STATE OF MICHIGAN

IN THE SUPREME COURT

CHARLETTE LEGION-LONDON,

Plaintiff-Appellee,

v

KEVIN CRAWFORD, D.O., P.C. and KEVIN CRAWFORD, D.O.,

Defendants-Appellants,

and

THE SURGICAL INSTITUTE OF MICHIGAN AMBULATORY SURGERY CENTER, L.L.C., MICHIGAN BRAIN & SPINE PHYSICIANS GROUP, P.L.L.C., and ARIA SABIT, M.D., Jointly & Severally,

Defendants.

SC Docket 161672

COA Docket 344838
LC Case No. 16-155115-NH
(Oakland County Circuit Court)

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DEFENDANTS-APPELLANTS' RESPONSE TO MICHIGAN ASSOCIATION FOR JUSTICE BRIEF AMICUS CURIAE

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INTRODUCTION

Not surprisingly, the Michigan Association for Justice (MAJ), the bar organization for lawyers representing plaintiffs in personal injury litigation, supports the Court of Appeals majority opinion. While wrapping themselves in the mantle of "the injured and the damaged," MAJ urges a position here that will lead to longer and costlier litigation rather than the elimination of weak frivolous cases and the speedy resolution of those with merit.

Contrary to MAJ's view, the majority opinion threatens harm to both meritorious plaintiffs and defendants while protecting lawyers. The majority opinion guts the measures that Michigan's Legislature enacted in 1993 to ensure that medical malpractice litigants – both plaintiffs and defendants - have complete and accurate information about the nature of the claim and its merit or lack of merit provided by qualified medical experts at the outset of litigation. The idea was to make sure that the parties know at the outset if the case is serious or not. Weak cases would be eliminated because no qualified expert would sign an affidavit. Strong cases could be resolved without long and costly litigation.

The heart of this effort to reduce litigation costs was the Legislature's 1993 amendments. Public Act 270 tightened the requirements for experts and required affidavits of merit and meritorious defense to be filed by those qualified experts in all cases early in the litigation. PA 1993, No 78, S 1, Eff. April 1, 1994. No longer could a party avoid filing the affidavits by paying security for costs. Both sides were obligated to show their hand early. Contrary to MAJ's position, the affidavits of merit and meritorious defense are not one-sided "manufactured technicalities" that impede justice; they assure a just, speedy resolution of litigation by requiring both sides to timely obtain and exchange expert analysis of the strength of the claims and defenses.

Because the Michigan Association for Justice (MAJ) chose to file its amicus brief with this Court after Defendants-Appellants had filed their supplemental brief and reply brief with this Court, Defendants-Appellants had no opportunity to address the arguments and authorities set forth in it. As a result, they are filing this reply.

MAJ argues that the legislative purpose and language of MCL 600.2912d shows that "a second affidavit of merit constitutes amendment to the first affidavit of merit." Michigan Association for Justice Brief Amicus Curiae, p v. In urging this point, MAJ offers several arguments: 1) Michigan law favors resolution on the merits and thus amendments should be liberally allowed; 2) the statute seeks to deter frivolous claims and to allow meritorious claims to be adjudicated on the merits; 3) an affidavit of merit belongs to the plaintiff and not the signatory; and 4) the rules and statute provide "no limit to the scope or type of amendment available." MAJ Amicus Brief, 6-16.

MAJ is wrong about what the Legislature did as reflected in the language of the 1993 amendments and the legislative history. It is wrong about the best reading to harmonize MCL 600.2192d, MCL 600.2196, and the court rules. And it is wrong because its approach like that of the Court of Appeals majority creates a serious separation-of-powers constitutional issue.

ARGUMENT

AN AFFIDAVIT OF MERIT SIGNED BY A DIFFERENT DOCTOR QUALIFIED IN A DIFFERENT MEDICAL SPECIALTY IS NOT AN AMENDMENT BUT A SUBSTITUTION WHICH DEFEATS THE LEGISLATIVE PLAN FOR FOSTERING SPEEDY RESOLUTION OF MEDICAL MALPRACTICE LITIGATION THROUGH EXCHANGE OF EXPERT AFFIDAVITS AT THE OUTSET

A. MAJ misreads the legislative history and ignores language in MCL 600.2192d and MCL 600.2196 requiring the early exchange of information from qualified medical experts about the claims and defenses to allow the parties to resolve litigation without costly discovery and trials

1. The Michigan Legislature sought to reduce litigation costs by facilitating early resolution of medical malpractice lawsuits

One of the key goals of Michigan's Legislature, when it enacted amendments to the medical malpractice tort reform measures in 1993, was to reduce the time and expense of malpractice lawsuits by assuring an early exchange of information from qualified experts about the nature and strength of the claims and defenses. This is apparent in the text and legislative history of the 1993 changes to the 1986 tort reform measures.

Michigan's Legislature sought to address "concerns about the effect of the medical liability system on the availability and affordability of health care in Michigan." House Legislative First Analysis Senate Bill 270, House Bill 4403 and 4404 (4-1-93). Proponents of the amendments had concluded that the 1986 reforms to the system had proven inadequate. *Id*. at p 1. ("Opinion is widespread in the medical community and elsewhere that these reforms have proved inadequate.") Proponents of the amendments pointed to statistics showing medical malpractice insurance costs were higher in Michigan than elsewhere, and "while Detroit area hospitals pay the highest liability rate in the country, even smaller, outstated hospitals pay more than some urban hospitals elsewhere." *Id.* The Legislature had before it a "1990 report of the U.S. Government Accounting Office (GAO) [which] confirms that while rates declined in the nation and adjacent states since about 1988, Michigan rates have continued to increase, although at a slower rate since 1986." *Id.*

The Legislature's analysis identified reports "that only 37 cents of each dollar spent on medical liability premiums goes to victims of malpractice, while roughly half of the money paid in premiums goes to legal fees (plaintiff and defense combined) and court costs." *Id.* At the same time, "[p]ayouts per claim are increasing: one hospital insurer reports a 173 percent increase – from $51,000 to $139,000 – in its average payout per

claim between 1986 and 1990." *Id.* The Legislature also identified as part of the problem the fact that lawsuits were "on the rise, threatening to widen the gap between Michigan and other states; nationally, about a half-dozen lawsuits are filed annually for every 100 physicians, but the figure for Michigan is closer to 20 lawsuits per 100 physicians." *Id.*

The Legislature saw "litigiousness and the high cost of insurance in Michigan" as a problem because it was driving physicians "either literally out of the state, or out of practice through early retirement" and "many other physicians remain in practice, but eliminate costly elements such as obstetrics that carry a comparatively high risk for lawsuits…." *Id.* This medical liability climate was considered "partly responsible for problems that people in urban centers and rural areas have in obtaining medical care…." *Id.*

These problems prompted proponents of reform to propose additional reforms to "alleviate problems with the state's medical liability system and address widespread dissatisfaction with it." *Id.* at p 2. The proposed bill included a legislative finding that "Michigan has 'a serious health care litigation problem … resulting in the high costs of defensive medicine and medical malpractice insurance'." Senate Fiscal Agency Summary of Senate Bill 270 as introduced 1-28-93, p 6. Other proposed legislative findings were that litigation climate and costs "'severely threatens access to and cost control of the health care delivery system … and results in a breakdown of the health care delivery system, severe hardships for the medically indigent, a denial of access for the economically disadvantaged, and depletion of the supply of physicians such as to substantially worsen the quality of health care available' to Michigan citizens." *Id.*

Public Act 270 was eventually enacted. It included provisions to strengthen the qualifications required for those providing expert medical testimony. Experts needed to be

of the same board-certified specialty or health profession as the defendant. MCL 600.2169. Each expert witness must devote "a majority of his or her professional time" to "active clinical practice of the same health profession… [or] active clinical practice of that specialty" or "instruction … in an accredited health professional school or accredited residency of clinical research program in the same health profession … or same specialty." MCL 600.2169(1).[1] The Legislature also required that the "plaintiff in an action alleging medical malpractice or, if the plaintiff is represented by an attorney, the plaintiff's attorney shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." MCL 600.2192d(1).

This affidavit of merit (to be followed by an affidavit of meritorious defense) was intended to allow both sides to evaluate their case at the outset. The Legislature's requirement that the affidavit be filed with the complaint reflects its belief that the plaintiff or plaintiff's attorney should complete its investigation before suing and that the defendant should do so expeditiously once the suit was filed.

2. The Legislature provided careful limited options to ensure that a diligent plaintiff was not deprived of a claim

The Legislature specifically provided two options if a plaintiff could not comply with this requirement. First, the plaintiff or plaintiff's attorney could move for 28 more days to

[1] The Legislature sought to avoid use of those not in active practice but making a living by serving as an expert witness giving testimony on behalf of those who pay the witness. By requiring the expert to devote "a majority" of time to active clinical practice or active teaching or research or residency programs, the Legislature sought to bar professional witnesses. And the legislature made clear that the requirements of the statute governing expert medical testimony do not limit disqualification on other grounds such as those in MRE 702 and 703.

file the affidavit. MCL 600.2912d(2). Second, if the difficulty was caused by the defendant's failure to allow access to medical records within the time period in the statute, the affidavit could be filed within 91 days after the complaint was filed. MCL 600.2912d(3).

The Legislature also sought to provide relief if the affidavit was later successfully challenged. Under the statute, the lawsuit must be dismissed unless the plaintiff's attorney had a reasonable belief that the expert met the requirements under MCL 600.2169. See *Bates v Gilbert*, 479 Mich 451, 462; 736 NW2d 566 (2007). And that makes sense because otherwise the reform would not ensure that the parties work a case up before filing it or can exchange the all-important expert testimony early.

The Legislature's plan was carefully focused on ensuring that qualified medical experts evaluate both the claims and the defenses early in the litigation. This Court recognizes "the maxim *expressio unius est exclusio alterius*; that the express mention in a statute of one thing implies the exclusion of other similar things." *Bradley v Saranac Cmty Sch Bd of Educ*, 455 Mich 285, 298; 565 NW2d 650, 656 (1997). And that negative-implication canon supports the conclusion here that the Legislature's specific recognition of only two narrow circumstances in which an affidavit may be filed after the complaint implies that its intent to exclude other late filings.

This early exchange of information was intended to bar frivolous lawsuits – because the complaint could not be filed without a qualified expert supporting it. But the Legislature also sought to ensure that strong cases with serious injuries could be resolved quickly at the outset thus saving the enormous litigation costs. This could be accomplished by voluntarily submitting cases to arbitration or by ensuring that both sides understood the medical testimony about claims and defenses at the outset. Then, if qualified experts

had reviewed medical records and offered their specific and concrete evaluation as required, the parties could negotiate a settlement – and avoid the time and expense of discovery and a trial.

3. MAJ and the Court of Appeals majority approach would gut the legislative plan

MAJ misses the point. Both the text of the enacted bill and the legislative history reflect a deep concern with litigation costs and with the huge amounts of premium dollars going to pay lawyers – rather than compensate injured plaintiffs. The Legislature saw the requirement that the parties file affidavits of merit and meritorious defense at the outset to save on those litigation costs by helping the parties evaluate their cases accurately so that they could resolve them without the need for a costly trial.

The Court of Appeals majority and MAJ interpret the court rules in a manner that guts this legislative plan. Under the Court of Appeals holding, even when a plaintiff's attorney lacks any reasonable belief that the affidavit is by someone qualified to sign it, the lawsuit still continues with no real penalty. As the Court of Appeals dissent pointed out, "In so holding, the majority essentially concludes that a plaintiff's attorney need not investigate whether a potential expert meets the requirements of MCL 600.2169 before filing a medical malpractice actions…." *Legion-London v Surgical Institute of Michigan*, ___ Mich App ___, slip op issued February 6, 2020 at * 5 (Cameron, J, dissenting). The dissent also points out that the "majority's interpretation of MCR 2.112(L)(2)(b) essentially renders MCL 600.2169 and MCL 600.2921d nugatory in that it permits plaintiffs to file complaints" without conforming to the mandatory statutory requirements for an affidavit of merit at the outset. *Id.*

That conclusion supports a decision from this Court peremptorily reversing the majority for the reasons set forth in the dissent or issuing its own decision.

B. MAJ and the majority also create a constitutional separation-of-powers issue by interpreting MCR 2.112(L)(2)(b) to abrogate the requirements of MCL 600.2192b and MCL 600. 2196

Michigan's Constitution vests rule-making authority in the Supreme Court. Const 1963, art 6, § 5. But the Court may engage in rule-making only when "'no clear legislative policy reflecting considerations other than judicial dispatch of litigation can be identified....' " *Kirby v Larson,* 400 Mich 585, 598; 256 NW2d 400 (1977) (opinion of Williams, J), citing 3 Honigman & Hawkins, Michigan Court Rules Annotated (2d ed.), p 404;15 see also Joiner & Miller, Rules of Practice and Procedure: A study of judicial rule making, 55 Mich LR 623, 650–651 (1957). The Court is "not authorized to enact court rules that establish, abrogate, or modify substantive law." *McDougal v Schanz,* 461 Mich 15, 27; 597 NW2d 148 (1999). Thus when "a particular court rule contravenes a legislatively declared principle of public policy, having as its basis something other than court administration ... the [court] rule should yield." *McDougal v Schanz*, 461 Mich 15, 30-31; 597 NW2d 148 (1999) citing Joiner & Miller, supra at 635.

The question before the Court arises at the border of its rule-making authority. If MAJ and the majority's interpretation of this Court's rules pertaining to affidavits of merit is accepted, it will render the rule unconstitutional. Their approach, as the dissent pointed out, abrogates or modifies the substantive law embodied in MCL 600.2912d and MCL 600.2196. This Court has held that the requirements for experts in medical malpractice litigation are a matter of substantive law:

> We conclude that MCL § 600.2169; MSA. § 27A.2169 is an enactment of substantive law. As such, it does not impermissibly infringe this Court's constitutional rule-making authority over "practice and procedure."

McDougall v Schanz, 461 Mich 15, 37; 597 NW2d 148, 159 (1999). That decision correctly recognized the policy decision the Legislature made to address the litigation crisis in the medical malpractice area. This Court held that the Legislature's power to change a common-law cause of action carries with it the power to circumscribe those qualified to give the requisite proofs to establish the cause of action. 461 Mich at 36. Public Act 270 further modified the common law cause of action for medical malpractice by requiring qualified medical experts to offer their opinions about whether a claim or defense is meritorious at the outset. This Court's rulemaking authority does not permit it to abrogate those requirements.

Yet MAJ boldly argues that "[t]here is no limit to the scope of type of amendment available." Michigan Association for Justice Amicus Brief, p 10. MAJ asserts that amendments are allowed -- "any type, either in form or substance," "any time before judgment is rendered." *Id.* at p 11. According to MAJ, "the only limiting factor to allowing amendment is if the amendment would be unjust." *Id.*

If that is true, then as the dissent correctly points out, the "majority's interpretation of MCR 2.112(L)(2)(b) essentially renders MCL 600.2169 and MCL 600.2912d nugatory…." Dissenting opinion * 5. The Legislature imposed enhanced responsibilities on those filing medical malpractice actions under Michigan law. By accepting any amendment without limit as allowed under the court rules, the majority has effectively abrogated the legislative requirement that affidavits of merit be filed with the complaint. This Court is not empowered to abrogate or modify substantive rights under the guise of rulemaking. And it should reject the Court of Appeals and MAJ's expansive interpretation of its rules to avoid this serious constitutional issue. *People v Skinner*, 502 Mich 89, 100; 917 NW2d 292, 297

(2018)(courts have a duty to construe a statute or rule as constitutional unless its unconstitutionality is apparent). See also *In re Sanders,* 495 Mich 394, 414; 852 NW2d 524, 534 (2014)("we have a duty to interpret statutes and court rules as being constitutional whenever possible"). Given this duty to avoid an interpretation that would render the court rule unconstitutional, this Court should embrace the circuit court and dissent's approach.

C. A policy favoring liberal amendment of pleadings does not apply here to override a legislative plan to foster early resolution of medical malpractice claims

MAJ's main argument is that Michigan favors decisions on the merits and requires the liberal amendment of complaints. This is problematic for two reasons. First, the rules governing amendment of pleadings are inapplicable here. The affidavit of merit or meritorious defense is not a pleading. MCR 2.110(A).[2] Thus, MCR 2.118(D) cannot be read to override the distinction between amendments to affidavits of merit and the amendment of pleadings.

Second, MAJ's contention that a policy in favor of decisions on the merits supports a rule that permits any change at any time is not consistent with Michigan law. This Court has offered a more nuanced view of longstanding policies governing the amendment of pleadings. According to this Court, court rules governing amendments are intended to avoid, twin evils, extreme formality and extreme ambiguity:

> A complaint must provide reasonable notice to opposing parties. MCR 2.111(B)(1); *Simonelli,* supra; *Jean v Hall*, 364 Mich 434; 111 N.W.2d 111 (1961); *Scott v Cleveland*, 360 Mich 322; 103 NW2d 631 (1960). This rule is designed to avoid two opposite, but equivalent, evils. At one extreme lies the straight jacket of ancient forms of action. Courts would summarily dismiss

[2] The rule defines "pleading" showing that it "includes only" a complaint, a cross-claim, a counterclaim, a third-party complaint, an answer to a complaint, cross-claim, counterclaim, or third-party complaint and a reply to an answer. MCR 2.110. Affidavits of merit must be filed with a pleading. But under the rules, they are not pleadings.

> suits when plaintiffs could not fit the facts into these abstract conceptual packages. At the other extreme lies ambiguous and uninformative pleading. Leaving a defendant to guess upon what grounds plaintiff believes recovery is justified violates basic notions of fair play and substantial justice. Extreme formalism and extreme ambiguity interfere equivalently with the ability of the judicial system to resolve a dispute on the merits. The former leads to dismissal of potentially meritorious claims while the latter undermines a defendant's opportunity to present a defense. Jean and Scott, supra. Neither is acceptable.

Dacon v Transue, 441 Mich 315, 329; 490 NW2d 369, 375 (1992). While this explanation relates to pleadings, it also shows why MAJ and the majority's approach does not pass muster – either as an interpretation of the rules and statutes (or constitutionally).

The Legislature's plan requires an affidavit of merit to be filed with the complaint at the outset. The Legislature avoided the evil of excessive formality by including several provisions to permit a complaint to filed even without a conforming affidavit. First, the suit may proceed if the plaintiff's attorney reasonably believed that the proposed expert met the requirements of MCL 600.2196, Second, the plaintiff may seek 28 more days to obtain the affidavit on a showing of good cause. MCL 600.2912d(2). Third, the plaintiff is allowed 91 more days to file the affidavit if the defendant impedes access to medical records. MCL 600.2912d(3).[3]

This Court adopted a rule providing further relief by making clear that an amended affidavit relates back to the original affidavit. The rule allows for changes to the amendment to clarify aspects of the practice of care or to expand or alter the acts or omissions that were considered to be a breach of that standard or for other additions, deletions, or corrections that the expert believes necessary.

[3] The Legislature likewise required defendants who are represented by counsel to file a comparable affidavit of meritorious defense within 91 days. MCL 600.2912e.

But here, the second affidavit of merit was not an amendment. Even under the broadest term of amendment, the plaintiff did not add, delete, or correct something in the original affidavit. The plaintiff replaced the original affidavit with a new one. If that is allowed as the majority and MAJ argue, it will vitiate the statutory plan for the parties to analyze the claims through qualified experts and exchange that information at the outset.[4]

These provisions lie at the heart of the statutory plan to make sure that both parties in a medical malpractice lawsuit know the basis of the claim and any defenses early in the litigation. Thus, the plaintiff's expert must provide an affidavit of merit that includes the applicable standard of care, the expert's opinion that the standard of care was breached, the actions that should have been taken or omitted by the health care professional or facility to comply with the standard of care, and the way the breach of the standard of care proximately caused the complained-of injury. MCL 600.2912d(1). The affidavit must certify that the medical expert has reviewed the presuit notice and all medical records supplied to him or her by the plaintiff's attorney. *Id.* within 91 days of the filing of the complaint, the defendant's expert must file an affidavit covering the same points as to any defenses. MCL 600.2912e.

The Legislature intended this exchange to avoid frivolous claims or frivolous defenses. But that was not the only goal. The Legislature also expected that, with full information available to both sides based on access to the medical records and qualified expert analyzing the claims, the parties would often be able to resolve cases without costly

[4] To be sure, MAJ and the plaintiffs' bar generally opposed tort reform measures. But having lost in the legislative battle, they ought not be able to obtain a victory under the guise of interpreting the statute and rules that undeniably defeats the Legislature's careful and nuanced plan to reform medical malpractice litigation.

discovery and a trial. That is why the Legislature included specific early timing requirements.

A correction to an affidavit of merit or meritorious defense may prompt an amendment to it. But substituting a new affidavit of merit from a different doctor in a different specialty does not satisfy the Legislative mandate to file a conforming affidavit with the complaint. It is not an amendment; it is a substitution. A new affidavit from a new expert does not relate back to the original filing. This is not a "manufactured technicality" as MAJ contends; it results from enforcing mandatory substantive requirements imposed by Michigan's legislature and interpreting the rules to give content to their plain language.

D. An affidavit of merit, while filed by a party, is a sworn statement of the affiant and cannot be changed by anyone else

MAJ offers a curious argument that because the party or party's attorney is required to file an affidavit of merit, it belongs to the party. MAJ Brief, p 9. From this, MAJ contends that "just like the Complaint belongs to the party (who is filing it), so does the affidavit." *Id.* From that, MAJ concludes that the party may change *anything* about the affidavit including its signatory. This strained reading of the statute is unpersuasive.

First, an affidavit is the sworn statement of the affiant; the contents originate from the affiant based on his knowledge and belief. Thus, it is only the affiant who can change (add, subtract, or correct) the words that he has included in a sworn statement. Second, the language in MCL 600.2912d and MCL 600.2912e does not support MAJ's argument. The Legislature differentiated between the affiant's sworn statement and the reasonable belief of the party's attorney. MCL 600.2912d and MCL 600.2912e contain several requirements. First, they require "an affidavit of merit signed by a health professional" to be filed with the complaint. Second, they require the health professional to be one "who the plaintiff's

attorney" or "who the defendant's attorney" reasonably believes meets the requirements for an expert witness under section 2169." MCL 600.2912d; MCL 600.2192e. In other words, the health professional swears to various aspects of the claim or defenses based on a review of medical records. But the health professional is not the person charged with determining whether he or she "meets the requirements of MCL 600.2197." That obligation falls on the party's attorney—and he is protected from reasonable mistakes by virtue of the "reasonably believes" language.

In providing for this "failsafe" analysis, the Legislature sought to balance what might be a harsh result with the need to assure that affidavits are timely-filed at the outset of the litigation. To avoid the kind of hypertechnical approach, the Legislature included this provision protecting the parties from negative consequences if their attorney "reasonably believes" that the medical expert satisfies the statutory requirements. But the Court of Appeals majority never considered this provision because it concluded that a wholesale substitution could replace a problematic affidavit. As the dissent correctly points out:

> Under MCL 600.2912d(1), a plaintiff's attorney in a medical malpractice action is required to file "an affidavit of merit signed by a health professional who the plaintiff's attorney *reasonably* believes meets the requirements for an expert witness under [MCL 600.]2169." (emphasis added). Thus, pursuant to MCL 600.2912d(1), a plaintiff's attorney must only reasonably believe that the proposed expert meets the requirements for an expert witness. See *Jones v Botsford Continuing Care Corp*, 310 Mich App 192, 200; 871 NW2d 15 (2015). "[T]he issue is not whether the attorney's judgment proves to be incorrect, but rather whether the attorney's belief, though erroneous in hindsight, was reasonable at the time." *Id.* at 201. If a plaintiff's attorney did not possess a reasonable belief that the expert met the requirements under MCL 600.2169, the medical malpractice action must be dismissed. See *Bates v Gilbert*, 479 Mich 451, 462; 736 NW2d 566 (2007).

Legion-London v Crawford, Dissenting Opinion, slip op p 4.

The Legislature provided protection for parties if their attorneys made a reasonable mistake about the qualifications that would be needed for an expert. But under MAJ and the majority opinion, this provision would never be used. Under their scenario, a litigant would simply substitute a new affidavit from a new medical expert and it would relate back to the original one. Thus, no court would ever need to consider the attorney's reasonable belief; they would simply look to the new untimely affidavit as though it were timely filed by virtue of this misinterpretation of the court rules.

Such an outcome not only completely eviscerates the Legislature's plan, it encourages work on the part of lawyers. Rather than find the time to thoroughly investigate the merits of the medical malpractice claim or the availability and strength of defenses to it, lawyers would be able to give the case a "lick and a promise" with the view that serious work can await trial or closer to it. And of course, that means that the parties will not have the information to accurately analyze their position and consider an early resolution. Such an interpretation entirely defeats the Legislative plan for avoiding or reducing heavy litigation and insurance costs. As a result, a reversal is in order.

RELIEF

Defendants-Appellants Kevin Crawford, D.O. and Kevin Crawford, D.O., P.C. request this Court reverse the Court of Appeals February 6, 2020 Opinion and order reinstated the trial court's orders relative to this issue, including the grant of summary disposition to Defendants-Appellants and the denial of the requested amendment of the AOM by Plaintiff-Appellee, together with any other relief this Court deems appropriate.

Respectfully submitted,

PLUNKETT COONEY

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Dated: November 29, 2021

STATE OF MICHIGAN

IN THE SUPREME COURT

CHARLETTE LEGION-LONDON, Plaintiff-Appellee, v KEVIN CRAWFORD, D.O., P.C. and KEVIN CRAWFORD, D.O., Defendants-Appellants, and THE SURGICAL INSTITUTE OF MICHIGAN AMBULATORY SURGERY CENTER, L.L.C., MICHIGAN BRAIN & SPINE PHYSICIANS GROUP, P.L.L.C., and ARIA SABIT, M.D., Jointly & Severally, Defendants.	SC Docket 161672 COA Docket 344838 LC Case No. 16-155115-NH (Oakland County Circuit Court)

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PROOF OF SERVICE/STATEMENT REGARDING E-SERVICE

STATE OF MICHIGAN)
)SS
COUNTY OF OAKLAND)

SHARON L. PAVELEK, being duly sworn, deposes and says that she is an employee of the law firm of Plunkett Cooney, and that on November 29, 2021, she caused to be served a copy of a Defendants-Appellants' Motion for Leave to File Response to Amicus, Response to Michigan Association for Justice Brief Amicus Curiae, and Proof of Service/Statement Regarding E-Service as follows:

Brian J. McKeen (P34123) Andrew F. Kay (P73707) Attorneys for Plaintiff-Appellee	**Counsel was served via MiFile** akay@mckeenassociates.com
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Wilson A. Copeland, II (P23837) Attorney for Defendant The Surgical Institute of Michigan Ambulatory Surgery Center, LLC	**Counsel was served via MiFile** Wc2nd@gcwpc.com
Aria Omar Sabit, M.D. Register Number: 50612-039 FCI Elkton Federal Correctional Institution P.O. Box 10 Lisbon, OH 44432 (last known address)	**Defendant was served via First Class Mail, all postage prepaid**
Michigan Brain & Spine Physicians Group, PLLC c/o Aria Omar Sabit, M.D. Register Number: 50612-039 FCI Elkton Federal Correctional Institution P.O. Box 10 Lisbon, OH 44432 (last known address)	**Defendant was served via First Class Mail, all postage prepaid**

/s/ Sharon L. Pavelek
SHARON L. PAVELEK

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