

STATE OF MICHIGAN
IN THE SUPREME COURT

SEJASMI INDUSTRIES, INC.,
Plaintiff/Counter-Defendant/Appellee,
v
QUALITY CAVITY, INC.,
Defendant/Counter-Claimant/Appellant,

Supreme Court No. 156341
Court of Appeals Nos. 336205 & 328292
Macomb County Circuit Court
No. 2014-004273-CB
Hon. Kathryn A. Viviano

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***Amici Curiae* Brief**
in Support of Application for Leave to Appeal by

**American Mold Builders
Association
Canadian Association of Mold
Makers
Canadian Tooling and
Machining Association
C.G. Automation & Fixtures, Inc.
C.G. Plastics, Inc.
Commercial Tool and Die, Inc.
Competition Engineering, Inc.
Datum Engineering, Inc.
Distinctive Machine Corporation**

**Eastern Michigan Tool and Die
Collaborative, LLC
Eclipse Tool & Die, Inc.
Huizenga Manufacturing Group,
Inc.
Monroe LLC
Pinnacle Tool, Inc.
Precision Metalforming
Association
Proper Tooling, LLC
Tooling Systems Group
Tri-Way Mold & Engineering**

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STATEMENT OF INTEREST

Amici include Michigan companies and trade associations with members who do business in Michigan's manufacturing industry under the Mold Lien Act and related Special Tools Lien Act. Both statutes are equally affected by the Court of Appeals decision in this case. Each *amicus* joining in this brief has a distinct interest in restoring vital legislative protections for the tooling industry that the Court of Appeals debilitated with its interpretation of the Mold Lien Act in this case.

The American Mold Builders Association ("AMBA") is the only national trade group that dedicates itself to just one industry—mold manufacturing. The AMBA's members build tools, dies, and molds for injection, blow, compression, thermoform, and other molding applications. The AMBA seeks to promote the development, welfare, and expansion of business enterprises engaged primarily in the manufacture of molds and related tooling.

The Canadian Association of Mold Makers ("CAMM") is Canada's leading national association representing moldbuilders, service providers, and suppliers to the global mold-making industry. CAMM supports the future welfare of all the member companies in the Association by, among other things, providing a voice for the Canadian auto industry and representing members on issues of importance to that industry, such as the issue presented in this brief.

The Canadian Tooling and Machining Association ("CTMA") is a non-profit trade association that represents and promotes the interests of the Canadian tooling and machining industry, both nationally and internationally. CTMA's mission includes representing Canadian tooling manufacturing at all levels of government and assisting these manufacturers in the sale of Canadian manufactured tooling in all applicable domestic and international markets.

C.G. Automation & Fixtures, Inc., specializes in producing fixtures, gauges, special machinery, trim dies, vacuum-form tools, and end-of-arm tooling. C.G. Plastics, Inc., provides sampling services to regional injection molders and moldbuilders. Commercial Tool and Die,

Inc., is an award-winning manufacturer of plastic injection and die cast molds, providing quality service to the automotive, appliance, hardware, and toy-producing industries. All three are located in Comstock Park, Michigan.

Competition Engineering, Inc., is an ISO 9001 certified company based in Marne, Michigan, that manufactures high-quality, production-ready tooling for the metal stamping industry. Datum Engineering, Inc., employs vision, technology, and experience in Grand Rapids, to successfully produce cost-effective stamping dies of world-class quality, with a focus on medium to large line dies, transfer dies, and progressive dies. Distinctive Machine Corporation, located in Rockford, specializes in metal stamping die construction, prototyping of parts and tooling, die repair, and engineering changes to existing dies, using decades of combined experience to provide customers with a durable, reliable, and maintainable product.

The Eastern Michigan Tool & Die Collaborative, LLC, consists of 15 tooling companies that have joined forces under a collaborative agreement to increase competitiveness, develop joint solutions, and combine resources and technologies for the full service manufacturing of custom metal and plastic components. Eclipse Tool & Die, Inc. in Wayland, Michigan, prides itself on its ability to design and build high-quality and innovative tooling, such as progressive dies, draw dies, transfer dies, multiple station line dies, acoustical and sound barrier trim tooling, single-hit loop dies for latch hooks, and tube notching and forming tools.

Huizenga Manufacturing Group, Inc., based in West Michigan, provides management services to a diverse group of companies involved in the tool and die industry. Headquartered in Grand Rapids, Monroe LLC uses precision plastic injection molding of close tolerance parts to mold, decorate, and assemble in excess of a million parts per week for the global automotive industry and other markets. Pinnacle Tool, Inc., also in Grand Rapids, is a state-of-the-art facility

with highly skilled staff trained in using the latest technology in the tool and die industry to manufacture precision tooling.

The Precision Metalforming Association is the full-service trade association representing the \$137 billion metalforming industry of North America—the industry that creates precision metal products using stamping, fabricating, spinning, slide forming, and roll forming technologies, among other value-added processes. Its nearly 900 member companies include suppliers of equipment such as molds, forms, dies, casts, and tools, to the industry.

Proper Tooling, LLC, located in Warren, Michigan, is a world-class manufacturer of production injection molds for exterior lighting, air induction systems, co-polymer production, textile molding, exterior ornamentation, and interior cockpit assemblies. The Tooling Systems Group is a collaborative of independently owned and operated companies that specialize in tooling, equipment, and service for manufacturers around the world, with member companies located in Grand Rapids, Michigan, Knoxville, Tennessee, and China. Tri-Way Mold & Engineering (a d/b/a of Tri-Way Manufacturing LLC) is a first-class mold tooling operation serving the mold industry since 1976 from Roseville, Michigan.

STATEMENT OF QUESTION PRESENTED

Under the Mold Lien Act, MCL 445.619, a moldbuilder's perfected lien on a mold is extinguished when the "customer" (who ordered the mold) receives a verified statement from the "molder" (who uses the mold) that the molder "has paid the amount for which the lien is claimed." Is the lien extinguished if the molder's statement says it paid "the amount" to someone other than the moldbuilder?

Trial court answered: Yes

Court of Appeals' majority answered: Yes

Appellant answers: No

Appellee answers: Yes

Amici Curiae answer: No

INTRODUCTION

The Court of Appeals' split decision in this case destroys all that the Legislature intended to accomplish with its 2002 amendment to the Mold Lien Act. The Amendment gave moldbuilders a post-delivery, non-possessory lien to protect their interests, provide them leverage to enforce contractual commitments, and thereby facilitate speedy delivery and financing of their undertaking. The majority on the panel has now interpreted the Act as allowing the molder (the end-user of the mold) to extinguish the lien by verifying to the entity that ordered the mold that the molder has paid someone other than the moldbuilder an amount equal to what was owed the moldbuilder. Under this interpretation, a savvy molder can always thwart any lien by ordering the mold through a subsidiary, paying the subsidiary the amount owed the moldbuilder, and sending the subsidiary a verified statement that it has "paid the amount" owed the moldbuilder. This would leave the moldbuilder nothing to enforce but the contract that it had regardless of the Mold Lien Act. The majority's interpretation strips moldbuilders of any real lien leverage and renders the Act pointless.

The Court should grant review because this appeal involves a first-impression question of statutory interpretation that is of major jurisprudential significance and public importance. If it were not for the highly expensive, customized molds, tools, and dies skill-crafted by the small, family-owned businesses that comprise the tooling industry, modern manufacturing would not exist. Nothing could be more important to the manufacturing sector of Michigan's economy than the health of mold, tool, and die makers. As the first and only appellate opinion on this issue, the lower court's decision impacts not only the outcome of this case, but also influences the financing and business decisions of every interested investor and tooling company, and the resolution of every dispute over this issue from here forward. There are thousands of liens, and thousands of supply chains structured around these liens, that are unsettled by this split decision in the Court of Appeals.

And it is a clearly erroneous decision.

It is inconceivable that the Legislature would have concocted the statutory scheme conjured by the majority's opinion—one where a payment by the molder to anyone (even a corporate shell) can extinguish the moldbuilder's lien. The majority only reached this conclusion by doing the inverse of what the ordinary rules of statutory construction require. Instead of discerning the Legislature's intent from the words that are *in* the statute, as the dissent did, the majority inferred the Legislature's intent solely from the absence of words in the statute.

Given the detrimental impact of the Court of Appeals' decision on the financial well-being of the tooling industry, the influential nature of this case on transactions with that industry, the lower court's misapplication of ordinary interpretive rules, and the resulting misinterpretation of the Legislature's intent, this Court should either peremptorily reverse or grant leave to appeal.

BACKGROUND

I. **As the “mother of manufacturing,” the mold, tool, and die industry plays a critical role in Michigan's economy.**

To appreciate the public importance of the issue presented in this case, the Court must first understand the tooling industry's role in manufacturing and its importance to Michigan's economy. The “tooling industry” refers not only to those businesses that make tools, but also those that make dies and molds. Canis, *The Tool and Die Industry: Contribution to U.S. Manufacturing and Federal Policy Considerations* (Congressional Research Serv 2012), summary page, available at <http://www.ntma.org>. The term “tools” can refer to dies and molds, but more often refers to equipment such as jigs, gauges, gauging fixtures, special machinery, or cutting tools, used to cut and form metal and other materials. *Id.* By contrast, “[d]ies are metal forms used to shape metal in stamping and forging operations.” *Id.* And molds, which are usually also of metal, “are used to shape plastics, ceramics, and composite materials.” *Id.*

“The tooling industry . . . makes possible the existence of virtually every other manufacturing industry.” Int’l Trade Admin, US Dep’t of Commerce, *Industrial Tools, Dies, and Molds: Industry Assessment*, at www.trade.gov/static/doc_Assess_ToolsDiesMolds.asp (accessed on June 12, 2016). “[A]ny durable-goods manufacturer seeking to introduce a new product is likely to require customized tools, dies, and molds to make metal, plastic, and ceramic components.” Canis, *The Tool and Die Industry*, p 3. Without tools, dies, and molds to cut, stamp, and form the materials used to make these products, the durable-goods market and military-industrial complex we know today would not exist. Congressional reports have accordingly recognized that the tooling industry “is critical to the health of the U.S. economy.” *Id.* It is so fundamental to manufacturing that the Chinese refer to the tool and die making industry as the “mother of manufacturing.” *Id.* at 1 n 5.

“While mass production is made possible by tooling, the principal tools themselves cannot be mass produced.” Arnett & Smith, *The Tool and Die Industry: Problems and Prospects* (Ann Arbor, Michigan: Graduate School of Business Administration, the University of Michigan, 1975), p 6. Molds, tools, and dies are “custom-made, one-at-a-time by skilled artisans who patiently and precisely machine, finish, and construct the complicated devices.” *Id.* One die or set of dies can be used to manufacture thousands or millions of parts, such as automobile fenders, dishwasher doors, refrigerator handles, and the like with precision machinery and little involvement of human labor or skill. *Id.* But “[t]ool making, and especially mold and die making, is one of the few activities connected with modern large-scale industry in which there has not been a general substitution of machinery for basic skills.” *Id.*

Consequently, “[t]he tool and die industry is primarily made up of small businesses using skilled employees with many years of experience.” Canis, *The Tool and Die Industry*, p 2.

These firms generally employ few than 50 workers, and tend to be privately owned and often family operated. *Id.* Thousands of these small and medium businesses comprise the industrial tool, die, and mold sector of the U.S. economy. Int'l Trade Admin, p 1.

The upper Midwest has “the largest numbers of companies and employees because tool and die makers are closely tied to durable goods industries—such as motor vehicle and appliances—which have plants in that region.” Canis, *The Tool and Die Industry*, p 4. Michigan in particular, though, has the largest tool and die industry in the country, exceeding other states by more than 50%. *Id.* This is explained by the fact that “[t]he auto industry alone accounts for half of all tooling consumption” (*id.* at 1), and the fact that these companies prefer to source their molds, tools, and dies locally (Center for Automotive Research, *A Collaborative Business Model for the Tool & Die Industry* (2002), p 10, available at www.cargroup.org).

Local sourcing is preferred because “[t]ool-making requires extensive collaboration with the customer, due to the high degree of production customization.” Int'l Trade Admin, p 1. The advantages of using local suppliers include lower logistical costs, better communication, more familiarity with domestic requirements, better implementation of engineering changes, and shorter lead and response times. Center for Automotive Research, pp 10-12. For this reason, a healthy local tooling industry is good not only for the *amici* represented here, but also Michigan's manufacturing economy generally.

II. Mold and tool liens encourage financing, reduce transaction costs, reduce time to market, and lower prices.

One of the major obstacles to the success of the tooling industry in Michigan is the availability of adequate financing. The tooling industry is extremely capital intensive. See Int'l Trade Admin, p 2. Consider, for example, the manufacture of steel panels used to construct today's cars and light trucks: The dies used to press the panels out of sheet steel are “among

the most complex and expensive tools in the industrial world.” Womack, et al., “Designing the Car,” in *The Machine That Changed the World* (New York: Rawson Associates, 1990), pp 116-117. The die-maker must create heavy metal forms using exotic steel alloys for extreme strength and hardness and shape them to tolerances of a few microns across continuously curving surfaces. *Id.* The two matching faces of the die (one upper and one lower) “must mesh with absolute precision.” *Id.* “Otherwise, the sheet steel will tear or even melt to the face of the dies as the two pieces come together under tons of pressure.” *Id.* The high cost of the exotic materials and skilled labor required to create such a device calls for a substantial front-end investment.

The equipment needed to manufacture these sophisticated tools is quite expensive as well. Int’l Trade Admin, p 2. To create dies like those mentioned above and other high precision tooling quickly and cost-effectively, these small businesses require highly sophisticated machines and manufacturing technology. *Id.* “Such an investment is extremely costly,” and institutions willing to lend the funds to these small businesses can be difficult to come by, particularly in a down economy. *Id.*

At one time, payment arrangements with the purchasers of these tools helped significantly with the initial acquisition costs and investment of labor. The “payment schemes were progress-based, for example, providing 30% at contract signing, 30% upon final design approval, 30% upon shipment, and 10% upon final validation at the customer facility.” Center for Automotive Research, pp 6-7. This arrangement allowed the mold, tool, or die company to finance the work through local banks. *Id.*

But changes in the automotive industry began “forcing suppliers to assume a greater portion of the OEM’s [Original Equipment Manufacturer’s] financial liability and investment risk.” *Id.* New payment schedules required the small tooling companies to accept deferred payments.

Id. Some even paid on the basis of production part approval, amortizing the investment in the mold or tool over its productive life. By 1999, the percentage of annual capital expenditures borne by suppliers had steadily increased to 66%. *Id.* “No part of the supply industry [was] affected more than tool and die where the manufacturing lead times are long and the expenditures are high.” *Id.* This new normal meant much greater risk of nonpayment for the tooling industry. *Id.*

The payment risk was compounded by longer and longer supply chains. Because tooling companies were more specialized and now sourcing their tool to a tier-1 or tier-2 parts supplier, rather than the OEM itself, they had to depend upon payment from a smaller, tier-1 company. See Center for Automotive Research, pp 6-7. They also found themselves further from the OEM in the supply chain, and last in the chain of payments flowing from the OEM. The financial difficulty of one company in the chain would affect the continued flow of payments to companies lower in the chain. The further away from the OEM in the chain, the more links in the chain, the greater the risk of a weak link appearing, and the greater the risk of nonpayment. The drawn out payment schemes, reliance on smaller mid-level companies for payment, and a last-in-line position drove “many banks [to] avoid[] tool and die financing, because of the higher risk in receiving payment.” See *id.*

Mold and tool liens are a solution to this financing problem and to other industry woes suffered as a result of these evolutions in the tooling industry and supply chain. A lien first and foremost provides the tooling company added leverage to enforce contractual commitments, which provides greater assurance to lenders that payments will be made. This alone lowers non-payment risk substantially. But a lien also does much more than that—it strengthens the supply chain, reduces lead times, and reduces costs, all of which make the industry more competitive

and benefit consumer pricing. See Canis, *The Tool and Die Industry*, p 14 (noting the importance of these objectives).

To explain, prior to the 2002 lien law, mold and tool builders had a practice of waiting until an unpaid tool came back to the toolmaker for service, or engineering changes, and then holding it hostage until the molder or the OEM paid past-due balances. Granting a nonpossessory lien virtually stopped that practice overnight for those toolmakers that took the time to file liens, resulting in fewer disruptions to the supply chain. Because foreclosing on a lien can likewise disrupt the supply chain, the existence of such a lien encourages everyone in the supply chain, including OEMs, to structure their chain of transactions in such a way that the payments to the tooling company are less likely to be interrupted by a weak link in the chain. This further reduces the nonpayment risk and lowers the cost of financing, as the lender is now again assuming less risk. The tooling company in turn can charge less for the mold or tool, begin production sooner, and accept deferred payment arrangements, all of which allow for faster time to market and lower pricing for the supply chain and ultimately the end consumer.

III. The 2002 amendment to the Mold Lien Act and the enactment of the Special Tools Lien Act responded to evolutions in the tooling industry and in automobile manufacturing supply chains.

In the original 1986 version of the Mold Lien Act, moldbuilders (those who manufactured the mold) and molders (those who used the mold) received only a possessory lien on the mold. MCL 445.611 (2001). The Act referred to them both as “molders” and treated them as one and the same because they often were. With the industry evolutions discussed above—increased specialization, longer supply chains, and deferred payment schedules—the possessory liens did little to protect the interests of mold and tool builders. They had to deliver the product and thereby release the lien long before they received most of the payment.

The Legislature solved this problem when it amended the Mold Lien Act (which covers fabrication of plastic parts) and enacted the Special Tools Lien Act (which covers fabrication of metal parts). Under these acts, the tooling industry obtained a non-possessory lien by properly marking the mold or tool and filing a financing statement to give the world constructive notice of the lien. These acts also established the conditions for extinguishing the liens, using substantially identical language. The amendment to the Mold Lien Act provides that the moldbuilder's lien may be extinguished when one of three events occurs:

- (a) The moldbuilder is paid the amount owed by the customer or molder.
- (b) The customer receives a verified statement from the molder that the molder has paid the amount for which the lien is claimed.
- (c) The financing statement is terminated. [MCL 445.619(5).]

Similarly, the Special Tools Lien Act extinguishes the special tool builder's lien when one of the following events occurs:

- (a) The special tool builder is paid the amount owed by the customer or end user.
- (b) The customer receives a verified statement from the end user that the end user has paid the amount for which the lien is claimed.
- (c) The financing statement is terminated. [MCL 570.563(5).]

Because the statutes track each other in all other relevant respects, any judicial interpretation of Section 9 of the Mold Lien Act will necessarily determine the interpretation of Section 23 of the Special Tools Lien Act. Together, these acts were to serve as a comprehensive solution for the tooling industry as a whole, for the plastics sector on the one hand, and one for the metals sector on the other.

Michigan's 2002 lien acts were innovative in two ways. First, no other state statute defined molders separately from moldbuilders, as the 2002 amendment did. Compare MCL

445.611 (2001), with MCL 445.611 (2016). Second, no other state statutes contained verified statement provisions like those in Section 9(5)(b) of the Mold Lien Act and Section 23(5)(b) of the Special Tools Lien Act.¹

The purpose of the verified-statement provision may not be readily apparent, but when it is understood, it makes eminent sense. When an OEM contracts with a tier-1 supplier, the contract often requires that the tier-1 provide legal documentation that there are no liens on the mold or tool. This ensures there will be no interruptions in the supply chain later from a foreclosure on the lien. And time is often of the essence when an OEM wishes to bring a new part on line. So what is the molder (or end-user) to do if it has paid the mold or tool builder what it is owed, but the builder will not cooperate by either confirming in writing it was paid what was owed under Section 9(5)(a), or by terminating the UCC financing statement under Section 9(5)(c)? If these were the only two ways to extinguish the lien, the molder would have no choice but to sue to establish the lien was extinguished and satisfy its contract with the OEM. But with Section 9(5)(b), there is another way. Once the molder has paid the moldbuilder for the lien, it can confirm to the OEM (or any lender wishing to use the mold as collateral) that the lien is extinguished by sending the verification, and the OEM can rely on that verification because the verification itself extinguishes the lien by operation of law.

Misconstruing the purpose of this provision, the Court of Appeals has instead held that it gives the molder the right to extinguish the lien by making a payment to anyone it chooses. COA Op 5. It has taken a practical provision designed to give customers and end-users peace of

¹ Ohio, which has the second largest tool and die industry next to Michigan, now has these provisions because it adopted language identical to Michigan's lien law in 2004. Ohio Rev Code Ann 1333.33 (2015).

mind and misshaped it into a weapon the molder can use to snuff out the moldbuilder's lien without any effort to pay the moldbuilder.

REASONS FOR GRANTING LEAVE

The Court should grant further review of the Court of Appeals' decision for three reasons. First, the decision is of great public importance as it subverts the Legislature's intent in enacting the statutes and detrimentally affects an industry that is vital to Michigan's economy. Second, the issue involves a legal principle of major significance to the state's jurisprudence. The Court of Appeals' decision—having resolved an issue of first impression—will influence all business decisions in the manufacturing industry until it is superseded. Finally, the decision is clearly erroneous and will cause material injustice to Quality Cavity and every other mold, tool, and die maker—not to mention their lenders—who entered into transactions in reliance upon the moldbuilder's or tool builder's lien.

I. The detrimental impact of the Court of Appeals' decision on the manufacturing industry is of serious public concern.

The Legislature enacted the Mold Lien Act to solve a problem in Michigan's durable-goods industry. Evolutions in the tooling industry and automotive industry created a sore need for a lien policy that would protect and support small businesses in the tooling industry. The 2002 Mold Lien Act amendment and Special Tools Lien Act provided tooling industries a non-possessory lien that would encourage lenders to finance the industry and force the supply chain to honor its contractual commitments to the "little guy" at the bottom. The Court of Appeals' interpretation of the acts, however, largely demolishes this buttress that the Legislature has built.

In this case, a majority of the Court of Appeals panel would allow Sejasmi to extinguish the lien by paying a debt Sejasmi owed Takumi and then verify to Takumi that the payment sum

was equal to the amount of Quality Cavity's lien. Under this interpretation, no demonstration of payment to the moldbuilder is required. Any payment the molder makes to anyone for an amount equal to the amount of the lien will be treated the same—it will extinguish the lien. Under the Court of Appeals' interpretation, it does not matter who receives the money or what the payment is for.

The lien has little value to the lienholder if it can be easily extinguished without any payment to the lienholder. If the Court of Appeals' opinion stands, moldbuilders can no longer rest assured that their liens provide leverage to obtain payment after they have delivered the mold to the molder. As a result, the perceived risk of non-payment has just increased significantly. This creates great uncertainty for the tooling industry and lenders who have already invested in ongoing projects. And it discourages future lending and investment in the tooling industry.

The lower court's decision not only hurts the local tooling industry, it hurts the manufacturing industry generally. Tools and molds are often sourced from foreign jurisdictions, such as Canada. It will now be more difficult and more expensive for the automotive industry to source molds, tools, and dies from outside of Michigan due to the higher risk of nonpayment. If nearby states, such as Illinois² with non-possessory lien statutes, offer more protection for the tooling industry than Michigan, those industries may choose to do business elsewhere, or worse, could be precluded from doing business in Michigan because lenders are unwilling to take the additional risk.

Given its impact on Michigan's economy, the Court of Appeals' decision deserves further review.

² 770 Ill Comp Stat 105/4.1 (2015).

II. The question of whether molders can unilaterally extinguish a moldbuilder's lien without paying for the mold is an issue of first impression and of major jurisprudential significance.

It goes without saying that interpretation of such an important provision in a Michigan statute—one affecting thousands of transactions in a critical industry—is a matter of great significance to the state's jurisprudence. The Court of Appeals' decision is the first and only opinion of an appellate court to interpret Section 9(5)(b). As such, it will undoubtedly influence the advice of counsel in the business decisions that turn on this issue, and influence the outcome of every dispute in which this issue arises.

Every federal court addressing the validity of a lien under Section 9(5)(b)—whether bankruptcy court, district court, or court of appeals—will for all practical purposes give this case binding effect in ruling on the validity of the moldbuilder's lien. See, e.g., *Talley v State Farm Fire & Cas Co*, 223 F3d 323, 328 (CA 6, 2000) (“We may not disregard the decisions of a state appellate court unless we are convinced by other authority that the Tennessee Supreme Court would decide otherwise, irrespective of whether a state appellate decision is published or unpublished.” (citations omitted)). The Court of Appeals' decision will loom particularly large if the molder or customer has declared bankruptcy, as the validity of the lien will have significant ramifications for how the moldbuilder's claim is treated. See 11 USC 506.

The lower court's decision could influence not only transactions within Michigan's tooling industry but within Ohio's as well. Ohio's Moldbuilder's Lien Act in 2004 adopted exactly the same language as the Michigan Mold Lien Act for extinguishing the moldbuilder's lien. Compare Ohio Rev Code Ann 1333.33(C) (2015), with MCL 445.619(5). Rest assured the final decision in this case, whether it is the Court of Appeals' or this Court's, will receive extensive consideration from decision-makers in our neighboring state.

The major jurisprudential significance of this case cries out for a final decision from this Court, one that will definitively resolve whether the tooling industry and its lenders can rely upon the Lien Acts in structuring their transactions and doing business in Michigan.

III. The Court of Appeals' decision is clearly erroneous and will result in material injustice to Quality Cavity and others in the tooling industry.

Not only does this case deserve further review because of its public importance and jurisprudential significance, it also deserves review because the majority has misapplied ordinary statutory-construction doctrine to reach an interpretation of this legislative enactment that is clearly wrong. The panel split over the meaning of the words “paid the amount for which the lien is claimed” in MCL 445.619(5)(b). In error, the majority begins and ends its analysis of this phrase by inferring legislative intent from the *absence* of certain words in the clause, never analyzing the words that actually *are* in the statute. The majority’s analysis is exactly the opposite of the ordinary analysis required under this Court’s precedents.

“The primary goal of statutory interpretation is to ‘ascertain the legislative intent that may reasonably be inferred *from the statutory language.*’ ” *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011) (quoting *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005)). “The first step in that determination is to review the language of the statute itself.” *Id.* (quoting *In re MCI Telecom Complaint*, 460 Mich 396, 411; 596 NW2d 164 (1999)). In interpreting the words in the statute, the court should “tak[e] into account the context in which the words are used,” *Krohn*, 490 Mich at 156, and “read them harmoniously to give effect to the statute as a whole,” *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012). In short, statutes are interpreted first and foremost according to the plain

meaning of the words that *are* in the statute. The absence of words from the statute only has significance to the extent it sheds light on the words that are.

Judge Hoekstra's dissenting opinion applies these principles perfectly. He first defines the words actually in the statute according to their plain meaning, then looks for additional clues to the legislative intent in related provisions, to ensure the terms are read harmoniously with the rest of the statute. COA Dissenting Op 2. As Judge Hoekstra correctly observes, "paid" is the past tense of "pay," which is defined in the dictionary as "[to] discharge an indebtedness." *Id.* An "indebtedness" is defined as "something (as an *amount of money*) that is owed." Merriam-Webster Dictionary, at www.merriam-webster.com. Correspondingly, "the amount of the lien" is defined two paragraphs earlier as "the amount that a customer or molder owes *the mold-builder*." MCL 445.619(3) (emphasis added). Thus, in context, to have "paid the amount for which the lien is claimed" means to have discharged the indebtedness that the moldbuilder claims it is owed. Here, Sejasmi did not verify that it discharged the debt owed the moldbuilder. Sejasmi instead verified it discharged the debt Sejasmi owed *Takumi*.

In sharp contrast, the majority's opinion gives absolutely no consideration to the plain meaning of any of this statutory language in context. It discusses at length the fact that one should not assume the Legislature would only protect the moldbuilder, but it makes no effort in the opinion to analyze the text to determine what the Legislature actually did intend.

The majority then goes on to defy the principle that the interpretation should "give effect to the statute as a whole." See *Johnson*, 492 Mich at 177. The majority concludes the phrase "paid the amount for which the lien is claimed" can include the molder discharging its own debt to someone other than the moldbuilder by first reasoning that the statute is silent as to who must be paid. But if that were true, the verified payment could be made to anyone and for anything.

The molder could discharge a debt to its parent company, or another vendor, or the government of Michigan, and then verify it was in an amount equal to the lien to extinguish the lien. Under the Court of Appeals' interpretation, all that matters is that a payment had been made in the correct amount to someone for something. This interpretation not only produces a bizarre result, it also renders the lien practically useless to the moldbuilder. The Legislature "cannot be tagged with a taste for the bizarre," *Cortez Byrd Chips, Inc v Bill Harbert Constr Co*, 529 US 193, 201 (2000), particularly when it would defeat the apparent purpose of the statute.

The majority rejects the dissent's interpretation on the ground that it renders Section 9(5)(b) unnecessary because it would mean the molder has presumably already complied with Section 9(5)(a) before 9(5)(b) can be satisfied. The majority misses the point of Section 9(5)(b). As explained in the end of the background discussion above, Section 9(5)(b) gives the molder and the customer a means to confirm with certainty that the lien is extinguished, absent cooperation from the moldbuilder. Perhaps the moldbuilder refuses to respond or confirm payment. Perhaps the moldbuilder claims the payment applies in whole or in part to some other product that was part of the mold and tool purchase but has no lien. By allowing the lien to be extinguished through the verification itself, the customer or an interested lender can have assurance the lien is in fact gone, without cooperation from the moldbuilder. Any dispute about how the money paid to the moldbuilder should be applied is effectively resolved in favor of applying it to the lien. Section 9(5)(b) serves a practical purpose and is not duplicative of Section 9(5)(a) under the dissent's interpretation.

Finally, the analogy drawn by the majority between moldbuilders under the Mold Lien Act, and subcontractors under the Construction Lien Act, is inapt. The Construction Lien Act expressly states that the subcontractor's lien is released when the homeowner "[p]aid the

contractor.” MCL 570.1118a(1). This makes sense because a homeowner almost invariably contracts with the contractor, not the subcontractors. The payment obligation thus ordinarily flows from the homeowner to the contractor and then from the contractor to the subcontractor.

The Mold Lien Act, by contrast, does not contain analogous language stating that the lien will be extinguished when the molder has paid the customer. Nor would it make sense to have such language. The customer is typically the manufacturer desiring an end product made by the molder using a mold. The contract to manufacture the mold is therefore almost invariably between either the molder and the moldbuilder or the customer and the moldbuilder. The money for the mold typically flows from the customer to the molder and then to the moldbuilder, or in some cases, directly from the customer to the moldbuilder (who may also be the molder). The molder paying the customer is like the contractor paying to the homeowner what is owed to the subcontractor. This sort of backwards payment would never extinguish the subcontractor’s lien under the Construction Lien Act. It therefore offers no support for the Court of Appeals’ view that a backward payment from the molder to the customer will extinguish the moldbuilder’s lien under the Mold Lien Act. The Court should have instead analyzed what the Legislature actually said in the Mold Lien Act.

The perverse consequence of the Court of Appeals’ misinterpretation is that it affords OEMs an easy way to extinguish the lien without paying for the mold. If the tooling industry cannot rely on the lien, there is nothing else to rely on except the contractual commitments that were made. The Legislature obviously agreed with the industry that contractual commitments were not sufficient, or it would not have gone through the trouble of enacting these lien acts in the first place. It is inconceivable that the Legislature would have intended to enact a system that

effectively leaves the moldbuilder with no real lien protection at all, but that is exactly the result attained under the Court of Appeals' interpretation of the Mold Lien Act.

CONCLUSION AND REQUESTED RELIEF

Moldbuilders must be able to rely on their lien for protection, and not have it invalidated at the molder's whim without payment in full, or else the 2002 legislative enactments designed to protect the heart of Michigan manufacturing will be virtually useless. Given the threatened economic impact of the Court of Appeals' decision, the jurisprudential significance of its interpretation of the Mold Lien Act, and the clear misapplication of the ordinary rules of construction that resulted in that interpretation, the Court should grant further review of the Court of Appeals' decision. Alternatively, the Court should peremptorily reverse the decision below and adopt the dissenting opinion's interpretation, to give the Mold Lien Act and Special Tools Lien Act their full intended effect.

Respectfully submitted,

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