under Michigan's common law).

Amicus answers: Yes.

3. Whether third-party beneficiary status under the warranty confers on the plaintiff any rights independent of the warranty?

Neither the trial court nor Court of Appeals decided this issue.

Amicus answers: No.

STATEMENT OF FACTS

Amicus Curiae Chrysler Group LLC adopts the statement of facts and proceedings as set forth by Forest River, Inc.

ARGUMENT

A. THIS COURT NEEDS TO DECIDE THE PRIVITY ISSUE.

In granting the motions seeking reconsideration, this Court stated that it would take up the issues of, *inter alia*: (1) whether the economic loss doctrine and the UCC, MCL 440.1101 *et seq.*, apply to the plaintiff consumer's claims for breach of warranty (Court's question #5); (2) whether the UCC requires privity to revoke acceptance of the purchase contract (Court's question #3); and (3) whether third-party beneficiary status under the warranty confers on the plaintiff any rights independent of the warranty (Court's question #4). Respectfully, this Court should not decide the issues it has asked the parties to brief without *first* deciding whether a consumer (like the Plaintiff here), who is not in privity with the manufacturer of a product, even has a claim under the MUCC for breach of implied warranty against that remote manufacturer.

The Michigan Court of Appeals has handed down conflicting and confusing opinions when faced with the issue of whether an implied warranty claim seeking only economic losses under the MUCC requires privity. Compare *Cova v. Harley Davidson Motor Co.*, 26 Mich App 602, 182 NW2d 800 (1970) (holding that uninjured buyer could recover economic losses for breach of implied warranty under the MUCC even though privity was lacking) to *Auto Owners Ins. Co. v. Chrysler Corp.*, 129 Mich App 38, 341 NW2d 223 (1983) (holding privity is required to bring a claim for implied warranty seeking only economic losses under the MUCC). The decision in this case by the Court of Appeals only added to the confusion by holding that an implied warranty claim under the MUCC *does* require privity, but then side-stepping this determination by finding that the MUCC does not apply to a case like this where the parties do not have a contractual relationship, and thus, concluded the Court of Appeals, the Plaintiff could

bring a common law warranty cause of action that permits privity-less rescission. *Davis v. Forest River, Inc.*, 278 Mich App 76, 91, 748 NW2d 887 (2008).

The United States district courts for the Eastern and Western District of Michigan have likewise been divided on the issue. Compare *Mt. Holly Ski Area v. U.S. Electrical Motors*, 666 F Supp 115, 120 (ED Mich 1987) (holding privity must exist between plaintiff and defendant in order to recover economic losses for breach of implied warranty under MUCC) to *Michaels v. Monaco Coach Corp.*, 298 F Supp2d 642 (ED Mich 2003) (holding “privity no longer is required in Michigan to pursue a breach of implied warranty claim against a remote manufacturer”). And, just when the Michigan federal courts appeared to finally agree that a consumer does not have an implied warranty under the MUCC against a remote manufacturer in a series of district court cases and a summary affirmance by the Sixth Circuit, (*see Pitts v. Monaco Coach Corp.*, 330 F Supp2d 918 (WD Mich 2004), *Parsley v. Monaco Coach Corp.*, 327 F Supp2d 797 (WD Mich 2004), *Ducharme v. A&S RV Ctr., Inc.*, 321 F Supp2d 843 (ED Mich 2004), *aff’d* 127 Fed Appx 204 (6th Cir 2005)), a different panel of the Sixth Circuit Court of Appeals ventured to *guess* that this Court would interpret MCLA § 440.2314 to not require privity so that a consumer can sue a remote manufacturer for breach of implied warranty seeking economic losses. *See Pack v. Damon Corp.*, 434 F3d 810, 820 (6th Cir 2006).

With so much confusion and uncertainty on such an important and recurring issue, it is the job of this Court to resolve the conflict. *See* MCR 7.302(B) (stating grounds warranting review by Supreme Court include where “the issue involves legal principles of major significance” and where decision of the Court of Appeals “conflicts with a Supreme Court decision or another decision of the Court of Appeals”). Indeed, this Court recognized the

importance of the issue when it directed the parties to address the privity question in its orders of June 25, 2008, and May 1, 2009.

Proper resolution of the privity issue has ramifications which bear significantly on the American automotive industry, which not only has been routinely subjected to claims by individual consumers for breach of implied warranty, but to massive class action lawsuits filed in other jurisdictions in which courts have effectively rewritten the MUCC implied warranty statute so as to eliminate the privity requirement. For example, in *Ysbrand v DaimlerChrysler Corp*, 81 P3d 618, 626 (Okla 2003), an Oklahoma state court certified a *nationwide* class of vehicle owners for purposes of pursuing economic losses based on an alleged breach of implied warranty *under the MUCC* even though there was no privity between the class members and the vehicle manufacturer defendant. And, the lack of privity in that case was not simply a matter of a “once-removed” relationship (*i.e.*, manufacturer sold vehicle to independent authorized dealer who sold to consumer/class member). Indeed, in many cases, foreign courts have determined that, under Michigan law, purchasers of used vehicles can pursue implied warranty claims against remote manufacturers even though the relationship between the consumer and the manufacturer is remote by multiple degrees (*i.e.*, manufacturer sold to independent authorized dealer who sold to buyer 1, who sold to buyer 2, who sold to “current owner”/class member). Opinions such as this have left vehicle manufacturers, like Chrysler Group, subject to excessive damage claims and unending potential liability based on nothing more than a “prediction” of how this Court would interpret this governing provision of the MUCC.

This Court’s ruling on the issue of whether privity is required to maintain a claim for breach of implied warranty seeking economic loss under the MUCC will have far-reaching effects, even outside the state courts of Michigan.

B. BECAUSE PLAINTIFF'S CLAIMS ARISE OUT OF THE SALE OF GOODS AND HE IS SEEKING ONLY ECONOMIC LOSSES, THE ECONOMIC LOSS DOCTRINE BARS PLAINTIFF FROM SEEKING RELIEF IN TORT AND HE MUST SEEK HIS REMEDIES UNDER THE MUCC. (RESPONSE TO QUESTION #5)

Plaintiff's purchase of his RV was clearly a "transaction in goods" that is governed by the MUCC. *See* MCLA § 440.2102; *see also Neibarger v Universal Cooperatives, Inc.*, 439 Mich 512, 519; 486 NW2d 612 (1992) ("Article 2 of the code governs the relationship between parties involved in 'transactions in goods.'"). Both of the parties agree with this conclusion. *See* Appellant's Opening Br. at 7; Appellee's Br. at 8. Indeed, Plaintiff expressly asserted claims under the MUCC against *both* the seller of the RV *and* the manufacturer, Forest River.

Moreover, this Court has long recognized that "where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses." *Neibarger*, 439 Mich at 520; 486 NW2d 612. This Court explained the rationale behind the economic loss doctrine:

[I]n a commercial transaction, the parties to a sale of goods have the opportunity to negotiate the terms and specifications, including warranties, disclaimers, and limitation of remedies. Where a product proves to be faulty after the parties have contracted for sale and the only losses are economic, the policy considerations supporting products liability in tort fail to serve the purpose of encouraging the design and production of safer products.

439 Mich at 523; 486 NW2d 612. After expressly adopting the economic loss doctrine in *Neibarger*, this Court further held that where a plaintiff seeks to recover for economic loss caused by a defective product, "the exclusive remedy is provided by the UCC." 439 Mich at 527; 486 NW2d 612. Therefore, because Plaintiff is seeking only economic losses arising from his purchase of an allegedly defective product, the economic loss doctrine limits Plaintiff to contractual remedies under the MUCC. *Id.*

C. UNDER THE MUCC A PARTY HAS NO CLAIM FOR BREACH OF IMPLIED WARRANTY AGAINST A PARTY WITH WHOM HE IS NOT IN PRIVITY, AND WITHOUT STANDING TO ASSERT SUCH A CLAIM THE REMEDY OF REVOCATION OF ACCEPTANCE IS NOT AVAILABLE TO HIM. (RESPONSE TO QUESTION #3)

The MUCC statutorily creates an implied warranty of merchantability and provides remedies, including the remedy of revocation of acceptance, for a breach of that warranty. Under the plain language of the MUCC, an implied warranty is only extended from the “seller” to the “buyer”. That is, the statute does not create an implied warranty in favor of a buyer against a manufacturer that is not in privity with the buyer. Because the plain wording of the statute does not create an implied warranty that extends from a manufacturer to a downstream buyer to whom the manufacturer does not sell the goods, there is simply no implied warranty for the remote manufacturer to breach under such circumstances. Without the existence of an implied warranty, *none* of the MUCC’s remedies for a breach of implied warranty, including revocation of acceptance, are available.

1. The Plain Wording of the MUCC Requires Privity for Breach of Implied Warranty Claims.

The MUCC statutorily creates implied warranties. The MUCC provision creating the implied warranty of merchantability provides, in relevant part, as follows:

Unless excluded or modified [] a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

MCLA § 440.2314.

The MUCC expressly defines the terms referenced in its various provisions, including those used in creating the implied warranty of merchantability. The “seller” is the “person who sells or contracts to sell goods.” MCLA § 440.2103(d). The “contract” is one “relating to the

present or future sale of goods.” MCLA § 440.2106(1). And, a “sale” is defined to require a “passing of title from the seller to the buyer for a price.” *Id.* These definitions, together with the plain wording of § 440.2314, require privity to bring a claim for breach of implied warranty.

First, under the express wording of the governing statute an implied warranty is created only when there is a “sale.” *See* MCLA § 440.2314. That is, a person has no implied warranty to enforce unless, and until, there is a “passing of title from *the* seller to *the* buyer for a price.” MCLA § 440.2106(1). To avoid the need for privity, § 440.2314 would have to be interpreted to mean that once there is a “passing of title” from “*the* seller” to “*the* buyer” an implied warranty is created in favor of the buyer, which is imposed against every person in the upstream distribution chain. But, the plain wording of the MUCC does not countenance such an interpretation. Indeed, it refers only to “*the* seller,” and not to anyone upstream in the chain of distribution. *See* MCLA § 440.2314. That the required “sale” is expressly contemplated to be only between the direct seller and the direct buyer makes clear that privity is a necessary prerequisite to a breach of implied warranty claim.

Second, by the express wording of the governing statute, a “contract” is a necessary prerequisite to the creation of an implied warranty. *See* MCLA § 440.2314. And, a “contract” creating an implied warranty is only one “relating to the *present* or future sale of goods.” *See* MCLA § 440.2106(1); *see also Lorenz Supply Co v American Standard Inc*, 100 Mich App 600, 607-08; 300 NW3d 335 (1980) (“To summarize these provisions, the code applies to a present sale of existing and identified goods or to a contract where the parties agree to the sale of goods at a future time.”). There is nothing in the statute itself which suggests that an implied warranty can be imposed on a non-party to the “*present* or future sale” of goods. Nor is there anything in the statute itself suggesting that a downstream remote buyer can enforce an implied warranty

against those who previously sold the goods to other parties. The fact that an implied warranty is created based on a “*present* sale,” without reference to any past sale, makes clear that implied warranties do not extend to those upstream in the distribution chain, and that privity is required to enforce the warranty.

Third, the MUCC expressly imposes the implied warranty only on “*the* seller.” See MCLA § 440.2314 (emphasis added). A party not in privity with a buyer is simply not “*the* seller” who, by statute, impliedly warrants the product sold. In fact, when it comes to implied warranties, the MUCC does not establish any legal relationship between non-privity parties. Under the express wording of the MUCC, “*the* seller” responsible for the statutorily-created implied warranty is only the person who sold or contracted to sell the goods. See MCLA § 440.2103(d). This wording clearly demonstrates the requirement of privity.¹

“In interpreting statutory language, courts must determine and give effect to the intent of the Legislature.” *Wold Architects & Engineers v. Strat*, 474 Mich 223, 233; 713 NW2d 750 (2006). “The first step in ascertaining legislative intent is to look at the words of the statute itself. *Id.*; see also *Bukowski v City of Detroit*, 478 Mich 268, 274; 732 NW2d 75 (2007) (“We give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art.”). “[A] court should refrain from speculating about the Legislature’s intent beyond the

¹ The wording of the provision outlining the statute of limitations for claims brought pursuant to the MUCC also lends support to the fact that a plaintiff must be in privity with the defendant to assert an implied warranty claim. Under MCLA § 440.2725, the 4 year statute of limitations on warranty claims begins to run when the breach of warranty occurs, and the statute expressly indicates that the breach occurs when “tender of delivery is made.” Without a privity requirement, this 4 year statute of limitations would be extended an additional 4 years every time there was a “tender of delivery.” This could lead to the bizarre result that an original purchaser of an automobile who held onto it for 5 years would be barred from bringing an implied warranty claim against a manufacturer in his last year of ownership, but any person he “tendered” the used vehicle to after his 5 years of ownership could bring a claim against the manufacturer when the vehicle is 6 years old or more.

words employed in the statute.” *In re MCI Telecomm*, 460 Mich 396, 414; 596 NW2d 164 (1999). When a statute “is clear and unambiguous, judicial construction is precluded.” *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998).

Here, the plain wording of the provision creating an implied warranty of merchantability under the MUCC, combined with the mandated meaning to be ascribed to the words used in that statutory provision, lead to only one conclusion: privity is a necessary element of a claim for economic damages brought under the MUCC for breach of implied warranty. The statute cannot be read to create an implied warranty between a seller and some unknown third-party without effectively rewriting it.

In fact, other states that have seen fit to abolish the privity requirement for implied warranty claims have expressly amended their state’s version of UCC § 2-314 to do so. For example, Maryland’s version of UCC § 2-314 provides:

(1) Unless excluded or modified [] a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. ... Notwithstanding any other provisions of this title

(a) ... “seller” includes the manufacturer, distributor, dealer, wholesaler or other middleman or the retailer; and

(b) Any previous requirement of privity is abolished as between the buyer and the seller in any action brought by the buyer.

MD. CODE ANN., COM. LAW. § 2-314. Unlike Maryland, the Michigan legislature has not amended § 440.2314 to abolish privity. This Court must interpret § 440.2314 as written, and not legislate the privity requirement out of the statute.

2. Other State Courts Have Held that Privity is Required for UCC Breach of Implied Warranty Claims.

One of the purposes enunciated by the Michigan legislature in enacting the MUCC was “to make uniform the law among the various jurisdictions.” MCLA § 440.1102(2)(c). Holding that privity is necessary for breach of implied warranty claims will further this purpose, as a multitude of states have expressly held that privity is required for breach of implied warranty claims under the UCC. These states include: California (*Blanco v Baxter Healthcare Corp*, 158 CalApp4th 1039, 1058-59, 70 CalRptr3d 566, 582 (2008)); Connecticut (*Kahn v Volkswagen of America, Inc*, 2008 WL 590469, *8 (Conn Super 2008)); Florida (*Rentas v DaimlerChrysler Corp*, 936 So2d 747, 751 (Fla App 2006)); Georgia (*McQueen v Minolta Bus Solutions, Inc*, 620 SE2d 391, 393 (Ga App 2005)); Idaho (*Oats v Nissan Motor Corp.*, 879 P2d 1095 1102 (Idaho 1994)); Kentucky (*Complex Int’l Co v Taylor*, 209 SW3d 462, 465 (Ky 2006)); Ohio (*Curl v Volkswagen of America, Inc*, 871 NE2d 1141, 1147-48 (Ohio 2007)); Washington (*Baughn v Honda Motor Co*, 727 P2d 655, 669 (Wash 1986)); and Wisconsin (*Northridge Co v WR Grace & Co*, 471 NW2d 179, 187 (Wis 1991)).

Other state courts, while holding that privity is necessary for claims brought under the UCC for breach of implied warranty, have limited the privity requirement to cases in which a plaintiff seeks economic damages only. Among these states are: Alabama (*Rhodes v General Motors Corp*, 621 So2d 945, 947 (Ala 1993)); Arizona (*Flory v Silvercrest Indus, Inc*, 533 P2d 383, 388 (Ariz 1981)); Illinois (*Rothe v Maloney Cadillac, Inc*, 518 NE2d 1028, 1029 (Ill 1988)); Iowa (*Tomka v Hoechst Celanese Corp*, 528 NW2d 103, 108 (Iowa 1995)); Kansas (*Professional Lens Plan, Inc v Polaris Leasing Corp*, 67 P2d 887, 898-99 (Kan 1984)); New York (*Adirondack Combustion Technologies, Inc v Unicontrol, Inc*, 17 AD3d 825, 827 (NYApp

2005)); North Carolina (*Energy Investors Fund, LP v Metric Constructors, Inc*, 525 SE2d 441, 446 (NC 2000)); Oregon (*Davis v Homasote Co*, 574 P2d 1116, 1117 (Or 1978)); Tennessee (*Walker Truck Contractors, Inc v Crane Carrier Co*, 405 F Supp 911, 919 n. 12 (ED Tenn 1975)); and Vermont (*Mainline Tractor & Equip Co v Nutrite Corp*, 937 F Supp 1095, 1108 (D Vt 1996)).

This Court should join the multitude of courts in other states which, interpreting UCC provisions similar, if not identical, to MCLA § 440.2314, have held that privity is required for a claim of breach of implied warranty under the UCC.

3. Requiring Privity Will Not Leave Consumers Without Sufficient Recourse.

Limiting aggrieved buyers of goods who seek only economic losses to the MUCC — with its attendant privity requirements for implied warranty claims — will not leave consumers without an adequate remedy. Indeed, it will not effect the type or amount of relief consumers may seek at all; it will only impact who they may seek that relief from. If MCLA § 440.2314 is enforced as written to require privity, aggrieved buyers can still assert implied warranty claims against the seller of defective goods, and seek all of the available remedies under the MUCC, *including revocation of acceptance*. See, e.g., § 440.2712 (cover); § 440.2713 (contract/market damages); § 440.2715 (incidental and consequential damages); § 440.2716 (specific performance); § 440.2608 (revocation of acceptance). Permitting an implied warranty claim against a remote manufacturer does not provide any additional form of relief to a consumer. That is, any right to recover economic losses from, or seek revocation against, a remote manufacturer would merely be duplicative of that which could be recovered from the seller under MCLA § 440.2314.

Nor does requiring privity for implied warranty claims leave an aggrieved buyer without any recourse to seek a remedy from a remote manufacturer. *First*, to the extent the manufacturer issues an express warranty to the buyer (as is the case with many motor vehicles and other consumer goods), the buyer can still sue the manufacturer directly for breach of that warranty. *See* MCLA § 440.2313. Indeed, that is exactly what the buyer of the allegedly defective RV did in this case. *See Davis v Forest River, Inc*, 278 Mich App 76, 94 n 2; 748 NW2d 887 (2008) (Bandstra, J. dissenting). In this day and age, manufacturers' express warranties are highly competitive, and consumers routinely take into account the terms of those warranties when purchasing goods. Moreover, for almost all goods, and certainly with motor vehicles, there is a competitive market for extended warranties and service contracts that provide additional protection from economic losses resulting from the purchase, assuming the buyer bargains for such additional protections. Buyers of extended warranties and service contracts can likewise sue the issuer (whether a remote manufacturer or another third party) for breach of such extended warranties or service contracts.

Second, to the extent that a buyer suffers personal injuries or other non-economic losses from the purchase of a defective product, in addition to any other remedy that may be available, the buyer can sue the manufacturer directly, whether in tort or under Michigan's product liability statute, neither of which require privity. *See, e.g., Prentis v Yale Mfg Co*, 421 Mich 670; 365 NW2d 176 (1985); MCLA § 600.2945.

Third, in the case of allegedly defective automobiles, the legislature has authorized remote buyers to sue a manufacturer directly for economic damages via its enactment of Michigan's "Lemon Law." *See* MCL 257.1401, *et seq.* Not only does the Lemon Law provide an avenue for remote purchasers to sue a motor vehicle manufacturer directly, it demonstrates

that the legislature is more than capable of abolishing the privity requirement if that is what it intends to do. *Compare id.* to MCLA § 440.2314.

D. THIRD-PARTY BENEFICIARY STATUS DOES NOT ELIMINATE THE PRIVACY REQUISITE OF ANY UCC BREACH OF IMPLIED WARRANTY CLAIM. (RESPONSE TO QUESTION #4)

The MUCC has what is commonly recognized as a “third-party beneficiary” provision which extends a seller’s warranties to persons other than the direct buyer. *See* MCLA § 440.2318. Many of the state courts that have abolished the privity requirement in regard to implied warranty claims have done so based on their state’s version of UCC § 2-318. However, MCLA § 440.2318, which is Michigan’s version of UCC § 2-318, is different than that upon which other states have relied to abolish the privity requirement. Under MCLA § 440.2318, third-party beneficiary status is extended only to certain persons who suffer personal injuries. The fact that claims based solely on economic damages were intentionally excluded from § 440.2318 is proof that the legislature intended to require privity for claims brought under § 440.2314 for economic damages, and that it did not intend to allow any type of third-party beneficiary status to act as a substitute for privity.

In any event, MCLA § 440.2318 has nothing to do with the *creation* of an implied warranty. Rather, § 440.2318, by its terms only applies once an implied warranty already exists between two parties (*i.e.*, between two people in a direct seller/buyer relationship), and it then acts to extend that *existing* implied warranty to other persons in the buyer’s household who suffer personal injury as a result of their use of the product. In other words, once a court finds that there is vertical privity between a seller and a buyer so that § 440.2314 has created an implied warranty in favor of the buyer, § 440.2318 allows members of that buyer’s family to sue for breach of that existing warranty to recover personal injury damages even though they are not

in privity with the seller (*i.e.*, the statute eliminates the need for horizontal privity for certain persons). *See* official comment to UCC § 2-318 (“The purpose of this section is to give the buyer’s family, household and guests the benefit of *the same warranty which the buyer received* in the contract of sale, thereby freeing any such beneficiaries from any technical rules as to privity.”).

Moreover, a finding that privity is not required to assert an implied warranty claim would render MCLA § 440.2318 completely meaningless. Without a privity requirement, everyone would be free to sue for breach of warranty, not just family members and household guests that suffer personal injury. There simply would be no need to enact a provision like MCLA § 440.2318, the only effect of which is to create a right to sue for breach of warranty in specified persons who are not in privity with a seller. Basic rules of statutory construction dictate that this Court should not adopt an interpretation of the MUCC which would render MCLA § 440.2318 meaningless. *See, e.g., Gusler v. Fairview Tubular Products*, 412 Mich 270, 294, 315 N.W.2d 388, 394 (1981) (“A statute should be construed so that effect be given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant and so that one section will not destroy another unless the provision is the result of obvious mistake or error”).

Reading the MUCC as a whole, it lends itself to no other interpretation than that third-party beneficiary status cannot be allowed to substitute for the privity required by that Act.

CONCLUSION AND REQUEST FOR RELIEF

Abolishing the privity requirement for implied warranty claims under the MUCC would be contrary to the express language of the statute and the legislature’s intent, would provide no additional remedies that are not already available to aggrieved buyers against sellers under the

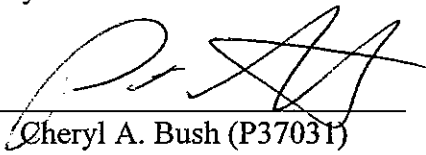
MUCC, and would make manufacturers absolute insurers of their products thereby subjecting them to limitless and unpredictable liability to any person who ever owns one of its products.

Consequently, for all of the reasons stated above, Amicus Curiae Chrysler Group LLC respectfully requests this Honorable Court to hold that in the absence of privity a consumer has no claim for breach of implied warranty seeking economic loss under the MUCC.

Respectfully submitted,

BUSH SEYFERTH & PAIGE PLLC
Attorneys for Amicus Curiae

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By: 
Cheryl A. Bush (P37031)
Patrick G. Seyferth (P47575)
3001 W. Big Beaver Rd., Suite 600
Troy, MI 48084
(248) 822-7800

