

**IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 7 EAP 2024

Robert Halpern,
on behalf of himself and all others similarly situated,
Appellant,

v.

Ricoh U.S.A., Inc.,
Appellee.

Appeal from the July 28, 2023 Order of the Superior Court at No. 226
EDA 2023 Affirming the January 12, 2023 Order of the Court of
Common Pleas of Philadelphia County at No. 220301922

**BRIEF *AMICI CURIAE* OF CHAMBER OF COMMERCE OF THE
UNITED STATES AND PENNSYLVANIA CHAMBER OF
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STATEMENT OF IDENTITY AND INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. The Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Pennsylvania Chamber of Business and Industry is the largest broad-based business association in Pennsylvania. It has close to 10,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth's private workforce. Its members range from small companies to mid-size and large business enterprises. The Pennsylvania Chamber's mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania's economic development for the benefit of all Pennsylvania citizens.

Amici's members have structured millions of contractual relationships around express or implied warranties of set duration. The ruling Appellant requests threatens to upend those warranties by extending their duration indefinitely. The continued enforceability of time limits for product warranties and the repose that such limits provide are of critical significance to *amici's* members.*

* *Amici* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Amici urge this Court to reject the sweeping and unprecedented ruling Appellant requests. After enjoying the use of his camera for five years (five times the express warranty period and one year past the statutory implied warranty period), Appellant brought suit against the manufacturer, Appellee, asking for those limitations periods to be ignored. In their place, Appellant proposes an unending warranty period, based on a buyer's belief about how long a product should perform without issue and which only begins to run once an issue arises. Neither Pennsylvania's Unfair Trade Practices and Consumer Protections Law (UTPCPL) nor any statute like it creates liability in circumstances like those here.

Appellant's request would effectively end any limitations period on warranties—imposing indefinite liability on any seller whose product (1) is sold in Pennsylvania and (2) does not last as long as a buyer believes it should. Such a result would thwart the important purposes and benefits of enforceable time limits on product warranties—harming consumers and sellers alike. Appellant and his *amicus* ignore entirely those real-world effects, which inform the Legislature's drafting of

commercial laws like the UTPCPL and should inform this Court's consideration. See 1 Pa. C.S. § 1921; *Commonwealth v. Beam*, 788 A.2d 357, 359 (Pa. 2002) (“[I]n assessing a statute, courts are directed to consider the consequences of a particular interpretation”); see also *Nationwide Ins. Co. v. Gen. Motors Corp.*, 625 A.2d 1172, 1174–75 (Pa. 1993) (four-year limitations period “is most appropriate to modern business practice”). What's more, adopting Appellant's rule would make the Commonwealth a singular and extreme outlier among American jurisdictions, imposing liability for failure-to-disclose claims without a time limitation and flooding Pennsylvania courts with stale claims the General Assembly never intended to allow.

As this Court has long recognized, the purpose of Pennsylvania's four-year limitations periods for implied warranty actions is to “repose . . . stale claims” and help “the seller in being able to ‘close the books’ on a given transaction.” *Cucchi v. Rollins Protective Servs.*, 574 A.2d 565, 573 (Pa. 1990) (citing 13 Pa. C.S. § 2725). But under Appellant's reading of the UTPCPL, the books will *never* be closed on a given transaction—so long as any buyer can allege that they believed a product should have lasted longer than it did entirely free of any performance

issue. Every good that arrives in the Commonwealth regardless of where it was purchased would come with an open-ended promise that it will perform without issue for as long as the buyer thinks it should, regardless of any express warranty and regardless of the four-year statute of limitations. *Amici* urge this Court to reject such an unprecedented ruling.

ARGUMENT

Appellant's claim arises after the expiration of not just one but both of *two* applicable warranty periods. He asks this Court to effectively extend those warranty periods indefinitely. Product warranties serve important purposes for consumers and sellers alike, purposes which would be thwarted by nullifying time limits on them. Unending warranties would actively harm Pennsylvania consumers and sellers. Given the damage Appellant's desired rule would inflict, it comes as no surprise that adopting that rule also would make the Commonwealth an extreme outlier. The unlimited extension of UTPCPL liability Appellant requests is unprecedented in American jurisdictions and unwarranted under Pennsylvania law. This Court should reject it.

I. Appellant’s Requested Expansion of UTPCPL Liability Would Extend Product Warranties Indefinitely.

Because Appellant did not experience any performance issue with his camera for nearly five years after purchasing it from an unidentified retailer, his claim falls outside both Appellee’s one-year express warranty for the product and Pennsylvania’s four-year statute of limitations for implied-warranty claims regarding consumer products. *See* R.201 (Ct. of Common Pleas Op. 2); 13 Pa. C.S. § 2725. Such warranty periods are common, and their validity is well-established. *See Cucchi*, 574 A.2d at 571.

Appellant nevertheless argues that the camera “prematurely failed due to a defective part” and that Appellee’s failure to warn him of this constituted “deceptive conduct.” Br. for Appellant 7. To allow his UTPCPL claim to proceed, Appellant asks the Court to “overrule” *Romeo v. Pittsburgh Associates*, 787 A.2d 1027, 1033 (Pa. Super. 2001) (dismissing UTPCPL claim where the defendant had no affirmative duty to disclose the risk of being struck by a foul ball to plaintiff, and therefore “nothing [defendant] did or did not do can be characterized as a ‘deceptive business practice’”). Appellant argues that the Court should hold that the UTPCPL does *not* require a plaintiff to allege “that the defendant has a

duty to disclose certain facts” about a product and permit suit whenever a buyer later encounters a problem about which he claims the seller should have disclosed such “facts.” Br. for Appellant at 7.

Permitting such claims to proceed under the UTPCPL would effectively nullify any time limit on product warranties (whether express or implied). In place of such well-established limits would be the indefinite risk of strict liability for sellers whenever a buyer *believes* that a product (or any of its components, like the solenoid component in Appellant’s camera) should have lasted longer than it did. *See Gregg v. Ameriprise Fin., Inc.*, 245 A.3d 637, 647 (2021) (UTPCPL catch-all provision imposes strict liability on sellers). A seller’s “warranty as to the quality of its product is a bargained for condition of sale, the effect of which must not be undermined.” *Jones v. Gen. Motors Corp.*, 631 A.2d 665, 666 (Pa. Super. 1993) (rejecting a consumer’s effort to circumvent contractual limitations because otherwise “any limitation of the manufacturer’s liability pursuant to the warranty would have little or no effect”). Without any real limitation on a seller’s duty to speak, Appellant’s expansion of UTPCPL liability would do away with product warranties as we know them.

II. Product Warranties Serve Important Purposes for Consumers and Sellers Alike.

The decision Appellant requests would undermine the important purposes product warranties serve for both consumers and sellers. As with any fixed contract term, warranties create value and efficiencies on both sides of a commercial transaction. *See Cucchi*, 574 A.2d at 573 (“[T]he UCC drafters also recognized that . . . [warranty] agreements and expectations were legitimate and deserving of protection.”). This is true of both express warranties, like Appellee’s one-year warranty on Appellant’s camera, and implied warranties, like Pennsylvania’s four-year backdrop warranty for sales of consumer products. *See id.* (discussing UCC § 2-725 and then express warranties). Eliminating time limits on warranties would thwart these mutual benefits.

A. Express warranties like Appellee’s benefit consumers and sellers.

1. Express warranties provide consumers clarity because they “memorialize the commitments and expectations to which the seller . . . will be held accountable.” John R. Trentacosta & Vanessa L. Miller, *Disputes in the Manufacturing Supply Chain: A Primer on Warranty and Disclaimer Law*, 93 Mich. Bar J. 24, 24 (2014) (hereinafter, “*A Primer on*

Warranty and Disclaimer Law”). They also “can and should provide an objective measurement for performance under the contract.” *Id.* This is especially true because, by definition, express warranties, unlike implied warranties, cannot be disclaimed. See Lanny J. Davis & John T. Westermeier, Jr., *Computer Contract Disputes—Supplemental Materials*, C601 ALI-ABA 37, 62 (1991) (hereinafter, “*Computer Contract Disputes*”).

Express warranties also give consumers more options, because consumers’ preferences for warranties (including their length) differ. Allowing variety in those warranties permits consumers to obtain the right amount of coverage at the right cost for them. “[C]onsumers . . . will not get more warranty coverage than they want” Alan Schwartz & Louis L. Wilde, *Imperfect Information in Markets for Contract Terms: The Examples of Warranties and Security Interests*, 69 Va. L. Rev. 1387, 1418 (1983) (hereinafter, “*The Examples of Warranties and Security Interests*”). For example, some consumers are more willing to purchase a restricted warranty because they are “unwilling to pay the premium required to obtain” a broader one. *Id.* at 1419. Other consumers may be willing to pay extra for an extended warranty for peace of mind. See

generally Breagin K Riley & Ahmed E. Taha, *Protecting Consumers Through Mandatory Disclosures: An Experimental Investigation of Extended Warranties*, 64 Vill. L. Rev. 285 (2019) (hereinafter, “*An Experimental Investigation of Extended Warranties*”).

Express warranties also provide consumers greater flexibility. Parties can “sculpt an express warranty to any shape [they] desire[,]” such as setting a particular duration or specific conditions to maintain coverage for a longer period. See Matt Crockett, 1 *The Law of Prod. Warranties* § 4:2 (2024). For example, an extended vehicle warranty might be more generous in its coverage if it is conditioned upon periodic maintenance. *Id.* Through this flexibility, express warranties typically will be more generous to consumers than implied or open-ended warranties.

2. The clarity express warranties provide also benefits sellers—from the largest manufacturer to the smallest family business. Because they are customizable, express warranties are not “so broad and generous that the seller[s] will be unable to satisfy the warranty.” *A Primer on Warranty and Disclaimer Law*, 93 Mich. Bar J. at 24. An express warranty allows sellers to reduce risk and “enhance predictability” by

turning “uncertain and indefinite exposure for breach of contract . . . into a known quantity.” *Id.* at 26. Time and scope limitations on such warranties are also “important for business planning purposes[,]” because sellers “may rely on these provisions in pricing [their] goods, performing financial forecasting, and even obtaining insurance coverage.” *Id.*

Extended limited warranties are also “important members of [sellers’] product portfolio.” *An Experimental Investigation of Extended Warranties*, 64 Vill. L. Rev. at 285. Those who wish to advertise faith in the quality of their products can offer generous extended warranties to attract more consumers, boost sales, and grow their companies. *See SMS Sys. Maint. Servs. v. Digit. Equip. Corp.*, 188 F.3d 11, 14 (1st Cir. 1999) (“Because a warranty is a mechanism through which a consumer can protect himself against the uncertainties inherent in owning a product that likely will require parts and service over time, the product’s allure increases as the warranty terms become more generous.”); *Goodman v. PPG Indus., Inc.*, 849 A.2d 1239, 1245 (Pa. Super. 2004) (“[A] manufacturer who is willing to make a specific and ambitious express warranty . . . must be able to retain some measure of control over . . . the

precise parameters of the warranty that it will be obliged to honor.”). For example, “a car maker may advertise its new emphasis on quality control and back it with an extended warranty.” Thomas C. Arthur, *The Costly Quest for Perfect Competition: Kodak and Nonstructural Market Power*, 69 N.Y.U. L. Rev. 1, 38 (1994) (hereinafter, “*Kodak and Nonstructural Market Power*”). For these reasons, express warranties are flexible and powerful marketing tools for sellers, and give consumers additional considerations in determining what type of product they want to purchase, and how much they want to invest in that product’s future protection by the seller.

B. Implied warranties like UCC § 2-725 benefit consumers and sellers.

The UCC’s four-year implied warranty, which Pennsylvania has adopted, also creates value and efficiencies not just for sellers but also for consumers. *Compare* UCC § 2-725 (Statute of Limitations in Contracts for Sale), *with* 13 Pa. C.S. § 2725 (Statute of Limitations in Contracts for Sale).

1. Implied warranties give consumers peace of mind through standardized and consistent protection beyond any express warranty. An implied warranty “is based upon the assumed expectations of the parties

regarding the qualities of the goods when provided in a contract for sale by a merchant with respect to goods of the kind.” 2 Hawkland UCC Series § 2-314:1, *Nature of implied warranty of merchantability* (Apr. 2024 update). The UCC and Pennsylvania agree that the appropriate limitations period for such peace of mind is four years. *See Patton v. Mack Trucks, Inc.*, 519 A.2d 959, 964 (Pa. Super. 1986) (“Section 2725 serves the interests of commercial uniformity and practicality even though it might bar some otherwise meritorious breach of warranty actions.”). Within that time, claims are subject to well-established standards so consumers and sellers alike can accurately assess their risk and appropriately adjust their expectations.

UCC § 2-725 also provides consumers with more options, because it allows them to purchase products (and, in particular, older products) at lower prices. Those lower prices are made possible by allowing sellers to discontinue service and maintenance for products that are no longer competitive on the market in order to focus on developing and releasing new products that consumers want. *See Computer Contract Disputes*, C601 ALI-ABA at 39. Technology-heavy products, like Appellant’s digital camera, may become obsolete more quickly due to competition in the

industry, and because market demands are constantly evolving. *Id.* Without a time limitation on liability, sellers would have to dedicate more resources to servicing and maintaining older products and price their products to build that increased liability risk into their business model. The four-year limitation period for implied warranty claims in UCC § 2-725 therefore creates value for consumers in the form of greater optionality and lower prices.

2. For sellers, UCC § 2-725 dispels uncertainty because it compels buyers “to sue when evidence is most readily available and allows sellers to continue with their businesses without fear of suit after a reasonable definite period.” Debra L. Goetz, et al., *Article Two Warranties in Commercial Transactions: An Update*, 72 Cornell L. Rev. 1159, 1325 (1987). Without the certainty of a set limitations period, sellers would be forced to build that increased risk into their product pricing, threatening to reduce consumer demand and company resources for new product development and innovation.

As this Court has observed, the four-year statute of limitations established under UCC § 2-725 also benefits sellers because it aligns with businesses’ established recordkeeping practices. “[I]n the usual

circumstances . . . defects are apt to surface within [four years of delivery], and the few odd situations where this is not the case, resulting in hardship to the buyer, are thought to be outweighed by the commercial benefit derived by allowing the parties to destroy records with reasonable promptness.” *Nationwide Ins. Co.*, 625 A.2d at 1174 (quoting William D. Hawkland, *Uniform Commercial Code Series* § 2-725:02, at 480 (1984)). The “four year period ‘is most appropriate to modern business practice’ because it ‘is within the normal commercial record keeping period.’” *Id.* at 1174–75 (quoting 13 Pa. C.S. § 2725, Uniform Commercial Code Comment). These well-settled principles of Pennsylvania law thus view the alleged problem that arose in the solenoid component of Appellant’s camera five years after purchase as an outlier that should be reposed.

III. Never-Ending Product Warranties Would Harm Consumers and Sellers Alike.

In addition to undermining the important purposes warranties serve, broadening UTPCPL liability to potentially include any undisclosed, latent product issue would harm both consumers and sellers. The destructive incentives created by never-ending product warranties would lead to excessive and confusing disclosures to consumers, increased prices, and reduced access to desired products for

consumers, as well as vast uncertainty, unending litigation, and reduced demand for sellers.

A. Unlimited warranty periods would harm consumers.

1. Creating unprecedented and unlimited statutory liability for undisclosed product failures would incentivize sellers to attempt to disclose every possible performance issue to minimize and avoid that liability. Sellers would overwhelm consumers with endless and practically meaningless disclosures, trying to alert them to not just all known but all conceivable risks. These excessive disclosures would confuse consumers, who would suffer “informational overload” that should be “avoid[ed].” *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 568 (1980) (internal quotations, alterations omitted). Such “complete disclosure,” *id.*, causes consumers’ attention to become “exhausted or depleted.” Michael Simkovic & Meirav Furth-Matzkin, *Proportional Contracts*, 107 Iowa L. Rev. 229, 231 (2021); see *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 390 (1992) (noting that too much information in advertisements “can have the paradoxical effect of stifling the information that consumers receive.”).

“Every demand on consumer attention depletes that attention and reduces consumers’ ability to assess” a given contract. Simkovic & Furth-Matzkin, *Proportional Contracts*, 107 Iowa L. Rev. at 233. When consumers are “presented with ‘too much’ information . . . they are unable to effectively and efficiently process the information” Naresh K. Malhotra, *Reflections on the Information Overload Paradigm in Consumer Decision Making*, 10 J. Consumer Research 436, 438 (1984). Regulations like “mandatory disclosures” have “often . . . exacerbate[d] the problem by demanding even more time and attention from consumers.” Simkovic & Furth-Matzkin, *Proportional Contracts*, 107 Iowa L. Rev. at 233. This is because contractual provisions like warranty disclaimers may have “far-reaching legal implications that are difficult for most consumers to understand without legal assistance.” *Id.* at 262. If any undisclosed alleged defect or performance issue could give rise to UTPCPL liability based on a consumer’s expectations, consumers would inevitably be faced with excessive and confusing disclosures.

2. Appellant’s *amicus*, Pennsylvania Association for Justice (PAJ), suggests that there is no increased risk of liability to businesses posed by Appellant’s reading of the UTPCPL, because “deceptive conduct” would

still require a “likelihood of confusion or misunderstanding,” based on the expectations of a “reasonable consumer.” *See* Br. Amicus Curia Pa. Ass’n for Justice 12–13. PAJ’s argument ignores several obvious realities. *First*, pleading a “likelihood of confusion or misunderstanding” for failing to speak without identifying any accompanying obligation to speak would obviously lower the pleading bar for UTPCPL claims. That is the bar Appellant’s own claim properly failed to clear in the Court of Common Pleas and the Superior Court. *Second*, lowering that bar would require more businesses to engage in time-consuming and expensive litigation defending their allegedly deceptive silence on the basis of plaintiff’s mere allegation that a product did not meet his subjective performance expectations. *See, e.g., Cooper v. Anheuser-Busch, LLC*, 553 F. Supp. 3d 83, 104 (S.D.N.Y. 2021) (Consumer expectations typically “cannot be resolved without surveys, expert testimony, and other evidence of what is happening in the real world.”). *Third*, as a result of this increased exposure to risk and litigation expense, businesses would no doubt have little choice but to attempt to disclose all reasonably possible risks of product failures years down the road. And those additional disclosures themselves could, of course, create more potential liability down the road

for an affirmative disclosure that a consumer believed to cause “a likelihood of confusion or misunderstanding.”

3. This inevitable increase in consumer disclosures would force consumers to absorb not only too much information but also increased costs. Warranties create extra costs that sellers must pass onto consumers, either partly or entirely, through higher prices. *See generally* Richard Craswell, *Passing on the Costs of Legal Rules: Efficiency and Distribution in Buyer-Seller Relationships.*, 43 Stan. L. Rev. 361 (1991). Warranties are inefficient when consumers “value[] the warranty at an amount less than the resulting price increase.” *Id.* at 370. When warranties are inefficient, “consumers will end up worse off as a result of the warranty, even if sellers cannot pass on all of their costs.” *Id.* at 369. Sellers realize that “consumers . . . will not get more warranty coverage than they want,” and therefore often sell extended warranties separately. *See The Examples of Warranties and Security Interests*, 69 Va. L. Rev. at 1418. “Extended warranties are important products for firms and consumers. It is estimated that over \$21 billion of extended warranties were sold on consumer electronics, appliances, computers, and phones in 2017.” *An Experimental Investigation of Extended Warranties*, 64 Vill. L.

Rev. at 285. Imposing extended (indeed indefinite) warranties on every product sold in Pennsylvania by expanding the UTPCPL in the way Appellant requests would harm consumers by driving up prices for those products.

4. Increased prices would also reduce consumers' access to desired products. Not only would consumers have less to spend on more expensive products, but also sellers would be less able to invest in developing and bringing to market new products that consumers desire. U.S. Chamber of Commerce Institute for Legal Reform, *Tort Costs in America: An Empirical Analysis of the Costs and Compensation of the U.S. Tort System* 6 (Nov. 2022). Increased uncertainty and litigation, along with the reduced demand for increasingly expensive products, would force sellers to divert resources away from innovating and marketing new, more desirable products to instead focus on preventing losses from consumer litigation driven by the expansion of UTPCPL liability Appellant requests.

B. Unlimited warranty periods would harm sellers.

Imposing unending warranty liability on products sold in Pennsylvania would cause crippling uncertainty and unending litigation

for sellers. Time limitations on warranties allow sellers to draft “clear and concise express warranties” and therefore “capture all aspects of the parties’ commercial relationship in the written agreement.” *See A Primer on Warranty and Disclaimer Law*, 93 Mich. Bar J. at 27. “[A] well-drafted, comprehensive agreement will serve as a road map for the parties’ commercial dealings” *Id.* In contrast, unlimited warranties would create more uncertainties, and “[u]ncertainty breeds disputes and litigation.” *Id.* Indeed, as this Court has recognized, the legitimate purpose of time limitations on warranty periods is “repose.” *Cucchi*, 574 A.2d at 573. But expanding UTPCPL liability as Appellant asks would destroy repose for any product sold in Pennsylvania, allowing suits to proceed (and strict liability to potentially attach) whenever a buyer can plead that they reasonably believed a product should have performed without issue for longer than it did.

As discussed above, *supra* Part III.A., increasing the costs associated with selling any product in Pennsylvania also would force sellers to increase prices, which would reduce demand and hinder companies’ growth by driving down sales.

Mandating warranties in perpetuity would be especially harmful to manufacturers of technology products, one of the largest and most in-demand sectors of the U.S. economy, *see* Genevieve Carlton, *2024 Tech Industry Statistics*, Forbes Advisor (June 20, 2024), <https://tinyurl.com/mpwr6v7>, because it would impede competition and innovation. “Competitive pressures often dictate that companies be on the leading . . . edge of technology. The period before obsolescence sets in is becoming shorter and shorter because of the acceleration in technological improvements.” *Computer Contract Disputes*, C601 ALI-ABA at 39. It is therefore not uncommon for tech companies to release new software that no longer supports older hardware, or to discontinue maintenance on outdated systems in general, in order to focus on rapidly advancing consumer expectations and demands. *See id.* at 39-40. Imposing liability for obsolete software or hardware, based just on consumer expectations without any duty to disclose information or any fixed time limit, would stifle technological competition and innovation as firms would constantly be forced to focus not on the next big thing but rather on the outdated widget that a consumer, or an online posting a

consumer sees, says should last longer than it did. *See* R.0008–09 (online posting allegations here).

IV. Adopting Appellant’s Rule, Especially Alongside this Court’s Decision in *Gregg*, Would Make Pennsylvania an Extreme Outlier.

Appellant’s rule would cause Pennsylvania’s UTPCPL to depart radically from similar statutes and bodies of law in any other American jurisdiction. The effect of appellant’s desired rule, when paired with the strict liability standard under *Gregg*, is that a seller would face the risk of strict liability for a UTPCPL violation well after the time for express- or implied-warranty claims just because a consumer believed that the product (or a part of the product) should have lasted longer and the seller should reasonably have disclosed that possibility to them years before. Under *Gregg*, a plaintiff need not prove that the seller was negligent or acted intentionally to establish liability under the UTPCPL. 245 A.3d at 651–52. And under Appellant’s requested expansion of the UTPCPL, he could prove this claim *without* having to plead or prove that the seller’s silence about a product or component’s failure breached a duty to speak. *Any* performance issue in a product would not only become pleadable if a

buyer can allege he believed the issue should not have arisen and the seller should have disclosed it, but would also trigger strict liability.

New Jersey explicitly rejected such a rule, which would “compel manufacturers and sellers to warrant their products and component parts beyond that to which the parties expressly agreed,” and provide no certainty as to when liability ends. *Perkins v. DaimlerChrysler Corp.*, 890 A.2d 997, 1005 (N.J. Super. App. Div. 2006). It would also “render inconsequential the warranty programs adopted by [vendors] and consented to by purchasing consumers . . . [and] have a tendency to extend those warranty programs for the entire life of the [product],” as defined by the buyer’s expectations. *Id.* And it would nullify the statute of limitations for implied warranties for consumer products. 13 Pa. C.S. § 2725.

Pennsylvania already is unique in its interpretation of its UTPCPL as imposing strict liability; it should not depart further from other jurisdictions by imposing that strict liability in perpetuity. In addition to New Jersey’s explicit rejection of an unending-warranties rule like Appellant’s, *see Perkins*, 890 A.2d at 1005, numerous other jurisdictions rightly bar breach-of-warranty claims after the statute of limitations

period in their consumer-protection-law equivalents. *See generally In re ZF-TRW Airbag Control Units Prod. Liab. Litig.*, 601 F. Supp. 3d 625, 773–814 (C.D. Cal. 2022).¹ Many jurisdictions also have held (like the Superior Court’s decisions in *Romeo* and below) that mere silence or so-called “pure omissions” are not actionable under consumer-protection laws absent a duty to speak, and that a plaintiff at least must prove intent to allege a consumer-protection law violation. *Id.*² Indeed, this Court has been one of them. *Milliken v. Jacono*, 103 A.3d 806, 809 (Pa.

¹ Citing *Koski v. Carrier Corp.*, 347 F. Supp. 3d 1185, 1192 (S.D. Fla. 2017 (four years)); *Carroll v. BMW of N. Am., LLC*, No. 19-cv-224, 2019 WL 4243153, at *7 (S.D. Ind. Sept. 6, 2019 (two years)); *Boulds v. Chase Auto Fin. Corp.*, 266 S.W. 3d 847, 851 (Mo. Ct. App. 2008) (five years); *Roberson v. Medtronic, Inc.*, 494 F. Supp. 3d 864, 871 n.7 (W.D. Tenn. 2007) (five years); *Mexia v. Rinker Boat Co.*, 174 Cal. App. 4th 1297, 1305–06 (2009) (four years); Colo. Rev. Stat. § 13-80-101 (three years).

² *See, e.g., Owen v. Gen. Motors Corp.*, 533 F.3d 913, 919–20 (8th Cir. 2008) (Under Missouri Merchandising Practices Act, there “must be something more than mere silence on defendant’s part,” and “[s]ilence becomes misrepresentation only when there is a duty to speak”); *Tietsworth v. Harley-Davidson, Inc.*, 677 N.W.2d 233, 245 (Wis. 2004) (“Silence—an omission to speak—is insufficient to support a claim under [Wisconsin’s Deceptive Trade Practices Act].”); *Kenney v. Healey Ford-Lincoln-Mercury, Inc.*, 730 A.2d 115, 117 (Conn. App. Ct. 1999) (requiring a “duty to disclose” (quoting *Normand Josef Enterprises, Inc. v. Conn. Nat’l Bank*, 646 A.2d 1289 (Conn. 1994))); *Ludwig v. Ford Motor Co.*, 510 N.E. 2d 691, 697 (Ind. Ct. App. 1987) (“Mere silence . . . will not constitute concealment absent a duty to speak.”).

2014) (Under the UTPCPL, “if there was no legal obligation to reveal [the] alleged defect, there can be no liability for [the buyer’s] claims.”).

Contrary to Appellant’s characterization, the Federal Trade Commission Act (FTCA) does *not* permit “pure omission” claims like Appellant’s here. *Compare* Appellant’s Br. 10 (quoting *Tomasella v. Nestle U.S.A.*, 364 F. Supp. 3d 26, 34 (D. Mass. 2019)), *with* *Tomasella*, 364 F. Supp. 3d at 34 (dismissing pure-omission claim because the FTC has “excepted pure omissions from FTCA deception liability”), *aff’d*, 962 F.3d 60, 68, 73–74 (1st Cir. 2020) (pure omission does “not create deception liability” under the FTCA).³ That should inform this Court’s interpretation of the UTPCPL because the UTPCPL “is based upon the [FTCA] . . . and the Lanham Act.” *Gregg*, 245 A.3d at 647; *Commonwealth ex rel. Creamer v. Monumental Props., Inc.*, 329 A.2d 812, 818 (Pa. 1974).

The Superior Court’s decisions in *Romeo* and below align with the UTPCPL, this Court’s precedents, other States’ deceptive practice laws,

³ Some jurisdictions toll the limitations period based on fraudulent concealment (i.e., affirmative actions by a seller to conceal a defect during the limitations period), but there is no such allegation in this case, so the Court may defer that question for another day.

and the FTCA. On the other hand, the decision Appellant asks this Court to make “overruling” the Superior Court has no state or federal analogue. It would make Pennsylvania an extreme outlier and harm Pennsylvania businesses and consumers alike in ruining the product-warranty mechanisms that buyers and sellers in Pennsylvania have come to know and depend on for decades.

CONCLUSION

For all the foregoing reasons, *amici* respectfully request that this Court affirm the decision of the Superior Court.

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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 531

I hereby certify that the foregoing Brief of *Amici Curiae* complies with Pa.R.A.P. 531, because it is filed during merits briefing and contains 5,074 words.

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**CERTIFICATE OF COMPLIANCE
WITH PUBLIC ACCESS POLICY**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

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PROOF OF SERVICE

I hereby certify that on this August 8, 2024, I electronically filed the foregoing on the PACFile system, which will send a notification of such filing to the appropriate counsel.

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