ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE NORTHBROOK INDEMNITY COMPANY, and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs-Appellants,

v.

CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROE COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE, INIMEG MANAGEMENT COMPANY, INC., 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C., 72 ROUTE 27 REALTY, L.L.C., SAME DAYPROCEDURES, L.L.C., MID-STATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN CENTERS, d/b/a METRO PAIN and VEIN, SOOD MEDICAL PRACTICE, L.L.C., ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC, ONE OAK ORTHOPAEDIC & SPINE GROUP, L.L.C., ONE OAK HOLDING, L.L.C.,

SUPERIOR COURT OF THE STATE OF NEW JERSEY

APPELLATE DIVISION
DOCKET NO. A-000778-23

On Appeal From:
Superior Court of New Jersey
Law Division, Middlesex County

Sat Below:
Hon. Christopher D. Rafano J.S.C.

Trial Court Docket No.:
Docket No. MID-L-1469-23

JOSEPH BUFANO, JR., D.C., CHRISTOPHER BUFANO, MICAH LIEBERMAN, D.C., RICHARD J. MILLS, M.D., JENNIFER M. O'BRIEN, ESQ., GERALD M. VERNON, D.O., D.C., ALVIN F. MICABALO, D.O., JOSE CAMPOS, M.D., JOHN S. CHO, M.D., MICHAEL C. DOBROW, D.O., RAHUL SOOD, D.O., SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D., RAVI K. VENKATARAMAN, M.D., MANGLAM NARAYANAN, M.D., SHANTI EPPANAPALLY, M.D.,

Defendants-Respondents.

BRIEF OF PLAINTIFFS-APPELLANTS
Submitted March 11, 2024

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Regulations

Other Authorities

TABLE OF JUDGMENTS, ORDERS, AND RULINGS ON APPEAL

APPENDIX
TABLE OF CONTENTS

VOL. I

VOL. II

VOL. III

PRELIMINARY STATEMENT

The Insurance Fraud Prevention Act (IFPA) of 1983 protects the public from fraudulent acts that drive up insurance premiums. The statute arms insurers with the means to claw back fraudulently obtained insurance benefits via a private cause of action and strong remedies, including treble damages and attorneys' fees. For forty years, insurers have employed the statute to recoup losses and deter future fraud, which ultimately benefits the public. The Supreme Court has held that there is a constitutional right to a jury trial on IFPA claims.

The Automobile Insurance Cost Reduction Act (AICRA) of 1998 amended the State's no-fault insurance law to reduce the cost of automobile insurance. AICRA revised the dispute-resolution process relating to personal-injury-protection (or PIP) benefits, which cover medical expenses for those involved in auto accidents. AICRA and its implementing regulations provide that "dispute[s] regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage" may be submitted to dispute resolution at the election of an insured, an insurer, or a medical provider to which the insured assigned PIP benefits. The statutory process for PIP dispute resolution is sometimes referred to as arbitration, but it is much more limited than traditional arbitration.

This case presents an important question for the insurance industry and

the public: whether AICRA's dispute-resolution provision deprives insurers of the right to sue healthcare providers that allegedly obtained PIP benefits through fraud. The Allstate-affiliated insurers (collectively, Plaintiffs) alleged that the medical-provider defendants (collectively, Defendants) violated the IFPA, the New Jersey racketeering statute (RICO), and equitable principles by operating a professional medical practice controlled by a non-physician, engaging in illegal kickbacks and self-referrals, and conducting a RICO enterprise through a pattern of racketeering. The Law Division held that those claims must be arbitrated under AICRA. That holding was in error.

First, the Law Division's interpretation of AICRA's dispute-resolution provision is wrong because it would render the provision unconstitutional. Under binding precedent, all parties have a constitutional right to a jury trial on IFPA damages claims, and a statute requiring mandatory arbitration of a claim that carries the right to a jury trial is unconstitutional. In contrast, this court has held that claims disputing whether PIP arbitration benefits must be paid do not require a jury trial. Thus, disputes about whether an insurer must pay PIP benefits and in what amount can be subject to mandatory arbitration, but affirmative fraud claims for damages cannot.

Second, text, context, purpose, and caselaw further demonstrate that AICRA arbitration applies to disputes about whether an insured or assignee can

recover unpaid PIP benefits but not to an insurer's claims for damages relating to fraud. Indeed, this court has recognized that the Legislature did not intend that PIP arbitrators decide IFPA claims.

Third, reading AICRA to mandate arbitration of Plaintiffs' claims would create a conflict between AICRA, the IFPA, and RICO. Under settled precedent, courts must harmonize the statutory schemes. The only way to do so that accords with the statutory purposes is to permit insurers to continue to sue medical providers that obtain PIP benefits through fraudulent means in court.

Finally, other canons of statutory interpretation reinforce that AICRA does not require Plaintiffs to arbitrate their claims. It would lead to absurd results that the Legislature could not have intended because insurers cannot obtain damages or attorneys' fees in a PIP arbitration or conduct the discovery that they need to litigate the type of claims that Plaintiffs allege. Prohibiting judicial actions for insurance fraud would also cause a sea change in the law, which the Legislature is presumed only to do expressly. But there is no indication that AICRA was intended to prohibit IFPA and other fraud actions; quite to the contrary.

The decision below risks profound adverse effects on the automobile-insurance industry in New Jersey, threatens AICRA's constitutionality, and will overwhelm an arbitration system unequipped to handle cases like this one. This court should reverse.

PROCEDURAL HISTORY

On March 15, 2023, Plaintiffs filed a nine-count complaint against Defendants in the Middlesex County Law Division seeking (1) a declaratory judgment that defendant Carteret Comprehensive Medical Care, P.C. (CCMC), is illegally structured and operated in violation of the doctrine against the corporate practice of medicine, codified at N.J.A.C. 13:35-6.16, and the prohibition against practicing medicine without a license under N.J.S.A. 2C:21-20; (2) a declaratory judgment that CCMC was not entitled to PIP benefits because it operated illegally and disgorgement of more than $1.7 million in benefits that Plaintiffs paid to it; (3) treble damages, fee shifting and other remedies under the IFPA relating to the unlawful benefits that CCMC received; (4) a declaratory judgment that defendant Joseph Bufano violated New Jersey Board of Chiropractic Examiners' regulations by receiving payments from certain of the other defendants for referring patients to those defendants; (5) a declaratory judgment that those defendants violated New Jersey Board of Medical Examiners' regulations by making those payments to Bufano; (6) a declaratory judgment that Defendants violated the Anti-Self-Referral Law, N.J.S.A. 45:9-22.4 to -22.9 (the Codey Act); (7) a declaratory judgment that Defendants were not entitled to PIP benefits due to self-referrals and kickbacks, and disgorgement of the amount of PIP benefits; (8) damages and other remedies

under the IFPA for self-referrals and kickbacks; and (9) damages and other remedies under RICO based on the violations of the corporate practice of medicine and self-referrals/kickbacks. Pa0023 (Compl. ¶¶ 350-521).[1]

On April 13, 2023, defendants CCMC, Inimeg Management, Joseph Bufano, Jennifer O'Brien, 311 Spotswood-Englishtown Realty, 72 Route 27 Realty, Christopher Bufano, Gerald Vernon, Micah Lieberman, Richard Mills, Michael Dobrow, and Alvin Micabalo moved to dismiss the complaint and to compel arbitration in lieu of an answer. Pa0335.

On April 24, 2023, defendants Mid-State Anesthesia Consultants, Interventional Pain Consultants of North Jersey, Sood Medical Practice, Rahul Sood, and Sachin Shah moved to compel arbitration in lieu of an answer. Pa0338.

On June 2, 2023, defendant John Cho moved to dismiss the complaint. Pa0341.

On August 10, 2023, defendants Mid-State Anesthesia Consultants, Interventional Pain Consultants of North Jersey, Sood Medical Practice, Rahul Sood, and Sachin Shah refiled their motion to compel arbitration in lieu of an answer. Pa0345.

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[1] Pa refers to Plaintiffs' Appendix.

On August 14, 2023, defendants CCMC, Inimeg Management, Joseph Bufano, Jennifer O'Brien, 311 Spotswood-Englishtown Realty, 72 Route 27 Realty, Christopher Bufano, Gerald Vernon, Micah Lieberman, Richard Mills, Michael Dobrow, and Alvin Micabalo refiled their motion to dismiss the complaint and to compel arbitration in lieu of an answer. Pa0347.

On August 16, 2023, defendant John Cho refiled his motion to dismiss the complaint. Pa0350.

Some defendants filed answers demanding a jury trial rather than moving to compel arbitration. Pa0152-0333.

On October 27, 2023, the Law Division entered written orders granting the three motions to compel arbitration along with statements of reasons that were identical in substance. Pa0001-0022. The Law Division dismissed Plaintiffs' claims without prejudice, including against those defendants that did not move to compel arbitration, without further order of the court. Pa0334.

On November 13, 2023, under R. 2:2-3(b)(8) (permitting appeals as of right from orders compelling arbitration), Plaintiffs filed a notice of appeal from the October 27, 2023 orders granting the motions to compel arbitration and dismissing Plaintiffs' claims without prejudice. Pa0353.

STATEMENT OF FACTS

The record on Defendants' motions to compel arbitration consists of Plaintiffs' complaint and the parties' certifications and exhibits. The facts below are drawn from that record.

I. Defendants' insurance-fraud scheme.

Plaintiffs provide no-fault automobile insurance policies in New Jersey, under which insureds can recover PIP benefits if they are involved in accidents. See Pa0025 (Compl. ¶ 3). When insureds receive medical treatment, they typically assign those PIP benefits to their providers, who seek payment from Plaintiffs. See N.J.S.A. 39:6A-4 (providing that PIP benefits may be assigned "to a provider of service benefits"). The complaint alleges that, from 2008 through 2022, Defendants conspired to obtain, through false and misleading insurance claims, more than $1.7 million in PIP benefits from Plaintiffs through more than 800 medical claims. See, e.g., Pa0037, Pa0074 (Compl. ¶¶ 110, 338). Plaintiffs learned after making the benefit payments that CCMC was illegally structured, and that Defendants engaged in kickbacks, illegal self-referrals, and a pattern of racketeering in connection with the services for which they obtained payment. Pa0448-0449.

A. Violations of the doctrine against the corporate practice of medicine and practicing medicine without a license.

The doctrine against the corporate practice of medicine prohibits the commercial exploitation of the practice of medicine. Pa0038 (Compl. ¶ 115). Doctors possessing a plenary license[2] cannot be employed by professionals possessing limited licenses, such as chiropractors. Pa0038 (Compl. ¶ 114). Non-physicians, including laypersons and healthcare professionals who do not hold plenary licenses, are also barred from owning or controlling the majority shares in a medical professional corporation. Ibid. Instead, one or more plenary physicians must own and control the majority of shares. Pa0039 (Compl. ¶ 121).

Medical practices organized unlawfully in this manner are not entitled to payment for services under no-fault benefit policies. Pa0042 (Compl. ¶ 133). The Supreme Court has held that healthcare services seeking payment under no-fault policies must comply with all significant qualifying requirements, including those governing permissible ownership and control structure. Pa0079 (Compl. ¶ 361 (citing Allstate Ins. Co. v. Northfield Med. Ctr., 228 N.J. 596 (2017))).

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[2] The New Jersey Board of Medical Examiners (BME) uses the term "plenary physicians" and "plenary licensees" to describe individuals licensed as medical doctors (M.D.) or doctors of osteopathy (D.O.).

As explained in the certification of Plaintiffs' investigator, Benjamin J. Hickey, Plaintiffs obtained information from a chiropractor named Wayne A. Petermann in July 2017 suggesting that CCMC, a full-service medical provider, might be owned and controlled by non-physicians or those with limited licenses. Pa0448 (Hickey Cert. ¶¶ 6-11). That information led Plaintiffs to investigate and later learn, through the help of witnesses that previously worked for CCMC, that CCMC was illegally structured. See Pa0043-0061 (Compl. ¶¶ 137-276).

Plaintiffs allege in the complaint that, although CCMC purports to be owned by Dr. Adrian Didita, a medical doctor, it is in fact illegally owned and controlled by defendant Joseph Bufano, a chiropractor. Pa0026, Pa0043-0045 (Compl. ¶¶ 8-12, 137-158). Although Dr. Didita purportedly signed CCMC's October 2003 certificate of incorporation, he stated in a sworn statement that he does not recall signing the certificate, never had any ownership interest in CCMC, was hired as a part-time employee after CCMC began operations, and only worked for CCMC for a few months after which Joseph Bufano fired him. Pa0043-0044 (Compl. ¶¶ 146-155).

Three physicians who worked at CCMC provided sworn statements to Plaintiffs that they were interviewed, hired, and supervised by Joseph Bufano or his brother, Christoper Bufano, an unlicensed layperson who managed CCMC. See Pa0045-0047 (Compl. ¶¶ 161, 177, 184-185). Two of these physicians swore

that they never met any plenary physician who purportedly owned CCMC, and no plenary physician supervised their work. See Pa0045, Pa0047 (Compl. ¶¶ 164-166, 180). A third physician swore that she had no meaningful interactions with defendant Richard Mills, CCMC's purported medical director. See Pa0057 (Compl. ¶¶ 246-248). Those physicians and two non-plenary licensees also swore or stated that the Bufanos or others under their direction pressured them to prescribe tests, services, and equipment that were not medically necessary, and otherwise sought to interfere with their exercise of medical or clinical judgment. See Pa0046-0059 (Compl. ¶¶ 170-174, 178-179, 193-249, 254-258, 263-273). Defendants submitted more than 800 claims for benefits that falsely represented they were eligible for insurance reimbursement and did not disclose that CCMC was illegally structured. See Pa0067-0068 (Compl. ¶¶ 307, 311).

Plaintiffs' complaint seeks a declaratory judgment that CCMC's ownership and control violated the doctrine against the corporate practice of medicine and statutes prohibiting practicing medicine without a license. Pa0076-0077 (Compl. ¶¶ 350-352). It also seeks a declaratory judgment that Defendants were not entitled to receive payment under no-fault insurance policies and are required to disgorge all such payments that they received from Plaintiffs because Defendants were unjustly enriched. Pa0077-0081 (Compl. ¶¶ 353-369).

Further, Plaintiffs allege that Defendants' unlawful practice of medicine violated the IFPA because Defendants falsely represented that their services were eligible for insurance reimbursement, and Defendants concealed or failed to disclose that those services were unlawfully rendered. Pa0082-0086 (Compl. ¶¶ 370-381). Plaintiffs seek compensatory and treble damages, investigation expenses, attorneys' fees, and costs under the IFPA. Pa0085-0086 (Compl. ¶¶ 382-383).

B. Kickbacks and illegal self-referrals.

Plaintiffs also allege that Defendants made, received, and/or aided and abetted, kickbacks and illegal self-referrals, which rendered them ineligible for PIP-benefit payments. Pa0087-0099 (Compl. ¶¶ 384-450). The complaint alleges that CCMC and its professionals referred patients insured by Plaintiffs to certain of the other defendants for pain-management and surgical procedures. Pa0087 (Compl. ¶ 385). Those defendants, who simultaneously owned, or were associated with, sizable independent medical practices, consulted with the patients at CCMC's offices and acted contrary to their own economic interests by allowing CCMC to bill for and profit from those consultations and services instead of billing for them directly. See Pa0087-0088, Pa0089, Pa0094 (Compl. ¶¶ 385, 388, 393, 409, 423). To make up for that lost revenue, those defendants also recommended that the patients undergo procedures at an outpatient facility

that they owned, and during the procedures, anesthesia was provided by professionals who worked for entities owned or controlled by those defendants. Pa0087 (Compl. ¶¶ 386-387).

Thus, the recipients of referrals from CCMC illegally split their fees with the referring defendants in exchange for the opportunity to treat CCMC patients. Plaintiffs attached an exhibit to the complaint detailing the claims for insurance benefits that violated the anti-kickback and self-referral laws. See Pa0087, Pa0145-0149 (Compl. ¶ 384 & Ex. B). The body of the complaint discusses specific examples of the unlawful conduct. See Pa0088-0097 (Compl. ¶¶ 393-439). Plaintiffs allege that Defendants submitted claims for insurance reimbursement that falsely represented that their services were eligible for payment, and that they concealed and failed to disclose that the services were not eligible due to kickbacks and self-referrals. See Pa0109-0111 (Compl. ¶¶ 484-489).

Regarding the alleged kickbacks and self-referrals, the complaint seeks: (1) a declaratory judgment that Joseph Bufano's receipt of kickbacks for referrals violated New Jersey Board of Chiropractic Examiners regulations, Pa0099 (Compl. ¶¶ 451-455); (2) a declaratory judgment that other defendants violated New Jersey Board of Medical Examiners regulations by paying the kickbacks, Pa0101-0102 (Compl. ¶¶ 456-461); (3) a declaratory judgment that

Defendants violated the Codey Act by referring, causing the referral of, or conspiring with, aiding and abetting, or urging each other, to refer patients for pain-management, anesthesia, and other procedures at or by entities controlled by some of the defendants, Pa0102-0105 (Compl. ¶¶ 462-474); (4) a declaratory judgment and disgorgement of the PIP benefits that Plaintiffs paid to Defendants due to unjust enrichment based on the alleged kickbacks and self-referrals, Pa0106-0107 (Compl. ¶¶ 475-483); and (5) compensatory and treble damages, investigation costs, and attorneys' fees under the IFPA for false and misleading benefit claims, Pa0109-0112 (Compl. ¶¶ 484-492).

C. RICO violations.

Plaintiffs also allege that the conduct described above violated RICO. See Pa0113-0118 (Compl. ¶¶ 493-521). The complaint explains that racketeering includes the acts of healthcare-claims fraud, insurance fraud, and the unlicensed practice of medicine in which Defendants engaged. Pa0114-0117 (Compl. ¶¶ 500-516). Plaintiffs seek compensatory and treble damages, attorneys' fees, and other remedies on its RICO claims. Pa0118-0119 (Compl. ¶¶ 521).

II. Plaintiffs' Decision Point Review Plans ("DPRPs").

Under AICRA and regulations promulgated by the New Jersey Department of Banking and Insurance (DOBI), no-fault insurers must put in place DPRPs, which describe the insurers' clinically related decision-making on

claims for PIP benefits. See N.J.A.C. 11:3-4.6. DOBI must approve the DPRPs and any amendments to them. N.J.A.C. 11:3-4.7. The DPRPs are permitted to include "reasonable restrictions on the assignment of benefits" from insureds to medical providers. N.J.A.C. 11:3-4.7(c)(7). Those restrictions may include "[a] requirement that as a condition of assignment, the provider agrees to submit disputes to alternate dispute resolution pursuant to N.J.A.C. 11:3-5," which implements the AICRA statutory arbitration provision. N.J.A.C. 11:3-4.9(a)(3).

Defendants submitted as part of the record below a version of Plaintiffs' DPRP that DOBI approved sometime between AICRA's enactment and 2010. That version of the DPRP contained the following language regarding dispute resolution as a condition of assignment:

> Assignment of a named insured's or eligible injured person's rights to receive benefits for medically necessary treatment, durable medical equipment tests or other services is prohibited except to a licensed health care provider who agrees to: . . . (e) Submit disputes to alternative dispute resolution pursuant to N.J.A.C. 11:3.
>
> [Pa511.]

After Plaintiffs filed this appeal, they learned of a revised version of the DPRP, which DOBI approved, effective March 1, 2020, and which applies to some of the PIP claims at issue in this case. Plaintiffs include the relevant

language below in the interest of full disclosure to the court, although they do not believe that it changes the issues to be decided on this appeal:

> Should any action be filed seeking relief under the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1, et seq., N.J.S.A. 39:6A-13(g) or any cause of action alleging fraud or misconduct, the insured and/or the provider must agree to put any arbitration proceedings in abeyance until the legal action is resolved.
>
> [Pa528.]

III. The Law Division's decisions on Defendants' motions to compel arbitration.

Three groups of defendants moved to compel arbitration. The Law Division entered three orders granting the motions, each with the same reasoning. See Pa0001-0022. The court held that AICRA's language required arbitration, at the election of any party, of "all 'disputes' around the recovery of PIP Benefits." Pa0006. The Law Division reasoned that AICRA's arbitration provision "encompasses a broad array of legal disputes regarding PIP benefits, including mistaken claims for benefits, fraud-based claims, or any other claim including the 'recovery' of PIP Benefits." Ibid.

The Law Division further reasoned that all of Plaintiffs' claims "involve (1) a dispute by Plaintiffs, (2) involving Defendant[s'] recovery of PIP Benefits that (3) one party wishes to send to arbitration." Pa0007. The court was "unconvinced" by Plaintiffs' argument that there was a distinction under AICRA

between disputes about whether an insurer was required to pay benefit claims and disputes about whether a provider obtained benefits from an insurer through fraud. Ibid.

LEGAL ARGUMENT

Orders compelling arbitration are appealable as of right, R. 2:2-3(b)(8), and are reviewed de novo, Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 131 (2020). The court also reviews de novo the trial court's interpretation of statutes. Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 139 (2015). AICRA requires arbitration of "dispute[s] regarding the recovery of medical expense benefits or other benefits provided under [PIP] coverage" if a party to the dispute so elects. N.J.S.A. 39:6A-5.1(a). That statutory directive does not apply to insurers' claims for damages because the medical providers submitted false or misleading statements in the process of recovering PIP benefits or otherwise unlawfully obtained those benefits.

I. The Law Division erred in holding that AICRA requires PIP arbitration of Plaintiffs' affirmative claims. (Decided below, Pa0001-Pa0022)

"The fundamental objective of statutory interpretation is to identify and promote the Legislature's intent." Parsons ex rel. Parsons v. Mullica Twp. Bd. of Educ., 226 N.J. 297, 307 (2016). The court begins with the words of the statute "and read[s] them in context with related provisions so as to give sense

to the legislation as a whole." DiProspero v. Penn, 183 N.J. 477, 492 (2005). "[W]hen the statutory language is ambiguous and a fair reading of the words permits more than one reasonable interpretation, then [the court] may turn to extrinsic interpretative aids, including legislative history and established canons of construction, for assistance in discerning the Legislature's intent." State v. Fleischman, 189 N.J. 539, 546 (2007). "An overriding principle of statutory construction compels that every effort be made to harmonize legislative schemes enacted by the Legislature." Richter v. Oakland Bd. of Educ., 246 N.J. 507, 538 (2021).

Those principles of statutory interpretation require reversal here. AICRA's arbitration provision would violate the constitutional right to a jury trial on fraud claims if the Law Division's and Defendants' interpretation were correct. This court can—and thus must—avoid that unconstitutional result. See infra Point I.A. In addition, the language of AICRA's dispute-resolution provision in the context of its purpose and the legislative scheme as a whole demonstrates that an insurer's effort to claw back fraudulently obtained insurance benefits via the IFPA's specialized provisions and remedies is not subject to AICRA's equally specialized and limited dispute-resolution procedures. See infra Point I.B. Further, to reconcile AICRA and the statutes under which Plaintiffs sue, the court must permit Plaintiffs to litigate their claims. See infra Point I.C. Finally,

other applicable canons of interpretation confirm that Plaintiffs' claims fall outside mandatory arbitration. See infra Point I.D.

A. AICRA's dispute-resolution clause would be unconstitutional if it required arbitration of Plaintiffs' fraud claims.

This court should reject Defendants' interpretation because it would render AICRA's arbitration provision unconstitutional.

Courts "must presume that the [L]egislature acted with existing constitutional law in mind and intended the [statute] to function in a constitutional manner." Whirlpool Props., Inc. v. Dir., Div. of Tax'n, 208 N.J. 141, 172 (2011) (alteration in original) (internal quotation marks omitted). "[W]hen a statute may be open to a construction which would render it unconstitutional or permit its unconstitutional application, it is the duty of th[e] Court to so construe the statute as to render it constitutional if it is reasonably susceptible to such interpretation." Ibid. (internal quotation marks omitted).

The New Jersey Constitution guarantees "the right to a jury trial [on] causes of action—even statutory causes of action—that sound in law rather than equity." Lajara, 222 N.J. at 142. In Lajara, the Supreme Court held that the defendants had a constitutional right to a jury trial on the insurer plaintiffs' claims under the IFPA seeking damages for PIP benefits that the defendants allegedly obtained through fraud. See id. at 134-35. The Court reasoned: "[T]he right to a jury trial under Article I, Paragraph 9 of the New Jersey Constitution

is triggered because the IFPA provides legal relief in the form of compensatory and punitive damages and because an IFPA claim is comparable to common-law fraud." Id. at 151.

That reasoning also applies to RICO, which similarly provides for compensatory and punitive damages. See N.J.S.A. 2C:41-4(c) (granting private right of action for compensatory and treble damages on RICO claims); see also Grandvue Manor, LLC v. Cornerstone Contracting Corp., 471 N.J. Super. 135, 142 (App. Div. 2022) (holding that party waived right to jury trial under RICO); Zorba Contractors, Inc. v. Hous. Auth., City of Newark, 362 N.J. Super. 124, 139 (App. Div. 2003) (recognizing right to jury trial on claims under Consumer Fraud Act because compensatory damages authorized by statute and sought in case "is a hallmark of a legal action"); Velop, Inc. v. Kaplan, 301 N.J. Super. 32, 41 (App. Div. 1997) (noting that parties held four-month jury trial on RICO and other claims); cf. Maersk, Inc. v. Neewra, Inc., 687 F. Supp. 2d 300, 340-41 (S.D.N.Y. 2009) (holding that defendants had right to jury trial on federal RICO claims for damages), aff'd sub nom., Maersk, Inc. v. Sahni, 450 F. App'x 3 (2d Cir. 2011).

In contrast, this court has held that "there is no right to a jury trial in an action for unpaid PIP benefits." Endo Surgi Ctr. v. Liberty Mut. Ins. Co., 391 N.J. Super. 588, 594 (App. Div. 2007); see also Manetti v. Prudential Prop. &

Cas. Ins. Co., 196 N.J. Super. 317, 320-21 (App. Div. 1984) (holding "that there is no right to a jury trial for PIP benefits where the issue is what benefits, if any, are due" because PIP benefits are mandated by statute and thus a claim for those benefits is not seeking legal relief for breach of contract).

The Supreme Court has held that the Legislature may not require parties to arbitrate claims on which they have a right to a jury trial. See Jersey Cent. Power & Light Co. v. Melcar Utility Co., 212 N.J. 576, 600 (2013). In Jersey Central Power & Light, the Supreme Court considered a provision of the Underground Facility Protection Act, which compelled parties seeking monetary relief for harm to underground facilities to arbitrate without a de novo jury trial. Id. at 581. The Court held that the "mandatory, binding arbitration is impermissible because it effectively denies . . . private litigants their constitutionally guaranteed right to a trial by jury for a common-law cause of action in negligence." Id. at 593-94. The Court further stated that "even when the Legislature has acted to compel the use of arbitration [in other statutes], this Court has highlighted the important caveat of permitting a right to a trial de novo following mandatory arbitration whenever the constitutional right to jury trial was implicated." Id. at 597.

That reasoning equally applies here: AICRA does not provide for a trial de novo after mandatory arbitration and thus would be unconstitutional if

applied to claims carrying a constitutional right to trial by jury. The Legislature understood that requirement when it enacted AICRA. Another provision of the no-fault laws imposes mandatory arbitration for tort claims under $15,000 arising out of auto accidents. See N.J.S.A. 39:6A-25. But the statute permits a party to request a trial de novo following arbitration, N.J.S.A. 39:6A-31, and thus "preserves the parties' right to a jury trial by providing for a trial de novo for any party dissatisfied with the arbitration award," Grey v. Trump Castle Assocs., L.P., 367 N.J. Super. 443, 447 (App. Div. 2004).

The Legislature could constitutionally require PIP arbitration to determine whether PIP benefits must be paid without a trial de novo, because there is no constitutional right to a jury trial on such claims. See Endo Surgi Ctr., 391 N.J. Super. at 594. But if insurers and medical providers were prohibited from litigating damages claims before a jury under the IFPA or RICO, there would be a serious constitutional flaw in AICRA that the Legislature clearly did not intend, and which this court should avoid by holding that Plaintiffs' IFPA and RICO claims are not subject to mandatory arbitration. See Whirlpool Props., 208 N.J. at 172.

B. The language of AICRA's dispute-resolution provision, in light of its context and purpose, encompasses only disputes regarding whether an insurer must pay unpaid PIP benefits.

AICRA states: "Any dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage . . . arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute." N.J.S.A. 39:6A-5.1(a). The statute delegates to the DOBI Commissioner the responsibilities to promulgate rules and regulations regarding such dispute resolution and to designate an organization to administer the proceedings. N.J.S.A. 39:6A-5.1(b); see also N.J.S.A. 39:6A-1.2 ("The commissioner may promulgate any rules and regulations . . . deemed necessary in order to effectuate the provisions of this amendatory and supplementary act.").

AICRA provides that the type of disputes covered by PIP arbitration "may include, but not necessarily be limited to, matters concerning:

> (1) interpretation of the insurance contract; (2) whether the treatment or health care service which is the subject of the dispute resolution proceeding is in accordance with the provisions of section 4 of P.L.1972, c. 70 (C.39:6A-4), section 4 of P.L.1998, c. 21 (C.39:6A-3.1) or section 45 of P.L.2003, c. 89 (C.39: 6A-3.3) or the terms of the policy; (3) the eligibility of the treatment or service for compensation; (4) the eligibility of the provider performing the treatment or service to be compensated under the terms of the policy or under

> regulations promulgated by the commissioner, including whether the person is licensed or certified to perform such treatment; (5) whether the disputed medical treatment was actually performed; (6) whether diagnostic tests performed in connection with the treatment are those recognized by the commissioner; (7) the necessity or appropriateness of consultations by other health care providers; (8) disputes involving application of and adherence to fee schedules promulgated by the commissioner; and (9) whether the treatment performed is reasonable, necessary, and compatible with the protocols provided for pursuant to P.L.1998, c. 21 (C.39:6A-1.1 et al.).
>
> [N.J.S.A. 39:6A-5.1(c).]

AICRA therefore mandates that disputes "regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage" be brought in PIP arbitration if a party to the dispute so chooses. The Legislature included in the statute a list of disputes that "may" be subject to PIP arbitration as guidance to DOBI in implementing AICRA.

DOBI promulgated regulations to "establish procedures for the resolution of disputes concerning the payment of medical expense and other benefits provided by personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1(a). An injured party, the insured, a provider who is an assignee of PIP benefits or the insurer may make a request for arbitration of a "PIP dispute," N.J.A.C. 11:3-5.6(a), which the regulations define by adopting the statutory examples with minor changes:

"PIP dispute" includes, but is not limited to, matters concerning:

1. Interpretation of the insurance contract's PIP provisions;

2. Whether the medical treatment or diagnostic tests are in accordance with the provisions of applicable statutes and rules for the basic and standard policies and in compliance with the terms of the policy;

3. Eligibility of the treatment or service for compensation or reimbursement, including whether the injury is causally related to the accident and the application of deductible and copayment provisions;

4. Eligibility of the provider performing the service to be compensated or reimbursed under the terms of the policy and the provisions of N.J.A.C. 11:3–4, and including whether the provider is licensed or certified to perform the treatment or service;

5. Whether the treatment was actually performed;

6. Whether the diagnostic tests performed are recognized by the Professional Boards in the Division of Consumer Affairs, Department of Law and Public Safety, administered in accordance with their standards, and approved by the Commissioner at N.J.A.C. 11:3–4;
7. The necessity and appropriateness of consultation with other health care providers;

8. Disputes involving the application of, or adherence to, the automobile insurance medical fee schedule at N.J.A.C. 11:3–29;

9. Whether the treatment or service is reasonable, necessary and in accordance with medical protocols adopted by the Commissioner at N.J.A.C. 11:3–4; or

> 10. Amounts claimed for PIP income continuation benefits, essential services benefits, death benefits and funeral expense benefits.
>
> [N.J.A.C. 11:3-5.2.]

The Law Division concluded that Plaintiffs' claims under the IFPA, RICO, the Declaratory Judgments Act, and equitable principles alleging that Defendants submitted false and misleading insurance-benefit claims, unlawfully operated a medical practice, engaged in kickbacks and illegal self-referrals, and operated a RICO enterprise through a pattern of racketeering were "dispute[s] regarding the recovery of" PIP benefits. Pa0007. It did not address the definition of "PIP disputes" in the DOBI regulations. The Law Division was wrong.

The phrase "recovery of benefits" in AICRA should be interpreted in light of its meaning in the insurance field. See Praxair Tech., Inc. v. Dir., Div. of Tax'n, 201 N.J. 126, 136 (2009) (recognizing that courts construe technical terms or terms of art in accordance with those meanings). Recovery of insurance benefits ordinarily refers to "how much money should the insured receive from the insurer." 11A Couch on Ins. § 168:1 (3d ed.); see also N.J.S.A. 39:6A-4.2 ("No person shall recover personal injury protection benefits under more than one automobile insurance policy for injuries sustained in any one accident."); Nationwide Mut. Fire Ins. Co. v. Fiouris, 395 N.J. Super. 156, 160 (App. Div. 2007) (holding that AICRA's arbitration provision "only requires arbitration of

disputes regarding entitlement to or the amount of PIP benefits"). It does not ordinarily refer to compensatory damages or other remedies that an insurer seeks from an insured or assignee due to benefits that were wrongfully obtained. For example, the IFPA authorizes an insurer to sue when benefits are obtained through fraud; the statute speaks in terms of an action "to recover compensatory damages" and to "recover treble damages," N.J.S.A. 17:33A-7(a), (b) (emphasis added), not to "recover benefits."

The United States Court of Appeals for the Second Circuit drew a similar distinction in interpreting New York's no-fault dispute-resolution statute. In Allstate Insurance Co. v. Mun, 751 F.3d 94 (2d Cir. 2014), the court held: "If Allstate had disputed [no-fault] claims without paying them promptly, disputes contemplated by the [dispute-resolution] statute would have arisen," but Allstate's action for fraud damages was not subject to arbitration because it "involves the medical provider's liability to the insurer, under a fraud theory, for what the provider already recovered in the claims process." Id. at 98.

A dispute "regarding the recovery of" PIP benefits is thus a dispute about whether an insured or assignee should receive any money (and, if so, in what amount) from the insurer on a disputed claim. That interpretation accords with the purpose of AICRA's dispute-resolution provision: "to establish an expeditious non-judicial procedure for resolving any dispute regarding the

payment of PIP benefits, in furtherance of the No-Fault Act's objectives of facilitating 'prompt and efficient provision of benefits for all accident injury victims' and 'minimiz[ing] resort to the judicial process[.]'" Endo Surgi Ctr., 391 N.J. Super. at 594 (alteration in original) (quoting Gambino v. Royal Globe Ins. Cos., 86 N.J. 100, 105,107 (App. Div. 1981)). Or, as the Supreme Court has put it: "The goal of PIP is to provide prompt medical treatment for those who have been injured in automobile accidents without having that treatment delayed because of payment disputes." Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 609 (2012).

The goal of "prompt and efficient provision of benefits" and avoiding treatment delay "because of payment disputes" makes clear that the Legislature was concerned in AICRA's dispute-resolution provision about avoiding long delays due to insurers denying or withholding PIP benefits, not insurer claims that providers duped them into paying those benefits, which are left to preexisting statutory and common-law judicial remedies. Indeed, the Legislature declared in AICRA that "[t]he present arbitration system has not sufficiently addressed the . . . goal of eliminating payment for treatments and diagnostic tests which are not medically necessary, leading to the belief that a revised dispute resolution mechanism needs to be established which will accomplish this goal." N.J.S.A. 39:6A-1.1. The Legislature focused on revising the dispute-resolution

process to determine whether treatments were medically necessary, which again suggests that PIP arbitration is limited to whether an insurer can properly deny a benefits request.

The distinction between disputes about whether an insurer must pay a benefit claim and about whether a provider unlawfully obtained benefits is also consistent with the context of the scheme established in AICRA and its implementing regulations. See In re H.D., 241 N.J. 412, 418-19 (2020) ("[W]e interpret statutes in context with related provisions, since the context is [often] determinative of the meaning." (second alteration in original) (internal quotation marks and citation omitted)).

AICRA dispute resolution is the last step in a statutory and regulatory process to determine whether PIP benefits are payable for clinical services. DOBI regulations incorporate "care paths" "as the standard course of medically necessary treatment, including diagnostic tests" for identified injuries from automobile accidents. N.J.A.C. 11:3-4.6(a). The care paths contain "decision points" at which providers can request coverage for further treatment from insurers. See N.J.A.C. 11:3-4.6(b). "Decision point review occurs at certain junctures during the treatment, as designated in the care paths, and may require a second opinion, development of a treatment plan, or case management." Coal.

for Quality Health Care v. DOBI, 348 N.J. Super. 272, 286 (App. Div. 2002) (Coalition II).

Insurers' DPRPs relate to precertification requests and the decision points on the care paths. The regulations require insurers to include in their DPRPs the treatments that must be precertified, procedures for the prompt review of treatment requests based on medical necessity, an internal appeals process for medical providers to submit additional information if the insurer denies reimbursement for a treatment, and procedures for conducing medical examinations of insureds to determine the medical necessity of a treatment. See N.J.A.C. 11:3-4.7(c). PIP benefits are "overdue if not paid within 60 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same," although the insurer can give notice to the provider that it needs another 45 days to investigate the claim. N.J.S.A. 39:6A-5(g). Insurers thus have a maximum of 105 days to approve or deny PIP-benefit claims.

A request for PIP dispute resolution "may include a request for review by a medical review organization." N.J.A.C. 11:3-5.6(a). A medical review organization reviews the medical services for which a provider seeks payment and "may request an injured person to submit to a mental or physical examination by an independent provider." N.J.A.C. 11:3-5.6(c). Additionally, providers must exhaust the insurer's internal appeal process "before making a

request for dispute resolution." N.J.A.C. 11:3-5.6(a)(2). A successful claimant in dispute resolution is entitled to interest and may receive attorneys' fees as part of an award, in addition to the amount subject to reimbursement. See N.J.S.A. 39:6A-5.1(e) (interest); N.J.A.C. 11:3-5.6(e) (attorneys' fees). This court has held that "if the insurance carrier is successful [in dispute resolution], there is no 'award,'" and thus only an insured or assignee may receive attorneys' fees. N.J. Coal. of Health Care Providers, Inc. v. DOBI, 323 N.J. Super. 207, 262 (App. Div. 1999) (Coalition I).

The carefully designed system of care paths that depict permissible treatment; precertification for specified procedures; requirement to exhaust internal appeals before invoking dispute resolution; review of treatment decisions by a medical review organization; short deadlines to expedite decisions on PIP claims; and remedies limited to reimbursement for benefit claims, interest, and attorneys' fees (for insureds and assignees only) clearly signals that the process and remedies were designed to address pending claims for PIP benefits when an insurer and provider have a payment dispute. Indeed, this court's ruling in Coalition I would make sense only if disputes regarding recovery of PIP benefits were limited to claims seeking benefits by insureds or their assignees. If insurers were permitted to obtain a monetary award, there

would be no reason that they could not also obtain attorneys' fees, particularly when, as here, the IFPA and RICO require fee awards to successful plaintiffs.

The DOBI regulations defining the "PIP disputes" subject to arbitration and implementing procedures also fit within this rubric. Those regulations "establish procedures for the resolution of disputes concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1(a). That language suggests that DOBI interpreted AICRA as requiring arbitration of "payment" disputes—i.e., whether a provider was entitled to payment on a disputed claim for PIP benefits. Moreover, the issues in the definition of "PIP disputes" all concern bases on which coverage could be denied, including whether the services for which a provider requests benefits are covered by the insurance policy, permitted by law, actually performed, medically necessary, and appropriately charged. See N.J.A.C. 11:3-5.2.

In sum, an insurer alleging that it was defrauded by a medical provider is not seeking to "recover" insurance benefits. The insurer is instead seeking compensatory damages and other remedies because the insured or assignee wrongfully recovered the benefits.

C. To harmonize the statutes, Plaintiffs must be permitted to litigate their claims.

It is "[a]n overriding principle of statutory construction" that courts must seek "to harmonize legislative schemes," Richter, 246 N.J. at 538, "in light of their purposes," Am. Fire & Cas. Co. v. N.J. Div. of Tax'n, 189 N.J. 65, 79-80 (2006). "Whenever statutory analysis 'involves the interplay of two or more statutes, [courts] seek to harmonize [them], under the assumption that the Legislature was aware of its actions and intended' for related laws 'to work together.'" N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 555 (2012) (second alteration in original) (quoting State ex rel. J.S., 202 N.J. 465, 480 (2010)). The court can easily harmonize the statutory schemes by holding that AICRA arbitration applies to disputes about whether insurers are required to pay PIP benefits, not whether medical providers committed fraud in convincing an insurer to pay out under a no-fault policy. Allowing litigation in court is the only way to further the antifraud purposes of the IFPA, RICO, and AICRA.

The Legislature made plain its purpose in enacting the IFPA:

> The purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims.

[N.J.S.A. 17:33A-2.]

The IFPA thus unambiguously expressed the Legislature's recognition that "[i]nsurance fraud is a problem of massive proportions that . . . results in substantial and unnecessary costs to the general public in the form of increased rates." Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 172 (2006) (alteration in original) (internal quotation marks omitted). "[T]he Act is a comprehensive statute designed to help remedy high insurance premiums which the Legislature deemed to be a significant problem." Ibid. (internal quotation marks omitted). It furthers the "strong public policy in New Jersey to curb and deter insurance fraud to reduce premiums." Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med. & Physical Therapy, 416 N.J. Super. 418, 432 (App. Div. 2010), aff'd on other grounds, 210 N.J. 597 (2012). Significantly, this court has stated: "It is clear . . . that the IFPA is aimed primarily at the areas of automobile and health insurance, where fraud has been most rampant." Chi. Title Ins. Co. v. Bryan, 388 N.J. Super. 550, 558 (App. Div. 2006).

As a key element to further that public policy, the IFPA grants insurers a private right of action: "Any insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorneys fees." N.J.S.A. 17:33A-7(a).

An insurer "shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating" the IFPA's substantive provisions. N.J.S.A. 17:33A-7(b). A defendant violates the IFPA if it: (1) presents or causes to be presented in support of a claim for payment pursuant to an insurance policy a written or oral statement that it knows contains false or misleading information material to the claim, N.J.S.A. 17:33A-4(a)(1); (2) prepares or makes such a false or misleading statement that is intended to be presented to an insurance company in connection with a benefits claim, N.J.S.A. 17:33A-4(a)(2); or (3) conceals or knowingly fails to disclose an event which affects any person's entitlement to insurance benefits or payment, N.J.S.A. 17:33A-4(a)(3); or (4) assists, conspires with, or urges another to violate the IFPA, or benefits, directly or indirectly, from the proceeds derived from a violation of the IFPA, N.J.S.A. 17:33A-4(a)(4).

The IFPA therefore grants insurers the right to seek broad remedies "in any court of competent jurisdiction" for materially false or misleading statements or omissions in connection with claims for payment under insurance policies, including no-fault policies, that caused them financial harm. This court has confirmed that the statutory language in the IFPA requires judicial resolution of claims: "It is clear from this provision that the Legislature did not contemplate

that a claim of a violation of the Insurance Fraud Prevention Act would be heard by an arbitrator." Fiouris, 395 N.J. Super. at 161.

RICO also contains provisions aimed at combatting insurance fraud. RICO provides that "[a]ny person damaged in his business or property by reason of a violation of [the substantive provisions] may sue therefor in any appropriate court and shall recover threefold any damages he sustains and the cost of the suit, including a reasonable attorney's fee, costs of investigation and litigation." N.J.S.A. 2C:41-4(c). "The gravamen of a RICO violation . . . is the involvement in the affairs of an enterprise through a pattern of racketeering activity." State v. Ball, 141 N.J. 142, 155 (1995). The statute defines "racketeering activity" as "forgery and fraudulent practices and all crimes defined in chapter 21 of Title 2C of the New Jersey Statutes." N.J.S.A. 2C:41-1(a)(1)(o).

In 2003, the Legislature amended Chapter 21 of Title 2C to include insurance fraud as a criminal act, and thus as a predicate racketeering act under RICO. See P.L. 2003, c. 89, §§ 71-73 (codified at N.J.S.A. 2C:21-4.6). In doing so, the Legislature explained that "[i]nsurance fraud increases insurance premiums, to the detriment of individual policyholders, small businesses, large corporations and governmental entities. All New Jerseyans ultimately bear the societal burdens and costs caused by those who commit insurance fraud." Id. § 71(a). The Legislature concluded that "it is necessary to establish a crime of

'insurance fraud' to directly and comprehensively criminalize this type of harmful conduct, with substantial criminal penalties to punish wrongdoers and to appropriately deter others from such illicit activity." Id. § 71(c).

The Legislature thus demonstrated its intent that those "damaged in [their] business," like Plaintiffs here, by a pattern of insurance fraud such as that alleged here, would have a judicial cause of action, as another prong in the State's ongoing efforts to protect "[a]ll New Jerseyans" from "the societal burdens and costs" of insurance fraud. Id. § 71(a). If the Legislature had intended an exception for insurance-fraud cases under RICO relating to PIP claims, it easily could have made that intention clear.

AICRA also contributes to the public policy of combatting insurance fraud by supplementing—not supplanting—existing fraud-prevention measures like the IFPA and RICO. AICRA established the Office of the Insurance Fraud Prosecutor because, the Legislature found, "fraud . . . has increased premiums, and must be uncovered and vigorously prosecuted," and "greater consolidation of agencies" was needed for "sufficient coordination to aggressively combat fraud." N.J.S.A. 39:6A-1.1; see also N.J.S.A. 17:33A-16 (codifying establishment of office). The Legislature also found that the PIP-arbitration system had to be revised because the then-existing system "has not sufficiently

addressed the Legislature's goal of eliminating payment for treatments and diagnostic tests which are not medically necessary." N.J.S.A. 39:6A-1.1.

In Governor Whitman's Conditional Veto Message on the bill that later became AICRA, the governor noted: "One of the causes of the higher premiums that plague the current system is the employment of superfluous medical testing and treatment." Governor's Conditional Veto Message to S. 3, L.1998, c.21, § II(C) (ed. note to N.J.S.A. 39:6A-1.1). The governor applauded the bill's "establishment of a listing of commonly accepted diagnostic tests by the professional boards within the Division of Consumer Affairs, and treatment of those injured in automobile accidents in accordance with commonly accepted medical protocols [i.e., the care paths]." Ibid. She also approved the bill's new arbitration procedures, "in which the arbitrators are full-time professionals, and in which questions of medical necessity or causality may be referred for medical peer review. These measures will assist substantially in constraining the principal reason for rising auto insurance premium rates: overutilization of medical benefits." Ibid. The Supreme Court has cited this veto message in interpreting AICRA. See DiProspero, 183 N.J. at 494, 503-04.

The common thread running through all three statutes is that they seek to prevent, penalize, and deter the "massive" problem of insurance fraud, Liberty Mut. Ins. Co., 186 N.J. at 172 (internal quotation marks omitted), in furtherance

of the "strong public policy in New Jersey to curb and deter" such fraud, Selective Ins. Co., 416 N.J. Super. at 432, and to protect "[a]ll New Jerseyans" from "the societal burdens and costs" that insurance fraud presents, P.L. 2003, c. 89, § 71. The Legislature would not have intended AICRA's arbitration provision to take away potent antifraud tools like the IFPA and RICO, and force insurers to arbitrate when medical providers obtained insurance benefits through fraud, particularly given the limitations of PIP arbitration and the lack of express intent to do so, as discussed in more detail below. See infra Point I.D.

Instead, AICRA, the IFPA, and RICO can be harmonized to work together. See N.J. Ass'n of Sch. Adm'rs, 211 N.J. at 555. AICRA's decision-point process, including the ability to refer an insured for independent medical evaluations and challenge benefit claims in arbitration, helps determine whether a medical provider's services are medically necessary and appropriately performed in an effort to reduce the "overutilization of medical benefits," Governor's Conditional Veto Message § II(C), while also ensuring reasonably prompt benefit determinations, see Selective Ins. Co., 210 N.J. 597 at 609. But when, as here, a medical provider obtains PIP benefits through allegedly false or misleading claims, insurers retain the causes of action provided in the IFPA, RICO, and common law and equity, in order to seek "restitution of fraudulently obtained insurance benefits, and reduc[e] the amount of premium dollars used

to pay fraudulent claims," N.J.S.A. 17:33A-2, coupled with treble damages and attorneys' fees for deterrent effect, see N.J.S.A. 17:33A-7(a)-(b); N.J.S.A. 2C:41-4(c). That commonsense approach is the only one faithful to legislative intent.

D. Canons of statutory interpretation confirm that Plaintiffs' claims are not subject to AICRA arbitration.

When interpreting statutes, courts must avoid absurd or unreasonable results and presume that the Legislature does not make significant legislative changes impliedly. Those canons require interpreting AICRA to permit Plaintiffs' claims to be litigated.

1. Defendants' interpretation violates the canon against absurd or unreasonable results.

Interpreting AICRA to require Plaintiffs to arbitrate their statutory and equitable claims arising from a complex fraudulent scheme would violate the canon against absurd or unreasonable results. See State v. Lewis, 185 N.J. 363, 369 (2005) ("[A] court should strive to avoid statutory interpretations that lead to absurd or unreasonable results." (internal quotation marks omitted)). AICRA arbitrators cannot award damages or attorneys' fees to insurers under this court's precedents; Plaintiffs are prohibited from obtaining in arbitration the discovery they need to prove their claims; the arbitration process is designed to handle extraordinarily high volumes of small, straightforward cases; and the arbitration

rules would require Plaintiffs to split their fraud claims into more than 120 separate arbitrations. Finally, it is no answer to say that insurers can raise fraud allegations as a defense to requests for benefits, given the complex nature of many fraudulent schemes, the limited time in which insurers must decide PIP claims, and the risk of inconsistent decisions.

First, AICRA arbitrators cannot grant the remedies that Plaintiffs request on their claims. Plaintiffs seek compensatory and treble damages, declaratory and injunctive relief, and attorneys' fees and expenses. See supra at 10-13. The IFPA, RICO, and common law authorize those remedies. See N.J.S.A. 17:33A-7(a)-(b) (compensatory damages, treble damages, and attorneys' fees and expenses under IFPA); Lajara, 222 N.J. at 144 (equitable remedies under IFPA); N.J.S.A. 2C:41-4 (treble damages, attorneys' fees, expenses, and equitable remedies under RICO).

As explained, however, this court has held that there is no "award" in a PIP arbitration in which the insurer prevails. See Coal. I, 323 N.J. Super. at 262. AICRA arbitrators therefore cannot award any monetary remedies to insurers. Rather, AICRA makes clear that the remedies are limited to "reimbursement with interest" following "a determination that all or part of a treatment or treatments, diagnostic test or tests or service performed, or durable medical goods provided are medically necessary and appropriate," N.J.S.A. 39:6A-

5.1(e), and attorneys' fees to a successful insured or medical provider, N.J.A.C. 11:3-5.6(e).

This court has held that those remedies are exclusive. See Endo Surgi Ctr., 391 N.J. Super. at 592-94 (holding that "the procedures and remedies provided by the No-Fault Act for enforcement of an insured's right to PIP benefits are exclusive," and "the sole remedy for a wrongful denial of PIP benefits is an award of the interest . . . and attorney's fees"). This court has also held that because "a PIP arbitrator lacks the requisite authority to award damages pursuant to the [IFPA], which affords special remedies to insurance companies . . . [IFPA] claims are not 'disputes' arising pursuant to Chapter 6A [N.J.S.A. 39:6A-1 and] . . . can only be heard in the Law Division." Ohio Cas. Ins. Co. v. Garzon-Cardenas, No. A-6234-03T3 (App. Div. July 15, 2005) (slip op. at 5-6) (Pa0404-0413).

In this context, it is important to recognize the different remedies available to the insurer. In PIP arbitrations, the insurer's sole remedy is denial of the claim for benefits. An insurer can assert a fraud defense in a PIP arbitration, but its remedy would still only be denial of the benefits claim. In contrast, under the IFPA and RICO, the insurer is entitled to treble damages, fee-shifting, and a host of tailored equitable remedies "to prevent and restrain" wrongful conduct that

may only be imposed by a court. See, e.g., N.J.S.A. 2C:41-4 (authorizing equitable remedies for RICO violations).

Second, the limited discovery permitted under AICRA and the arbitration rules would not permit Plaintiffs to obtain the necessary information to prove their fraud-based claims. This court has held that a "broad discovery request . . . contravenes New Jersey's comprehensive PIP statutory scheme providing for arbitration of disputed no-fault benefit claims submitted by health care providers to insurance companies." Selective Ins. Co., 416 N.J. Super. at 429. In Selective Insurance, the insurer filed an action seeking a declaratory judgment that medical providers were required to provide information relevant to whether they violated the doctrine against the corporate practice of medicine and engaged in illegal self-referrals under the Codey Act. Id. at 423-24. This court held that "New Jersey's PIP statute . . . provides a limited discovery remedy, permitting disclosure only to the extent delineated in the statute." Id. at 430. The statute permits discovery relating to the "history, condition, treatment, dates and costs of such treatment of the injured person." Ibid. (internal quotation marks omitted) (quoting N.J.S.A. 39:6A-13(b)). DOBI has interpreted Selective Insurance to hold "that in PIP arbitrations, N.J.S.A. 39:6A-13(g) limits the exchange of discovery to information concerning a patient's 'history, condition, treatment, dates and cost of such treatment' and the scope of this cannot be

expanded." In re N.J. Healthcare Coal., Order No. A12-114, 2012 WL 6653982, at *10 (Dep't of Banking & Ins. Nov. 23, 2012) (Pa0497).

The arbitration rules established by Forthright—the current forum for no-fault arbitration—do not expressly provide a right to discovery, but merely permit the arbitrator "to establish the extent of, and schedule, any such exchange [of information] pertaining to the subject matter of the arbitration." Pa0395 (Forthright N.J. No-Fault PIP Arb. Rules (Forthright Rules), R. 40 (2022)). Even if that rule would allow some discovery, this court has recognized that "[u]nlike civil actions in the Law Division, discovery in PIP arbitrations is limited," Kimba Med. Supply v. Allstate Ins. Co., 431 N.J. Super. 463, 490 (App. Div. 2013), and DOBI has opined that Selective Insurance's discovery restrictions apply in PIP arbitrations, In re N.J. Healthcare Coal., 2012 WL 6653982, at *10 (Pa0497).

Moreover, Forthright's rules do not authorize nonparty subpoenas, and although N.J.S.A. 39:6A-13(b) might permit nonparty subpoenas for medical records that fall within the scope of that statute, such a limited subpoena power would not assist insurers in cases like this. For example, whether the medical practice's ostensible plenary owner is "subject to direction and financial control by the chiropractor-owner of a management company" is highly relevant in these types of cases. Northfield, 228 N.J. at 625. Without the ability to subpoena

banking and other financial records from nonparties, insurers would not be able to establish that critical issue.

Further, "parties [in PIP arbitrations] are engaged in simple, inexpensive, and expeditious dispute resolution." N.J. Mfrs. Ins. Co. v. Bergen Ambulatory Surgery Ctr., 410 N.J. Super. 270, 278 (App. Div. 2009); see also In re N.J. Ass'n For Justice, Order No. A12-118, 2012 WL 6927765, at *9 (Dep't of Banking & Ins. Dec. 21, 2012) ("PIP arbitrations are not as procedurally complex or time consuming as traditional litigation") (Pa0486). Forthright's rules reflect the expectation that hearings will be simple and efficient, unlike a complex fraud trial. When the claimant seeks less than $1,000 in PIP benefits, the arbitrator "decide[s] the case based solely upon the documentation." Pa0382 (Forthright R. 6(b)). Even if there is a hearing, the parties can present their case "telephonically." Pa0382 (Forthright R. 6(a)).

Forthright's quarterly reports show that it handles a large volume of small, relatively simple cases. For example, Forthright assigned 11,497 cases to 41 arbitrators in the fourth quarter of 2023 alone. See Forthright 4th Quarter 2023 Rep. to DOBI at 2, https://www.nj.gov/dobi/pipinfo/forthright2023q4.pdf (last accessed Mar. 11,

2024).[3] Those 41 arbitrators concluded 12,043 cases in that quarter, an average of about 98 cases per arbitrator, per month. Id. at 4. The average amount awarded in PIP benefits and attorneys' fees to claimants was $6,277 in that quarter. Id. at 2. There is no indication in the quarterly reports that Forthright awarded any money to an insurer, which makes sense in light of this court's decision in Coalition I. Forthright is not a forum intended to resolve, or capable of resolving, complex affirmative fraud allegations like those here.

The Second Circuit made a similar commonsense point about no-fault arbitration under New York law: "New York's arbitration process for no-fault coverage is an expedited, simplified affair meant to work as quickly and efficiently as possible. Discovery is limited or non-existent. Complex fraud and RICO claims, maturing years after the initial claimants were fully reimbursed, cannot be shoehorned into this system." Mun, 751 F.3d at 99 (citations omitted).

Third, Forthright's limited joinder rules would permit joinder in the same demand for arbitration only of claims relating to the same injured person or same accident. See Pa0383 (Forthright R. 7) (stating that a single demand for

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[3] This court should take judicial notice of Forthright's quarterly reports to DOBI because they are publicly available studies and statistics published on DOBI's website. See N.J.R.E. 201(b)(3); N.J.R.E. 202(b); see also In re Grant of Charter Sch. Application of Englewood on Palisades Charter Sch., 164 N.J. 316, 320 n.1 (2000) (taking judicial notice of a Department of Education report); State v. Terry, 430 N.J. Super. 587, 594 n.5 (App. Div. 2013) (taking judicial notice of United States Census Bureau statistics), aff'd, 218 N.J. 224 (2014).

arbitration may only join claims for the same injured person or for up to four people who occupied the same vehicle on the same date of accident). Although Forthright may consolidate cases, see Pa0385-0386 (Forthright R. 9), Plaintiffs would need to file separate arbitrations for each of the roughly 120 patients for whom Defendants obtained benefits, see Pa0066 (Compl. ¶ 304), unless some were injured in the same vehicle, each originally filed arbitration would require a separate award, Pa0386 (Forthright R. 9), and there is no guarantee that Forthright would agree to consolidate all or some of those separate proceedings.

It is also highly doubtful that insurers could name in a demand for arbitration alleged co-conspirators of medical providers who were not themselves assigned benefits. The DOBI regulations refer to "the injured party, the insured, a provider who is an assignee of PIP benefits . . . or the insurer," as potential parties to ACIRA dispute resolution. N.J.A.C. 11:3-5.6(a). Plaintiffs' complaint names 36 defendants, many of whom—including key players in the scheme like the Bufanos—did not themselves submit benefit claims or agree to PIP arbitration as a condition of assignment. Some of the defendants did not even move to compel arbitration, choosing instead to answer and demand a jury trial. See Pa0152-0333. Thus, if the Law Division's interpretation of AICRA were correct, it would lead to the absurd result that Plaintiffs here and insurers in future cases would not be able to pursue their claims against defendants who

never signed a false statement, but who are still clearly liable under theories of concert liability. See, e.g., Northfield, 228 N.J. at 600 ("[I]n light of the broad anti-fraud liability imposed under the IFPA, holding defendants responsible for promoting and assisting in the formation of an ineligible medical practice—created for the obvious purpose of seeking reimbursement for medical care delivered by that practice—was not a novel or unanticipated application of [the IFPA].").

Finally, the absurd—and therefore clearly unintended—effect of Defendants' interpretation of AICRA's arbitration provision would be that insurers must discover fraudulent PIP claims within the short time allotted to approve or deny such claims—a maximum of 105 days. But that is simply not reasonable with the kind of fraudulent scheme alleged here. Plaintiffs needed the testimony of who are essentially cooperating witnesses to discover that CCMC was illegally owned and controlled, and that Defendants were paying and receiving kickbacks and self-referrals. See Pa0448 (Hickey Cert. ¶¶ 6-11); Pa0043-0045 (Compl. ¶¶ 137-276). That result would only encourage providers to conceal fraud long enough to get paid, which is clearly at odds with the legislative intent in AICRA and other statutes to root out insurance fraud.

2. Defendants' interpretation violates the canon that the Legislature is presumed to make significant changes only explicitly.

New Jersey courts presume that the Legislature makes significant changes in the law explicitly. See, e.g., Perez v. Zagami, LLC, 218 N.J. 202, 216 (2014) (noting that adoption of plaintiff's interpretation of statute "would dramatically expand the liability of private individuals beyond its current bounds and authorize actions against a private person for perceived constitutional violations," "a radical change" that the Legislature would not make ambiguously); Plastic Surgery Ctr., PA v. Malouf Chevrolet-Cadillac, Inc., 457 N.J. Super. 565, 573 (App. Div. 2019) ("Absent greater evidence than its silence, we refuse to assume the Legislature intended to make such a significant and incongruous change" to an existing statutory scheme), aff'd, 241 N.J. 112 (2020). In other words, the Legislature does not "hide elephants in mouseholes." Perez, 218 N.J. at 216 (quoting Whitman v. Am. Trucking Ass'ns, 531 U.S. 457, 468 (2001)).

If Defendants were right that claims for compensatory damages arising from fraud must be arbitrated, it would be a sea change in the law of this State. As explained, the IFPA and RICO are both aimed at preventing insurance fraud, including by authorizing private rights of action in court and broad judicial remedies including compensatory and treble damages. See supra Point I.C. The

IFPA is particularly focused on fraud in automobile insurance as a major area of abuse. Chi. Title Ins., 388 N.J. Super. at 558. Those private causes of action and statutory remedies would effectively be abolished as to PIP-related fraud if an insurer were required to arbitrate such claims before Forthright, which, as explained, cannot award any monetary or equitable remedies to insurers, permits very limited party discovery and nonparty subpoenas, and severely restricts party and claim joinder. Nothing in AICRA, its legislative history, purpose, or implementing regulations provides any indication that the Legislature intended AICRA's arbitration provision to sweep away those rights and remedies or to change the law as it had stood for more than a decade before AICRA was enacted.

CONCLUSION

For the foregoing reasons, the court should reverse the Law Division's orders compelling arbitration and dismissing Plaintiffs' claims. It is important to the law of this State—and the public that bears the cost of rising premiums—that no-fault insurers continue to have the right to remedy and deter insurance fraud through judicial actions under the IFPA, RICO, and common law and equity.

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Dated: March 11, 2024

ALLSTATE NEW JERSEY INSURANCE COMPANY; ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY; ALLSTATE INSURANCE COMPANY; ALLSTATE FIRE & CASUALTY INSURANCE COMPANY; ALLSTATE NORTHBROOK INDEMNITY COMPANY; AND ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs,

v.

CARTERET COMPREHENSIVE MEDICAL CARE P.C. D/B/A MONROES COMPREHENSIVE MEDICAL CARE, D/B/A COMPREHENSIVE MEDICAL CARE, D/B/A FASSST SPORT, COMPREHENSIVE VEIN CARE; INIMEG MANAGEMENT COMPANY, INC.; 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C.; 72 ROUTE 27 REALTY, L.L.C.; MID-STATE ANESTHESIA CONSULTANTS, L.L.C.; NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A.; INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY L.L.C., D/B/A PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY D/B/A METRO PAIN AND VEIN;

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No.: A-778-23T1

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY

DOCKET NO.: MID-L-1469-23

Sat Below: Hon. Christopher D. Rafano, J.S.C

SOOD MEDICAL PRACTICE L.L.C., ONE OAK MEDICAL GROUP, L.L.C. D/B/A NEW JERSEY VEIN TREATMENT CLINIC; ONE OAK TREATMENT CLINIC; ONE OAK ORTHOPAEDIC & SPINE GROUP L.L.C.; ONE OAK HOLDING L.L.C.; JOSEPH BUFANO JR., D.C.; CHRISTOPHER BUFANO; MICAH LIEBERMAN D.C.; RICHARD MILLS, M.D.; JENNIFER M. O'BRIEN ESQ.; GERALD M. VERNON, D.O.; ALVIN F. MICABALO, D.O.; JOSE CAMPOS, M.D.; JOHN S. CHO, M.D.; MICHAEL C. DOBROW, D.O.; RAHULSOOD, D.O.; SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D.; RAVI K. VENKATRAMAN M.D.; MANGLAM NARAYANA M.D.; SHANTI EPPANAPALLY, M.D.; JOHN AND JANE DOES 1 THROUGH 10; XYZ CORPORATIONS 1 THROUGH 10,

Defendants.

DEFENDANT/RESPONDENT CARTERET COMPREHENSIVE MEDICAL CARE, PC, ET. ALS.'S APPELLATE APPENDIX

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TABLE OF CON

TENTS

TABLE OF AUTHORITIES

STATUTES

REGULATIONS

CASE LAW

OTHER

PRELIMINARY STATEMENT

The foundation of our constitutional republic is the separation of powers between the three branches of government. The Legislature as the primary branch makes the laws and establishes public policy; the Executive Branch enforces those laws; and the Judicial Branch interprets and provides guidance. This system of checks and balances provides safeguards on each branch not overstepping their boundaries as the framers' intended.

Insurance fraud has a long and tortuous history in the State of New Jersey. To combat insurance fraud, the New Jersey Legislature in 1983 passed into law the New Jersey Insurance Fraud Prevention Act ("NJIFPA"), which provided private insurance companies a private cause of action to sue fraudsters in the Superior Courts of the State. In 1970, the Legislature also had passed the New Jersey Racketeer Influenced and Corrupt Organizations Act, ("NJRICO"), which was primarily aimed at organized crime organizations but was expanded through the years to apply to conspiracies to commit insurance fraud.

Fast forward approximately fifteen years and the Legislature realized that the NJIFPA and NJRICO's intended benefit of combating and reducing insurance fraud was an abject failure. In response to this failed experiment in public policy, the Legislature thereafter passed into Law the Automobile

Insurance Cost Reduction Act ("AICRA"), in 1998. Among other things, AICRA implemented a mandatory arbitration system for No-Fault disputes between insurers and claimants. AICRA provided that once either party opted into the ADR system, arbitration of their disputes was *mandatory* and that there could be no piecemeal, one-by-one determination of which claims to submit to arbitration and which to court. The Legislature had full knowledge of the existence of the NJIFPA and NJRICO laws, passed into law decades prior, and their private causes of action, when it enacted AICRA. However, they did *not* exempt these NJIFPA / NJRICO civil actions from mandatory arbitration under AICRA.

Despite the passing into law of AICRA and opting-in to the mandatory arbitration process, insurers such as Allstate continued to sue healthcare providers for fraud and racketeering in Superior Court in direct violation of the mandates of AICRA that such disputes be resolved through arbitration. No one ever called the insurers on these improper actions until recently when Judge Rafano correctly interpreted the statutory language and interplay of AICRA and NJIFPA/NJRICO and dismissed Allstate's NJIFPA, NJRICO and other claims in the present action in favor of mandatory No Fault arbitration.

Of further significance is the fact that, since Judge Rafano issued his decision in this matter remanding Allstate's claims to arbitration in late 2023, the United States Court of Appeals for the Third Circuit issued a precedential decision addressing the arbitrability of NJIFPA claims that form the basis of this appeal. In its decision in GEICO v. Mt. Prospect Chiropractic Center, PA, Consol. Case Nos. 23-1378, 23-2019 & 23-2053 (April 15, 2024)("Precedential"), the U.S. Court of Appeals rejected GEICO's claims, similar to those of Allstate in the present matter, that NJIFPA claims are not subject to mandatory New Jersey No-fault Arbitration.

Finally, to permit numerous, complex, Track 4 civil NJRICO and NJIFPA cases to further congest a system rife with vacancies and cause delay to other matters properly before the courts is completely contrary to the public policy of the state favoring arbitration, AICRA, and the need to unburden the courts from matters that belong in alternative dispute venues such as arbitration.

Allstate now appeals Judge Rafano's correct determination which was fully supported by the evidence, statutes, and judicial precedent. Allstate is asking this Court to violate the separation of powers doctrine and legislate from the bench to rewrite the express terms of AICRA, a request the Court must unconditionally deny.

STATEMENT OF FACTS

Defendants are medical professionals, administrative laypersons, and entities treating, among others, patients suffering from injuries sustained in automobile accidents. (C.C.Da.1-10).[1] At its core, the theory of Allstate's complaint is that Defendants fraudulently billed Allstate for medical services that were either not necessary or appropriate, were not provided or were forced to be provided by doctors of lower licensure or no licensure or were the product of illegal referrals. Therefore, Allstate argues that the claims were not covered under the Allstate insurance policies. (C.C.Da.1-100). Specifically, plaintiff's complaint sounds in the following causes of action:

> Count One: Declaratory Judgment that CCMC is Structured, Organized and Operated in Violation of the Corporate Practice of Medicine Doctrine and N.J.A.C. §13:35-6.16 and Practices Medicine Without a License in Violation of N.J.S.A. §2C:21-20.
>
> Count Two: Declaratory Judgment that CCMC was Not Entitled to No-Fault Insurance Benefits Pursuant to Allstate v. Northfield and Allstate v. Orthopedic Evaluations and Ordering Disgorgement of Insurance Benefits Received as a Result of CCMC's Corporate Structure Violations
>
> Count Three: Violations of the Insurance Fraud Prevention Act as a Result of the Defendants' CPOM Violations

[1] C.C.Da. refers to the Carteret Comprehensive Defendants' Appendix per R. 2:6-8 for multiple defendants.

> Count Four: Declaratory Judgment that Defendant Joseph Bufano, D.C., Violated Board of Chiropractic Examiners' Regulation N.J.A.C. §13:44E-2.6, Prohibiting Payment or Receipt of Referral Fees or Other Compensation, in Connection with Referrals for Pain Management, Anesthesia and Other Surgical Procedures
>
> Count Five: Declaratory Judgment that Defendants Mills, Sood, Shah, Mahmood, Venkataraman, Narayanan and Eppanapally Violated Board of Medical Examiners' Regulation, N.J.A.C. §13:35-6.17 Prohibiting Payment or Receipt of Compensation in Exchange for Patient Referrals.
>
> Count Six: Declaratory Judgment that the Defendants Violated the Anti Self-Referral Law N.J.S.A. §§45:9-22.4, et. seq. (The Codey Act)
>
> Count Seven: Declaratory Judgment that CCMC, Same Day, Mid-State, Naraynan, the Sood Practices and the Mahmood Practices were Not Entitled to No-Fault Insurance Benefits Pursuant to Allstate v. Orthopedic Evaluations and Ordering Disgorgement of Insurance Benefits Received as a Result of the Bufano-Sood-Mahmood Kickback and Self-Referral Violations
>
> Count Eight: Violations of the Insurance Fraud Prevention Act as a Result of the Bufano-Sood-Mahmood Self-Referral and Kickback/Self-Referral Violations.
>
> Count Nine: Violations of the New Jersey Anti-Racketeering Statute, N.J.S.A. §2C:41-2, et. seq. in Connection with CCMC's CPOM Violations and the Bufano-Sood-Mahmood Kickback and Self-Referral Violations.

(C.C.Da.1-100). Through hundreds of paragraphs, Allstate tried to impute liability on all the named defendants, through one service or another, even though many defendants had no involvement with processing, submitting,

reviewing, or collecting on the claims. Allstate even included real estate holding companies in the complaint as somehow conspiring to commit insurance fraud. Further, Allstate claims these fraud allegations based on its lay opinion, with no medical background, regulatory background on the corporate practice of medicine, and no information provided in the Complaint. (C.C.Da.1-100).

Pursuant to the New Jersey No-Fault laws, insurers, including Allstate, are required to adopt a Decision Point Review ("DPR") Plan, providing insurers oversight to the payment of PIP benefits to medical providers. See, N.J.A.C.11:3-4.7. DPR plans, for example, allow insurers to specify which treatments require precertification, establish a process for approving further treatments at various decision points, and enumerate an internal appeals procedure. Id. Consistent with the governing laws and regulations, the Allstate Plan sets forth the decision point review process, outlines its mandatory and voluntary precertification requirements, and the internal appeals process. (C.C.Da.131-48). Critical to this case, the Allstate plan, as required by law, contains a *mandatory* arbitration provision, which requires disputes for PIP benefits to be resolved through arbitration rather than by filing a court action:

> **ASSIGNMENT OF BENEFITS**
> Assignment of a named insured's or eligible injured person's rights to receive benefits for medically necessary treatment, durable medical equipment tests or other services is prohibited except to a licensed health care provider who agrees to:
>
> (a) Fully comply with ANJ/ANJP&C Decision Point Review Plan, including pre- certification requirements,
>
> (b) Comply with the terms and conditions of the ANJ/ANJP&C policy
>
> (c) Provide complete and legible medical records or other pertinent information when requested by us,
>
> (d) Utilize the "internal appeals process" which shall be a condition precedent to the filing of a demand for alternative dispute resolution for any issue related to bill payment, bill processing, Decision Point Review Request or Precertification request,
>
> (e) **Submit disputes to alternative dispute resolution pursuant to N.J.A.C. 11:3 …**

(C.C.Da.138)(emphasis added). Based upon this valid, binding arbitration agreement, health care providers enter an Assignment of Benefits of the Automobile Insurance policy with their patients/Allstate insureds and are mandated to arbitrate all of their claim disputes with the New Jersey arbitration forum, Forthright Solutions. See, N.J. Coalition of Healthcare Providers v. NJDOBI, 348 *N.J. Super.* 242 (App. Div. 2002) ("Because a provider, with a valid assignment, is bound by the same rights and remedies as an insured, the provider can be similarly bound to submit a PIP dispute to dispute resolution.")

As of January 2011, Forthright Solutions (successor to the American Arbitration Association) is the exclusive provider of No-Fault arbitration services in New Jersey pursuant to a bidding and award process with the New Jersey Department of Banking and Insurance. N.J.S.A.§39:6A-5. Towards this end, Forthright enacted No-Fault arbitration rules effective for claims filed after April 1, 2011. See, *New Jersey No-Fault Arbitration Rules* (2011 as amended August, 2022). Forthright implemented a system for resolution of all No-Fault disputes by a panel of arbitrators or Dispute Resolution Professionals ("DRPs"). See, *N.J.S.A. §39:6A-5.1 et seq.* and *N.J.A.C. 11:3-5.1 et seq*. *New Jersey No-Fault Arbitration Rules, R.10.* There are requirements for arbitrators to act as a No-Fault DRP to ensure that they have expertise and experience in handling such matters:

> (a) A dispute resolution professional employed by the dispute resolution organization shall be either: 1. An attorney licensed to practice in New Jersey with at least 10 years of experience in cases involving personal injury or workers' compensation; 2.A former judge of the Superior Court or the Workers' Compensation Court, or a former Administrative Law Judge; or 3. Any other person, qualified by education and at least 10 years' experience, with sufficient understanding of automobile insurance claims and practices, contract law, and judicial or alternate dispute resolution practices and procedures.

N.J.A.C.11:3-5.5. Accordingly, most DRPs are former No-Fault attorneys or retired judges with decades of experience in the industry. They are the

undeniable experts in the field of No-Fault disputes, including allegations of fraud in No-Fault claims.

The No Fault statute and Forthright Arbitration Rules further provide multiple levels of due process to ensure the fairness of the proceedings for all parties:

> The Commissioner [of the New Jersey Department of Banking and Insurance] shall establish standards of performance for the organization to ensure the independence and fairness of the review process, including, but not limited to, standards relative to the professional qualifications of the professionals presiding over the dispute resolution process, and standards to ensure that no conflict of interest exists which would prevent the professional from performing his duties in an impartial manner. The standards of performance shall include a requirement that the organization establish an advisory council composed of parties who are users of the dispute resolution mechanism established herein. . . . The organization shall establish a dispute resolution plan, which shall include procedures and rules governing the dispute resolution process and provisions for monitoring the dispute resolution process to ensure adherence to the standards of performance established by the commissioner. The plan, and any amendments thereto, shall be subject to the approval of the commissioner.

N.J.S.A.§39:6A-5. See, N.J. Coalition of Healthcare Providers v. NJDOBI, *supra,* 348 *N.J. Super.* At 242 ("The DOBI has established various criteria to insure the competency, independence, and fairness of the dispute resolution process."). Forthright promulgated specific rules to ensure fairness and due process under this delegated authority.

The rules provide for either party to request an independent review by a Medical Review Organization doctor whose opinion is "presumed to be correct by the DRP, which presumption may be rebutted by a preponderance of the evidence." Id. at R.14. The Rules provide for multiple levels of review of an arbitrator's determination – both through a modification/clarification mechanism (R.24), as well as a formal appeal to an independent panel of three arbitrators (R.25). There are provisions for the application to an arbitrator for emergent relief upon a showing of immediate and irreparable loss or damage by either party. (R.34). There are provisions for either party to apply for the dismissal of an arbitration similar to a motion to dismiss in Superior Court. (R.35). All parties are afforded the opportunity to submit written submissions with legal arguments as well as any evidence they deem supports their position. (R.39). Further, similar to Superior Court, if a party deems there is a need for discovery, there is a mechanism to apply to the arbitrator for a discovery order. (R. 40). This includes the ordering of an examination under oath of a doctor or patient under certain circumstances. See, N.J. Auto Full Ins. v. Jallah, 256 *N.J. Super.* 134 (1992). N.J.S.A.§39:6A-13 further permits specific discovery to be exchanged related to no-fault claims subject to arbitration, which includes conducting an Independent Medical Examination, disclosure of all pertinent

medical records or history, the signing of all forms, authorizations or releases for information, which may be necessary to the discovery of the above facts, in order to reasonably prove the injured person's losses. See, N.J.S.A. §39:6A-13.

If the claims at issue exceed $1,000, the parties have a right to an in-person hearing before the arbitrator and can call live witnesses who testify under oath. (R. 43). If less than $1,000 is at issue, the matter is decided "on the papers," but Forthright has carved out exceptions permitting an in-person hearing for various disputes even when the claimed amount does not exceed $1,000. Either party can request an interpreter or stenographer to record the proceedings. (R.45&46). Within 45 days of the closing of the hearing, the Arbitrator must issue a detailed decision in accordance with the standards set forth at N.J.A.C.11:3-5.6(d). (R.20&21). Thereafter, all decisions can be vacated upon the filing of an Order to Show Cause by either party pursuant to N.J.S.A.§2A:23A-13 within forty-five days of the decision.

Further, contrary to the assertions of Allstate in its brief, not only healthcare providers can file an arbitration to seek relief. Rather, the Forthright arbitration rules expressly provide that" *Any* party may file a written demand for arbitration …" *Forthright* R. 7. Thus, a No-Fault insurer such as Allstate can initiate arbitration and seek a remedy for any erroneously paid or fraudulent claims.

DRPs can issue determinations on whether fraud was established by the carrier and determine non-compensability of claims – all of which are subject to *de novo* review at the initiation by either party pursuant to N.J.S.A.§2A:23A-13.

Prior to the initiation of an arbitration, the No-Fault regulations and Decision Point Review adopted by Allstate provide multiple levels of due process during the treatment and claim submission process:

- Health Care Providers must provide notice of commencement of treatment within twenty-one days to the carrier.
- The carrier has sixty days to investigate coverage and the claim and can request an automatic forty-five day extension if needed;
- The healthcare providers must follow Care Paths promulgated by NJDOBI which direct the course of treatment and ration care;
- All treatment plans must be pre-certified with the carrier pursuant to their DPR plan prior to care;
- If the care plan is denied by the carrier, the health care provider must file a pre-service appeal;
- If the pre-service appeal is denied and the care is provided, the health care provider must file a post-service appeal prior to the claims being ripe for arbitration;
- If all of these steps fail, arbitration may be initiated if all conditions precedent are met.

(C.C.Da.131-48). See, N.J.A.C.11:3-4.

Thus, contrary to Allstate's assertions, the arbitration venue includes full discovery rights and multiple levels of due process that equal or match those provided in the Superior Court. Further, pursuant to N.J.S.A.§2A:23A-13, the

arbitration law includes a safety mechanism to allow any party to apply for *de novo* review, in the Superior Court, of a decision within forty-five days.

PROCEDURAL HISTORY

On March 15, 2023, Allstate filed its complaint in this matter against all defendants. (C.C.Da.1). These defendants (as well as all other defendants) filed a Motion to Dismiss In Lieu of Answer on or about April 13, 2023. (C.C.Da.101-03). Following a case management conference with the trial judge who was going to be reassigned to another division, these defendants (as well as all other defendants) withdrew their Motions to Dismiss Without Prejudice and refiled on or about August 14, 2023. (C.C.Da.149).

Oral argument was heard before Judge Rafano on or about October 24, 2023. Thereafter, Judge Rafano issued his written decision and Order on October 27, 2023. (C.C.Da.150-57). Allstate filed the present appeal of this decision on October 27, 2023. (Pa.0353).

STANDARD OF REVIEW

In determining whether a ruling, action or inaction by the lower court or agency constituted error, the appellate court applies a standard of review that gives the appropriate deference to the lower court's decision. That standard may allow for no deference (review of purely legal decisions), some degree of

deference, or a substantial degree of deference (review of findings of fact). See, Mandel, *N.J. Appellate Practice* § 34:2-1 (2022).

An appellate court's review of rulings of law and issues regarding the applicability, validity (including constitutionality) or interpretation of laws, statutes, or rules is de novo. See, In re Ridgefield Park Bd. of Educ., 244 *N.J.* 1, 17 (2020) (agency's interpretation of a statute); State v. Courtney, 243 *N.J.* 77, 85 (2020) (interpretation of sentencing provisions in the Criminal Code).

With regards to findings of fact, "[T]he general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence." Gnall v. Gnall, 222 *N.J.* 414, 428 (2015) (*quoting* Cesare v. Cesare, 154 *N.J.* 394, 411-12 (1998)). See, State v. Camey, 239 *N.J.* 282, 306 (2019) ("[w]e will not disturb the trial court's findings; in an appeal, we defer to findings that are supported in the record and find roots in credibility assessments by the trial court"); Motorworld, Inc. v. Benkendorf, 228 *N.J.* 311, 329 (2017) ("[w]e review the trial court's factual findings under a deferential standard: those findings must be upheld if they are based on credible evidence in the record"); Thieme v. Aucoin-Thieme, 227 *N.J.* 269, 283 (2016) (findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence); State v. K.W., 214 *N.J.* 499, 507 (2013) ("[w]e defer to the trial

court's factual findings 'so long as those findings are supported by sufficient credible evidence in the record").

However, many issues on appeal present mixed questions of law and fact. Under those circumstances the appellate court gives deference to the supported factual findings of the trial court but reviews *de novo* the trial court's application of legal rules to the factual findings. State v. Pierre, 223 *N.J.* 560, 576 (2015); State v. Nantambu, 221 *N.J.* 390, 404 (2015); State v. Harris, 181 *N.J.* 391, 416 (2004).

In the present matter, the underlying determination that the dispute at issue constituted a "coverage dispute" subject to arbitration was a finding of fact by the trial judge while the interpretation of the New Jersey No-Fault laws as they interplay with the NJIFPA and NJRICO laws was a question of law, warranting the hybrid standard review of mixed questions of fact and law.

LEGAL ARGUMENT

Point I: The Trial Judge Was Correct In Remanding All Claims to Binding No-Fault Arbitration and Dismissing the Complaint and No Mistake of Law or Abuse of Discretion Occurred.

New Jersey has a long and robust history of favoring alternative dispute resolution in lieu of court proceedings for a wide variety of legal matters. The

Appellate Division as far back as 1996, affirmed ". . . our firm policy favoring prompt and efficient resolution of PIP disputes without resort to the judicial process." See, State Farm Mut. Auto v. Molino, 289 *N.J. Super.* 406 (1996)(*citing* N.J.S.A. 39:6A-16); see, Roig v. Kelsey, *135 N.J. 500* , 516 (1994) (noting that the reduction of court congestion is one of "the overwhelming goals" of our no-fault scheme); Gambino v. Royal Globe Ins. Cos., 86 *N.J.* 100, 107(1981)(same);Crocker, *supra,* 288 *N.J. Super.* at 257-58(same). This construction also comports with New Jersey's long-standing and strong public policy favoring arbitration in general. *See* Barcon Assocs. v. Tri-County Asphalt Corp., *86 N.J. 179* , 186 (1981).

With regard to No-Fault disputes in particular, in 1972, the New Jersey Legislature adopted the New Jersey Automobile Reparation Reform Act ("No-Fault Law"), which mandated that automobile insurers, regardless of fault, provide personal injury protection ("PIP Benefits") to motorists involved in automobile accidents. Johnson v. Roselle EZ Quick, LLC, 143 *A.3d* 254, 261 (N.J. 2016). In 1983, the Legislature revised the No-Fault Law in the Automobile Insurance Cost Reduction Act ("AICRA") to require PIP Benefits disputes to be resolved through arbitration rather than through the courts. Churm v. Prudential Prop. & Cas. Ins. Co., 634 A.2d 741, 742 (N.J. App. Div. 1994).

The purpose of the shift from the courts to arbitration was "to establish an informal system of settling tort claims arising out of automobile accidents in an expeditious and least costly manner, and to ease the burden and congestion of the State's courts." Id.

The mandatory arbitration statute provides that, "***Any*** dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage . . . arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute." N.J.S.A.§39:6A-5.1(a)(emphasis added). The statute also expressly mandates arbitration for the claims alleged in this case, including: "whether the treatment or health care service which is the subject of the dispute resolution proceeding is in accordance with" applicable law; "eligibility of the treatment or service for compensation"; "eligibility of the provider performing the treatment or service to be compensated under the terms of the policy or under regulations promulgated by the commissioner"; "whether the disputed medical treatment was actually performed"; "the necessity or appropriateness of consultations by other health care providers"; "disputes involving application of and adherence to fee schedules"; and "whether the treatment performed is reasonable, necessary, and

compatible with the protocols provided." Id. §5.1(c).

It would have been simple for the Legislature to include in AICRA a single sentence exempting insurance company civil suits under the NJIFPA/NJRICO. However, no such carve out or exemption exists in AICRA, the subsequently passed legislation that supersedes and preempts the private cause of action afforded by NJIFPA/NJRICO.

Insurers, thus, had a decision to make in 1998 – retain the right to sue fraudulent healthcare providers in Superior Court under the NJIFPA and/or NJ RICO laws or opt-in to the arbitration system by implementing mandatory arbitration through their Decision Point Review ("DPR") programs and assignment of benefits ("AOB") forms. Under the DPR and AOB contracts, healthcare providers agree to step into the shoes of their patients under their auto insurance policies and become bound to the option to participate in the No Fault arbitration process. Allstate is one of those carriers that opted-in shortly thereafter.

Despite the express language of the AICRA statute mandating arbitration of coverage disputes, including fraud, and the strong public policy in favor of arbitration, No-Fault insurance companies such as Allstate developed a cottage industry suing healthcare providers for alleged fraud and racketeering in state

and federal courts under the NJRICO Act and NJIFPA. The impetus for these suits is to force doctors to waive all outstanding claims; pay money back to the carrier; and to agree on forward looking billing restrictions such as an agreement to cap all physical medicine visits at a limited number of visits or not to perform certain procedures and bill the carrier for them.

This practice has developed despite the statutory language mandating that coverage disputes such as these belong in arbitration to be decided by arbitrators who are the penultimate experts in this area. Arbitrators issue decisions on coverage and alleged fraud on a daily basis and are instrumental in removing such claims from the Superior Courts of the State. Such cases burden the judicial system for many years and waste judicial resources despite having a separate arbitration forum specifically designed to address such matters. No-Fault Arbitrators are the clear experts in making these decision as they are required to have at least ten years' experience in the field, are appointed by an equally balanced advisory panel of representatives for both healthcare providers and insurance carriers as well as a representative of the New Jersey Department of Banking and Insurance. Most arbitrators are prior No-Fault attorneys or retired judges with decades of experience in the field. See, *Forthright Rules Governing the Advisory Council for Arbitration of No-Fault Disputes In the*

State of New Jersey.

Judge Rafano, following the lead of multiple U.S. District Court judges who have addressed the issue of arbitrability in prior cases, made the correct decision by holding that the dispute presented by Allstate in its complaint, most of which seeks declaratory relief, constituted a coverage dispute and, therefore, must be arbitrated under the mandatory No-Fault law. (C.C.Da.150-57). The Appellate Court is urged to affirm this correct determination based upon the express language of the AICRA statute and strong public policy favoring arbitration over litigation.

Juge Rafano and his District Court colleagues are not alone in their reasoning. The Federal Arbitration Act ("FAA"), 9 U.S.C. §2, further supports the conclusion that the coverage claims raised in Allstate's complaint belong in arbitration. The FAA "creates a body of federal substantive law of arbitrability applicable to arbitration agreements . . . affecting interstate commerce." Ragone v. Atl. Video at Manhattan Ctr., 595 *F.3d* 115, 121 (2d Cir. 2010). Federal policy strongly favors arbitration. E.g., AT & T Mobility LLC v. Concepcion, 563 *U.S.* 333, 339 (2011). "[T]he FAA was 'enacted to replace judicial indisposition to arbitration,' and is an expression of a 'strong federal policy favoring arbitration as an alternative means of dispute resolution.'" Ross v. Am. Express Co., 547

F.3d 137, 142 (2d Cir. 2008) Indeed, it has been observed that "it is difficult to overstate the strong federal policy in favor of arbitration, and it is a policy [courts] have often and emphatically applied." Ragone, 595 *F.3d* at 121.

The New Jersey Arbitration Act, N.J.S.A. §2A:23B-1 to -36, is nearly identical to the FAA and enunciates the same policies favoring arbitration. Atalese v. U.S. Legal Servs. Grp., L.P., 219 *N.J.* 430, 440 (2014). The NJAA governs "all agreements to arbitrate made on or after January 1, 2003," and exempts from its provisions only "an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement." N.J.S.A. §2A:23B-3(a).

Since the decision in this matter was issued by Judge Rafano, the United States Court of Appeals for the Third Circuit issued a decision addressing the arbitrability of NJIFPA claims. In its decision in GEICO v. Mt. Prospect Chiropractic Center, PA, Consol. Case Nos. 23-1378, 23-2019 & 23-2053 (April 15, 2024)("PRECEDENTIAL"), the U.S. Court of Appeals for the Third Circuit rejected GEICO's claims, similar to those of Allstate in the present matter, that NJIFPA claims are not subject to mandatory New Jersey No-fault Arbitration. In *Mt. Prospect*, the U.S. Court of Appeals held, consistent with Juge Rafano,

that NJIFPA claims must be adjudicated in binding No-Fault arbitration pursuant to the GEICO DPR Plan and Assignment of Benefit Agreement.

Public policy further favors arbitration, especially in light of the crisis the New Jersey court system faces with unprecedented judicial vacancies. The crisis recently reached the tipping point where Justice Rabner was forced to suspend civil trials in two counties in the state. Chief Justice Rabner issued the following statement on July 5, 2023: "Earlier this year, trials in the Civil Division and matrimonial trials were suspended in two vicinages because of the high number of judicial vacancies. . . . For the past three years, the court system has operated with an average of more than 60 vacancies. . . . The Judiciary's goal is to serve the public by providing a place to resolve disputes fairly and expeditiously. In order to do so in every vicinage, we respectfully ask the Executive and Legislative branches to continue to address the critical issue of judicial vacancies in a timely manner." *Statement of Chief Justice on Suspension of Civil and Matrimonial Trials in Vicinages Due to Vacancy Crisis.* (7/5/2023). Though the Senate has made progress in appointing judges to address some of the backlog, the crisis if far from over.

The AICRA law, implemented by the Legislature in 1998 to address skyrocketing premium increases due to overutilization and fraud, supersedes the

civil cause of action contained in the NJIFPA enacted fifteen years earlier in 1982 and the NJRICO law, enacted in the 1970s. Thus, the claims in the present complaint brought by Allstate in Superior Court must fail in favor of arbitration.

In the present matter, there are express arbitration agreements in both Allstate's Decision Point Review Program as well as the Assignment of Benefits form that the healthcare provider enters with the Allstate insured to become a beneficiary of the automobile policy and arbitration clause. (C.C.Da.131-48). Thus, based upon the strong public policy of New Jersey, the express provisions of AICRA that mandate coverage disputes to the arbitration forum and supersedes the NJIFPA/NJRICO civil cause of action, as well as the NJAA and the FAA, the underlying decision to remand Allstate's claims to No Fault arbitration was correct and must be affirmed on appeal.

1. The Trial Court Was Correct in its Determination that the Court Lacks Jurisdiction Over This Matter as the Claims At Issue Are Subject to Mandatory, Binding Arbitration Based Upon Plaintiffs' Own Insurance Policies.

Under the Automobile Insurance Cost Reduction Act ("AICRA"), N.J.S.A.§39:6A-1.1 *et. seq.*, every standard automobile liability insurance policy issued or renewed in this State must provide PIP benefits for the payment

of benefits to the named insured and members of the insured's family residing in the insured's household without regard to negligence, liability or fault. See, N.J.S.A.§39:6A-4. Any dispute regarding the recovery of medical expense benefits provided under PIP coverage arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution at the request of any party to the dispute. N.J.S.A.§39:6A-5.1a. Regulations codified at N.J.A.C. 11:3-5.1 to -5.12 implement this authority. All decisions of the dispute resolution professional are binding, N.J.S.A.§39:6A-5.1c, but are reviewable by the Superior Court in an action filed pursuant to N.J.S.A.§2A:23A-13 for review of the award. N.J.A.C. 11:3-5.6(f).

N.J.S.A.§2A:23A-13 is a constituent part of the New Jersey Alternative Procedure for Dispute Resolution Act ("APDRA"), N.J.S.A.§2A:23A-1 to 30. Effective February 25, 1987, the purpose of APDRA is to provide a new procedure for dispute resolution to serve as an alternative to the present civil justice system and the existing arbitration system for settling civil disputes. Mt. Hope Dev. Assocs. v. Mt. Hope Waterpower Project, L.P., 154 *N.J.* 141, 145 (1998) (*citing* Governor's Reconsideration and Recommendation Statement to A. 296, at 1 (Jan. 7, 1987)). A party to an alternative dispute resolution procedure may seek review of any award in the Superior Court.

N.J.S.A.§2A:23A-13a. The statute provides broader grounds for vacation or modification of the award than the traditional arbitration model. Allstate Ins. Co. v. Sabato, 38 *N.J. Super.* 463, 470-71 (App. Div. 2005). In a dispute submitted pursuant to APDRA, the party seeking review may seek vacation or modification of an award when the rights of that party were prejudiced by the umpire "erroneously applying law to the issues and facts presented for alternative resolution." N.J.S.A.§2A:23A-13c(5),-13e(4). Once an order is entered confirming, modifying, or correcting an award, there shall be no further appeal or review of the judgment. N.J.S.A. §2A:23A-18.

It is undisputed that all of the automobile insurance policies effective at the time services were provided and paid, for which Plaintiffs now seek recoupment, contain mandatory arbitration clauses requiring the submission of ***all*** disputes for medical expense benefits to alternate dispute resolution with Forthright. The insurance policies under which Plaintiff now sues, which were all approved by the New Jersey Department of Banking and Insurance, require all health care provider assignees to submit any and all disputes under the plans to NAF/Forthright arbitration. It was a conscious decision by Plaintiffs to include mandatory alternative dispute language in their policies of automobile insurance and mandatory submission to alternate dispute resolution is permitted

by statute. N.J.S.A.§39:6A-5.1a; N.J.A.C. 11:3-5.6(a). See Allstate Ins. Co., *supra*, 380 *N.J. Super.* 463, 469-70 (noting that insurance carriers can create a "blanket policy" to choose alternative dispute resolution in all PIP disputes). As assignees of the Plaintiffs' insureds, the Defendants step into the shoes of the insureds and are subject to the same binding arbitration provisions as the insureds.

Accordingly, the Plaintiffs, through their own arbitration clauses, are contractually bound to seek the relief they now pray for in their complaint in arbitration and not the overburdened short-staffed Superior Courts.

2. The Trial Court Was Correct In Following Judge Shipp's Decision Remanding The Majority of Claims to Mandatory No Fault Arbitration.

Pursuant to R. 4:6-2 (e), a complaint should be dismissed when a court lacks subject matter jurisdiction over a claim. Claims subject to arbitration should be dismissed for lack of subject matter jurisdiction. *See,* Thompson v. Nienaber, 239 *F. Supp.2d* 478, 483-86 (D.N.J. 2002) (dismissing complaint for lack of subject matter jurisdiction because claims were subject to arbitration). Here, the governing laws, regulations, documents, and case law as decided by Judge Michael Shipp, U.S.D.J., require arbitration of all claims asserted against

Defendants, supporting the decision of the trial judge.

As Judge Shipp decided in GEICO v. Elkholy, 3:321-cv-16255 (6/30/2022)[2] the No-Fault laws and the insurers DPR plans mandate that any dispute related to the recovery of PIP benefits be submitted to arbitration. (C.C.Da.106-30). See, also, N.J.S.A.§39:6A-5.1 (emphasis added). That language is clear and unequivocal and can have only one meaning: all disputes related to PIP benefits must be arbitrated. *See,* Jimenez v. Quarterman, 555 *U.S.* 113, 118 (2009) ("It is well established that, when the statutory language is plain, we must enforce it according to its terms.").

Judge Shipp held that the federal analog to R. 4:6-2 – the FRCP 12(b)(6) standard - was the appropriate standard of review and that the heightened pleading standard of fraud under Rule 9(b) was applicable. In his analysis, Judge Shipp refused to blue pencil an express statute (the No Fault Statute) with an adjective that the legislature "pointedly omitted in drafting" to carve out causes of action subject to mandatory No Fault Arbitration. (C.C.Da.118). He

[2] Other US District Court judges have issued similar opinions as Judge Shipp. See, Gov't Employees Ins. Co. v. MLS Med. Grp. LLC, 2013 WL 6384652, at *4 (D.N.J. Dec. 6, 2013)(Stanley R. Chesler, U.S.D.J.); GEICO v. Tri Cnty. Neurology & Rehab, LLC, 721 F. App'x 118, 122-123 (3d Cir. 2018)(Madeline Cox Arleo, U.S.D.J); State Farm v. Tri-County Chiropractic, et. als., Civ. Action 22-4852 (7/06/2023)(Esther Salas, U.S.D.J.); GEICO v. Menkin, et. als, Civ. Action 23-218 (12/30/23)(Zahid Quraishi, U.S.D.J.).

held, "[u]nder the plain meaning of the statutory language, accordingly, the GEICO entities common law fraud, RICO, and unjust enrichment claims do not elude the No-Fault laws arbitration mandate. . . The Court therefore dismisses these counts in favor of arbitration." (C.C.Da.118-19). Judge Shipp further dismissed GEICO's declaratory judgment claim as duplicative to the dismissed counts. (C.C.Da.129-30)

Therefore, based upon the well-reasoned decision issued by Judge Shipp in *Elkholy*, the complaint was properly dismissed by the Trial Court for lack of subject matter jurisdiction pursuant to R.4:6-2.

3. Recent U.S Court of Appeals for the Third Circuit Precedent Supports The Trial Court's Determination.

Since the decision in this matter was issued by Judge Rafano in late 2023, the United States Court of Appeals for the Third Circuit issued a decision addressing the arbitrability of NJIFPA claims. In its decision in GEICO v. Mt. Prospect Chiropractic Center, PA, Consol. Case Nos. 23-1378, 23-2019 & 23-2053 (April 15, 2024)("PRECEDENTIAL"), the U.S. Court of Appeals for the Third Circuit rejected GEICO's claims similar to those of Allstate in the present matter that NJIFPA claims are not subject to mandatory New Jersey No-fault Arbitration.

In *Mt. Prospect*, the U.S. Court of Appeals went even further than Judge Shipp and his federal colleagues and held, consistent with Juge Rafano, that NJIFPA claims must be adjudicated in binding No-Fault arbitration pursuant to the GEICO DPR Plan and Assignment of Benefit Agreement. "GEICO's suits against the Practices in this action each included a claim under the IFPA, which gives insurers a fraud- like action with fewer elements than common-law fraud. Allstate N.J. Ins. Co. v. Lajara, 117 *A.3d* 1221, 1231-32 (N.J. 2015). The Practices sought arbitration of GEICO's IFPA claim, arguing both that a valid arbitration agreement covered the claim and that a different New Jersey insurance law allowed them to compel arbitration. But each District Court disagreed, ruling instead that IFPA claims cannot be arbitrated. The Practices appealed to the U.S. Court of Appeals, which reversed and remanded the District Courts' findings and sent the matters to binding No-Fault Arbitration.

The *Mt. Prospect* Court disagreed with GEICO's reliance on the Nationwide Mutual Fire Insurance Co. v. Fiouris, 928 *A.2d* 154 (N.J. App. Div. 2007), *certif. denied*, 934 *A.2d* 640 (N.J. 2007) case, holding that the NJIFPA does not prohibit arbitration based upon permissive language in the statute and that the portions of that decision relied on by GEICO were mere dicta. Id. at 8-9. The Court further rejected GEICO's claims that arbitration of fraud claims

frustrates the anti-fraud mission of the NJIFPA, finding that there was no authority for this proposition. Id. It further held that the right to a jury trial under NJIFPA cases afforded by the *Lajara* case did not prevent arbitration of fraud claims, finding that there was no authority to claim that this could not be waived by agreeing to arbitrate as GEICO had in its DPR Plan and AOB. Id.

GEICO claimed that the NJIFPA's frequent use of phrases that suggest trial (like "the court" and "the action") implicitly prohibited arbitration. The Court rejected this claim, holding that a statute's use of those terms does no such thing. Id. *citing* CompuCredit Corp. v. Greenwood, 565 *U.S.* 95, 100-01. (2012). Addressing GEICOs argument that a No-Fault arbitrator could not grant treble damages under the NJIFPA, the Court observed that, to the contrary, No Fault Arbitration Rules [citing the prior arbitration administrator the American Arbitration Association], give the arbitrator broad discretion to "grant any remedy or relief[.]" *citing* Am. Arb. Ass'n, *Commercial Arbitration Rules and Mediation Procedures* 28 (2013) (Rule 47), https://perma.cc/4Y74-WZM8. It further cited a New Jersey intermediate appellate court, in a decision compelling arbitration of a statutory claim with treble damages, where it noted that they "can be vindicated in the arbitration forum[.]" Gras v. Assocs. First Cap. Corp., 786 *A.2d* 886, 892 (N.J. App. Div. 2001), *certif. denied*, 794 *A.2d* 184 (N.J.

2002). The Court rejected GEICO's last argument that New Jersey itself could join private NJIFPA actions to collect penalties, IFPA §7(d), and suggested this would be impossible in arbitration. The Court rejected this claim, indicating that GEICO failed to explain why New Jersey couldn't join an arbitration, and pointed out that the IFPA allows the State to file independent actions. IFPA §5. Id.

The Court further reasoned that New Jersey has a strong policy in favor of arbitration, citing Arafa v. Health Express Corp., 233 *A.3d* 495, 506 (N.J. 2020), especially for PIP claims. *citing* Gambino v. Royal Globe Ins. Cos., 429 *A.2d* 1039, 1043 (N.J. 1981) ("[A]pproaches which minimize resort to the judicial process [for PIP claims] . . . are strongly to be favored."). The Court, therefore, predicted" . . . that the New Jersey Supreme Court would allow arbitration of IFPA claims." Id. at 10-11.

Addressing the FAA, the Third Circuit Court of Appeals held that the FAA also compels arbitration of the GEICO NJIFPA claims. Id. The Court addressed whether the claims subject to the NJIFPA claims were covered by the arbitration agreements contained in the GEICO DPR Plan and AOB in the affirmative:

> "GEICO's IFPA claims, we must hold that the arbitration agreement in the Plan covers them. [citation omitted] It does. As noted above, that provision covers "any issue . . . in connection with any claim for [PIP] benefits." Caring Pain App. 315. This language is broad

> and, as the IFPA claims are connected to claims paid to the Practices based on PIP coverage, includes GEICO's claims. Arafa, 233 *A.3d* at 509 (agreement to arbitrate "any dispute" has "broad" scope). Supporting our view, New Jersey law encourages us to read arbitration agreements "liberally in favor of arbitration." Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 773 *A.2d* 665, 670 (N.J. 2001) (*quoting* Marchak v. Claridge Commons, Inc., 633 *A.2d* 531, 535 (N.J. 1993)). Further, because the Practices had no role in drafting the Plan, we must construe it in their favor. Pacifico v. Pacifico, 920 *A.2d* 73, 78 (N.J. 2007). Therefore, GEICO's IFPA claims are subject to the Plan's arbitration agreement, and so we must compel arbitration. Dean Witter Reynolds, Inc. v. Byrd, 470 *U.S.* 213, 218 (1985).

Id.at 14-15. Based upon the above analysis, the Court reversed the decisions of the District Court and remanded with instructions to compel arbitration of GEICO's IFPA claims against the Practices.

In the present matter, we face the *identical* NJIFPA claims that GEICO pursued in *Mt. Prospect,* only now alleged by Allstate in State versus Federal Court. Allstate has the same DPR Plan and AOB as did GEICO which encompassed their NJIFPA claims and raised the same arguments before Judge Rafano who, consistent with the Court of Appeals in *Mt. Prospect*, rejected them in favor of arbitration. Based upon this binding precedent, the reviewing court must reject the anti-arbitration claims raised by Allstate, which are virtually identical to those of GEICO in the *Mt. Prospect* case.

In conclusion, based upon the binding precedent issued by the U.S. Court of Appeals for the Third Circuit in *Mt. Prospect*, this court must deny Allstate's appeal, affirm the underlying decision of Judge Rafano, and remand the entire complaint to No-Fault Arbitration.

4. The Federal Arbitration Act Supports the Trial Court's Dismissal of the Action in Favor of Arbitration.

The Federal Arbitration Act ("FAA") has a long and consistent history favoring arbitration as opposed to litigation in matters where parties have contractually agreed to arbitration. Section 2 of the FAA provides,

> "A written provision in any...contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction,...shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (Emphasis added)

9 U.S.C. §2.

The Federal Arbitration Act, 9 U.S.C. §2, further supports the conclusion that the coverage claims raised in Allstate's complaint belong in arbitration. The FAA "creates a body of federal substantive law of arbitrability applicable to arbitration agreements . . . affecting interstate commerce." Ragone v. Atl. Video at Manhattan Ctr., 595 *F.3d* 115, 121 (2d Cir. 2010). Federal policy strongly favors arbitration. *E.g.*, AT & T Mobility LLC v. Concepcion, 563 *U.S.* 333, 339

(2011). "[T]he FAA was 'enacted to replace judicial indisposition to arbitration,' and is an expression of a 'strong federal policy favoring arbitration as an alternative means of dispute resolution.'" Ross v. Am. Express Co., 547 *F.3d* 137, 142 (2d Cir. 2008) Indeed, it has been observed that "it is difficult to overstate the strong federal policy in favor of arbitration, and it is a policy [courts] have often and emphatically applied." Ragone, 595 *F.3d* at 121.

It is well-settled law that both state and federal courts must enforce the FAA with respect to all arbitration agreements covered by that statute. Marmet Health Care Center, Inc. v. Brown, 132 *S.Ct.* 1201, 1202 (2012); Southland Corp. v. Keating, 465 *U.S.* 1, 16 (1984); Allied-Bruce Terminix Co., Inc. v. Dobson, 513 *U.S.* 265 (1995); Liberty Mut. Ins. Co. v. Open MRI of Morris & Essex, L.P. 356 *N.J.Super*. 567, 582 (Law Div. 2002).

The overarching purpose of the FAA is to ensure the enforcement of arbitration agreements "according to their terms". Id. at 1748; Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 *U.S.* 468, 469 (1989) ("the FAA's principal purpose is to ensure that private arbitration agreements are enforced according to their terms.") In fact, Section 4 of the FAA states, in pertinent part,

> "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court…for an order directing that such arbitration proceed **in the manner provided for in such agreement**....[T]he court shall make an order directing the parties to proceed to arbitration **in accordance with terms of the agreement**...." (Emphasis added)

9 U.S.C.A.§4

The United States Supreme Court held that the FAA "requires courts to enforce the bargain of the parties to arbitrate." Id., *citing*, Dean Witter Reynolds Inc. v. Byrd, 470 *U.S.* 213, 217 (1985). The FAA "reflects an emphatic federal policy in favor of arbitral dispute resolution." Id. (citations omitted). State laws, even those based upon public policy considerations, that by their terms consistently interfere with a singular type of claim, e.g., insurance coverage disputes, must be struck down as conflicting with the FAA. Id.

In the present matter, there is a valid, binding arbitration agreement between Allstate and the defendant healthcare providers. Allstate's very own Decision Point Review Plan, approved by NJDOBI, mandates arbitration of all disputes. Further, the Assignment of Benefits contract, which Allstate mandates that all healthcare providers sign in order to submit and be paid for claims for their insureds, contains express, mandatory arbitration language. Allstate has raised no basis in their underlying trial court submissions or argument to rescind

these mandatory arbitration contracts or for any other reason render them void. To the contrary, Allstate has acknowledged the validity of both the DPR Plan and AOB by mandating the defendants follow the precertification, multi-level appeal and arbitration process on all of the claims in dispute. Further, by accepting precertification requests, responding to same, accepting claims and adjusting the claims, and accepting appeals on the claims and responding to same, directly with the defendant healthcare providers, they have acknowledged the validity of the AOB contracts by their conduct and at no point have rescinded or otherwise indicated that that they are void or unenforceable. Moreover, Allstate cannot now choose to selectively enforce provisions of the AOB that favor them and reject others that disfavor them to support their specious claims.

In conclusion, the FAA fully supports the Trial Court's determination that valid arbitration contracts exist between the parties mandating arbitration of the claims contained in the Complaint and that all of the claims must be pursued in the mandatory arbitration venue, not the court system.

5. The New Jersey Arbitration Act Supports the Trial Court's Dismissal of the Action in Favor of Arbitration.

The New Jersey Arbitration Act, N.J.S.A.§2A:23B-1 to -36, is nearly identical to the FAA and enunciates the same policies favoring arbitration.

Atalese v. U.S. Legal Servs. Grp., L.P., 219 *N.J.* 430, 440 (2014). The NJAA governs "all agreements to arbitrate made on or after January 1, 2003," and exempts from its provisions only "an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement." N.J.S.A. §2A:23B-3(a).

Significantly, since its enactment, the NJAA has applied automatically as a matter of law to all non-exempted arbitration agreements from its January 1, 2003, effective date on, see *ibid.*, and has applied to all agreements to arbitrate made on or after July 4, 1923, since January 1, 2005, see id. at (c) to (d). Within N.J.S.A.§2A:23B-3 itself, therefore, the Legislature marked the difference between optional and mandatory application of the NJAA. In short, for arbitration agreements entered since 2003, there has been no need to express an intent that the NJAA would apply because its application has been automatic, absent preemption.

As articulated above in the FAA argument, the present matter contains valid contractual arbitration clauses in both the Allstate DPR Plan as well as mandatory AOB forms that all healthcare providers must sign to have their claims processed. These arbitration provisions concern neither collective bargaining nor negotiations between an employer and employee, the only two

express carve outs under the NJAA. Also, the dispute at issue concerns claims paid six years prior to the initiation of this lawsuit in 2023, with the broadest statute of limitations extending back to 2018. The AOB and DPR contracts, thus, were all entered from 2018 forward, all beyond the NJAA initiation date of January 1, 2005. Thus, there can be no valid argument that the NJAA does not apply to the present matter or that the claims at issue do not meet any of the express statutory carve outs.

In conclusion, the NJAA is directly applicable to the claims at issue in this matter and mandates that the dispute between plaintiff and defendants be arbitrated in mandatory No-Fault Arbitration. Thus, the trial judge was correct in remanding the claims to Forthright for dispute resolution.

Point II: The Legislature Implemented Safeguards to Combat Fraud Through the 1998 Automobile Insurance Cost Reduction Act, Not Through Civil Litigation in the Court System.

The gravamen of Allstate's complaint against defendants are allegations of fraud in violation of the NJIFPA, N.J.S.A.§17:33A-1 (1983). The NJIFPA was enacted as L.1983, c.320, s.1. in the year 1983 and provided the NJDOBI or insurers an optional cause of action against fraudulent health care providers in the Superior Court.

Approximately fifteen years later, the New Jersey Legislature enacted the Automobile Insurance Cost Reduction Act ("AICRA"), N.J.S.A.§39:6A-1.1 (1998), implementing various safeguards to combat fraud which were discussed supra, such as Care Paths for treatment, precertification, mandatory appeals, and the mandatory arbitration process. See, N.J. Coalition of Healthcare Providers v. NJDOBI, 348 *N.J. Super.* 242 (App. Div. 2002). As an after enacted statutory scheme, the Legislature clearly intended for AICRA to supersede the NJIFPA as it applies to New Jersey No-Fault as it was implementing statutory safeguards to address fraud in No-Fault claims. The NJIFPA still remained fully valid for other insurance claims such as property damage, homeowner's claims, and others, but the enactment of AICRA in 1998 superseded the option provided to insurers to file suit in State Court in favor of its express, mandatory arbitration process, if the insurer opted into the arbitration process through its DPR plan and AOB.

The Appellate Division in *Coalition*, *supra*, made this abundantly clear. To address skyrocketing premiums and to address a faulty statutory scheme to date to combat fraud, " . . . AICRA substantially revised the process for resolving disputed PIP claims and amended the mandatory PIP coverages to provide for treatment in accordance with protocols, or care paths, and for the

precertification of certain medical procedures, treatments, tests or other services". Id *citing* N.J.S.A.§39:6A-3.1, -4, and -5.1. To provide oversight of this process, the legislature delegated to NJDOBI the sole authority to promulgate regulations, review DPR plans and insurance forms, and to monitor compliance with the program. Id. The Legislature did not deputize private insurance companies as private attorney generals to enforce AICRA through the civil provisions of the NJIFPA.

NJDOBI's approval of DPR plans containing mandatory arbitration provisions pursuant to AICRA was addressed in the *Coalition* case as well: "Appellants next argue that the Commissioner exceeded her authority in approving three policy forms which require the submission of PIP disputes to dispute resolution." In rejecting this contention, the Appellate Division held:

> In reading the sections together, we reach the inescapable conclusion that the AICRA scheme permits not only the claimant, but any party to a PIP dispute to choose dispute resolution rather than a traditional Superior Court action. Although retention of the word "option" in N.J.S.A.§39:6A-5 appears to lend some credence to appellants' argument, we are unpersuaded. Under the pre-AICRA scheme, a claimant's option to submit a PIP dispute to arbitration did not establish an immutable guarantee to be permitted to submit it instead to court. Insurers were merely precluded from depriving claimants of their arbitration option. . . . Just as an insurer was bound by the exercise pre-AICRA of a claimant, so too is a claimant now bound by the exercise of the option by an insurer. . . .The DOBI's approval of insurance policy provisions that steer PIP disputes to dispute resolution is consistent

> with the policy goals of AICRA in that it will foster prompt resolution of disputes without resort to protracted litigation, ease court congestion and reduce costs to the automobile insurance system. This action also furthers the general public policy of this state, which favors arbitration. See Allgor v. Travelers Ins. Co., 280 *N.J.Super.* 254, 260-61 (App. Div. 1995).. . .
>
> We hold that insurance policy provisions providing that all PIP disputes must be submitted to dispute resolution rather than court are statutorily authorized, consistent with the policy goals of AICRA and with our public policy generally, and were properly approved by the Commissioner.

Coalition, *supra*, at 310-13.

Thus, the legislative implementation of vast reforms to No Fault in 1998 under AICRA and the implementation of treatment protocols, appeals and mandatory arbitration was the legislature's remedy to fraud and resultant increased premiums. It did not intend to permit insurers to resort to civil litigation under a fifteen-year-old statute that would result in the congestion of the court system with No Fault disputes and run contrary to the long-standing public policy in favor of arbitration. Civil Actions under NJIFPA and NJRICO were a failed experiment that AICRA intended to remedy.

The Legislature had full knowledge of the existence of the NJIFPA and NJRICO for decades when it passed into law AICRA. Had the Legislature intended to exempt NJIFPA / NJRICO civil fraud actions from AICRA's

mandatory arbitration process, it could have done so by providing an express statutory carve out, but it did not. The legislature's conscious decision to not include exceptions leads to the inescapable conclusion that the Legislature did not intend to permit NJIFPA/NJRICO civil fraud actions to continue following AICRA, unless the carrier opted out of the arbitration process.

Allstate did the exact opposite and opted *into* the arbitration process by creating and obtaining NJDOBI approval for both their DPR Plan as well as AOB which both include mandatory arbitration of disputes. The *Coalition* court held that there could not be a piecemeal case-by-case opt-out by any party and the implementation of the blanket arbitration mandate by Allstate in its DPR and AOB are an express opt-in to the arbitration for all disputes. Coalition, *supra*, at 310-13. Unless and until Allstate amends its DPR and AOB to remove mandatory arbitration and obtain DOBI approval of the modification, they cannot bypass the AICRA arbitration process by couching coverage disputes as "fraud" and filing civil fraud litigation in Superior Court under the NJIFPA and NJRICO statutes.

Point III: Allstate's Reliance on the Lajara, Jersey Central Power & Light and Second Circuit Caselaw Is Misplaced.

Allstate in its appellate brief relies heavily upon Second Circuit case law which is not binding upon this court nor persuasive as it does not address the specific New Jersey statutes at issue: AICRA, NJIFPA, and NJRICO. Rather, it addresses New York No-Fault laws completely irrelevant to this matter. Allstate further relies upon the New Jersey Supreme Court cases of Jersey Cent. Power & Light Co. v. Melcar Utility Co., 212 *N.J.* 576 (2013) and Allstate v. Lajara, 222 *N.J.* 129 (2015), both of which are distinguishable to the present matter.

First, Allstate's reliance on Second Circuit case law based upon New York laws such as Allstate Ins. Co v. Munn, 751 *F.3d* 94 (2nd Cir. 2014) is completely misplaced. This case does not address nor interpret the New Jersey AICRA, RICO and NJIFPA statues which are the primary basis of the underlying decision and appeal. The case interprets a completely different No Fault Statutory Scheme set forth in New York statutes which has no bearing on this case. It is telling that Allstate could not find *any* Third Circuit cases to support its allegations and had to settle for a distinguishable case from a different circuit. The court should disregard this attempt at producing precedent that is inappropriate here.

Allstate claims that the right to a jury trial afforded by the New Jersey Supreme Court in Jersey Central Power & Light and Lajara supports its position that arbitration of coverage disputes is not mandated under the law. It does not. In Jersey Central Power & Light, the Supreme Court addressed whether the mandatory dispute resolution provisions of the Underground Facility Protection Act (UFPA), N.J.S.A.§48:2–73 to –91, for disputes under $25,000 was unconstitutional. While the Court struck down the ADR provision as unconstitutional, it did so on a very discrete ground. The Court held that, unlike other statutes which have a safety mechanism to allow *de novo* review of the alternative dispute decisions, the UFPA did not: "N.J.S.A. 48:2–80(d) is a unique statute because it retains no option for a trial de novo." Jersey Cent. Power & Light Co. v. Melcar Utility Co., 212 *N.J.* at 598. Based upon this significant due process deficiency, the Court struck down the arbitration provision as unconstitutional.

The Court distinguished the UFPA statue from other statutory ADR provisions that did have a *de novo* review safety mechanism, and were, therefore, constitutional:

> "In Hartsfield v. Fantini, 149 *N.J.* 611, 615–16, (1997), we reviewed the legislatively required mandatory arbitration process for certain automobile accident claims with damages totaling less than $15,000. See N.J.S.A.39:6A–24 to –35. We approved the

> process in recognition that the Legislature intended for either party to the arbitration to petition the Superior Court and obtain a de novo jury trial on the legal issue presented to the arbitrator. Id. at 615, 695 A.2d 259 (*citing* N.J.S.A.39:6A–31, authorizing trial de novo post arbitration). Id. at 598. . . .
>
> N.J.S.A.2A:23A–20(a), which mandates arbitration for certain personal injury actions when damages amount to $20,000 or less. Again, we recognized that either party to the arbitration could petition the court "'within 30 days of the filing of the arbitration decision for a trial *de novo.*'" Hartsfield*, supra,* 149 *N.J.* at 615–16. Id.

In the present matter, as in the cases cited by the Court above and unlike *Jersey Central Power*, the AICRA arbitration process does have an express statutory right for either party to seek *de novo* review of an arbitration decision within forty-five days of its issuance. N.J.S.A.§2A:23A-13, provides, in pertinent:

> **2A:23A-13. Application to court for review of award**
>
> a. A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award modified pursuant to subsection d. of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.
>
> b. In considering an application for vacation, modification or correction, a decision of the umpire on the facts shall be final if there is substantial evidence to support that decision; provided, however, that when the application to the court is to vacate the award pursuant to paragraph (1), (2), (3), or (4) of subsection c., the court shall make an independent

> determination of any facts relevant thereto de novo, upon such record as may exist or as it may determine in a summary expedited proceeding as provided for by rules adopted by the Supreme Court for the purpose of acting on such applications. . . .
>
> f. Whenever it appears to the court to which application is made, pursuant to this section, either to vacate or modify the award because the umpire committed prejudicial error in applying applicable law to the issues and facts presented for alternative resolution, the court shall, after vacating or modifying the erroneous determination of the umpire, appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire. The court shall then confirm the award as modified.

L. 1987, c. 54, s. 13.

This statute provides broader grounds for vacation or modification of the award than the traditional arbitration model. Allstate Ins. Co. v. Sabato, 38 *N.J. Super.* 463, 470-71 (App. Div. 2005). In a dispute submitted pursuant to APDRA, the party seeking review may seek vacation or modification of an award when the rights of that party were prejudiced by the umpire "erroneously applying law to the issues and facts presented for alternative resolution." N.J.S.A.§2A:23A-13c(5),-13e(4). Thus, unlike the UFPA statute in *Jersey Central Power & Light* which had no *de novo* review safety mechanism, the AICRA arbitration statute does through N.J.S.A.§2A:23A-13. Therefore, *Jersey Central* does not support Allstate's argument in the present matter.

Similarly, Allstate's reliance on the *Lajara* decision is misplaced. The *Lajara* Court addressed whether the *defendant* (health care provider) had a right to demand a jury trial under the NJIFPA. Relying heavily on the *Jersey Central & Light* decision[3] (distinguished above), Justice Albin found that a defendant did have such a right if they so choose. He did not hold that an insurance company as the plaintiff had any such right: "The issue before us is whether *defendants* in a private action brought under the IFPA have a right to trial by jury." Id. at 139 (emphasis added). In fact, Allstate went to great lengths to argue against the right to a jury trial in Lajara claiming that it would delay adjudication of such matters, the exact opposite of what it argues now: "The plaintiff insurance companies claim that the drafters of the IFPA wanted to avoid the "delays and inefficiencies" of jury trials. To be sure, other means of trying cases are more expeditious and efficient than a jury trial." Id. at 149.

The United States Court of Appeals for the Third Circuit, in GEICO v. Mt. Prospect Chiropractic Center, PA, Consol. Case Nos. 23-1378, 23-2019 & 23-2053 (April 15, 2024)("Precedential"), addressed whether the *Lajara* case's holding that there was a right to a jury trial under the NJIFPA precluded arbitration in the negative. It held that the right to a jury trial under NJIFPA

[3] Lajara, 222 *N.J.* at 146-47.

cases afforded by the *Lajara* case did not prevent arbitration of fraud claims, finding that there was no authority to claim that this could not be waived by agreeing to arbitrate as GEICO had in its DPR Plan and AOB. Id. at 8-9.

Finally, affirming the underlying decision that these disputes belong in No Fault Arbitration does not render the *Lajara* decision invalid. First, insurers can bring non-No-Fault claims in the Superior Court such as property damage, homeowner's insurance and other non-auto related policy matters wherein a defendant can seek a jury trial. The NJIFPA is not limited to No-Fault claims. Second, there remains a civil cause of action for the NJDOBI under the NJIFPA: "The IFPA authorizes two separate causes of action to enforce the statutory scheme—one a State action brought by the Commissioner of Banking and Insurance, N.J.S.A.§17:33A–5, and the other a private civil action brought by insurers "damaged as the result of a violation of any provision of [the IFPA]," N.J.S.A. §17:33A–7. Lajara, 222 *N.J.* at 144. These civil actions may continue to proceed in civil court as NJDOBI is not subject to nor opted in to the AICRA arbitration process as Allstate has and defendants in those matters retain the right to demand a trial by jury in civil court under the NJIFPA. Third, Allstate as well as any other No-Fault carrier can amend their DPR Plan to opt out of the arbitration system and have full access to the courts to file NJIFPA and NJRICO

suits. The lack of access to the court system Allstate complains of is of their own making by opting in to the AICRA arbitration system and is easily cured by opting out.

In conclusion, for the reasons cited above, Plaintiffs failed to provide precedential case law in support of its position as the New Jersey case law relied upon Allstate is distinguishable from this case and Allstate's reliance on out of circuit decisions interpreting New York No Fault statutes is not applicable. Accordingly, the underlying determination of the trial court must be affirmed.

CONCLUSION

In conclusion, Judge Rafano's well-reasoned holding, affirmed in substance by the U.S. Court of Appeals for The Third Circuit, therefore, should not be overturned and, rather, affirmed on appeal.

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Dated: April 22, 2024

/s/ *Jeffrey B. Randolph*
Jeffrey B. Randolph, Esq.

ALLSTATE NEW JERSEY INSURANCE COMPANY; ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY; ALLSTATE INSURANCE COMPANY; ALLSTATE FIRE & CASUALTY INSURANCE COMPANY; ALLSTATE NORTHBROOK INDEMNITY COMPANY; and ALLSTATE PROPERTY AND CASULATY INSURANCE COMPANY,

Plaintiffs,

v.

CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROES COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE; INIMEG MANAGEMENT COMPANY, INC.; 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C.; 72 ROUTE 27 REALTY, L.L.C.; MID-STATE ANESTHESIA CONSULTANTS, L.L.C.; NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A.; INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a/ METRO PAIN and VEIN; SOOD MEDICAL

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Docket No. A-00778-23

Civil Action

On Appeal From:
Superior Court of New Jersey, Law Division, Dkt. No. MID-L-1469-23

Sat Below:
Honorable Christopher D. Rafano, J.S.C.

PRACTICE, L.L.C.; ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC; ONE OAK TREATMENT CLINIC; ONE OAK ORTHOPAEDIC & SPINE GROUP, L.L.C.; ONE OAK HOLDING, L.L.C.; JOSEPH BUFANO, JR., D.C.; CHRISTOPHER BUFANO; MICAH LIEBERMAN, D.C.; RICHARD MILLS, M.D.; JENNIFER M. O'BRIEN, ESQ.; GERALD M. VERNON, D.O., D.C.; ALVIN F. MICABALO, D.O.; JOSE CAMPOS, M.D.; JOHN S. CHO, M.D.; MICHAEL C. DOBROW, D.O.; RAHUL SOOD, D.O.; SACHIN SHAH, M.D.; FAISAL MAHMOOD, M.D.; RAVI K. VENKATRAMAN, M.D.; MANGLAM NARAYANAN, M.D.; SHANTI EPPANAPALLY, M.D.; JOHN AND JANE DOES 1 through 10; and XYZ CORPORATIONS 1 through 10,

Defendants.

BRIEF OF DEFENDANTS MID-STATE ANESTHESIA CONSULTANTS, L.L.C., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., SOOD MEDICAL PRACTICE, L.L.C., RAHUL SOOD, D.O., AND SACHIN SHAH, M.D.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Court Rules

Regulations

Other Authorities

PRELIMINARY STATEMENT

Plaintiff Allstate's lawsuit is an attempt to circumvent the mandatory arbitration provision the Legislature crafted when it adopted the Automobile Insurance Cost Reduction Act ("No-Fault Law") governing claims for Personal Injury Protection benefits ("PIP benefits") under automobile insurance policies. Instead of challenging the defendant medical practitioners' PIP benefits claims for alleged fraud at the time they submitted them to Allstate or even sometimes challenging them and losing in individual arbitration, Allstate has, several years later, lumped hundreds of PIP benefits claims together *en masse*, claimed they were fraudulent for a variety of reasons, and filed a lawsuit in the Superior Court of New Jersey contending that the defendants violated the New Jersey Insurance Fraud Prevention Act ("IFPA") and New Jersey RICO statute ("RICO") and that Allstate is entitled to declaratory judgments about the eligibility of those PIP benefits claims.

The trial court saw through this ruse and granted the defendants' motions to compel arbitration of Allstate's claims under the No-Fault Law's statutory arbitration provision. The trial court's interpretation of the No-Fault Law was correct. Indeed, it aligns with the recent published decision of the United Stated Court of Appeals for the Third Circuit's holding that IFPA claims must be arbitrated under the No-Fault Law in a case in which another insurer attempted the same maneuver around the arbitration statute. At base, Allstate's claims are disputes about

the recovery of PIP benefits. And that is exactly what the No-Fault Law's arbitration provision covers. Dressing PIP benefits disputes as "fraud" and belatedly bringing them as civil claims in Superior Court does not change anything.

To effectuate the plain language of the No-Fault Act and the Legislature's intent, this Court should affirm the trial court's order granting the defendants' motion to compel arbitration.

PROCEDURAL HISTORY

Allstate filed this lawsuit on March 15, 2023. Pa3, 23. In April 2023, Dr. Sood and Dr. Shah (and the other co-defendants) moved compel arbitration of Allstate's claims, which was later re-filed in August 2023 with a new return date. Pa4, 345-46. On October 24, 2023, the trial court held oral argument. See T.[1] On October 27, 2023, the trial court granted the Sood Defendants' motion (and the other defendants' motions to compel arbitration) and compelled arbitration of Allstate's claims. Pa1-2, 7. Allstate then appealed as of right pursuant to Rule 2:2-3(b)(8). Pa354, 357.

STATEMENT OF FACTS

I. New Jersey's No-Fault Law

Statutory context and history are important here. Indeed, this case illustrates the age-old maxim that a "page of history is worth a volume of logic." New York

[1] "T" refers to the transcript of oral argument dated October 24, 2023.

Trust Co. v. Eisner, 256 U.S. 345, 349 (1921) (Holmes, J.); Delvalle v. Trino, 474 N.J. Super. 124, 137 (App. Div. 2022).

In 1972, the New Jersey Legislature adopted the New Jersey Automobile Reparation Reform Act (the "No-Fault Law"), which mandated that automobile insurers, like Allstate, provide personal injury protection benefits ("PIP Benefits") to motorists involved in automobile accidents, regardless of fault. Johnson v. Roselle EZ Quick, LLC, 143 226 N.J. 370, 382-83 (2016); N.J.S.A. 39:6A-1 et seq.; N.J.S.A. 39:6B-1 to -3. Pursuant to the No-Fault Law, patients treated for injuries sustained in automobile accidents assign their rights to PIP Benefits to the medical provider who provides the treatment. Under the assignment, the provider seeks reimbursement from the insurer for the treatment.

In 1983, the Legislature revised the No-Fault Law to require PIP Benefits disputes to be resolved through arbitration rather than through the courts. Churm v. Prudential Prop. & Cas. Ins. Co., 276 N.J. Super. 631, 632-33 (App. Div. 1994). The purpose of the shift from the courts to arbitration was "to establish an informal system of settling tort claims arising out of automobile accidents in an expeditious and least costly manner, and to ease the burden and congestion of the State's courts." Ibid. (quoting N.J.S.A. 39:6A-24).

The No-Fault Law contains the following arbitration provision: "Any dispute regarding the recovery of medical expense benefits or other benefits provided under

personal injury protection coverage . . . arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute." N.J.S.A. 39:6A-5.1(a). The statute also expressly mandates arbitration for claims including: "whether the treatment or health care service which is the subject of the dispute resolution proceeding is in accordance with" applicable law; "eligibility of the treatment or service for compensation"; "eligibility of the provider performing the treatment or service to be compensated under the terms of the policy or under regulations promulgated by the commissioner"; "whether the disputed medical treatment was actually performed"; "the necessity or appropriateness of consultations by other health care providers"; "disputes involving application of and adherence to fee schedules"; and "whether the treatment performed is reasonable, necessary, and compatible with the protocols provided." N.J.S.A. 39:6A-5.1(c).

At the same time, the Legislature also "amended the mandatory PIP coverages to provide for treatment in accordance with protocols, or care paths, and for the precertification of certain medical procedures, treatments, tests or other services." Coal. For Quality Health Care v. New Jersey Dep't of Banking & Ins., 348 N.J. Super. 272, 283 (App. Div.) (citing N.J.S.A. 39:6A-3.1, -4, -5.1), certif. denied, 174 N.J. 194 (N.J. 2002). Precertification is as it sounds. It allows insurers to pre-certify "certain treatments, diagnostic tests, or other services . . . provided that the

requirement for precertification shall not be unreasonable." Id. at 1093 (quoting N.J.S.A. 39:6A-3.1(a)). Precertification thus emerged as a program "by which the medical necessity of certain diagnostic tests, medical treatments and procedures are subject prior to authorization." Id. at 1094 (quoting N.J.A.C. 11:3-4.2).

"Decision point review occurs at certain junctures during the treatment, as designated in the care paths, and may require a second opinion, development of a treatment plan, or case management." Ibid. (citing N.J.A.C. 11:3-4.6(b)). "Decision point is defined as 'those junctures in the treatment of identified injuries where a decision must be made about the continuation or choice of further treatment . . . . [and] tests.'" Ibid. (citing N.J.A.C. 11:3-4.2).

Insurers must adopt what is known as a "decision point review plan," which gives insurers oversight to the payment of PIP benefits to medical providers. N.J.A.C. 11:3-4.7. Decision point review plans, for example, allow insurers to specify which treatments require precertification, establish a process for approving further treatments at various decision points, and provide for an internal appeals procedure, among other things. Ibid.

Taken together, these provisions establish the protocols and dispute resolution process for the payment of PIP benefits to medical providers who treat the insurance carrier's insureds and provide insurance carriers the opportunity to approve or

otherwise challenge, through the precertification process or in arbitration, the medical provider's requests for payment of PIP benefits.

II. The allegations in Allstate's Complaint as to the Sood Defendants.

Allstate is an insurer in New Jersey that issues automobile insurance policies under which insureds are entitled to PIP benefits if they are involved in accidents. Pa25. Pursuant to the No-Fault Law, N.J.S.A. 39:6A-1 *et seq.*, typically, insureds-patients assign their entitlement to benefits to their medical providers who then make claims for PIP benefits from insurers like Allstate. See N.J.S.A. 39:6A-4; Coal. for Quality Health Care, 348 N.J. Super. at 313.

Dr. Sood and Dr. Shah are licensed physicians. Pa32. Dr. Sood owns Mid-State Anesthesia Consultants, LLC ("Mid-State"), Interventional Pain Consultants of North Jersey, LLC ("IPCNJ"), Sood Medical Practice, LLC ("Sood Medical") (together, the "Sood Defendants"). Pa28-29, 32-33. Dr. Shah works for some of Dr. Sood's medical practices. Pa32-33. The Sood Defendants' pain management medical practice involves treating patients who suffer from injuries sustained in automobile accidents. See Pa3, 34-35.

The essence of Allstate's Complaint against the Sood Defendants is that they billed Allstate for medical services that were fraudulent because they were engaged in kickbacks or made improper self-referrals. See Pa3-4, 24-25. Allstate alleges that because of this alleged conduct, the Sood Defendants were not entitled were not

eligible to bill and receive payment of PIP benefits from Allstate under insurance policies. Pa87-88. Allstate's allegations do not mention its obligation to arbitrate PIP disputes under the No-Fault Law. Pa23-122; N.J.S.A. 39:6A-5.1; N.J.A.C. 11:3-5.6;

In its Complaint, Allstate asserts claims for declaratory judgments (Counts 1-2, 4-7), for violation of the IFPA, N.J.S.A. 17:33A-4 (Counts 3, 8), and for violation of the New Jersey RICO statute (Count 9). Pa76-119. Through some of its declaratory judgment claims, Allstate seeks to declarations that the defendants were not eligible to be paid any of the PIP benefits payments and to disgorge all of the PIP benefits that it paid to the Sood Defendants and other defendants on eight-hundred-plus PIP claims totaling $1.737 million. Pa77-82, 106-09. These hundreds of PIP claims date to as far back as 2009 and to as recent as 2022. Pa123-149; see also Pa67 ¶ 306; Pa69 ¶ 315.

Allstate's entire theory in its Complaint is that the defendants were "ineligible" for PIP benefits bases on their alleged conduct. See, e.g., Pa42 ¶ 136, Pa69 ¶ 314, Pa70 ¶ 319, Pa74 ¶ 338, Pa77 ¶ 352(b), Pa77-78 ¶ 354, Pa80 ¶¶ 364-68, Pa81 ¶ 369, Pa84 ¶ 377, Pa85 ¶ 381, Pa106 ¶¶ 476-78, Pa109-10 ¶¶ 485-87. Using the IFPA and RICO statutes, Allstate also seeks to disgorge those PIP benefits payments plus treble damages and attorney's fees. Pa109-119.

III. The trial court compels arbitration of Allstate's claims.

The trial court granted the Sood Defendants' motion to compel Allstate to arbitrate its claims pursuant to the No-Fault Law's statutory arbitration provision, N.J.S.A. 39:6A-5.1(a). Pa2. In its decision, the trial court "look[ed] to the No-Fault Law's plain language" and concluded that the "term 'any dispute'" in the statute "is straightforward enough: it means all 'disputes' around the 'recovery' of PIP benefits" are governed by the provision. Pa6. Moreover, "dispute" refers to "a legal dispute between parties." Ibid. The term "recovery" in context was intended to refer to recovery of PIP benefits submitted by insureds or medical providers. Ibid. And so, the Court concluded that the "language of the statute leads to one conclusion: the arbitration mandate covers a broad array of legal disputes." Ibid. (citing State Farm Mut. Auto. Ins. Co. v. Molino, 289 N.J. Super. 406, 405-406 (App. Div. 1996)).

The trial court also rested on the No-Fault Law's purpose to unclog the courts of PIP disputes and "to ensure the viability of arbitration as a forum for the resolution of PIP disputes." Ibid. The arbitration statute evinced a "firm policy favoring prompt and efficient resolution of PIP disputes without resort to judicial process." Ibid. (quoting Molino, 289 N.J. Super. at 410). The trial court further explained that, contrary to these objectives of the No-Fault Law, "a party wishing to sidestep mandatory arbitration could easily classify their claims in ways that fling open the courthouse doors. Such an end-run around the No-Fault Law's strong policy purpose

of 'prompt and efficient resolution of PIP disputes without resort to the judicial process' would be consequential." Ibid. As the trial court recognized, Allstate simply tried to dress its PIP benefits dispute as sounding in fraud that is purportedly not arbitrable. Pa7.

As to the IFPA claim, the trial court harmonized the IFPA and the No-Fault Law, which are at odds because the former referred to a court while the latter referred to arbitration. Pa6. The court concluded that "Allstate's IFPA claims can potentially be resolved in court, but it is not mandatory" to do so, while all PIP benefits disputes are required to be arbitrated. Pa6-7. Critically, the trial court pointed out that all of Allstate's claims were based on PIP benefits eligibility under the No-Fault Law. Pa7. So, because Allstate's claims all involved a dispute involving recovery of PIP benefits that one party wished to arbitrate, all of Allstate's claims must be arbitrated under the No-Fault Law. Ibid. The No-Fault Law did not single out fraud-related PIP benefits disputes for special treatment. Ibid.

Further, the trial court rejected Allstate's attempt to distinguish claims based on PIP benefits already paid from those yet to be paid because the statute did not make that distinction. Ibid. Finally, the statute clearly required arbitration of claims based on alleged ineligibility for PIP benefits. Ibid. Nothing in the statute precluded an arbitrator from deciding Allstate's claims. Ibid.

LEGAL ARGUMENT

The Court reviews a trial court decision compelling arbitration de novo. Flanzman v. Jenny Craig, Inc., 244 N.J. 119, 131 (2020). In reviewing orders compelling arbitration, however, courts "are mindful of the strong preference to enforce arbitration agreements, both at the state and federal level." Hirsch v. Amper Financial Services, LLC, 215 N.J. 174, 179 (2013); see also Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131 (2001) (recognizing "arbitration as a favored method of resolving disputes"). Furthermore, "questions of statutory interpretation are reviewed de novo," and in so doing, a court's "aim is to effectuate the Legislature's intent." Sanjuan v. Sch. Dist. of W. New York, Hudson Cnty., 256 N.J. 369, 378 (2024).

I. The trial court correctly held that the No-Fault Law requires Allstate to arbitrate its claims because the claims center on the eligibility to recover PIP benefits.

The No-Fault Law's statutory arbitration provision states that "[a]ny dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage" that arises "out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute" as provided by the statute. N.J.S.A. 39:6A-5.1(a); see also N.J.A.C. 11:3-5.1(a). The same provision goes on to outline a non-exhaustive list of such disputes, including "the eligibility of the treatment or service

for compensation" and "the eligibility of the provider performing the treatment or service to be compensated under the terms of the policy or under regulations promulgated by the commissioner, including whether the person is licensed or certified to perform such treatment." N.J.S.A. 39:6A-5.1(c); see also N.J.A.C. 11:3-5.2 (defining "PIP dispute").

The trial court got it exactly right when it rejected Allstate's attempt to circumvent the No-Fault Law's arbitration mandate by re-labeling PIP disputes "fraudulent" IFPA and RICO violations that are supposedly not arbitrable. Based on statutory history and interpretation, case law, and policy objectives, this Court should affirm.

A. The plain language of the No-Fault Law requires arbitration of Allstate's claims.

Fundamentally, the issue before the Court is one of statutory interpretation—the meaning of No-Fault Law's arbitration provision, N.J.S.A. 39:6A-5.1, and whether it requires arbitration of Allstate's claims. Based on the plain language, the answer to this question is yes.

The "best indicator" of the Legislature's intent when enacting a statute is the statute's language itself. Castano v. Augustine, 475 N.J. Super. 71, 77 (App. Div. 2023). "If a statute's plain language is clear," a court applies "that plain meaning" and the inquiry is over. Ibid. Courts are not in the business of "rewrite[ing] a plainly-written enactment of the Legislature" and do not "presume that the Legislature

intended something other than that expressed by way of the plain language." Id. at 77-78. Words in a statute are accorded "their ordinary meaning and significance." Matter of H.D., 241 N.J. 412, 418 (2020). "It is well established that, when the statutory language is plain, [a court] must enforce it according to its terms." Jimenez v. Quarterman, 555 U.S. 113, 118 (2009). Moreover, as to the No-Fault Law in particular, the Supreme Court has long held that "approaches which minimize resort to the judicial process, or at least do not increase reliance upon the judiciary, are strongly to be favored" when interpreting the No-Fault Law. Gambino v. Royal Globe Ins. Companies, 86 N.J. 100, 107 (1981).

Indicative of the weakness of Allstate's position, Allstate first detours the Court to constitutional and regulatory arguments. See Pb17-25. The Court should stay on a straight path of statutory interpretation.

First, the No-Fault Law expressly requires "**[a]ny** dispute regarding the recovery of" PIP benefits to be submitted to arbitration. N.J.S.A. 39:6A-5.1(a) (emphasis added). This Court held that, based on the statute's language, "any 'dispute' concerning a 'payment' of PIP benefits due" under the No-Fault Law "is subject to binding arbitration." State Farm Mut. Auto. Ins. Co. v. Molino, 289 N.J. Super. 406, 410 (App. Div. 1996). "[T]he word 'dispute' is unqualified" in the statute and thus encompasses entitlement to PIP benefits under the statute. Ibid.

Building on Molino, this Court, in State Farm Ins. Co. v. Sabato, 337 N.J. Super. 393, 396 (App. Div. 2001), explained that "that the language of [N.J.S.A. 39:6A-5.1] should be read as broadly as the words themselves indicate." Thus, insurers are "not empowered" to avoid the arbitration mandate merely "by characterizing PIP disputes" in a certain way to be able to seek resolution in court." Id. at 396-97 (quoting Molino, 289 N.J. Super. at 411).

Second, N.J.S.A. 39:6A-5.1(c), which governs the scope of arbitrable PIP benefits disputes, is extremely broad. Arbitrable PIP benefits disputes "include, but not necessarily be limited to, matters concerning" a wide array of issues including whether the treatment is eligible for compensation, whether medical practice is eligible to be compensated based on governing regulations, and whether a treatment was performed at all. N.J.S.A. 39:6A-5.1(c)(3)-(5); see also N.J.A.C. 11:3-5.6(a)(2)-(4). Thus, the Legislature clearly envisioned insurers like Allstate having to arbitrate matters that implicated alleged fraud. See Sabato, 337 N.J. Super. at 396. The trial court was correct in its interpretation of the No-Fault Law. Pa6.

Despite the broad and straightforward language of N.J.S.A. 39:6A-5.1(a) and (c), Allstate tries to substantially narrow it. Allstate says the phrase "recovery of benefits" in N.J.S.A. 39:6A-5.1(a) "ordinarily refers to 'how much money should the insured receive from the insurer." Pb25. Stated another way, Allstate tries to engraft the word "pending," "unpaid," or a similar phrase into N.J.S.A. 39:6A-

5.1(a). But the statutory language does not limit disputes to those concerning benefits not yet paid or to disputes only over exact the quantum of money that should be paid. Rather, the statute governs any dispute concerning the recovery of PIP benefits, which encompasses disputes about whether the medical provider should be recovering or should have recovered PIP benefits from the insurer at all.

The entire premise of Allstate's Complaint and claims here is that it disputes all of the PIP benefits that the Sood Defendants and other defendants recovered under the insured-patients' policies. In other words, Allstate contends the defendants should have recovered nothing. And, by the same token, Allstate is trying to recover PIP benefits payments from the Sood Defendants that Allstate paid because Allstate claims the Sood Defendants were "ineligible" to be paid PIP benefits. See Pa77-82, 106-09 (seeking in its Complaint to disgorge PIP benefits payments through declaratory judgment and other claims).

In short, N.J.S.A. 39:6A-5.1(a) is clear, unequivocal, and has only one meaning: all disputes related to PIP benefits must be arbitrated, an insurer's attempt to couch the dispute as involving "fraud" notwithstanding. The United States Court of Appeals for the Third Circuit recently agreed with the Sood Defendants' position in a published case, holding that an insurer's IFPA claims based on PIP benefits it sought to recover were arbitrable under the No-Fault Law.

In Government Employees Insurance Co. v. Mount Prospect Chiropractic Ctr., P.A., __F.4th__, 2024 WL 1819645, at *1 (3d Cir. Apr. 26, 2024), GEICO sued several medical practices under the IFPA, RICO, and other causes of action alleging that the practices submitted over $10 million in fraudulent PIP benefits claims based on unnecessary medical care and kickback schemes. After finding that IFPA could be arbitrated as a general matter, the Third Circuit first held that GEICO's IFPA claim had to be arbitrated under the No-Fault Law's arbitration provision, N.J.S.A. 39:6A-5.1. Id. at __, 2024 WL 1819645, at *3.

Specifically, the Third Circuit examined the statutory language and concluded that because GEICO's suit was an "effort to recover medical expense claims paid through auto insurance PIP benefits, they fall under [N.J.S.A. 39:6A-5.1(a)'s] plain text." Ibid. The court rejected GEICO's argument that the statute did not cover IFPA claims merely because the claim deals with fraud, because N.J.S.A. 39:6A-5.1(a) "does not have an exception for fraud" and it was not the court's job to create such a carveout. Ibid. Moreover, the court observed that the statutory list of claims covered by the arbitration provision encompassed fraud claims. Ibid. (citing N.J.S.A. 39:6A-5.1(c)). The court also relied on this Court's pronouncements in Molino and Sabato about the No-Fault Law's language. Ibid.

The Third Circuit's published Mount Prospect decision is directly contrary to Allstate's position here. This Court should follow Mount Prospect, which the Third

Circuit decided after extensive briefing in a consolidated appeal consisting of three separate district court cases (among many others) filed by GEICO.[2] Notably, even before Mount Prospect, several district courts correctly held that the plain language of the No-Fault Law required insurers to arbitration PIP-based causes of action like RICO and other common law claims. See, e.g., State Farm Guar. Ins. Co. v. Tri-Cnty. Chiropractic & Rehab. Ctr., P.C., No. 22-cv-4852, 2023 WL 4362748, at *4-8 (D.N.J. July 6, 2023); Gov. Employees Ins. Co. v. Menkin, No. 23-cv-2184, 2023 WL 9039567, at *4-5 (D.N.J. Dec. 30, 2023); Gov't Employees Ins. Co. v. Elkholy, No. 21-cv-16255, 2022 WL 2373917, at *6 (D.N.J. June 30, 2022). But they had held incorrectly that IFPA claims were exempt based on an erroneous understanding of a few words in the IFPA. See infra, Section I.B.

[2] It appears that Allstate intends to try to get around Mount Prospect by arguing on reply that the parties thereto did not devote much briefing to arbitrability under the No-Fault Law. See David N. Cinotti, Third Circuit Overlooks Jurisdictional Problem in New Jersey Insurance Fraud Claims Decision, N.J.L.J. (May 7, 2024) [hereafter "Cinotti Article"] (arguing, in an article drafted by Allstate's appellate counsel in this appeal, that the parties devoted limited briefing to the No-Fault Law). That is inaccurate. Both GEICO and the medical practice defendants briefed the No Fault Law at length. See, e.g., Brief of Hassan Medical Defendants at 34-37, No. 23-1378, GEICO v. Mount Prospect Chiropractic Ctr., P.A., __F.4th__ (3d Cir. 2024); Brief of GEICO at 33-38, No. 23-1378, GEICO v. Mount Prospect Chiropractic Ctr., P.A., __F.4th__ (3d Cir. 2024). And with regard to Allstate's apparent intent to argue the Third Circuit did not have jurisdiction to decide the No-Fault Law issue, see Cinotti Article, Allstate cannot collaterally attack the decision, nor does whether the Third Circuit had jurisdiction detract from the Third Circuit's persuasive analysis of the merits.

Notably, Mount Prospect was not the first time the Third Circuit had rejected an insurer's attempt at an end-around N.J.S.A. 39:6A-5.1(a). In Government Employees Ins. Co v. Tri County Neurology & Rehabilitation, LLC, 721 F. App'x 118, 120 (3d Cir. 2018), the Third Circuit turned away an insurer's resort to federal court to obtain a declaratory judgment that the insurer was not obligated to pay several million in outstanding PIP benefit claims by the medical practitioner because of the practitioner's alleged fraud. In so doing, the court explained that "disputes between medical providers and insurance companies over the payment of PIP claims must be resolved through a statutorily mandated arbitration process" in N.J.S.A. 39:6A-5.1(a). Id. at 122. The parties had the right to compel arbitration to resolve the PIP disputes. Ibid. The Third Circuit also commented that "the presence of a claim for damages under the [IFPA] does not impact an arbitrator's ability to resolve a claim for fraud." Id. at 123 n.4.

The only type of claim that this Court held not to be arbitrable under the No-Fault Law's plain language is a "claim of fraud in the inception of the policy or other claim involving the validity of the policy." Nationwide Mut. Fire Ins. Co. v. Fiouris, 395 N.J. Super. 156, 159 (App. Div. 2007). When the validity of the insurance policy is not at issue—the validity of insureds' policies is not at issue here—then the PIP dispute is arbitrable under the broad No-Fault Law. See ibid. (holding N.J.S.A. 39:6A-5.1 only comes into play when there is a dispute regarding entitlement to or

the amount of PIP benefits under a valid, operative automobile policy"). N.J.S.A. 39:6A-5.1 "requires arbitration of disputes regarding entitlement to or the amount of PIP benefits[.]" Id. at 160.

In sum, the plain language of the No-Fault Law's arbitration provision compels Allstate to arbitration each of its civil claims premised on PIP disputes. Much like GEICO, which chose to clog up the federal court system with PIP disputes recast as civil claims, Allstate chooses to clog up the New Jersey state court system with PIP disputes that it recasts into civil claims. This Court should reject Allstate's gambit to circumvent the Legislature's intent to take PIP disputes out of court.

Allstate's claims in this case are all premised on the alleged "ineligibility" of the PIP claims to be paid because of alleged fraudulent conduct. See, e.g., Pa42 ¶ 136, Pa69 ¶ 314, Pa70 ¶ 319, Pa74 ¶ 338, Pa77 ¶ 352(b), Pa77-78 ¶ 354, Pa80 ¶¶ 364-68, Pa81 ¶ 369, Pa84 ¶ 377, Pa85 ¶ 381, Pa106 ¶¶ 476-78, Pa109-10 ¶¶ 485-87. And whether a PIP claim is eligible to be paid is the *sin qua non* of the No-Fault Law's arbitration provision, N.J.S.A. 39:6A-5.1(a), (c). Repackaging and relabeling PIP disputes as fraud or IFPA/RICO violations does not change that.

B. The No-Fault Law did not carve out fraud-based claims.

Contrary to Allstate's argument, its IFPA, RICO, and declaratory judgment claims do not need to be "harmonized" with the No-Fault Law's arbitration provision in a way that permits insurers to litigate them in court. Pb32. For sure, requiring

litigation in a judicial forum is not the "only" way to further the antifraud purposes of the IFPA, RICO, and the No-Fault Law. Ibid. The notion that claims under remedial statutes intended to combat fraud cannot be arbitrated is long-outdated and incompatible with governing case law. See Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 446-48 (2014) (permitting arbitration of Consumer Fraud Act claims); Curtis v. Cellco P'ship, 413 N.J. Super. 26, 36-37 (App. Div.), certif. denied, 203 N.J. 94 (2010) (same); Mount Prospect Chiropractic Ctr., __F.4th at __, 2024 WL 1819645, at *2-3 (explaining IFPA claims can be arbitrated).

There is nothing special or unique about IFPA and RICO claims that exempts them from arbitration. Indeed, it stretches the imagination to conclude that the Legislature intended to give insurers greater access to the courts than it gave to victims of consumer fraud under the Consumer Fraud Act ("CFA"), for example. Indeed, permitting such lawsuits in court would give insurers like Allstate an unfair second bite at the apple after they unsuccessfully challenged a medical provider's PIP benefits claims in a arbitration—essentially turning those individual arbitrations into a dry run. To construe the No-Fault Law to exempt IFPA/RICO claims from arbitration and to fling open the courtroom doors to insurers bundling hundreds or thousands of PIP claims together *en masse*—many of which insurers had previously been arbitrated to finality—would run counter to the Supreme Court's original admonition that "approaches which minimize resort to the judicial process, or at least

do not increase reliance upon the judiciary, are strongly to be favored" when interpreting the No-Fault Law. Gambino, 86 N.J. at 107.

To make the opposite point, Allstate hangs its hat on generic language in the IFPA stating that any insurer damaged by an IFPA violation "may sue therefor in any court of competent jurisdiction" to recover enumerated damages. Pb33-34 (quoting N.J.S.A. 17:33A-7(a)). Allstate also points to similar generic forum language in the RICO statute. Pb35 (citing N.J.S.A. 2C:41-4(c)).

But this is boilerplate forum language found in innumerable remedial state statutes. See N.J.S.A. 34:19-5 (stating in CEPA stating that an aggrieved employee "may . . . institute a civil action in a court of competent jurisdiction"); N.J.S.A. 56:8-19 (stating in CFA that a consumer "may bring an action . . . in any court of competent jurisdiction"); N.J.S.A. 10:5-13(a)(2) (stating in the LAD that a plaintiff "may initiate suit in Superior Court"); N.J.S.A. 34:11-56a25 (stating in the WHL that a plaintiff "may bring [an] action" to recover wages and obtain relief "in the Superior Court").

And it is well-settled that CEPA, CFA, LAD, and WHL claims are all subject to arbitration. See Arafa v. Health Express Corp., 233 N.J. 147, 171-72 (2020) (WHL); Atalese, 219 N.J. at 446-48 (CFA); Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131-32 (2001) (LAD); Littman v. Morgan Stanley Dean Witter, 337 N.J. Super. 134, 145-48 (App. Div. 2001) (CEPA). So,

Allstate's argument that the unremarkable forum language in the IFPA and RICO exempts those claims from arbitration is unavailing. See Mount Prospect Chiropractic Ctr., __F.4th at __, 2024 WL 1819645, at *2 (rejecting insurer's reliance on the boilerplate language in N.J.S.A. 17:33A-7(a) of the IFPA as indicative of an intent to exempt the statute from arbitration).

Allstate also points to this Court's statement in Fiouris concerning N.J.S.A. 17:33A-7(a). Pb34-35. Largely for the reasons the Third Circuit articulated in Mount Prospect, Allstate's reliance on Fiouris is misguided. In dicta toward the end of the Fiouris decision, the panel commented that, based on the "may sue therefor in a court of competent jurisdiction" language in the IFPA, it was "clear from this provision that the Legislature did not contemplate that a claim of a violation of the Insurance Fraud Prevention Act would be heard by an arbitrator." 395 N.J. Super. at 161 (citing Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 173-74 (2006)). Respectfully, the Court's parting but sweeping statement about the arbitrability of an IFPA claim under the No-Fault Law was incorrect. See Mount Prospect Chiropractic Ctr., __F.4th at __, 2024 WL 1819645, at *2. And, regardless, in the following paragraph, the panel acknowledged that parties could agree to arbitrate an IFPA claim, undermining Allstate's general proposition that IFPA claims can never be arbitrated. Fiouris, 395 N.J. Super. at 161. As the Sood Defendants observed above, the New

Jersey Supreme Court (other courts too) has held that several statutes with identical language are subject to arbitration. See supra.

Further confirming that IFPA and RICO claims are not exempt from arbitration under the No-Fault Law, the judicial forum provisions of both the IFPA and RICO are expressed permissively, not mandatorily. That is, each say "**may** sue" in court, not shall or must sue in court. N.J.S.A. 17:33A-7(a); N.J.S.A. 2C:41-4(c). New Jersey courts consistently hold that the plain meaning of the term "may" is permissive, not mandatory. See Aponte-Correa v. Allstate Ins. Co., 162 N.J. 318, 325 (2000) ("Under the 'plain meaning' rule of statutory construction, the word 'may' ordinarily is permissive."); State v. Gomes, 253 N.J. 6, 29 (2023) ("Although there can be exceptions, we customarily deem the term 'may' within a statute to connote something that is not obligatory."). The Legislature's pointed use of permissive language in these statutes supports that the Legislature did not intend to exempt PIP claim-based IFPA claims from arbitration. See Prospect Chiropractic Ctr., __F.4th at __, 2024 WL 1819645, at *2 (noting that the IFPA "may sue" language is "permissive" and thus it does not prohibit arbitration). Thus, the trial court was correct when it held that resolution of IFPA claims in court was "not mandatory" given the IFPA's language. Pa6.

The Court should not accord any weight to the dicta in Fiouris that exempted IFPA claims from arbitration, especially because Fiouris involved fraud in the

inception of a policy rather than eligibility to receive PIP benefits under the No-Fault Law and its arbitration mandate. If the Legislature wanted to carve out "fraud" claims like IFPA and RICO from the scope of the No-Fault Law's arbitration provision, it could have done so when it amended the No-Fault Law on several occasions. It did not, however, and the courts cannot read into a statute that which the Legislature expressly omitted. See Tumpson v. Farina, 218 N.J. 450, 467-68 (2014) ("We will not presume that the Legislature intended a result different from what is indicated by the plaint language or add a qualification to a statute that the Legislature chose to omit.").

Moreover, Allstate does not state that it or any other insurer has ever even attempted to file an IFPA or RICO claim in arbitration under the No-Fault Law. So, it's assertion that it cannot and that an arbitrator would not or could not hear the claims is speculative.

C. Allstate's interpretation allows it to sidestep the No-Fault Law.

Allstate's interpretation of the No-Fault Law would lay waste to the Legislature's objective to minimize PIP disputes in court when it adopted the No-Fault Law's arbitration provision. Gambino, 86 N.J. at 107; see also Roig v. Kelsey, 135 N.J. 500, 516 (1994) (explaining that one of the "overwhelming goals" of adopting the No-Fault Law was "reducing court congestion"); Sabato, 337 N.J. Super. at 396 (explaining that insurers cannot be permitted to sidestep arbitration

under the No-Fault Law "simply by characterizing PIP disputes" as some of the kind of dispute and then "seeking judicial resolution of those issues").

Allstate has taken eight-hundred-plus individual PIP claims submitted by the defendants dating from 2009 through 2022, see Pa123-149; Pa67 ¶ 306; Pa69 ¶ 315, many of which it had pre-authorized or have been arbitrated to finality, characterized them fraudulent, and bundled them together under the banner of IFPA, RICO, and declaratory judgment claims in Superior Court. Insurers like Allstate jettison the "PIP dispute" nomenclature to circumvent the No-Fault Law's arbitration command and to get a second bite at the apple in many cases. Allowing Allstate to avoid arbitration merely by calling PIP disputes IFPA and RICO claims would, as the trial court and others rightly noted, "fling open the courthouse doors" when the Legislature purposely closed them to PIP claims. Pa6.

Moreover, absent enforcement of the No-Fault Law's arbitration statute, insurers like Allstate have absolutely no incentive to review and arbitrate PIP claims at the time medical practices submit the PIP claims. Instead, insurers will simply pay PIP claims or arbitrate them and lose and then later—perhaps many years later like Allstate did here and GEICO did in the Mount Prospect cases—gather hundreds or thousands of paid PIP claims together, label them as one large fraud, and file an IFPA/RICO claim in Superior Court seeking to disgorge

those payments and collect treble damages. It is a great business proposition for insurers who then leverage settlements. But it is a bad policy for New Jersey courts (and contrary to the statute adopted by the Legislature). To this end, it would also eviscerate the finality of decisions already reached under the statutorily prescribed arbitration mechanism on individual PIP disputes that insurers did arbitrate.

These conclusions are buttressed by the canons of statutory interpretation, which require courts to harmonize differing statutory provisions. In re Gray-Sadler, 164 N.J. 468, 485 (2000) ("When interpreting different statutory provisions, we are obligated to make every effort to harmonize them, even if they are in apparent conflict."). The way to harmonize the No-Fault Law and IFPA is to hold that claims like Allstate's premised on PIP benefits disputes belong in arbitration—the Legislature's longstanding forum of choice for disputes about a medical practitioner's eligibility or entitlement to PIP benefits. See N.J.S.A. 39:6A-5.1(a); Churm, 276 N.J. Super. at 634 (explaining legislative history of No-Fault Law arbitration). It also means holding that prior individual PIP benefits arbitrations retain their finality, like any other adjudication, and are not merely a practice run for insurers.

The statute specific to PIP benefits disputes, the No-Fault Law with its arbitration provision, governs over the more general statute, the IFPA, which

applies insurance fraud of all stripes. See Williams v. New Jersey State Parole Bd., 255 N.J. 36, 47 (2023) ("A statute or provision relating to a specific subject may be understood as an exception to a statute or provision relating to a general subject."); Matter of Restrepo Dep't of Corr., 449 N.J. Super. 409, 419 (App. Div. 2017) ("It is a well-established precept of statutory construction that when two statutes conflict, the more specific controls over the more general."). Moreover, the No-Fault Law already contemplates that one of its purposes is to combat fraud. N.J.S.A. 39:6A-1.1(b). As such, Allstate should not be permitted to escape the requirement to arbitrate PIP benefits disputes by relabeling the dispute as insurance fraud.

That is the approach required by this Court's decisions in Molino and Sabato. In Molino, the panel cautioned against reading the arbitration requirement "too narrowly" and noted that the statute's requirement to arbitrate any dispute was "unqualified." 289 N.J. Super. at 409. The panel held that the statute "must" be construed "liberally to harmonize the arbitration provision with our firm policy favoring prompt and efficient resolution of PIP disputes without resort to judicial process." Id. at 410. The panel noted that this policy would advance the "overwhelming goals" of the No-Fault Law by "reduc[ing] court congestion" and "comport[ing] with New Jersey's long-standing and strong public policy

favoring arbitration in general." Ibid. (citing Roig v. Kelsey, 135 N.J. 500, 516 (N.J. 1994); Barcon Assocs v. Tri-County Asphalt Corp., 86 N.J. 179, 186 (N.J. 1981)).

The panel further stated that insurance carriers should not be allowed to "frustrate[] these salutary policies" and "should not be empowered to avoid arbitration simply by characterizing PIP disputes as questions of 'entitlement' or 'coverage' and then seeking judicial resolutions of those issues." Ibid. All disputes related to the payment of PIP Benefits are subject to arbitration with the arbitrator "charged with applying the PIP statute as a whole, guided by pertinent case law, and deciding both legal and factual questions in the process." Ibid.

In Sabato, the panel reaffirmed Molino and added that arbitrators, in a PIP benefits dispute, are "empowered to determine the issues of coverage and fraud." 337 N.J. Super. at 394-97. Specifically, the panel held that defenses, including fraud, should be resolved by an arbitrator and that the "statutorily mandated arbitration [was] not as narrow and circumscribed as" the insurance carrier claimed. Id. at 396. Indeed, the panel reminded that arbitration "is mandated by statute" and cannot be evaded by insurances carriers bringing claims in courts. Ibid.

The panel reiterated that the arbitration was "mandated by statute" and that insurers could not avoid arbitration "by characterizing PIP disputes as questions of 'entitlement' or 'coverage' and then seeking judicial resolutions of those issues." Id. at 396-97 (noting that "[a]rbitration proceedings shall be

administered and subject to procedures established by the American Arbitration Assocation").

With those precedents in mind, the resolution of this current dispute should be clear: Allstate must arbitrate the PIP benefits disputes that is has recast to seek judicial resolution. Otherwise, the essential characteristic of finality inherent in an arbitration award under the No-Fault Law would be only illusory and the court would be endorsing an implied exception to the arbitration requirement that inures to the sole benefit of insurers like Allstate.

D. Allstate never raised a constitutional jury trial argument in the trial court.

Allstate tacitly concedes the frailty of its position when it leads with a constitutional argument untethered to the No-Fault Law's statutory text. Pb17-21. Specifically, Allstate argues that interpreting the No-Fault Law to mandate arbitration of its IFPA and RICO claims would violate the New Jersey state constitutional right to a jury trial for IFPA and RICO claims. Pb17. Stated another way, Allstate claims the No-Fault Law is unconstitutional if it requires arbitration of those claims. Pb18. Allstate fails to mention, however, that it never raised this constitutional argument in the trial court. And so, Allstate cannot raise a constitutional argument for the first time on appeal here.

"It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for

such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest." Zaman v. Felton, 219 N.J. 199, 226-27 (2014); see also N. Haledon Fire Co. No. 1 v. Borough of N. Haledon, 425 N.J. Super, 615, 631 (App. Div. 2012). ("An issue not raised below will not be considered for the first time on appeal."). This rule applies even to "constitutional issues" not raised below. State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006). Therefore, this Court should not entertain Allstate's constitutional jury trial argument raised for the first time now.

Allstate's newfound principal reliance on an argument that it has a right to a jury trial for its IFPA and RICO claims is ironic if not disingenuous because Allstate did not request a jury trial in its Complaint. Pa23-100, 150. Thus, it smacks of gamesmanship for Allstate to now argue that interpreting the No-Fault Law to require it to arbitrate its IFPA and RICO claims would be unconstitutional.

Moreover, Allstate's jury-trial argument is another attempt to skirt the No Fault Law's mandatory arbitration provision. The Court should reject Allstate's attempt to recast this appeal as necessary to vindicate a constitutional right to a jury trial where the underlying entitlement PIP benefits are not subject to a jury trial but are subject to mandatory arbitration.

Allstate's reading of the law incentivizes insurers to follow all of the requirements of the No-Fault Law, including preauthorization and payment of

claims or arbitrating disputed claims, and then later repackage the claims and label them insurance fraud. And that is precisely what Allstate and other insurers do. They pay claims for years and then bundle them together and allege fraud, under the penalty of treble damages and statutory fee-shifting provisions. That approach, however, is contrary to the statutory design of the No-Fault Law. Indeed, if Allstate was compelled to raise and prove the alleged fraud during the ordinary course of PIP benefits disputes, there would be no need to, years later, bundle thousands of claims together in a sprawling civil lawsuit. And that is why this Court long ago, in Molino and Sabato, concluded that insurers cannot do what Allstate is trying to do here, repackage PIP disputes and bring them to court.

To be sure, the Supreme Court has held that defendants facing IFPA claims are entitled to a jury trial. Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 134 (2015). Lajara, however, does not preclude the arbitration of IFPA claims. Rather, Lajara analyzes, as a general matter, whether IFPA claims seek relief that is equitable or legal in nature to determine whether a right to a jury trial applies. Id. at 144-46. Ultimately, the Court concluded that the monetary remedies afforded by the IFPA, compensatory damages, treble damages, and attorneys' fees and costs, were legal in nature, justifying a right to a jury trial. Id. at 146.

But, even despite that conclusion, Lajara does not address the intersection of the IFPA and the No-Fault Law. That issue was not in front of the Court. And the

IFPA applies to myriad types of insurance policies and claims, not only to motor vehicle policies and PIP benefits. Allstate wants this Court to apply Lajara broadly without any consideration of the provisions adopted by the Legislature in the No-Fault Law, but this Court should decline to do so and should not provide insurers with a loophole to avoid arbitration.[3]

CONCLUSION

The Court should affirm the trial court's order compelling Allstate to arbitrate its claims. The Court should follow the Third Circuit's lead in Mount Prospect and hold that insurers like Allstate cannot sidestep the No-Fault Law's arbitration provision. As a matter of statutory interpretation and sound policy, Allstate must arbitrate its PIP claim-based IFPA, RICO, and declaratory judgment claims.

Respectfully submitted,

MANDELBAUM BARRETT PC

Dated: May 28, 2024

By: */s/ Andrew Gimigliano*
Andrew Gimigliano
Brian M. Block

[3] Allstate's reliance on Allstate Insurance Co. v. Mun, 751 F.3d 94 (2d Cir. 2014) is irrelevant. That case involves New York's No-Fault Law, an entirely different statutory scheme which does not include the same arbitration mandate as New Jersey's No-Fault Law. This is especially so where the Third Circuit, reviewing the New Jersey No-Fault Law, held that IFPA claims challenging eligibility to receive PIP benefits are subject to the mandatory arbitration regime established by the Legislature. See Mount Prospect Chiropractic Ctr., __F.4th at __, 2024 WL 1819645, at *2-3.

ALLSTATE NEW JERSEY INSURANCE COMPANY; ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY; ALLSTATE FIRE & CASUALTY INSURANCE COMPANY; ALLSTATE NORTHBROOK INDEMNITY COMPANY; and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiffs, v. CARTERET COMPREHENSIVE MEDICAL CARE P.C. D/B/A MONROES COMPREHENSIVE MEDICAL CARE D/B/A FASSST SPORT; COMPREHENSIVE VEIN CARE; INIMEG MANAGEMENT COMPANY, INC.; 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C.; 72 ROUTE 27 REALTY, L.L.C.; MID-STATE ANESTHESIA CONSULTANTS, L.L.C.; NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A.; INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY L.L.C. D/B/A PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY D/B/A METRO PAIN AND VEIN; SOOD MEDICAL PRACTICE L.L.C.; ONE OAK MEDICAL GROUP, L.L.C. D/B/A NEW JERSEY VEIN TREATMENT CLINIC; ONE OAK ORTHOPAEDIC &	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-778-23T1 ON APPEAL FROM: New Jersey Superior Court, Middlesex County, Law Division Docket No. MID-L-1469 SAT BELOW Hon. Christopher D. Rafano, J.S.C.

SPINE GROUP L.L.C.; JOSEPH BUFANO JR., D.C.; CHRISTOPHER BUFANO; MICAH LIEBERMAN D.C; RICHARD MILLS, M.D.; JENNIFER M. O'BRIEN, ESQ; GERALD M. VERNON, D.O.; ALVIN MICABALO, D.O.; JOSE CAMPOS, M.D.; JOHN S. CHO, M.D.; MICHAEL C. DOBROW, D.O.; RAHUL SOOD, D.O.; SACHIN SHAH, M.D.; FAISAL MAHMOOD, M.D.; RAVI K. VENKATARAMAN, M.D.; MANGLAM NARAYANA, M.D.; SHANTI EPPANAPALLY, M.D.; JOHN AND JANE DOES 1 THROUGH 10; XYZ CORPORATIONS 1 THROUGH 10,

Defendants.

BRIEF OF DEFENDANT/RESPONDENT JOHN S. CHO, M.D.

Submitted May 28, 2024

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TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS, AND RULINGS

PRELIMINARY STATEMENT

On October 27, 2023, the trial court entered an Order dismissing and compelling arbitration of all claims asserted against Defendant John S. Cho, M.D. ("Dr. Cho") and other defendants/respondents, including Carteret Comprehensive Medical Care, P.C. ("CCMC"), pursuant to the mandatory arbitration provision in the New Jersey's No-Fault statute (N.J.S.A. 2A:23B-7). Dr. Cho hereby adopts the brief and appendix submitted on behalf of CCMC and respectfully submits that the trial court's decision should be affirmed for the reasons stated therein.

PROCEDURAL HISTORY

On March 15, 2023, Plaintiffs filed their Complaint against Dr. Cho and other defendants. (Pa0023).[1]

On June 2, 2023, Dr. Cho filed a motion to dismiss the claims asserted against him in favor of arbitration under the No-Fault statute and on other grounds. (Pa0341). On April 14, 2023 and April 24, 2023, the other defendants moved to dismiss the claims against them in favor of arbitration under the No-Fault statute and on other grounds similar to those raised by Cho. (Pa0335, Pa0338).

Because the trial court judge then presiding over this matter was being reassigned to another division, Dr. Cho and the other defendants withdrew their

[1] "Pa_" refers the Appendix submitted on behalf of Plaintiffs.

motions to dismiss and refiled them between August 10 and August 16, 2023. (Pa0344, Pa0347, Pa0350).

On October 24, 2023, the trial court held oral argument on the motions to dismiss.

On October 27, 2023, the trial court issued orders and written decision in which it dismissed all claims against Dr. Cho and the other moving defendants in favor of arbitration. (Pa0001 to Pa0022). The trial court did not rule on Dr. Cho's other grounds for dismissal, including the statute of limitations and the failure to state a claim.[2]

ARGUMENT

Dr. Cho hereby adopts and incorporates by reference the legal arguments set forth in the brief submitted on behalf of CCMC.

CONCLUSION

For the foregoing reasons and those set forth in the brief submitted on behalf of CCMC, Dr. Cho respectfully requests that this Court affirm the trial court's October 27, 2023 Order dismissing all claims asserted against him.

[2] Dr. Cho expressly reserves the right to pursue dismissal on these and other grounds if this Court remands any of the claims asserted against him.

Respectfully submitted,

CALCAGNI & KANEFSKY LLP
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By: */s/ Eric T. Kanefsky*
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Dated: May 28, 2024

ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE NORTHBROOK INDEMNITY COMPANY, and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs-Appellants,

v.

CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROE COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE, INIMEG MANAGEMENT COMPANY, INC., 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C., 72 ROUTE 27 REALTY, L.L.C., SAME DAYPROCEDURES, L.L.C., MID-STATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN CENTERS, d/b/a METRO PAIN and VEIN, SOOD MEDICAL PRACTICE, L.L.C., ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC, ONE OAK ORTHOPAEDIC & SPINE GROUP,

SUPERIOR COURT OF THE STATE OF NEW JERSEY

APPELLATE DIVISION
DOCKET NO. A-000778-23

On Appeal From:
Superior Court of New Jersey
Law Division, Middlesex County

Sat Below:
Hon. Christopher D. Rafano J.S.C.

Trial Court Docket No.:
Docket No. MID-L-1469-23

L.L.C., ONE OAK HOLDING, L.L.C., JOSEPH BUFANO, JR., D.C., CHRISTOPHER BUFANO, MICAH LIEBERMAN, D.C., RICHARD J. MILLS, M.D., JENNIFER M. O'BRIEN, ESQ., GERALD M. VERNON, D.O., D.C., ALVIN F. MICABALO, D.O., JOSE CAMPOS, M.D., JOHN S. CHO, M.D., MICHAEL C. DOBROW, D.O., RAHUL SOOD, D.O., SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D., RAVI K. VENKATARAMAN, M.D., MANGLAM NARAYANAN, M.D., SHANTI EPPANAPALLY, M.D.,

Defendants-Respondents.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules and Other Sources

TABLE OF REPLY APPENDIX

PRELIMINARY STATEMENT

Under Defendants' interpretation, AICRA (1) precludes insurers from exercising their right to a jury trial on PIP-related fraud claims; (2) prevents insurers from recovering damages and equitable remedies for PIP-related fraud because Forthright has no power to award such remedies; (3) requires insurers to discover fraud within 105 days of a PIP benefit claim, including when the fraud is based on concealed schemes; (4) mandates alternative dispute resolution (ADR) even of those claims based on complex schemes like unlawfully owned or controlled medical practices, kickbacks, and illegal self-referrals, while also denying discovery to prove those claims; (5) compels insurers to file separate ADR proceedings for each accident rather than a single case concerning all of a provider's fraudulent claims; and (6) forces complex fraud cases into a system designed to handle tens of thousands of small-denomination disputes about medical necessity of treatment.

In other words, Defendants argue that the Legislature enacted an unconstitutional and absurd law that will encourage insurance fraud rather than prevent, deter, and remedy it. Their arguments are wrong.

ARGUMENT

I. The court should not interpret AICRA's ADR provisions in an unconstitutional manner as applied to PIP-related fraud claims.

Defendants[1] incorrectly contend that (1) Plaintiffs cannot argue for the first time on appeal that the court must avoid an unconstitutional interpretation of AICRA, (2) the Legislature intended insurers to raise fraud as a defense to benefit claims in PIP ADR rather than as affirmative claims, (3) AICRA can prohibit jury trials on damages claims because a court can review a PIP ADR award, (4) only defendants have a jury-trial right on IFPA claims, (5) Plaintiffs waived their right to a jury trial by contractually agreeing to arbitrate and can "opt out" of PIP ADR, and (6) insurers can sue in court for non-PIP-related fraud claims and DOBI can sue in court on all IFPA claims. SDb28-31; CCDb44-49.[2]

First, parties must preserve issues at the trial level, but they may raise different theories in support of a litigated issue on appeal. See Docteroff v. Barra Corp. of Am., 282 N.J. Super. 230, 237 (App. Div. 1995) ("[W]e will consider the same issues [raised below] as presented to us, regardless of whether plaintiffs' principal theory has changed."); Regans v. City of New Brunswick, 305 N.J. Super. 342, 355 (App. Div. 1997), abrogated on other grounds by Dzwonar v. McDevitt, 177 N.J. 451 (2003) ("[W]e may consider a plaintiff's contentions on

[1] Capitalized terms and acronyms are listed at Pra001.

[2] CCMC's brief is referred to as "CCDb." The Sood Defendants' brief is referred to as "SDb." Dr. Cho's brief merely joins CCMC's brief.

appeal, even though not specifically argued before the trial or motion judge, as long as the issue on appeal is generally the same issue presented before the trial court."). Plaintiffs preserved the issue of whether AICRA requires ADR of their claims and so may raise additional theories regarding that issue on appeal.

In any event, the court may consider issues raised for the first time on appeal when they "substantially implicate the public interest." N.J. Div. of Youth & Fam. Servs. v. M.C. III, 201 N.J. 328, 339 (2010). Whether AICRA violates the right to a jury trial has widespread impact on insurance companies, medical providers, and consumers who pay insurance premiums, all of which are affected by insurers' ability to obtain effective remedies for insurance fraud. See D'Ambrosio v. Dep't of Health & Senior Servs., 403 N.J. Super. 321, 334 (App. Div. 2008) (addressing issues of statutory interpretation raised for first time on appeal because "they touch upon the public interest and could have widespread importance for other EMTs, rescue squads, health care providers, and other persons and organizations in the field"). The court can and should consider that pure issue of law. See ibid. (holding that "pure issues of law" may be considered though not raised below).

Plaintiffs did not waive a jury trial or engage in "gamesmanship" by not including a jury demand in their complaint. A jury demand is not due until ten

days after the "last pleading" directed to an issue triable by jury. R. 4:35-1(a). Because most defendants moved to compel arbitration rather than answering, Plaintiffs' jury demand was not yet due when the Law Division compelled ADR. Moreover, the answering Defendants demanded a jury trial, see Pa0152-0332, and thus Plaintiffs were not required to do so as well. See 500 Columbia Tpk. Assocs. v. Haselmann, 275 N.J. Super. 166, 170 (App. Div. 1994) (holding that once requested by any party, all parties must consent to waive a jury trial).

Second, the Sood Defendants suggest that there is no constitutional problem with mandatory ADR because fraud can be asserted as a defense to requests for PIP benefits, rather than as an affirmative claim. As an initial matter, that contention is inconsistent with the Sood Defendants' argument that Plaintiffs' affirmative damages claims are subject to ADR. See, e.g., SDb18 (arguing that AICRA "compels Allstate to arbitrat[e] each of its civil claims" (emphasis added)).

The court should, in any event, reject the suggestion that the Legislature intended AICRA to foreclose insurers' affirmative fraud claims in PIP-related cases. That argument could only succeed if the Legislature abrogated insurers' private rights of action under the IFPA and RICO for PIP-related fraud. But an implied repeal "requires clear and compelling evidence of the legislative intent,

and such intent must be free from reasonable doubt." Mahwah Twp. v. Bergen Cnty. Bd. of Tax'n, 98 N.J. 268, 280 (1985). Nothing suggests the Legislature intended AICRA's ADR provision to repeal IFPA and RICO causes of action for PIP fraud; rather, the Legislature sought to ensure that the payment of PIP benefits was not unduly delayed without compromising insurers' ability to combat insurance fraud. See Pb22-49. Because Plaintiffs retain damages claims under the IFPA and RICO for PIP-related fraud, they have a constitutional right to present those claims to a jury.

Further, this case illustrates the sound reasons for which the Legislature provided insurers with that private right of action rather than limiting them to fraud as a defense in PIP ADR. Plaintiffs discovered that CCMC is illegally owned and controlled by a non-physician and that CCMC's benefit claims were therefore fraudulent only with assistance from cooperating witnesses. Pb9-11. Plaintiffs' other fraud claims are based on kickbacks and illegal self-referrals. Pb11-13. Those are not the types of fraud that an insurer can reasonably discover within the strict 105 days to pay or reject a PIP claim.

Third, the provisions of the Alternative Procedure for Dispute Resolution Act on which CCMC relies do not provide the right to a de novo jury trial after ADR, but only limited grounds for a judge to review an award. Our Supreme

Court held in Jersey Central Power & Light Co. v. Melcar Utility Co., 212 N.J. 576 (2013), that compulsory arbitration on claims carrying the right to a jury trial is constitutional only if parties have a right to a de novo trial by jury after an arbitration, id. at 597-98, which AICRA does not provide.

Fourth, our Supreme Court has held that parties have a right to a jury trial on IFPA damages claims based on the nature of the action, not the identity of the party invoking the right. See Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 151 (2015) ("[T]he right to a jury trial . . . is triggered because the IFPA provides legal relief in the form of compensatory and punitive damages and because an IFPA claim is comparable to common-law fraud.").

Fifth, CCMC is wrong that Plaintiffs waived the right to a jury trial in their DPRP. The DPRP at issue in Government Employees Insurance Co. v. Mount Prospect Chiropractic Center, P.A., 98 F.4th 463 (3d Cir. 2024) (GEICO), on which CCMC relies, broadly required arbitration of "any issue arising under [the DPRP], or in connection with any claim for [PIP] benefits." Id. at 470. Plaintiffs' DPRP, in contrast, merely requires ADR to the extent required under AICRA's regulations. See Pa511. Thus, unlike in GEICO, there is no independent contractual basis here to compel arbitration. CCMC is equally wrong that Plaintiffs can "opt out" of PIP ADR; it is mandatory at the election

of a party. Habick v. Liberty Mut. Fire Ins. Co., 320 N.J. Super. 244, 253 (App. Div. 1999).

Finally, that other insurers in different cases or DOBI can seek IFPA damages before a jury is irrelevant. The court must avoid an interpretation that renders the statute unconstitutional as applied in the case before it, even if the statute might be constitutional as applied elsewhere. See, e.g., McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 560 (1993) (interpreting sanctions statute to "avoid declaring the statute unconstitutional as applied to attorneys" although statute could constitutionally be applied to others).

II. The court must interpret AICRA in light of its history, purpose, relationship to the IFPA and RICO, and canons of statutory interpretation, to avoid the absurd result that Defendants advocate.

Mandatory PIP ADR is not commercial arbitration. The dispute on this appeal is not merely about the proper forum to resolve claims. Rather, Defendants insist on PIP ADR because they know that it will prevent insurers from proving and remedying complex fraud. PIP ADR is a one-way street under this court's caselaw: arbitrators may deny or award claimants PIP benefits, but they cannot award insurers remedies such as treble damages and attorneys' fees, which the IFPA and RICO require. Discovery is also limited to the medical necessity of treatment. And insurers likely cannot join as parties those

responsible for the fraud who are not the specific legal entities to which patients assigned PIP benefits because only those entities agree to PIP ADR as a condition of assignment. In addition, insurers need to file separate cases for each injured person or accident, and cannot join all of a healthcare provider's allegedly fraudulent claims in a single case. See Pb39-47. Finally, insurers would be required to present complex insurance-fraud claims to an arbitrator who resolves an average of 100 cases per month. See Pb45.

Defendants do not meaningfully contest any of these points. They label it "speculation" that an arbitrator would not hear affirmative fraud claims. SDb23. But the point that Plaintiffs cannot obtain fraud damages in PIP ADR is based on this court's explanation that "if the insurance carrier is successful [in PIP ADR], there is no award." N.J. Coal. of Health Care Prof'ls, Inc. v. DOBI, 323 N.J. Super. 207, 262 (App. Div. 1999) (Coalition I). Defendants also argue that courts have rejected the view that arbitration is not capable of resolving statutory or complex fraud disputes. SDb19. Those cases, however, concern contractual arbitration—where parties choose the forum and the procedural rules, which ordinarily permit damages to any party and provide reasonable discovery—not involuntary ADR with rules designed to resolve tens of thousands of small disputes about medical necessity of treatment. Even in the distinct context of

contractual arbitration, an arbitration agreement that does not permit the effective vindication of statutory rights—because, for example, it precludes statutory claims or renders them impracticable—is unenforceable. See Am. Express Co. v. Italian Colors Rest., 570 U.S. 228, 235-36 (2013). The Legislature's intent to ensure effective vindication of insurance-fraud claims to benefit the public could not be clearer. See Pb32-39.[3]

Defendants ask the court to ignore the overwhelming evidence that AICRA does not prevent insurers from suing in court for fraud damages based on the language of AICRA's ADR provision. But, as Plaintiffs explained, the correct interpretation of a dispute "regarding the recovery of [PIP] benefits" in N.J.S.A. 39:6A-5.1(a) is in light of that phrase's specialized meaning in the insurance industry: to "recover benefits" means to obtain payment from an insurer under an insurance policy. See Pb26-27; see also N.J.S.A. 1:1-1 ("[W]ords and phrases having a special or accepted meaning in the law, shall be construed in accordance with such technical or special and accepted meaning.").

[3] Defendants incorrectly rely on Gambino v. Royal Globe Insurance Cos., 86 N.J. 100, 107 (1981), where the Court said that the no-fault law should be interpreted to "minimize resort to the judicial process." The Court was referring to the legislative intent to avoid "[t]he problem of long delays in obtaining compensation" for benefits. Id. at 107. That concern is irrelevant to fraud claims seeking damages for benefits already paid, such as in this case.

Thus, a dispute regarding the recovery of PIP benefits is a dispute about whether the insurer must pay PIP benefits it has denied or refused to pay.

This court's decision in Coalition I accords with that distinction: there is no award when an insurer wins in PIP ADR because the process only adjudicates claims to recover benefits by covered individuals or assignees. 323 N.J. Super. at 262. This court held in Nationwide Mutual Fire Insurance Co. v. Fiouris, 395 N.J. Super. 156 (App. Div. 2007) that "N.J.S.A. 39:6A-5.1 only requires arbitration of disputes regarding entitlement to or the amount of PIP benefits," and that the "Legislature did not contemplate that a claim of a violation of the [IFPA] would be heard by an arbitrator." Id. at 160-61. And the distinction is consistent with DOBI's interpretation when it promulgated regulations to "establish procedures for the resolution of disputes concerning the payment of [PIP] . . . benefits." N.J.A.C. 11:3-5.l(a) (emphasis added). That interpretation is entitled to "great deference." Garden State Check Cashing Serv., Inc. v. DOBI, 237 N.J. 482, 489 (2019). The authors of the Gann treatise also agree: PIP disputes are "[d]isputes between an insurer and a claimant as to whether or not benefits are due under the PIP statute," and "such disputes, for practical purposes, will only arise when the insurer denies payment of the claim, in whole or in part, made by the insured or his or her assignee and thus must be initiated

by the insured or his or her assignee." Craig & Pomeroy, N.J. Auto Insurance Law § 10:1 (Gann 2024).

At the very least, Defendants' interpretation is not the only way to read the statute, and so, as our Supreme Court directs, the court should examine all the sources discussed in Plaintiffs' opening brief. See Lee v. First Union Nat'l Bank, 199 N.J. 251, 258-59 (2009) ("If the language of a statute is ambiguous or susceptible to more than one possible interpretation, courts will look to other sources to determine the Legislature's intent."). This court should "construe the language . . . in a manner that sensibly applies the No Fault Act and fulfills its policy objectives." N.J. Mfrs. Ins. Co. v. Hardy, 178 N.J. 327, 333 (2004). "All rules of statutory construction are subordinate to the goal of effectuating the legislative plan as it may be gathered from the enactment when read in full light of its history, purpose, and context." Chi. Title Ins. Co. v. Bryan, 388 N.J. Super. 550, 557 (App. Div. 2006) (internal quotation marks omitted). Defendants' approach must be rejected as it would lead to an absurd and unconstitutional result, violate the overall statutory scheme, conflict with the IFPA and RICO, and frustrate the Legislature's efforts to control insurance fraud. See DiProspero v. Penn, 183 N.J. 477, 493 (2005).

Defendants' reliance on the general/specific canon is also misplaced. The IFPA is the more specific statute concerning insurers' causes of action and remedies for fraudulent insurance claims, see N.J.S.A. 17:33A-2 (stating that a purpose of the IFPA is "requiring the restitution of fraudulently obtained insurance benefits"), and the IFPA is primarily aimed "at the areas of automobile and health insurance, where fraud has been most rampant." Chi. Title, 388 N.J. Super. at 558. Even if that were not true, this court has held that the IFPA's broad remedial purpose mandates its application rather than an arguably more specific statute. See id. at 556-59 (rejecting general/specific canon "[i]n light of the broad purpose of the IFPA" and reconciling apparent conflict with arguably more specific statute by holding that IFPA controlled due to its remedial purpose). Courts "must construe the [IFPA's] provisions liberally to accomplish the Legislature's broad remedial goals." Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 173 (2006).

The cases that Defendants cite are not helpful to them. In State Farm Mutual Automobile Insurance Co. v. Molino, 289 N.J. Super. 406 (App. Div. 1996), this court held that an insurer's declaratory-judgment suit raised a dispute about "entitlement to certain PIP benefits," which the arbitrator had to decide before resolving whether PIP benefits were overdue. Id. at 410. That ruling fits

with Plaintiffs' position—disputes about whether PIP benefits are due are for ADR; disputes about whether an insurer was defrauded into paying benefits are not.

In State Farm Insurance Co. v. Sabato, 337 N.J. Super. 393 (App. Div. 2001), the court held that a PIP arbitrator should have decided whether injured persons' allegedly false and evasive information during an examination under oath was a basis to deny payment of benefits to their assignee physician. Id. at 396-97. That case was also a dispute about whether payments were due, not about whether a provider obtained benefits through fraud.

Defendants also argue that it would be bad policy to allow insurers to make payments and then sue for fraud. See SDb23-26. Plaintiffs did not pay Defendants just so Plaintiffs could later sue in court. Courts would have tools to address that issue if such evidence existed in another case. For example, if an insurer knowingly paid a benefit claim for the sole purpose of creating a fraud cause of action, a court might consider whether the insurer was actually deceived. To the extent that an insurer could have, but chose not to, raise fraud as a defense in PIP ADR when doing so was practicable given the procedural limitations of the process, preclusion principles might apply.

Finally, the Third Circuit's holding in GEICO was based on the narrow

and different arguments before it. GEICO devoted about five pages in its nearly fifty-page briefs in consolidated appeals to whether AICRA requires ADR of PIP-related fraud claims. See Pra044-049, 104-110, 68-172.[4] GEICO instead focused on whether the IFPA precludes arbitration of fraud claims and thus "reverse preempts" the Federal Arbitration Act under the McCarran-Ferguson Act, see Pra033-044, 088-099, 155-168, an issue not relevant here. The Third Circuit's discussion of whether AICRA's ADR provision requires PIP ADR of affirmative fraud claims occupies only two brief paragraphs. See GEICO, 98 F.4th at 469-70.

The reason for that brevity is that GEICO did not make, and thus the Third Circuit did not consider, the arguments before this court. For example, the Third Circuit did not consider how to interpret AICRA to preserve a jury trial on IFPA claims because GEICO waived a jury trial through its broad arbitration agreement. See id. at 469 ("GEICO does not explain why it cannot waive that right [to trial by jury] by agreeing to arbitrate."). GEICO also did not make the extensive arguments about statutory purpose, PIP ADR's specialized rules,

[4] The court can take judicial notice of what was argued in those briefs. See N.J.R.E. 201(4) ("The court may judicially notice . . . records of the court in which the action is pending and of any other court of this state or federal court sitting for this state.").

absurdity, or legislative intent raised here. Indeed, the information before the Third Circuit was so limited that the court mistakenly relied on the American Arbitration Association's Commercial Arbitration Rules to suggest that PIP arbitrators can award insurers treble damages. Ibid. This court should correct the Third Circuit's incorrect interpretation of New Jersey law based on the full record before it.

III. Plaintiffs did not agree in their DPRP to bring their claims to ADR.

CCMC alternatively argues that Plaintiffs agreed to arbitrate their claims through their DPRP. See CCDb23-25, 32-42. As explained, Plaintiffs' DPRP merely incorporates AICRA's ADR regulations. Because AICRA does not require Plaintiffs to bring their claims to ADR, neither does their DPRP.

CONCLUSION

The court should reverse and remand for further proceedings.

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Dated: June 25, 2024

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000778-23T1

Civil Action

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Submitted on: July 25, 2024

JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN CENTERS, d/b/a METRO
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Defendants-Respondents.

BRIEF OF AMICUS CURIAE THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE AND THE NEW JERSEY OFFICE OF THE INSURANCE FRAUD PROSECUTOR

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Statutes

Administrative Rules

Court Rules

INTEREST OF AMICUS CURIAE

This appeal concerns the proper forum for an insurance company to litigate affirmative claims for insurance fraud under the Insurance Fraud Prevention Act ("IFPA"), N.J.S.A. 17:33A-1 to -30. The IFPA sets up statutory and regulatory structures to protect the public from insurance fraud.

The IFPA created the Bureau of Fraud Deterrence ("BFD") within the Department of Banking and Insurance ("Department"). N.J.S.A. 17:33A-8(a)(1). The IFPA's powerful remedies include authorizing the Commissioner of the Department to bring a civil action for penalties, including fines and restitution, for any violation of the IFPA. And under N.J.S.A. 17:33A-7(d), "the commissioner may join in [an insurer's] action for the purpose of seeking judgment for the payment of a civil penalty authorized under [N.J.S.A. 17:33A-5]."

Additionally, the Commissioner may request the Attorney General to bring a criminal action under applicable criminal statutes, for violations of the IFPA. N.J.S.A.17:33A-5(a). The IFPA also created the Office of the Insurance Fraud Prosecutor ("OIFP") under the direction and supervision of the Attorney General. N.J.S.A. 17:33A-16. The statute tasks both BFD and OIFP to work in consultation with one another to "investigat[e] allegations of insurance fraud"

and to "implement[] programs to prevent insurance fraud and abuse." N.J.S.A. 17:33A-8(a)(1).

Because the Legislature designated BFD and OIFP as the agencies "to whom its enforcement is entrusted," this court affords their interpretation of the IFPA "great weight." Peper v. Princeton Univ. Bd. of Trs., 77 N.J. 55, 69-70 (1978). As the agencies charged with combating insurance fraud and enforcing the IFPA in this State, the Department and the OIFP have a substantial interest in ensuring the correct interpretation of the IFPA and that its enforcement goals are not unduly hindered. Thus, the agencies have a strong interest in the outcome of this case, which concerns the appropriate forum to hear cases filed by insurance companies under the IFPA. Because insurance companies play a significant role in combating civil and criminal insurance fraud in New Jersey through use of the IFPA, including in ways that impact the Department and OIFP's work, both the Department and the OIFP appear as amicus to shed light on how the decision below has significant consequences on how fraud claims are heard and resolved.

Moreover, the Department's interest in this case also stems from the fact that it is also the agency charged by the Legislature with promulgating regulations for and supervising the administration of the Personal Injury Protection ("PIP") no-fault arbitration statute. The Automobile Insurance Cost

Reduction Act ("AICRA"), N.J.S.A. 39:6A-1.1 to -35, delegates to the Commissioner the responsibilities to promulgate rules and regulations regarding such dispute resolution and to designate an organization to administer the proceedings. N.J.S.A. 39:6A-5.l(b); see also N.J.S.A. 39:6A-1.2 ("The commissioner may promulgate any rules and regulations . . . deemed necessary in order to effectuate the provisions of this amendatory and supplementary act"). The Commissioner of the Department designates the organization that administers the dispute resolution proceedings regarding medical expense benefits under PIP coverage. N.J.S.A. 39:6A-5.1(b). Thus, it is in a unique position to provide this court with context on how PIP arbitrations operate.

In short, this case bears directly on the functions of the Department and the OIFP in protecting the public from insurance fraud. The trial court's decision to send Allstate's IFPA complaint to PIP no-fault arbitration will profoundly impact civil and criminal insurance fraud cases, and limit the Department's and the OIFP's ability to protect the public. The Department and the OIFP seek to ensure that the court has a full understanding of the case's stakes, and to offer the perspectives of the Department and the OIFP on the proper forum for litigation of IFPA cases.

PRELIMINARY STATEMENT

New Jersey has a strong public policy against insurance fraud. The New Jersey Supreme Court has repeatedly stated that insurance fraud in this State is "a problem of massive proportions that currently results in substantial and unnecessary costs to the general public in the form of increased rates." Merin v. Maglaki, 126 N.J. 430, 436 (1992). In furtherance of that goal, the IFPA authorizes a private right of action in the Superior Court for an insurance company damaged as a result of any violation. An insurance company filing suit under the IFPA may recover compensatory damages, including costs of investigation, costs of suit and attorneys' fees. An insurance company also may be entitled to an award of treble damages, where a pattern of fraud is established. The IFPA further authorizes the Commissioner to intervene in any case brought by an insurance company alleging a violation of the IFPA.

By contrast, the AICRA's PIP no-fault dispute resolution proceedings are designed to only handle simple disputes over individual PIP claims between insured parties and insurance companies, such as disagreements over the amount or legitimacy of medical expenses and related costs. PIP arbitration is generally limited in subject matter and scope to one accident and one injured person. The proceeding is a one-way process. The claim is either allowed or denied. While PIP arbitrators can consider evidence of fraud as a defense when making their

decisions, they cannot grant affirmative relief to insurance companies in the form of any of the IFPA's remedies, such as damages or costs and attorneys' fees.

The decision below held that AICRA required that the causes of action in an insurance company's multi-faceted IFPA complaint against thirty-six defendants be determined in a PIP no-fault arbitration rather than in Superior Court. It is the Department's and OIFP's experience that PIP dispute resolution under AICRA was not designed to, and cannot, adjudicate the types of IFPA claims at issue here. The trial court's decision to send Allstate's IFPA complaint to PIP no-fault arbitration effectively puts an end to the IFPA — and relatedly, RICO anti-racketeering cases claiming insurance fraud. This holding is contrary to the express statutory language in the IFPA and AICRA, which are plainly structured to provide different forums for the diametrically different claims at issue. Moreover, the rules and regulations governing PIP arbitration make clear that they are in no way designed to properly adjudicate IFPA and RICO claims. Finally, the decision below has far reaching consequences that impacts not only private insurance companies, but also the work of the Department and the OIFP, whose work in carrying out New Jersey's strong public policy to confront aggressively the problem of insurance fraud would be hampered if insurance companies cannot litigate IFPA and RICO fraud claims in court.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

The Department and the OIFP mainly rely on the procedural history and statement of facts as presented by Appellant Allstate, (Pb4; Pb7),[2] and highlight the following.

In March 2023, Allstate filed a nine-count complaint against Defendants/Respondents in Superior Court, Middlesex County, Law Division. (Pa23). Allstate provided no-fault automobile insurance policies in New Jersey under which insureds can recover PIP benefits if they are involved in an accident. (Pa25). When insureds receive medical treatment, they typically assign those PIP benefits to their medical providers, who seek payment from Allstate. See N.J.S.A. 39:6A-4 (providing that PIP benefits may be assigned "to a provider of service benefits").

Allstate's complaint alleged that, from 2008 through 2022, Respondents conspired to obtain, through false and misleading insurance claims, more than $1.7 million in PIP benefits from Allstate through more than 800 medical claims. (See, e.g., Pa37; Pa74). Allstate learned after making the benefit payments that Respondent Carteret Comprehensive Medical Care ("CCMC") was illegally

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[1] Because the procedural history and facts are closely related, this brief combines them for efficiency and for the court's convenience.

[2] "Pa" refers to Appellant Allstate's Appendix; "Pb" refers to Allstate's brief filed on March 12, 2024.

structured, and that numerous Respondents had engaged in kickbacks, illegal self-referrals, and a pattern of fraud and racketeering in connection with the services for which they obtained payment. (Pa43-61; Pa87-99).

Allstate's lawsuit centered around CCMC, a medical practice that is alleged to have been structured in violation of the Corporate Practice of Medicine Doctrine ("CPMD"), a regulatory framework designed to prevent the commercial exploitation of medical practices and protect public health and safety by ensuring that such practices are owned and controlled by licensed physicians. (Pa37-68). See Allstate Ins. Co. v. Northfield Med. Ctr., P.C., 228 N.J. 596, 600 (2017); N.J.A.C. 13:35-6.16(f). Allstate's complaint alleged that CCMC's formation and operation contravened the CPMD by allowing non-plenary physicians to exert control over the practice. (Pa43-61; Pa448). Further, the complaint alleged that Respondents violated the statutes and regulations prohibiting medical providers from paying or receiving kickbacks and engaging in self-referrals. (Pa87-99).

Allstate's complaint sought: disgorgement of the $1.7 million in PIP benefit payments; damages and other remedies under the IFPA for self-referrals and kickbacks; and damages and other remedies under the New Jersey anti-racketeering law (N.J.S.A. 2C:41-1 to -6.2) ("RICO") based on the violations of the CPMD and for self-referrals/kickbacks.

In October 2023, the trial court granted three motions by Respondents to compel arbitration of the allegations in Allstate's complaint. (Pa1-22). The court held that the language in AICRA required arbitration, at the election of any party, of "all 'disputes' around the recovery of PIP Benefits." (Pa6-7; Pa13-15; Pa20-22). The trial court reasoned that AICRA's arbitration provision "encompasses a broad array of legal disputes regarding PIP benefits, including mistaken claims for benefits, fraud-based claims, or any other claim including the 'recovery' of PIP Benefits." (Pa6; Pa13; Pa21). The trial court dismissed Allstate's claims without prejudice, including against those defendants that did not move to compel arbitration. (Pa334).

On November 13, 2023, under Rule 2:2-3(b)(8) (permitting appeals as of right from orders compelling arbitration), Allstate appealed. (Pa353). The Department and the OIFP submit this amicus curiae brief in connection with this appeal pursuant to Rule 1:13-9(e).

ARGUMENT

POINT I

A LAWSUIT UNDER THE INSURANCE FRAUD PREVENTION ACT DOES NOT BELONG IN A PERSONAL INJURY PROTECTION NO-FAULT ARBITRATION UNDER N.J.S.A. 39:6A-5.1(a).

The IFPA was enacted "to confront aggressively the problem of insurance fraud in New Jersey." N.J.S.A.17:33A-2. It provides that an "insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction . . . ." N.J.S.A.17:33A-7(a). Until now, courts have interpreted this provision to mean that "the Legislature did not contemplate that a claim of a violation of the Insurance Fraud Prevention Act would be heard by an arbitrator." Nationwide Mut. Fire Ins. Co. v. Fiouris, 395 N.J. Super. 156, 161 (App. Div. 2007).

New Jersey operates under a no-fault insurance system. This means that in the event of an auto accident, an individual's own insurance company covers their medical expenses and other related costs, regardless of who was at fault. Under the AICRA, N.J.S.A. 39:6A-1.1 to -35, every standard automobile liability insurance policy issued or renewed in this State must provide for the payment of PIP benefits to the named insured and members of the insured's family residing in the insured's household without regard to negligence, liability or fault. N.J.S.A. 39:6A-4. Those benefits include medical expenses, lost

wages, and certain other costs resulting from an auto accident, up to the policy limits. N.J.S.A. 39:6A-4.

Disputes can arise regarding the amount or legitimacy of PIP claims. When such disputes occur, a specially created dispute resolution proceeding provides a way to efficiently resolve these issues so that overdue medical bills can be paid. The AICRA provides the following parameters for how PIP claims are resolved:

> a. Any dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage pursuant to section 4 of [L. 1972, c. 70] (C. 39:6A-4), section 4 of [L. 1998, c. 21] (C. 39:6A-3.1) or section 45 of [L. 2003, c. 89] (C. 39:6A-3.3) arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute, as hereinafter provided.
>
> [N.J.S.A. 39:6A-5.1(a).]

The language of N.J.S.A. 39:6A-5.1(a) clearly states that PIP arbitration is applicable to the recovery of medical expense benefits or other benefits provided under the PIP coverage found in automobile insurance policies. PIP dispute resolution only applies to disputes over payment of medical expense benefits with an insured, an injured person, or a medical provider who has an assignment of benefits. See N.J.S.A. 39:6A-4; N.J.S.A. 39:6A-5.1. Here, Allstate's complaint seeks compensatory damages and other remedies allowed

under the IFPA and RICO. (Pa77; Pa81-82; Pa86; Pa105; Pa108-109; Pa112; Pa118-120). The payment of medical expenses is not at issue.

To interpret the meaning of a statute, courts seek "to determine and give effect to the Legislature's intent." In re Registrant H.D., 241 N.J. 412, 418 (2020) (quoting N.J. Div. of Youth & Fam. Servs. v. A.L., 213 N.J. 1, 20 (2013)). "The 'best indicator' of legislative intent" is typically the plain language of the statute. W.S. v. Hildreth, 252 N.J. 506, 518 (2023) (quoting State v. Lane, 251 N.J. 84, 94 (2022) (additional citations omitted)). Courts also read each part of a statute "in context with related provisions so as to give sense to the legislation as a whole." DiProspero v. Penn, 183 N.J. 477, 492 (2005). If the plain language of a statute is clear, the court's task is complete. Sanjuan v. Sch. Dist. of W. N.Y., 256 N.J. 369, 379 (2024) (citing DiProspero, 183 N.J. at 492-93).

The purposes and plain language of the IFPA and AICRA are clear. PIP no-fault arbitrations are intended by the Legislature to resolve expeditiously uncomplicated claims by an insured, an injured person, or a medical provider who has an assignment of benefits, related solely to payment of medical benefits stemming from single accidents, and not broad, complex, multi-defendant IFPA and RICO claims. Affirmative IFPA cases brought by insurance companies belong in Superior Court, and one-way disputes over the payment of PIP benefits

that qualify belong in PIP arbitration. See In re Johnny Popper, Inc., 413 N.J. Super. 580, 589 (App. Div. 2010) (noting "statutes should be interpreted in a manner that avoids unreasonable or absurd results" and rejecting an interpretation that would defeat the purpose of the law). This is reflected in the language of the IFPA and AICRA respectively. It is also reflected in the rules and regulations governing PIP arbitrations, including the implementing regulations at N.J.A.C. 11:3-5.1 to -5.12, and the rules of Forthright, the current Administrator of New Jersey's No-Fault PIP Arbitration Program designated by the Commissioner of the Department pursuant to N.J.S.A. 39:6A-5.1(b). See https://www.nj-no-fault.com/rules ("Forthright's Rules"). (Pa377).

A. The Text And Structure Of The Relevant Statutes Show That A Personal Injury Protection No-Fault Arbitration Was Designed By The Legislature To Be Limited In Subject Matter, Parties And Scope.

"The goal of PIP is to provide prompt medical treatment for those who have been injured in automobile accidents without having that treatment delayed because of payment disputes." Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 609 (2012). "The role of arbitration in automobile insurance matters is to provide for the prompt payment of PIP benefits to ensure that people legitimately injured because of an automobile accident receive reasonable and necessary medical treatment in a prompt and

expeditious manner." Allstate Ins. Co. v. Lopez, 311 N.J. Super. 660, 678 (Law Div. 1998).

"The evident purpose of [N.J.S.A. 39:6A-5.1] is to establish an expeditious non-judicial procedure for resolving any dispute regarding the payment of PIP benefits, in furtherance of the No-Fault Act's objectives of facilitating 'prompt and efficient provision of benefits for all accident injury victims . . . .'" Endo Surgi Ctr., P.C. v. Liberty Mut. Ins. Co., 391 N.J. Super. 588, 594 (App. Div. 2007) (quoting Gambino v. Royal Globe Ins. Cos., 86 N.J. 100, 105, 107 (1981)).

By contrast, the goal of the IFPA is "to confront aggressively the problem of insurance fraud in New Jersey." N.J.S.A.17:33A-2. It provides a private right of action in the Superior Court for an insurance company damaged as a result of any violation of its provisions. The goals of the IFPA is not to facilitate efficient benefits payments; it is to root out fraud.

First, the plain language of N.J.S.A. 39:6A-5.1(a) limits a PIP arbitration to "[a]ny dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage" pursuant to N.J.S.A. 39:6A-4 (Personal Injury Protection), N.J.S.A. 39:6A-3.1 (Basic Automobile Policies) or N.J.S.A. 39:6A-3.3 (Special Automobile Insurance Policies), arising out of the operation, ownership, maintenance or use of an

automobile. An IFPA case does not constitute a dispute under N.J.S.A. 39:6A-5.1 because it is not a dispute "regarding the recovery of medical expense benefits." (emphasis added). Rather, it is a dispute about whether an entity has defrauded an insurance company. Thus, by its plain terms, IFPA claims are not subject to PIP arbitration.

Second, the Legislature could not have intended IFPA claims to be subject to PIP arbitration because an insurance company who claims fraud cannot obtain any of the relief permitted by the IFPA in a PIP no-fault arbitration. The IFPA authorizes an insurance company that has been damaged as a result of any violation to bring a private right of action. N.J.S.A. 17:33A-7. An insurance company filing suit under the IFPA has powerful remedies, and may recover compensatory damages, including costs of investigation, costs of suit and attorneys' fees. N.J.S.A. 17:33A-7(a). An insurance company also may be entitled to an award of treble damages, where a pattern of fraud is established. N.J.S.A. 17:33A-7(b). Allstate sought this relief in the Law Division. (Pa86). The IFPA authorizes the Commissioner to intervene in any case brought by an insurance company alleging a violation of the IFPA. N.J.S.A. 17:33A-7(d).

A PIP arbitration, on the other hand, cannot award damages to insurance companies under the IFPA and other statutes, such as RICO. While PIP arbitrators can consider evidence of fraud as a defense when making their

decisions, they cannot grant affirmative relief to insurance companies, such as any of the remedies contained in the IFPA. N.J.S.A. 39:6A-5.1(d) and (e). The arbitration is generally limited to one accident and one injured person, and is a one-way process. The claim is either allowed or denied.

The possible remedies in a PIP arbitration are therefore very limited, further evidencing the Legislative intent that PIP arbitration is designed to resolve uncomplicated claims relating to prompt payment of medical benefits. The PIP arbitrator's power is limited to either referring the matter to a medical review organization, or to award reimbursement for the treatments provided. No other remedy is authorized. N.J.S.A. 39:6A-5.1(d) and (e).

The PIP arbitrator's remedial authority is limited to "reimbursement . . . with interest" following "a determination that all or part of a treatment or treatments, diagnostic test or tests or service performed, or durable medical goods provided are medically necessary and appropriate." N.J.S.A. 39:6A-5.1(e). The arbitrator is not authorized to make any award to an insurance company. In addition, the arbitrator cannot impose liability upon parties who never signed a bill or made a claim for services.

In comparison, the IFPA and RICO, by definition, require that a successful insurer plaintiff be awarded compensatory damages. N.J.S.A. 17:33A-7(a) and (b). Moreover, under the IFPA, all compensatory damages, defined to include

investigatory expenses, costs of suit and attorneys' fees, may be trebled. Allstate v. Lajara, 222 N.J. 129, 145 (2015). Similarly, RICO provides for treble damages, investigatory expenses, costs of suit and attorneys' fees. N.J.S.A. 2C:41-4(c).

Further, the New Jersey Constitution guarantees the right to a jury trial for causes of action - even statutory causes of action - that sound in law rather than equity." Lajara, 222 N.J. at 142. The Court in Lajara found that a private-party's right to a jury trial is triggered "because the IFPA provides legal relief in the form of compensatory and punitive damages and because an IFPA claim is comparable to common-law fraud." Id. at 151. The Court found that the defendants had a right to a jury trial due to claims brought by the insurance company plaintiffs under the IFPA. Id. at 134-135, 151. In contrast, in Endo Surgi Ctr., 391 N.J. Super. at 594, the court found that "there is no right to a jury trial in an action for unpaid PIP benefits."

While fee shifting in a successful plaintiff's favor is mandatory under the IFPA and RICO, PIP arbitration does not permit arbitrators to award attorneys' fees to insurers. "We find nothing in the Legislature's findings and declarations contained in N.J.S.A. 39:6A-1.1(b) expressing an intention to permit an award of counsel fees to an insurance carrier against an insured or injured person in

the statutory dispute-resolution process." N.J. Coal. of Health Care Pros., Inc. v. Dep't of Banking and Ins., 323 N.J. Super. 207, 263 (App. Div. 1999).

PIP arbitration also does not permit an arbitrator to award punitive damages, and a PIP arbitrator cannot award the treble damages required by the IFPA and RICO. See Lajara, 222 N.J. at 144-45 ("Treble damages [under the IFPA] are intended to punish, and only partly to compensate, and therefore have the classic features of punitive damages." (citing Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 185 (2006)). That conclusion is equally applicable to RICO.

Nor does a PIP arbitrator have authority to grant equitable relief. Successful IFPA plaintiffs are entitled to all available equitable remedies. Lajara, 222 N.J. at 144. RICO empowers the Superior Court to impose a variety of equitable remedies, none of which are within a PIP arbitrator's powers. N.J.S.A. 2C:41-4(a) authorizes the court, among other things, to: (1) order a person to divest their interests in any enterprise; (2) dissolve or reorganize any enterprise; (3) restrict a person's future activities or investments; (4) revoke a corporation's charter, or license to do business in the State; (5) revoke any licenses granted by any State agencies; (6) issue cease and desist orders to any person for any conduct; and (7) order restitution, civil monetary penalties and forfeiture of property. A PIP arbitrator's complete lack of authority to make mandatory damage awards and grant equitable relief plainly shows that the

Legislature did not intend that IFPA and RICO claims be decided in a PIP arbitration.

Finally, the very limited discovery allowed in a PIP arbitration clearly shows that the Legislature never intended that broad, multi-defendant IFPA and RICO claims be arbitrated there. The statute, N.J.S.A. 39:6A-13, does not permit discovery of the exact types of information required to prosecute the CPMD, kickback and self-referral violations alleged in this case. Instead, it only provides for discovery rules specific to individual claims regarding benefits; it thus provides specific rules relating to matters like lost earnings, medical reports, and physical or mental examinations. Had the Legislature intended PIP arbitration to include IFPA claims, its discovery parameters would not have been so narrow.

B. The Practical Implementation Of The Legislature's PIP Arbitration Rules Do Not Allow For Adjudication Of IFPA And RICO Claims.

Were the statutory evidence not enough, the rules governing PIP dispute resolution also make plain the limited scope of such proceedings, and why they are not fit for IFPA claims.

Based on authority granted by the Legislature, N.J.S.A. 39:6A-5.1, the Commissioner promulgated regulations to "establish procedures for the resolution of disputes concerning the payment of medical expense and other

benefits provided by personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1(a). These regulations demonstrate the fulfilment of legislative intent for AICRA PIP arbitration to apply to disputes about whether an insured or assignee can recover unpaid PIP benefits. There is no indication in the regulations that AICRA was intended to deal with and dispose of claims made by an insurer for damages relating to fraudulent practices and violations of the IFPA and RICO. Tellingly, the term "fraud" does not exist in the regulations. See N.J.A.C. 11:3-5.1 to 5.12. Instead, many of the substantive provisions concern the use of medical review organizations to conduct evaluations of the necessity, nature, and scope of medical treatment in individual cases. See N.J.A.C. 11:3-5.8 to 5.11. By contrast, cases involving insurance fraud frequently involve many parties, complex schemes, and require large amounts of fact and financial discovery. But there is nothing in the regulations providing parameters for such inquiries.

A PIP arbitration is a mechanism designed to provide a streamlined and specialized process to resolve disputes between insured parties and insurance companies regarding PIP claims without the need for court litigation. It offers an efficient and cost-effective alternative to traditional court litigation, ensuring that claimants can receive fair and timely resolutions to their disputes. This is further demonstrated by the court rules, which state that a "non-attorney may

represent an insurance company employer at a Personal Injury Protection (PIP) arbitration." R. 1:21-1(g). It is difficult to imagine, however, how a non-attorney could possibly represent an insurance company in an IFPA or RICO claim. That neither the Commissioner's regulations nor the court rules contemplated such complex disputes in PIP arbitration is a very significant indication that such arbitrations were never intended to cover IFPA or RICO claims.

Moreover, the rules created by Forthright, the administrator of the PIP program under the authority granted by N.J.S.A. 39:6A-5.1(b), removes any doubt: PIP arbitration proceedings are not designed for IFPA or RICO claims. All PIP arbitrations must be conducted exclusively under Forthright's Rules. N.J.A.C. 11:3-5.4(a)(6). Arbitration by any other organization, or by any other rules, is not authorized. Several aspects of Forthright's Rules are illustrative of the understanding that the PIP program was never intended to cover claims under the IFPA and RICO.

For one, both the IFPA and RICO involve the aggregation of claims against multiple defendants who acted in concert, and the aggregation of similar claims, to establish "patterns" of IFPA or racketeering violations. N.J.S.A. 17:33A-7(a) and (b) provides that insurance companies damaged by "a violation of any provision of" the IFPA "shall recover treble damages if the court

determines that the defendant has engaged in a pattern of " IFPA violations. Similarly, besides making it "unlawful for any person to conspire . . . to violate" any part of N.J.S.A. 2C:41-2, the RICO statute's definition of a "Pattern of Racketeering Activity" specifically authorizes the aggregation of multiple defendants and claims as one would find in any complex insurance fraud litigation. N.J.S.A. 2C:41-1(d).

These statutory causes of action are completely incompatible with Forthright's Rules, which require claims based on "only one accident" or "only one injured person," or "a maximum of four injured persons who occupied the same vehicle on the same date of accident." (Pa384). In a PIP arbitration, neither claim, nor party, aggregation is possible. Furthermore, Forthright's Rules on claim and party joinder provide that a Demand for Arbitration shall include claims for only one accident unless the claims are for the same injured person. Ibid. A Demand for Arbitration shall include the claims of only one injured person, except that one Demand for Arbitration may include the claims of a maximum of four injured persons who occupied the same vehicle on the same date of accident. Ibid. Here, Allstate's complaint seeks damages related to fraudulent treatment in over 800 medical claims due to a conspiracy among thirty-six defendants. (Pa23-34; Pa123-44). The defendants include non-medical provider corporations, and a layperson and attorney, who are not

insureds or injured persons. Within these confines, Allstate's IFPA claims cannot be heard according to Forthright's Rules.

For another, discovery in the PIP arbitration process is non-existent. Forthright's Rules do not provide for the types of discovery that a party bringing (or defending) a large and complex case alleging IFPA violations would require to prove (or rebut) the allegations and penalties that are being sought. Beyond N.J.S.A. 39:6A-13, discovery is otherwise highly curtailed in a PIP arbitration. There are no procedures in place for discovery tools such as interrogatories, notices to produce documents, party or non-party depositions, or subpoena power. There is no authority to issue, or enforce, subpoenas, compel depositions, or compel the production of documents. (Pa377). Under §7 of Forthright's Rules, the party filing an arbitration demand submits whatever "amounts claimed, bills and assignments" it believes are necessary. (Pa383-84). Forthright's Rule §8 describes a respondent's reciprocal, yet permissive, discovery obligation. (Pa385). Forthright's Rules contain no mechanism to compel or enforce the exchange of documents and evidence. (Pa395). The result of this limited subject matter and scope of review is that it is impossible for PIP arbitrators to resolve the issues in a large and complex IFPA case.

Even the conduct of the PIP arbitration hearing is informal, without the right to compel the testimony of a party-opponent. (Pa396). If there is a dispute,

the arbitrator may, under §40, establish an "exchange of information," but there is a clear presumption that such information is limited to the items described in N.J.S.A. 39:6A-13 concerning an accident victim's earnings and medical history. (Pa395). As discussed above, Forthright's Rules do not authorize production of information relevant to the specific issues in an IFPA or RICO case. And Forthright's Rules are also silent as to what happens if either party fails to comply with any such "exchange of information." The PIP arbitration rules do not include any method of discovering what evidence is in the other party's possession through interrogatories, document demands, or depositions.

Traditional discovery methods and evidentiary rules under the established New Jersey Court Rules are necessary to properly evaluate claims of insurance fraud under the IFPA and RICO. Without access to the liberal discovery afforded by the court rules, a plaintiff will be unable to prove the critical issues in an IFPA and RICO case. Further, a plaintiff will be unable to discover the extent of a defendant's fraudulent activities, or determine whether a party not yet named in the complaint may also be liable.

Forthright's Rules make it abundantly clear that PIP arbitration was never intended to go beyond garden-variety PIP disputes, and that arbitration of complex IFPA and RICO claims is not only inappropriate, but impossible. (See, e.g., Pa384; Pa395). As an example, the violations of the CPMD that Allstate

alleges here, were found to violate the IFPA in Allstate v. Northfield, 228 N.J. at 621-27 (defendants knowingly assisted in violating rules of the State Board of Medical Examiners and submitted ineligible and fraudulent medical claims for reimbursement through that practice structure, contrary to law). It is impossible to bring a CPMD case in the limited confines of a PIP arbitration. To hold otherwise would unfairly deny clear rights under the IFPA, RICO, and established case law, and would nullify the Legislative intent to confront aggressively the problem of insurance fraud underlying the IFPA.

And finally, contrary to Respondents' arguments, not only is the Third Circuit's decision in Gov't Emps. Ins. Co. v. Mount Prospect Chiropractic Ctr., P.A., 98 F.4th 463 (3d Cir. 2024) ("GEICO"), not precedential or binding here, its conclusions should be completely rejected. See State v. O'Donnell, 255 N.J. 60, 81 (2023) (On questions that involve state statutory law, federal court opinions are looked to "for their persuasive reasoning, but their conclusions are not binding authority."). For the reasons discussed above, the Third Circuit's cursory and flawed analysis and holding in GEICO that an insurer's affirmative IFPA claims are subject to PIP arbitration is simply wrong on numerous levels.

For example, the Third Circuit refers to rules of the American Arbitration Association ("AAA") in support of its decision. But, as explained above, AAA does not administer PIP arbitrations in New Jersey; Forthright does under different rules.

Further, relying on these inapplicable AAA rules, and with no analysis of the applicable statutes, regulations, and rules, the Third Circuit jumped to the incorrect conclusion that a PIP arbitration can award all of the remedies an insurer is entitled to under the IFPA. GEICO, 98 F.4th at 469.

As discussed, contrary to the holding in GEICO, neither the plain language of the IFPA, AICRA, the Department's regulations or Forthright's Rules, allow an insurer to obtain an affirmative recovery in a PIP arbitration, much less the remedies allowed by the IFPA. The Third Circuit's statement that an insurer's affirmative IFPA claims are an "effort to recover medical expense claims" is an incorrect holding based on an incomplete and flawed analysis of New Jersey law. GEICO, 98 F.4th at 467. The Third Circuit further oversimplified the alleged fraud underpinning the IFPA claims as "billing for fictitious or unnecessary care." Id. at 469-70. For these reasons, the Third Circuit's decision in GEICO should be completely rejected here.

POINT II

SERIOUS HARM TO THE PUBLIC WILL RESULT IF INSURANCE FRAUD PREVENTION ACT CASES ARE LIMITED TO PERSONAL INJURY PROTECTION NO-FAULT ARBITRATION.

As noted, the Legislature enacted the IFPA "to confront aggressively the problem of insurance fraud in New Jersey." N.J.S.A. 17:33A-2. In Merin, 126

N.J. at 439, the Supreme Court recognized the magnitude of the problem of insurance fraud in the State, and noted that fraud constitutes "approximately ten to fifteen percent of all insurance claims." Consequently, courts "must construe the Act's provisions liberally to accomplish the Legislature's broad remedial goals" in enacting the statute. Liberty Mut. Ins. Co. v. Land, 186 N.J. at 173. Yet the decision below would do the opposite. Insurance companies — whose role in investigating and bringing actions to enforce against insurance fraud is significant — would become all but unable to use the IFPA to combat the huge problem of fraud in the insurance industry if an in-court forum were not available. But that also has significant downstream consequences. The efforts of the Department and the OIFP in protecting the public from insurance fraud receive invaluable assistance from investigations and referrals from, and the prosecution of IFPA cases by, insurance companies. By hampering the ability of insurance companies to investigate and bring such actions, the decision below also constrains the State's ability to do the same.

The Department, through its Bureau of Fraud Deterrence, is charged with protecting the public from insurance fraud — a mission that is encumbered by the PIP arbitration decision below. The IFPA provides for a civil enforcement action under the police power of the State against any person who violates the statute and establishes sanctions in the form of civil penalties, attorneys' fees

and costs. See N.J.S.A. 17:33A-1 to -30. The Department is allowed to, and does, intervene in IFPA cases filed by insurance companies to also seek civil penalties. See Lajara, 222 N.J. at 152 ("[T]he Commissioner may join in [an insurer's] action for the purpose of seeking judgment for the payment of a civil penalty authorized under [N.J.S.A. 17:33A-5]."") (quoting N.J.S.A. 17:33A-7(d)) (alterations in original)). In such cases, the Department works in conjunction with insurance companies to combat insurance fraud. But the Department cannot intervene in IFPA cases that are sent to PIP arbitration, since those proceedings do not contemplate intervenor action by the Department to enforce the IFPA. As a result, the Department cannot exercise its authority to assess statutory civil penalties in IFPA cases in PIP arbitration. Thus, shunting IFPA cases to PIP arbitration is to also foreclose an important tool for the Department's efforts to combat insurance fraud.

The decision below affects the work of the OIFP as well. In addition to coordinating all insurance-related anti-fraud activities of State and local departments and agencies, the IFPA directs the OIFP to provide any assistance necessary to any State agency in overseeing administrative enforcement activities. N.J.S.A. 17:33A-24(a). Under the direction of the Attorney General, the OIFP shall also "[f]ormulate and evaluate proposals for legislative, administrative, and judicial initiatives to strengthen insurance fraud

enforcement." N.J.S.A. 17:33A-24(b). The OIFP investigates a wide range of insurance fraud schemes and serves as the focal point for prosecuting all insurance fraud in the State of New Jersey. And pursuant to the IFPA, the OIFP is obligated to investigate all referrals it receives from insurers, State agencies, or county and municipal governments, and prosecute where appropriate. N.J.S.A. 17:33A-19.

In fact, most cases investigated by the OIFP are the result of referrals from the Special Investigations Units of insurance companies, which are required by law to refer matters of suspected insurance fraud to the OIFP. N.J.S.A. 17:33A-9. If the referral is deemed appropriate for a criminal investigation, the case may be assigned to the OIFP or a County Prosecutor's Office.[3] But if insurance companies are unable to access a Superior Court forum for its insurance fraud claims, there will undoubtedly also be an impact on their will and ability to investigate insurance fraud. That hinders an important source of information for OIFP's own criminal investigations.

As noted, the stated purpose of the IFPA is to aggressively confront the problem of insurance fraud in New Jersey. With regard to remedies, the IFPA directs the Department and the OIFP to prioritize the restitution of moneys to

[3] If the referral is deemed appropriate for a civil investigation, it may be handled by the Department for civil investigation and recovery.

insurers and others who are defrauded as a major priority. N.J.S.A. 17:33A-2; N.J.S.A. 17:33A-26. In furtherance of this stated objective, insurance companies must also continue to have access to all of the powerful remedies listed within the IFPA, such as the recovery of compensatory damages, treble damages, costs of investigation, costs of suit, and attorneys' fees, to fight and deter insurance fraud. Any statutory interpretation that limits the relief ensured by the IFPA would have the unintended effect of undermining the purpose of the IFPA while also incentivizing insurance fraud.

Nor is there any indication that by enacting AICRA to manage and expeditiously resolve PIP disputes by medical providers, the Legislature intended to change the intent and remedial goals of the IFPA. AICRA also contributes to the public policy of aggressively confronting insurance fraud by supplementing, not supplanting, existing fraud prevention measures like the IFPA and RICO. The Legislature recognized that, whether in the form of inappropriate medical treatments, inflated claims, staged accidents, or any other form, insurance fraud must be "uncovered and vigorously prosecuted," and "greater consolidation of agencies" was needed for "sufficient coordination to aggressively combat fraud," which thus led to the creation of the OIFP. N.J.S.A. 39:6A-l.1. Moreover, AICRA calls for more, not less, statewide fraud fighting capabilities. Thus, arbitration of IFPA claims would be contrary to both the

spirit and the letter of not only the IFPA, but also the AICRA. See N.J.S.A. 17:33A-9 (requiring referrals to the BFD and OIFP of alleged violations for investigation).

A decision to send affirmative insurance fraud actions to PIP no-fault dispute resolution proceedings will negatively impact the fight against insurance fraud, and will severely weaken the collective ability of carriers, the Department, and the OIFP to combat insurance fraud within the State of New Jersey. The Legislature did not so intend.

CONCLUSION

For these reasons, this court should hold that a lawsuit under the Insurance Fraud Prevention Act is not subject to Personal Injury Protection No-Fault Arbitration under N.J.S.A. 39:6A-5.1(a), and reverse the decision below.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: s/Jeffrey S. Posta
Jeffrey S. Posta
Deputy Attorney General

Dated: July 25, 2024

ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE NORTHBROOK INDEMNITY COMPANY, and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiffs-Appellants, v. CARTERET COMPREHENSIVE MEDICAL CARE, P.C. d/b/a MONROE COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE, INIMEG MANAGEMENT COMPANY, INC., 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C., 72 ROUTE 27 REALTY, L.L.C., SAME DAYPROCEDURES, L.L.C., MID-STATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN CENTERS, d/b/a METRO PAIN and VEIN, SOOD MEDICAL PRACTICE, L.L.C., ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC, ONE OAK ORTHOPAEDIC & SPINE GROUP, L.L.C., ONE OAK HOLDING, L.L.C, JOSEPH BUFANO, JR., D.C., CHRISTOPHER BUFANO, MICAH LIEBERMAN, D.C., RICHARD J. MILLS, M.D., JENNIFER M.	SUPERIOR COURT OF THE STATE OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-000778-23 On Appeal from: Superior Court of New Jersey, Law Division, Middlesex County Sat below: Hon. Christopher D. Rafano, J.S.C. Trial Court Docket No.: Docket No. MID-L-1469-23

O'BRIEN, ESQ., GERALD M. VERNON, D.O., D.C., ALVIN F. MICABALO, D.O., JOSE CAMPOS, M.D. JOHN S. CHO, M.D., MICHAEL C. DOBROW, D.O., RAHUL SOOD, D.O., SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D., RAVI K. VENKATARAMAN, M.D., MANGLAM NARAYANAN, M.D., SHANTI EPPANAPALLY, M.D.,

Defendants-Respondents.

BRIEF OF AMICUS CURIAE
CITIZENS UNITED RECIPROCAL EXCHANGE
Submitted June 25, 2024

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

PRELIMINARY STATEMENT

Before the passage of the Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1, et. seq. ("IFPA"), investigating, pursuing, and recovering fraudulently obtained payments by an auto insurer was a costly prospect. If a carrier believed an insured or a health care provider committed fraud, it had little recourse other than to pursue common law fraud claims, requiring an extraordinary investment of time, money, and effort to make itself whole. Even if the insurer was successful, more often than not it was a pyrrhic victory - the fraudulent party had to return what they stole (if they still had the money) and the insurer was out thousands of dollars in fees and expenses, which could reasonably exceed the amount recovered.

The passage of the IFPA changed that calculus. Now, insurers are empowered to investigate fraud without fear of a moral victory only, due to the significant deterrents and tools created by the IFPA to combat such abuse. The Law Division's decision in this case, if allowed to stand, will upend decades of well-settled New Jersey law and practice by forcing insurers to pursue IFPA claims in personal injury protection ("PIP") dispute resolution under the Automobile Insurance Cost Reduction Act ("AICRA"). The dispute resolution forum is simply not designed for or capable of adjudicating IFPA claims. Accordingly, Citizens United Reciprocal Exchange ("CURE") respectfully submits this brief as amicus curiae

in support of the Allstate Plaintiffs' ("Allstate") Appeal of the Law Division's October 27, 2023 orders and decision dismissing Plaintiffs' case and remanding Plaintiffs' IFPA claims to dispute resolution.

By granting the Defendants' motions to dismiss the IFPA claims and compelling Allstate to arbitrate those dismissed claims, the Law Division disregarded the IFPA and its clear mandate that "insurers may sue. . . in any court of competent jurisdiction." N.J.S.A. 17:33A-7(a). The Law Division ignored the plain language of the IFPA, AICRA, the regulations interpreting AICRA, and thirty (30) years of State law precedent. Instead, the Law Division usurped the role of the legislature and the New Jersey Department of Banking and Insurance ("DOBI"), by engaging in de facto rulemaking and creating new policies and procedures clearly inconsistent with the legislative intent. The Law Division's decision also deprives parties of their constitutional right to a jury trial.

If the Law Division's decision were to become the law of this State, insurers would lose significant incentives to investigate and root out fraud. Subjecting IFPA claims to dispute resolution – with limited discovery and the inability of arbitrators to award treble damages, attorneys' fees, and other statutorily-prescribed damages – insurers such as CURE simply cannot afford to incur the time and money necessary to pursue such claims. Thus, the burden

of fighting against fraud and abuse in the system would fall solely on the State, through prosecutions by the Attorney General's office. The legislature clearly did not intend for this outcome when drafting the IFPA and AICRA, and Courts in this State have consistently agreed that jurisdiction over IFPA claims is properly in the Superior Court.

Accordingly, because the Law Division's decision is inconsistent with the statutory intent, and the public policy of combating and preventing insurance fraud in this State, CURE respectfully urges this Court to reverse the Law Division's decision.

INTEREST OF AMICUS CURIAE

The Supreme Court has repeatedly recognized that insurance fraud is a "problem of massive proportions" resulting in "substantial and unnecessary costs to the general public in the form of increased rates." Merin v. Maglaki, 126 N.J. 430, 436 (1992). According to the FBI, the total cost of insurance fraud (non-health insurance) is estimated to be more than $40 billion per year.[1] The New Jersey Office of the Insurance Fraud Prosecutor estimates that insurance fraud costs each New Jersey family over $1,300.00 every year.[2]

[1] https://www.fbi.gov/stats-services/publications/insurance-fraud
[2] https://www.youtube.com/watch?v=zlpRfryV39c

CURE, as an insurance carrier issuing insurance primarily to New Jersey drivers and accountable to those policyholders believes that it can, as a friend of the Court, share important information about the impact this litigation will have on the insurance landscape. CURE therefore respectfully seeks leave to participate in this matter as amicus curiae so that it may explain why the Court should reverse the Law Division's orders compelling arbitration and dismissing Plaintiff's claims.

Currently, the party insurance company is a large, national insurer with obligations to stockholders. CURE, as a domestic, reciprocal exchange, offers unique insight to the important policy considerations of reversing the Law Division's decision and in doing so, upholding the legislative intent of the IFPA.

STATEMENT OF THE CASE

In the interest of brevity, amicus curiae hereby incorporates by reference and relies on the Procedural History in the brief submitted by Petitioner/Appellant Allstate, accepting the facts as stated therein.

LEGAL ARGUMENT

POINT I

THE LAW DIVISION ERRED BY DISMISSING ALLSTATE'S IFPA COMPLAINT AND COMPELLING ARBITRATION OF THE IFPA ALLEGATIONS, AS THE PIP DISPUTE RESOLUTION FORUM (FORTHRIGHT) CAN NEVER HAVE JURISDICTION OVER: (1) THE NON-MEDICAL PROVIDER DEFENDANTS; AND (2) AN INSURANCE CARRIER'S IFPA CLAIMS.

AICRA is explicitly clear concerning both the parties and the claims to which it applies. According to N.J.S.A. 39:6A-4, AICRA's provisions apply to insureds, injured persons, and medical providers *only*. Moreover, an insurer's claims for violations of the IFPA are not "disputes involving medical expense benefits." N.J.S.A. 39:6A-5.1(c) citing to N.J.S.A. 39:6A-4. Plaintiffs' case includes three non-medical provider corporation Defendants (Inimeg Management Company, Inc., 311 Spotswood-Englishtown Road Realty, LLC, and 72 Route 27 Realty, LLC); one layperson Defendant (Christopher Bufano) who is not an insured and/or injured party; and one attorney Defendant (Jennifer M. O'Brien, Esquire), who is not an insured and/or injured party. The mandatory arbitration provisions do not apply to these five Defendants or to the Plaintiffs' IFPA claims.

A. Parties Subject to PIP Arbitration

N.J.S.A. 39:6A-5.1(a) is the enabling statutory provision allowing for PIP arbitration and it states, in relevant part:

> Any dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage pursuant to section 4 of P.L. 1972, c. 70 (C.39:6A-4) . . . arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute, as hereinafter provided.

According to the above provision, the only disputes that may be subject to ADR are those regarding the recovery of medical expense benefits provided under N.J.S.A. 39:6A-4. N.J.S.A. 39:6A-4 states, in relevant part:

> . . . every standard automobile liability insurance policy issued or renewed on or after [the effective date of the Automobile Insurance Cost Reduction Act ("AICRA")] shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind, **to the named insured and members of his family residing in his household** who sustain bodily injury as a result of an accident while occupying, entering into, alighting from or using an automobile, or as a pedestrian, caused by an automobile or by an object propelled by or from an automobile, **and to any other persons sustaining bodily injury while** occupying, entering into, alighting from or using the automobile of the named insured, with permission of the named insured. (emphasis added)

N.J.S.A. 39:6A-4(a) defines "medical expense benefits" that the named insured, injured resident relatives, or other persons sustaining bodily injury may be entitled to under the "personal

injury protection coverage." N.J.S.A. 39:6A-4 also explains assignment of benefits to a medical provider as follows:

> Benefits payable under this section shall: . . . (2) Not be assignable, **except to a provider of service benefits under this section in accordance with policy terms approved by the commissioner**, nor subject to levy, execution, attachment or other process for satisfaction of debts. (emphasis added)

N.J.S.A. 39:6A-4 clearly states that the payment of medical expense benefits under the personal injury protection coverage of a standard automobile liability insurance policy is only to the insured, injured person, or a medical provider who has an assignment of benefits. Since N.J.S.A. 39:6A-5.1's dispute resolution provision applies to the "medical expense benefits" provided under N.J.S.A. 39:6A-4, **only the insured, injured person, or the medical provider who has an assignment of benefits is subject to dispute resolution**. Pursuant to the enabling statutes, Forthright has no jurisdiction over any other party that is not the insured, injured person, a medical provider or an automobile insurance carrier. Here, this jurisdictional bar includes the three non-medical provider corporations, and the one layperson and one attorney who are not an insured and/or injured party.

The Appellate Division addressed a similar issue in New Jersey Manufacturers Ins. Co. v. Horizon Blue Cross Blue Shield of New Jersey, 403 N.J. Super. 518 (App. Div. 2008), wherein it held that the PIP arbitration regulations do not include or apply to health

insurers. NJM v. Horizon, 403 N.J. Super. at 529. In that case, the health insurer's insured had exercised his statutory option to designate health insurance as his primary coverage for injuries sustained in automobile accidents, rather than the PIP provisions of his automobile insurance policy. Id. at 520. The Appellate Division analyzed N.J.A.C. 11:3-5.1, adopted by the Commissioner of Banking and Insurance to implement N.J.S.A. 39:6A-5.1. NJM v. Horizon, 403, N.J. Super. at 528.

N.J.A.C. 11:3-5.1 states:

> (a) The purpose of this subchapter is to establish procedures for the resolution of **disputes concerning the payment of medical expense and other benefits** provided by the personal injury protection coverage in policies of automobile insurance. This subchapter implements N.J.S.A. 39:6A-5.1 and 5.2, which provide that **PIP disputes** shall be resolved by binding alternative dispute resolution as provided in the policy form approved by the Commissioner . . .
>
> (b) This subchapter **shall apply to disputes** arising under policies of private passenger automobile insurance . . . that provide medical expense benefits and other benefits under personal injury protection coverage, **as follows:**
>
> 1. **PIP benefits under a standard automobile insurance policy pursuant to N.J.S.A. 39:6A-4** . . . (Emphasis added)

The Appellate Division concluded that "neither the statute nor the implementing regulations contemplate that arbitration under N.J.S.A. 39:6A-5.1 will include health insurers." NJM v. Horizon,

403 N.J. Super. at 528. (See also Palisades Ins. Co. v. Horizon Blue Cross Blue Shield of New Jersey, 469 N.J. Super. 30 (App. Div. 2021).

Here, neither the statute nor the implementing regulations contemplate PIP dispute resolution under N.J.S.A. 39:6A-5.1 will include non-medical corporations or lay people and an attorney who are not an insured and/or injured party. As a result, the three non-medical provider corporation Defendants, the one layperson Defendant and the one attorney Defendant can never be subject to PIP arbitration and must remain in the Superior Court. Clearly, the legislature, in enacting the IFPA and AICRA, did not intend to require piecemeal litigation/arbitration of IFPA claims involving numerous co-conspirators and overlapping, fact-specific allegations. This would result in massive inefficiencies for insurers and other affected parties, requiring inextricably intertwined IFPA claims to be litigated simultaneously, but separately. For a carrier such as CURE, investigating and litigating fraud claims is already an expensive and time-consuming prospect. If the Law Division's decision is upheld, it would create a chilling effect on insurer's ability to prosecute such claims.

Finally, the Defendants who obtained dismissal Orders do not comprise all of the Defendants in this litigation. Defendants Same Day Procedures, L.L.C., North Jersey Perioperative

Consultants, P.A., One Oak Medical Group, L.L.C. d/b/a New Jersey Vein Treatment Clinic, One Oak Orthopaedic & Spine Group, L.L.C., One Oak Holding, L.L.C., Faisal Mahmood, M.D., Ravi K. Venkataraman, M.D., Manglam Narayanan, M.D., and Shanti Eppanapally, M.D., are all represented by other counsel who not only did not file Motions to Dismiss, but answered the Complaint and requested a trial by jury. (Pa0152, Pa0215, Pa0257). Thus, Allstate's case against those Defendants must continue to be litigated in the Superior Court. Again, the legislature clearly did not intend for such claims to be litigated separately when doing so would lead to such absurd and inefficient results.

B. Disputes Subject to PIP Dispute Resolution

N.J.S.A. 39:6A-5.1(c) states that dispute resolution proceedings "shall include disputes arising regarding medical expenses benefits provided under" N.J.S.A. 39:6A-4. This provision does not reference the IFPA, or affirmative claims brought for violations of the IFPA. Notwithstanding, given the analysis above of N.J.S.A. 39:6A-4, that the disputes involving medical expenses articulated in § 5.1(c) apply only to the insured, the injured person, or a medical provider seeking the payment of medical expense benefits from the automobile insurance carrier, the scope and extent of a "PIP dispute" does not include an automobile insurance carrier seeking the reimbursement of medical expense benefits paid to: medical providers; non-medical provider

corporations, laypersons who are not an insured/injured party and attorneys who are not an insured/injured party. The enabling statutes simply do not subject an insurer's IFPA claims to PIP arbitration.

C. The Law Division's Analysis of N.J.S.A 39:6A-5.1(a) was Flawed.

The Law Division's analysis of the relevant law was contrary to the clear language of the enabling statutes. In analyzing what constitutes a "dispute," the Law Division cited N.J.S.A. 39:6A-5.1(a): "[a]ny dispute regarding the recovery of. . . benefits provided under personal injury protection coverage. . . arising out of the operation, ownership, maintenance, or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute . . ." (Pa0006, Pa0013, Pa0020-Pa0021). However, the Law Division omitted the following pertinent language: "medical expense benefits or other benefits provided under personal injury protection coverage pursuant to [N.J.S.A. 39:6A-4] . . ." (Ibid.).

Because of its failure to review and analyze N.J.S.A. 39:6A-4, the Law Division overlooked that the provision does not permit insurers, such as Plaintiffs, to recover "medical expense benefits" in dispute resolution. In other words, AICRA was meant to be a one-way street: insureds, injured persons, and medical providers with a valid assignment of benefits can seek to recover

"medical expense benefits" owed to them via arbitration, but the plain language of the statute **does not** enable insurers to seek recoupment of "medical expense benefits" already paid in that forum. This critical omission in the Law Division's analysis was a fatal flaw to its ultimate decision to dismiss Plaintiffs' IFPA claims seeking reimbursement of "medical expense benefits" in favor of PIP arbitration.

POINT II

THE LAW DIVISION'S DECISION THAT THE ENABLING STATUTES AND REGULATIONS APPLY TO: THE NON-MEDICAL CORPORATIONS; A LAY PERSON; AN ATTORNEY; AND TO AN INSURER'S AFFIRMATIVE IFPA CLAIMS CONSTITUTES "RULE-MAKING" AND VIOLATES THE ADMINISTRATIVE PROCEDURES ACT.

It is a fundamental tenet of New Jersey law that Courts may not usurp policy decisions from other branches of government. See Texter v. Dep't of Hum. Servs., 88 N.J. 376, 382, 443 A.2d 178, 181 (1982). Indeed, as recently as May 2024, the Supreme Court of New Jersey reaffirmed this principle. In Goyco v. Progressive Insurance Company, 257 N.J. 313 (2024), the Supreme Court refused to expand the definition of the term "pedestrian" in the No-Fault Act to include low speed electric scooters because to do so would be a policy decision with insurance cost implications that is properly for the Legislature, not the Court. Similarly, in this case, expanding: (1) the definition of the term "PIP dispute" to include violations of the IFPA, or (2) N.J.S.A. 39:6A-4 and N.J.A.C. 11:3-5.1 et seq. to include non-medical provider

corporations, lay people and attorneys who are not the insured/injured party and/or medical provider, would be a policy decision with insurance cost implications that is properly for the Legislature and/or DOBI, not the Court.

Here, however, the Law Division's decision is clearly an instance of judicial overreach in violation of the Administrative Procedures Act ("APA"), N.J.S.A. 52:14B-1, et seq., which vests rule-making authority in state administrative agencies when appropriately delegated by the legislature. As discussed below, such a drastic change in long-standing policy is properly made only by DOBI pursuant to the procedures and protections set forth in the APA.

To be valid, a rule must be adopted in "substantial compliance" with the APA. N.J.S.A. 52:14B-4(d). Under the APA, prior to adopting or amending any rule, an administrative agency must give notice of its intended action, N.J.S.A. 52:14B-4(a)(1), and afford interested parties a "reasonable opportunity to submit data, views, or arguments, orally or in writing." N.J.S.A. 52:14B-4(a)(3). Public comments should be "given a meaningful role" in the process of rule adoption. In re Adoption of Rules Concerning Conduct of Judges, 244 N.J. Super. 683, 687 (App. Div. 1990). Among the purposes of the APA is "to give those affected by the proposed rule an opportunity to participate in the rule-making process, not just as a matter of fairness but also as a means of informing

regulators of possibly unanticipated dimensions of a contemplated rule." In re Comm'r's Failure to Adopt 861 CPT Codes, 358 N.J. Super. 135, 142-43 (App. Div. 2003) (citations and internal quotations omitted).

The APA defines an "administrative rule" as an:

> . . . [A]gency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) interagency and interagency statements; and (3) agency decisions and findings in contested cases. (N.J.S.A. 52:14B-2(e)).
>
> [Coalition for Quality Health Care v. NJDOBI, 348 N.J. Super. 272, 295 (App. Div. 2002)].

In determining whether agency action constitutes rulemaking courts inquire whether the agency action:

> (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication

> or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.
>
> [Id. at 296 (citing Metromedia, Inc. v. Dir. Div. of Tax, 97 N.J. 313 (1984)].

These factors are applicable whenever the authority of an agency to act without conforming to the requirements of the APA is questioned, for example, in adopting orders, guidelines, or directives. Ibid. However, not all of these factors must be present for an agency action to constitute rulemaking; instead, the factors are balanced according to weight. Ibid.

The Law Division granted the Defendants' motions to dismiss and mandated that the following types of parties: non-medical corporations; a lay person who is not an insured/injured party; and an attorney who is not an insured/injured party are subject to PIP arbitration. In the granting the Defendants' motions to dismiss, the Law Division also mandated an insurers' affirmative claims for IFPA, are likewise subject to PIP arbitration. Applying the aforementioned factors, the Law Division's ruling unquestionably constituted impermissible rulemaking. The ruling: (1) violated the APA; (2) usurped the authority of the Commissioner of Banking and Insurance in administering how claims are handled

by Forthright; and (3) usurped the law-making function of the Legislature.

All of the aforementioned factors are present:

- The Law Division's ruling will have "wide coverage" encompassing a large segment of the regulated insurance industry and the general public served by those insurers. Metromedia, 97 N.J. at 331. (Factor one).

- The Law Division's decision was "intended to be applied generally and uniformly to all similarly situated persons," as any Defendants sued in Superior Court for violations of the IFPA can rely upon the Law Division's decision. Ibid. (Factor two).

- All current and future Defendants in a pending IFPA lawsuit related to automobile accidents will be subject to PIP arbitration and all current and future IFPA claims related to automobile accidents will be subject to PIP arbitration. Ibid. (Factor three).

- When the Law Division adopted the Defendants' proposed course of action, it prescribed "a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization," a factor which deserves significant weight. Ibid.; Doe v. Poritz, 142 N.J. 1, 98 (1995) (declined to follow on other grounds) (according the greatest weight to this factor in assessing whether promulgation of guidelines constituted rulemaking). The Law Division's adoption of a legal standard or directive specifying additional parties and additional issues that are subject to PIP arbitration constituted rulemaking. Metromedia, 97 N.J. at 334. (Factor four).

- The Law Division materially changed the regulations established by DOBI implementing the enabling statutes. Thus, the Law Division's action reflects a material change in administrative policy. Id., at 331. (Factor five).

- The Law Division's ruling represents "a decision on administrative regulatory policy in the nature of the interpretation of law or general policy." Id. at 331–32. (Factor six).

The Law Division's ruling - to allow PIP arbitration jurisdiction over the following types of parties: non-medical provider corporations; a lay person who is not the insured/injured party; and an attorney who is not the insured/injured party; and the following types of claims: insurer's affirmative IFPA claims, is tantamount to the Court creating a new administrative rule, adopted in violation of the procedural requirements of the APA, N.J.S.A. 52:14B–1 to –24. Such policy decisions are not properly made by the Court and cannot stand.

POINT III

THE LAW DIVISION'S RULING DEPRIVES ALL PARTIES OF THEIR CONSTITUTIONAL RIGHT TO A JURY TRIAL AND IS CONTRARY TO THE NEW JERSEY SUPREME COURT'S DECISION IN ALLSTATE V. LAJARA THAT THE IFPA MANDATES THE RIGHT TO A JURY TRIAL.

In Allstate New Jersey Ins. Co. v. Lajara, 222 N.J. 129, 151 (2015), the Supreme Court of New Jersey held that the right to a jury trial is implied in the IFPA. "The right to a civil jury trial is one of the oldest and most fundamental of rights." Lajara, 222 N.J. at 134. "Under New Jersey's constitutional jurisprudence, the right to a jury trial applies to causes of action—even statutory causes of action—that sound in law rather than equity." Id. at 142. New Jersey courts consider not only

the nature of the relief (the remedy), but whether the cause of action resembles one that existed in common law. Ibid.

The Lajara Court determined that the relief available to insurance companies in IFPA actions—compensatory damages, treble damages, and attorneys' fees and costs—is legal in nature. Id. at 146. Further, the Court compared a private-party action brought under the IFPA to the cause of action for common-law fraud and concluded that the only element of a claim for common-law fraud absent from an IFPA claim is reliance by the plaintiff on the false statement. Id. at 147-49. "Perfect alignment between the elements of an IFPA claim and common-law fraud is not necessary to trigger the right to a jury trial." Id. at 148. The Court pointed out that a jury trial is required in a consumer-fraud case, despite the lack of complete symmetry between a consumer-fraud case and a common-law fraud claim. Id. at 148-149.

The Lajara Court stated:

> We presume that the Legislature is aware that New Jersey's jury-trial right attaches to statutory actions that confer legal remedies and resemble actions in common law. In other words, we will presume, as we must, that the Legislature intended to conform to the Constitution.
>
> We have no reason to conclude that, in IFPA private-party actions, the Legislature intended a result inconsistent with the demands of our State Constitution. When the Legislature provides for legal remedies, it can be inferred that it "intended to authorize a jury trial." (citations omitted)

[Id. at 149-150].

". . . [A] jury trial in an IFPA action is not a recent advent or a break from a long-accepted practice of bench trials. **IFPA claims have been tried before juries since at least 1994**." Id. at 153. (Emphasis added). Ultimately, the Lajara Court held:

> By this measure, we conclude that the right to a civil jury trial provided by Article I, Paragraph 9 of the New Jersey Constitution applies to private-action claims seeking compensatory and punitive damages under the IFPA. We also presume that the Legislature, in passing the IFPA, intended the statutory scheme to conform to the Constitution. We therefore remand to the trial court to allow defendants in this case to exercise their right to a jury trial.
>
> [Id. at 134].

As Allstate's IFPA case has been dismissed in favor of PIP dispute resolution, the Law Division has overruled the express command of this State's highest court and deprived the parties of their constitutional right to a jury trial under the IFPA. In fact, the Law Division fails to even mention this controlling Supreme Court of New Jersey case in its decision and that nine of the Defendants in the case asserted their right to a jury trial when they filed their respective Answers to Allstate's Complaint. (Pa0152, Pa0215, Pa0257).

POINT IV

THE LAW DIVISION'S DECISION IS ERRONEOUS BECAUSE IT DISREGARDED 30 YEARS OF STATE COURT LAW DEMONSTRATING THAT THE SUPERIOR COURT IS THE PROPER JURISDICTION FOR CLAIMS BROUGHT PURSUANT TO THE IFPA, N.J.S.A. 17:33A-1, et. seq.

There is no question that the IFPA "interdicts" a broad range of fraudulent conduct. Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 172 (2006). There is also no question that as a matter of policy the statutory sanctions are remedial in nature, intended to compensate insurance companies when they pursue IFPA violators for costs incurred as a result of investigation and prosecution. Id. at 172–73. Since 1994, the Supreme Court of New Jersey, the Appellate Division, and the Law Division have consistently permitted insurer's IFPA cases concerning fraudulent conduct resulting in an insurer's payment of personal injury protection benefits to be adjudicated in the Superior Court. Lajara, 222 N.J. at 153. Not once, until the Law Division's decision on October 27, 2023, did any State Court rule that PIP dispute resolution is the appropriate forum for an IFPA case.

Not only have the State Courts heard IFPA cases since 1994, but they have uniformly held that the Superior Court is the proper jurisdiction to litigate IFPA claims. For example, in Lajara, the Supreme Court of New Jersey also held that insurance carriers have standing to sue under the IFPA. "**The IFPA authorizes two separate**

causes of action to enforce the statutory scheme . . . the other a private civil action brought by insurers 'damaged as the result of a violation of any provision of [the IFPA], N.J.S.A. 17:33A-7.'" Lajara, 222 N.J. at 143-144. (Emphasis added). "Under the IFPA, "[a]ny insurance company damaged as the result of a violation of [the Act] may sue ... to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorneys fees." N.J.S.A. 17:33A-7(a). Moreover, an insurance company "shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating [the IFPA]." N.J.S.A. 17:33A-7(b)." Id. at 144.

Finally, the Supreme Court held that: "Notably, attorneys' fees, investigatory costs, and costs of suit are, by definition, compensatory damages under the IFPA, **and therefore a successful lawsuit initiated by an insurance company will necessarily involve an award of damages.** N.J.S.A. 17:33A-7(a)." (Id. at 147-48). (Emphasis added). The Lajara Court interpreted the word "court" in "court of competent jurisdiction" to include a jury serving as the fact-finder. Id. at 151.

In Material Damage Adjustment Corp. v. Open MRI of Fairview, 352 N.J. Super. 216, 230 (Law Div. 2002), Plaintiff sought reimbursement of payments made to Defendant, treble damages, and counsel fees pursuant to the IFPA. Plaintiff there alleged that Defendant submitted claims and received PIP reimbursement during

the time it was not licensed by the Department of Health. Open MRI of Fairview, 352 N.J. Super. at 230. In determining that the Defendant's conduct constitutes a violation of the IFPA, the Court stated:

> The Legislature has authorized private insurance companies damaged as a result of a violation of any provision of the Insurance Fraud Act **to institute a civil action to recover compensatory damages, including reasonable investigation expenses, costs of suit and counsel fees.** N.J.S.A. 17:33A-7(a). **The statute also mandates treble damages "if the court determines that the defendant has engaged in a pattern of violating the act."** N.J.S.A. 17:33A-7(b). (emphasis added)
>
> [Ibid.].

In Allstate Ins. Co. v. Greenberg, 376 N.J. Super. 623, 637 (Law Div. 2004), the Court stated: "The Fraud Act expressly provides that the forum for the adjudication of claims is in the Superior Court. Section 7(a) of the Fraud Act prescribes that, "[a]ny insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction."

In Allstate v. Northfield Medical Center, 228 N.J. 596, 600 (2017), the Supreme Court of New Jersey granted Certification of Allstate's appeal to consider the issue of whether violations of regulatory requirements could constitute insurance fraud under the provision of the IFPA that creates liability for one who "knowingly assists, conspires with, or urges any person or practitioner to

violate any of the provisions of the [IFPA]." (citations omitted). The Supreme Court of New Jersey unanimously adopted Allstate Insurance Co. v. Orthopedic Evaluations, Inc., 300 N.J. Super. 510 (App. Div. 1997), which held that healthcare services must be rendered in compliance with all significant requirements imposed by law in order to qualify for payment as a PIP medical expense benefit. "The theory . . . reflects that in New Jersey a practice entity must comply with all statutes and regulations governing the permissible structures for control, ownership, and direction of a medical practice, including the use of professional services interconnected with a medical practice." Northfield, 228 N.J. at 622. The Northfield Court concluded that the trial court's finding of a knowing violation of the IFPA was amply supported in the record, which contained compelling evidence demonstrating how the unlawful practice structure shielded from view its effective circumvention of regulatory rules. Id. at 600. Thus, the Supreme Court of New Jersey's consideration of this IFPA case and its holding are clear evidence that the Supreme Court of New Jersey believes it has jurisdiction over IFPA claims.

The caselaw in this State demonstrates that the plain language of the IFPA should be construed to confer jurisdiction for claims arising thereunder *exclusively* in the Superior Court. Until Carteret and the Third Circuit's decision in Gov't Employees Ins. Co. v. Mount Prospect Chiropractic Ctr, P.A., 98 F.4th 463 (3d Cir.

Apr. 26, 2024), both of which are patently flawed, there was not one decision that held PIP arbitration is the appropriate forum for IFPA claims. It is the clear dictate of the State Courts that IFPA claims are to be adjudicated in the Superior Court and not in the inadequate arbitration forum. In disregarding the established law concerning IFPA jurisdiction, the Law Division erred.

POINT V

THE MOUNT PROSPECT CASE IS NOT PRECEDENTIAL OR BINDING ON THIS COURT AND CONTAINS A PATENTLY FLAWED INTERPRETATION OF THE RELEVANT LAW.

A. The Third Circuit's *Mount Prospect* Decision is not precedential or binding on this Court.

The Defendants repeatedly claim that the Mount Prospect decision is "precedential" or "binding", but New Jersey state courts are *not bound* by federal court decisions regarding state law. See, e.g., Kavky v. Herbalife Int'l of Am., 359 N.J. Super. 497, 500-01 (App. Div. 2003) (rejecting Third Circuit's "prediction" as to how New Jersey Supreme Court would rule on question involving application of New Jersey Consumer Fraud Act ("NJCFA") stating: "Notwithstanding our high regard for the Third Circuit, we are unable to agree with its unduly restrictive interpretation of the Act."); and Small v. Dep't of Corr., 243 N.J. Super. 439, 442-444 (App. Div. 1990) ("decisions of the Federal Court are not binding upon a State court's interpretation of identical provisions").

These decisions conclusively demonstrate that New Jersey State courts are *not bound* by the Third Circuit's interpretations of New Jersey statutes—especially when such interpretations are patently flawed.

B. The Third Circuit's interpretation of the IFPA and AICRA in *Mount Prospect* is patently flawed.

Not only is the Third Circuit's decision in Mount Prospect not precedential and not binding, but the Third Circuit repeatedly errs in its analysis, which discredits its entire decision concerning the State law issue of IFPA jurisdiction. First, the Third Circuit's Mount Prospect decision mistakenly cited to rules promulgated by the American Arbitration Association ("AAA"), despite AAA not being the administrator of New Jersey PIP ADR since 2004. (See Mount Prospect, 98 F.4th at 469). Relying on these outdated and inapplicable rules, the Third Circuit then incorrectly asserted that a DRP in a New Jersey No-Fault PIP arbitration could award all remedies to an insurer that the IFPA allows. Ibid. The Third Circuit's reliance on AAA's rules evinces a blatant unfamiliarity with the fundamental statutes, regulations, and rules that govern New Jersey No-Fault PIP dispute resolution and punctuates precisely why this Court should not afford the Mount Prospect decision any weight.

Neither N.J.S.A. 39:6A-5.1 et seq. nor N.J.A.C. 11:3-5.1 et seq., permit DRPs to award any of the IFPA remedies in PIP dispute

resolution proceedings as the Third Circuit erroneously asserted. Further, the Forthright Rules, established at the direction and approval of DOBI, are silent in this regard. Additionally, the Legislature did not give DRPs the power to award treble damages mandated by the IFPA. See N.J.S.A. 17:33A-7(a); and Lajara, 222 N.J. at 143. Moreover, the Appellate Division rejected the idea of insurance carriers being able to obtain attorneys' fees as a result of being successful in arbitration. See N.J. Coalition of Health Care Professionals, Inc., et al., v. NJDOBI, et al., 323 N.J. Super. 207, 263-264 (App. Div. 1999). In contrast, an award of attorneys' fees is mandatory in a successful IFPA suit. Lajara, 222 N.J. at 145 and N.J.S.A 17:33A-7(a). By dismissing the Plaintiffs' Complaint in favor of dispute resolution, the Law Division is forcing the Plaintiffs to assert their IFPA claims in PIP arbitration, where they cannot be awarded compensatory damages, treble damages, or attorneys' fees. Thus, the Law Division's ruling deprives the Plaintiffs of remedies to which they are statutorily entitled under the IFPA by relying on the inapplicable rules of AAA.

Further, the Third Circuit cites N.J.S.A. 39:6A-5.1(a), stating that "it allows 'any party' to compel arbitration of '[a]ny dispute regarding the recovery of medical expense benefits or other benefits provided under [PIP] coverage . . . arising out of the operation, ownership, maintenance or use of an automobile.'" (See

Mount Prospect, 98 F.4th at 469). The Third Circuit then states, "As these suits are GEICO's effort to recover medical expense claims paid through auto insurance PIP benefits, they fall under the Provision's plain text." Ibid. In making this conclusion, the Third Circuit omits and never discusses the critical language of N.J.S.A. 39:6A-4. If they had, as CURE does in Point I above, then the Third Circuit could not have concluded that "*GEICO's* effort to recover medical expense claims" is an issue under arbitration jurisdiction. The Third Circuit's assertion that an insurer's affirmative IFPA claims are an "effort to recover medical expense claims" is a gross mischaracterization and their incorrect analysis of the enabling statute is a serious flaw that discredits their interpretation of New Jersey law.

Next, the Third Circuit stated that "they rule as they predict the state supreme court would." (See Mount Prospect, 98 F.4th at 467). However, the Third Circuit had a clear indication of how the Supreme Court of New Jersey would rule on IFPA cases by way of the determinative decisions in Lajara and Northfield, and they ignored and/or dismissed those rulings. The Third Circuit noted the "jury trial right" from Lajara but said "GEICO does not explain why it cannot waive the right by agreeing to arbitrate." (Id. at 469). They also failed to review or analyze the constitutional right to a jury trial and the right to a jury trial pursuant to R. 4:35-1. The Third Circuit also never discussed Northfield. By ignoring

and/or dismissing the Lajara and Northfield rulings, the Third Circuit incorrectly ruled on New Jersey law as it pertains to IFPA jurisdiction.

Not only is the Mount Prospect decision non-binding and non-precedential, but in light of these aforementioned flaws, it should carry no weight as the Third Circuit lacked a fundamental understanding of the subject matter at issue here. In short, it is respectfully submitted that the Appellate Division must reject Mount Prospect as contrary to the plain language of the IFPA, the plain language of AICRA and the binding New Jersey Supreme Court and State Court precedent.

POINT VI

THE APPELLATE DIVISION IS EMPOWERED TO EXERCISE ORIGINAL JURISDICTION OVER ISSUES NOT RAISED BY THE PARTIES ON APPEAL

CURE submits that the Appellate Division can and should exercise original jurisdiction in its review of issues raised by CURE in its amicus brief, in the Third Circuit's Mount Prospect case, or in any other party or amicus filing in this matter. The Law Division's order, as well as the erroneous decision in the Mount Prospect case, do not require any further fact-finding for this Court to perform a complete determination of the significant issues raised on appeal, including whether the law requires IFPA cases to be arbitrated in No-Fault dispute resolution. R. 2:10-5 provides: "[t]he appellate court may exercise such original

jurisdiction as is necessary to the complete determination of any matter on review."

In Price v. Himeji, LLC, 214 N.J. 263, 294 (2013), the Supreme Court of New Jersey explained the Appellate courts' exercise of original jurisdiction and stated:

> Appellate courts are empowered to exercise original jurisdiction within the bounds set forth in our rules . . . We have observed that the exercise of original jurisdiction is appropriate when there is "public interest in an expeditious disposition of the significant issues raised[.]"
>
> More recently, we have explained that Rule 2:10-5 "allow[s an] appellate court to exercise original jurisdiction to eliminate unnecessary further litigation, but discourage[s] its use if factfinding involved." State v. Santos, 210 N.J. 129 (2012). Similarly, our Appellate Division has observed that a court's [r]esort to original jurisdiction is particularly appropriate to avoid unnecessary further litigation, as where the record is inadequate to terminate the dispute and no further fact-finding or administrative expertise or discretion is involved, and thus a remand would be pointless because the issue to be decided is one of law and implicated public interest. (citations omitted)

CURE is not suggesting that the Appellate Division has the authority to obtain jurisdiction over the Mount Prospect case itself; however, a complete and thorough review of the issues raised in the Mount Prospect decision is necessary in order for the Appellate Division to perform a complete determination of the matter on review.

Indeed, in their Appellate briefs, the Defendants rely upon the Mount Prospect decision as further support for the Law Division's ruling. Moreover, currently pending in multiple counties around the State are various Motions to Dismiss based upon both the Law Division decision and the Mount Prospect decision. After 30 years of case law establishing that IFPA jurisdiction is in the Superior Court, these two patently flawed decisions, though not precedential or binding on State Courts, have emboldened various defendants who have been sued by automobile insurers for IFPA violations, to seek dismissal in favor of the PIP arbitration forum. In order to terminate this legal dispute, it is absolutely necessary for the Appellate Division to exercise original jurisdiction and to clarify the erroneous decisions made in the Mount Prospect case, to the extent those issues differ from the instant appeal. As stated above, the issues herein seriously implicate the insurance industry's interest in fighting insurance fraud and following the clear mandates of the Legislature in enacting the IFPA.

CONCLUSION

CURE respectfully submits that the Law Division's decision should be reversed.

Respectfully submitted,

/s/ William L. Brennan, Esq.

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Citizens United Reciprocal Exchange

Date: June 25, 2024

ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE NORTHBROOK INDEMNITY COMPANY, and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Appellants

V.

CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROE COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE, INIMEG MANAGEMENT COMPANY, INC., 311 POTSWOODENGLISHTOWN ROAD REALTY, L.L.C., 72 ROUTE 27 REALTY, L.L.C., SAME DAY PROCEDURES, L.L.C., MIDSTATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A. INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-778-23

LAW DIVISION:
DOCKET NO. MID-L-1469-23

Civil Action

SAT BELOW:

Hon. Christopher D. Rafano, J.S.C.

CENTERS, d/b/a METRO PAIN and VEIN, SOOD MEDICAL PRACTICE, L.L.C., ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC, ONE OAK ORTHOPAEDIC & SPINE GROUP, L.L.C., ONE OAK HOLDING, L.L.C., JOSEPH BUFANO, JR., D.C., CHRISTOPHER BUFANO, MICAH LIEBERMAN, D.C., RICHARD J. MILLS, M.D., JENNIFER M. O'BRIEN, ESQ., GERALD M. VERNON, D.O., D.C., ALVIN F. MICABALO, D.O., JOSE CAMPOS, M.D., JOHN S. CHO, M.D., MICHAEL C. DOBROW, D.O., RAHUL SOOD, D.O., SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D., RAVI K. VENKATARAMAN, M.D., MANGLAM NARAYANAN, M.D., SHANTI EPPANAPALLY, M.D.,

Respondents

BRIEF OF AMCI CURIAE THE INSURANCE COUNCIL OF NEW JERSEY AND AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION

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TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS, AND RULINGS ON APPEAL

APPENDIX
TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

INTRODUCTION

Here, Allstate New Jersey Insurance Company, et al. (Allstate) filed suit against numerous defendants asserting claims, in part, under the New Jersey Insurance Fraud Prevention Act (the Fraud Act), N.J.S.A. 17:33A-1, et seq., and the New Jersey RICO Statute, N.J.S.A. 2C:41-2, et seq. They seek to recover compensatory damages, treble damages, attorney's fees, and the costs of investigation and suit. Significantly, several defendants filed Answers to the Complaint and asserted jury demands. Others moved to dismiss the plaintiffs' Complaint arguing that plaintiffs' claims are subject to mandatory "arbitration." The trial court granted those motions, dismissed the plaintiffs' Complaint, and remanded this matter to "arbitration." The trial court's rulings are erroneous.

Compelling this matter to be resolved via New Jersey's No-Fault Alternative Dispute Resolution (hereinafter "NFADR") process established by the Automobile Insurance Cost Reduction Act (hereinafter the No-Fault Act) deprives plaintiffs and those defendants who demanded a jury trial of their constitutional right to same. It also deprives all parties of their right to party discovery; non-party discovery; to compel witness testimony at depositions and at hearings; and to resolve this matter in one comprehensive hearing. The trial court's ruling not only deprives plaintiffs of their ability to obtain a damages award, but it also deprives the Commissioner of the New Jersey Department of

Banking and Insurance (DOBI) of its statutory right to intervene in the matter to collect statutory penalties and its ability to seek suspension of defendants' driving privileges. As a result, the trial court's ruling in this matter should be reversed.

PROCEDURAL HISTORY

The amici adopt Allstate's procedural history as if set forth at length herein.

STATEMENT OF FACTS

The amici adopt Allstate's statement of facts as if set forth at length herein.

POINT I

THE LEGISLATIVE HISTORY OF THE NEW JERSEY NO-FAULT ACT AND THE FRAUD ACT DEMONSTRATE THAT FRAUD ACT CLAIMS SHOULD NOT BE RESOLVED THROUGH NFADR. (Decided below, Pa0001-Pa0022)

The No-Fault Act was passed in 1972. See the Laws of 1972, Chapter 70. The act "encompassed the recommendations of the Automobile Insurance Study Commission, created under Joint Resolution 4 of 1970." See Sponsor's Statement to Laws of 1972, c.70. The Commission addressed four major concerns in its recommendations. They are "The Reparation objective; the Cost Objective; The Availability Objective; and the Judicial Objective. See Gambino v. Royal Globe Insurance Companies, 86 N.J. 100, 105-106 (1981),

citing the Automobile Insurance Study Commission, Reparation Reform for New Jersey Motorists at 7 (December 1971). The Gambino court noted that "the failure of many automobile accident victims to receive any, or adequate, reimbursement for their injuries was considered a major deficiency in the tort liability system that existed prior to the institution of the no-fault law and an unwarranted hardship upon unfortunate victims." 86 N.J. at 106. The court in Amiano v. The Ohio Casualty Insurance Company, 85 N.J. 85, 90 (1981), similarly stated that "the No-Fault Act is social legislation intended to provide insureds with the prompt payment of medical bills, lost wages and other such expenses without making them await the outcome of protracted litigation."

Section 4 of the No-Fault Act defines the benefits available under the act. They are medical expenses benefits, income continuation benefits, essential services benefits, survivor benefits and funeral expense benefits. See the Laws of 1972, Chapter 70. Section 4. Section 5 of the statute established when the above benefits were to be paid. It states, "Personal Injury Protection coverage benefits shall be overdue if not paid within 30 days after the insurer is furnished written notice of the fact of a covered loss and of the amount of same." Id. at section 5[1]. Significantly, the act did not establish a procedure for resolving

[1] This was later expanded to 60 days. The carrier is allowed a 45 day extension. N.J.S.A. 39:6A-5.

disputes that arose under the act. Ibid. Therefore, personal injury protection ("PIP") suits were filed in the Superior Court to resolve same.

On August 30, 1983, the Legislature passed the Fraud Act. See Laws of 1983, Chapter 320. The Legislature stated that the

> "purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims." [N.J.S.A. 17:33A-2.]

In part, a person or a practitioner violates the act if s/he "presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that statement contains any false or misleading information concerning any fact or thing material to the claim." N.J.S.A. 17:33A-4(a)(1). A person or practitioner also violates the act if s/he conspires with others to violate the act or knowingly benefits from a violation of the act. See N.J.S.A. 17:33A-4(b) and (c). Unlike the No-Fault statute, the Fraud Act contains a provision for the resolution of disputes under the act. It states that "any insurance company damaged as a result of a violation of any provision of this act section may sue therefor in any court of competent jurisdiction to recover compensatory damages, which may include reasonable investigation expenses,

costs of suit and attorney fees." See N.J.S.A. 17:33A-7(a)[2]. The act also provides that "a successful claimant under subsection a. shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating this act." Id. at. 7(b). The Fraud Act provides the Commissioner of the Department of Banking and Insurance (DOBI) with the ability to intervene for "the purpose of seeking judgment for the payment of a civil penalty authorized under Section 5 of this act." DOBI may also recover attorney's fees under the act. See N.J.S.A. 17:33A-7(d). The act also created the Division of Insurance Fraud Prevention within DOBI to investigate allegations of insurance fraud and to develop fraud prevention programs. The Insurance Fraud Division was directed to "promptly notify the Attorney General of any claim which involves criminal activity" and to "cooperate with the Attorney General in the investigation and prosecution of criminal violations." See N.J.S.A. 17:33A-8(a).

Three months after the Fraud Act was passed, the No-Fault Act was amended to require all automobile insurers to "provide any claimant with the option of submitting a dispute under this section to binding arbitration. Arbitration proceedings shall be administered and subject to procedures

[2] In 1997, the award of "reasonable investigation expenses, costs of suit, and attorney fees" as an element of the carrier's compensatory damages was made mandatory. See Laws of 1997, chapter, 151.

established by the American Arbitration Association." See, Laws of 1983, Chapter 362, Section 5(c) (emphasis added).

The No-Fault Act was next amended in a relevant way in 1998 with the passage of the Automobile Insurance Cost Reduction Act (AICRA). Thus, from 1983 until 1998, essentially, a two-track system existed to resolve disputes arising out of the No-Fault system. Claimants could file arbitration demands against insurance carriers to compel them to pay overdue PIP benefits and insurance companies could file Fraud Act claims in a "court of competent jurisdiction" to recover compensatory damages, attorney's fees, cost of suit, costs of investigation and, potentially, treble damages.

In passing AICRA, the Legislature stated that the amendments were prompted by several considerations. Initially, it stated that medical benefits available under the No-Fault Act were being used to overcome the verbal threshold established in 1988. The Legislature further stated that the American Arbitration Association system had not sufficiently eliminated payment for unnecessary treatment and testing. Moreover, the Legislature found that

> "fraud, whether in the form of inappropriate medical treatments, inflated claims, staged accident, falsification of records or in any other form has increased premiums and must be uncovered and vigorously prosecuted and while the pursuit of those who would defraud the automobile insurance system has heretofore been addressed by the State through various agencies, it has been without sufficient coordination to aggressively combat fraud, leading to the conclusion that greater consolidation of agencies

> which were created to combat fraud is necessary to accomplish this purpose." [See the Laws of 1998, Chapter 21, Section 1(b).]

Based upon these findings, the Legislature made significant changes to the No-Fault statute.[3] However, the Legislature did not make any meaningful changes to section 5 of the No-Fault Act in terms of the scope of issues that could be raised in the new NFADR process. The revised statute still required carriers to provide "any claimant with the option of submitting a dispute under this section to dispute resolution" instead of under the former arbitration process. See N.J.S.A. 39:6A-5(i) (emphasis added).

Newly adopted N.J.S.A. 39:6A-5.1(a) provides that "Any dispute regarding the recovery of medical expenses benefits or other benefits provided under personal injury protection coverage … arising out of the operation, ownership, maintenance or use of an automobile may be submitted to dispute resolution on the initiative of any party to the dispute, as hereinafter provided." The statute then goes on to outline the contours of the dispute resolution organization to be created and the process to be fleshed out by DOBI. In its implementing regulations, DOBI stated that "The purpose of this subchapter is to establish procedures for the resolution of disputes concerning the payment

[3] See New Jersey Coalition of Healthcare Professionals, Inc., v. New Jersey Department of Banking and Insurance, 323 N.J. Super. 207 (App. Div. 1999), for a lengthy discussion of these various changes.

of medical expense and other benefits provided by the personal injury protection coverage and policies of automobile insurance." See N.J.A.C 11:3-5.1(a) (emphasis added.)

Significantly, DOBI also adopted a "loser-pays counsel fees" provision. See New Jersey Coalition of Health Care Professionals, Inc. v. NJ. Department of Banking and Insurance, 323 N.J. Super. 207, 260 (App. Div. 1999) (Coalition I). This provision stated that the Dispute Resolution Professional's (DRP) award "may include attorney's fees for a successful claimant or respondent in an amount consonant with the award and with Rule 1.5 of the Supreme Court Rules of Professional Conduct." Id. at 260 quoting then N.J.A.C. 11:3-5.6(d)(3).

Under AICRA's implementing regulations, a demand for No-Fault dispute resolution can be filed by "the injured party, the insured, a provider who is an assignee of PIP or the insurer in accordance with the terms of the policy as approved by the Commissioner." See N.J.A.C. 11:3-5.6(a). To avoid confusion as to what defenses a carrier could and could not raise before a Dispute Resolution Professional (DRP), DOBI defined the term "PIP dispute" at N.J.A.C. 11:3-5.2.

Contrary to the foregoing legislative history, the trial court here found that:

> "Allstate's common law fraud, unjust enrichment, IFPA, and RICO claims fall within the purview of the statute's arbitration provisions. Allstate's claims involve (1) a dispute by Allstate (2) involving defendants' recovery of PIP benefits that (3) one party wishes to send to arbitration. Notwithstanding, Allstate seeks to dress their PIP Benefits dispute in a different color sounding in fraud. The Court adheres to substance over form. Nothing in the statute provides that fraud-based claims warrant special treatment or should be carved out from mandatory arbitration, nor can the Court find any independent reason to do so." [Pa001]

In so holding, the trial court erred.

A. Rules of Statutory Interpretation

The first rule of statutory interpretation is that when the statute is clear on its face, it is applied as written:

> "Our task in statutory interpretation is to determine and effectuate the Legislature's intent. See D'Annunzio v. Prudential Ins. Co. of Am., 192 N.J. 110, 119 (2007); Daidone v. Buterick Bulkheading, 191 N.J. 557, 565 (2007). As we have explained, in carrying out this important role, 'we look first to the plain language of the statute, seeking further guidance only to the extent that the Legislature's intent cannot be derived from the words that it has chosen.' Pizzullo v. N.J. Mfrs. Ins. Co., 96 N.J. 251, 264 (2008). We will, in this effort, read the words selected by the Legislature in accordance with their ordinary meaning, D'Annunzio, supra, 192 N.J. at 119–20, unless the Legislature has used technical terms, or terms of art, which are construed 'in accordance with those meanings,' In re Lead Paint Litig., 191 N.J. 405, 430, 924 A.2d 484 (2007). See N.J.S.A. 1:1-1 (declaring that 'words ... having a special or accepted meaning in the law, shall be construed in accordance with such ... meaning.'). Nor will we 'rewrite a plainly-written enactment of the Legislature ... [or] presume that the Legislature intended something other than that expressed by way of the plain language.' O'Connell v. State, 171 N.J. 484, 488, 795 A.2d 857 (2002). [Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009)].

A court should not "resort to extrinsic interpretative aids" when "the statutory language is clear and unambiguous, and susceptible to only one interpretation . . .." Lozano v. Frank DeLuca Const., 178 N.J. 513, 522 (2004) (internal quotations omitted). On the other hand, if there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, "including legislative history, committee reports, and contemporaneous construction." Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004) (internal quotations omitted). We may also resort to extrinsic evidence if a plain reading of the statute leads to an absurd result or if the overall statutory scheme is at odds with the plain language. See Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 392-93 (2001).

B. THE TRIAL COURT'S RULING MISINTERPRETS WHAT CONSTITUTES A "PIP DISPUTE" UNDER THE 1983 AMENDMENT AND THE 1998 AMENDMENT TO THE NO-FAULT STATUTE.

The Legislature specifically limited the scope of PIP disputes to "disputes under this section" in both the original No-Fault act and AICRA. See Laws of 1983, Chapter 362 Section 5(c) and N.J.S.A. 39:6A-5.1(i). In both versions of the statute, the phrase "under this section" refers to the payment of overdue personal injury protection coverage benefits as outlined in section 5 of the statute. Before the passage of AICRA in 1998, only No-Fault claimants could institute arbitration proceedings. Thus, before AICRA, monies flowed in only one direction in the arbitration process, from the insurance carrier to the No-

Fault claimant. Given that the language in section 5 of the No-Fault statute did not change in any relevant ways with the implementation of AICRA, there is no basis for concluding that the scope of the issues that can be addressed in an NFADR hearing changed in any way.

In fact, in its implementing regulations, DOBI specifically construed the foregoing provisions and stated that "the purpose of this subchapter is to establish procedures for the resolution of disputes concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1(a). DOBI's interpretation of AICRA as a system that resolves disputes concerning the payment of No-Fault benefits to claimants or their assignees (and nothing else) is entitled to deference. In Merin v. Maglaki, 126 N.J. 430, 436 (1992), the court gave deference to DOBI's interpretation of the Fraud Act. It stated, "We give substantial deference to the interpretation of the agency charged with enforcing an act. The agency's interpretation will prevail provided it is not plainly unreasonable." citing Metromedia, Inc. v. Director, Div. of Taxation, 97 N.J. 313, 327, 478 A.2d 742 (1984).

Similarly, in N.J.S.A. 39:6A-5.1(c), the Legislature specifically outlined the various issues that could constitute a "PIP dispute" subject to the NFADR process. In doing so, it identified, essentially, a series of defenses that a carrier

could assert in opposition to a claimant's demand for payment of medical expense benefits. Significantly, the Legislature could have, but did not, include within the definition of a PIP dispute whether a No-Fault claimant, a medical provider with an assignment of benefits or an insured knowingly misrepresented material facts to an insurance carrier in connection with a claim, whether a person conspired with others to do so or whether a person knowingly benefited from other individual's violations of the Fraud Act, all of which would be actionable under the Fraud Act even though the Legislature was then making other changes to the Fraud Act.[4] Instead, the Legislature continued to vest exclusive jurisdiction over the resolution of the Fraud Act issues in a "court of competent jurisdiction." As the Merin court stated, "The words chosen [or not chosen] by the Legislature are deemed to have been chosen for a reason." Merin, 126 N.J. at 435 citing Gabin v. Skyline Cabana Club, 54 N.J. 550, 555, 258 A.2d 6 (1969). Under AICRA, the Legislature restructured the government to fight No-Fault fraud more comprehensively and with greater coordination. See N.J.S.A. 39:6A-1.1. The Legislature's explicit failure to grant DRPs

[4] Respondents argue that the Legislature could have carved out Fraud Act claims from the reach of the definition of what constitutes a PIP Dispute under N.J.S.A. 39:6A-5.1. We respectfully suggest that no such carve out was necessary because Fraud Act claims never came within the definition of a PIP Dispute as is evidenced by the procedural and constitutional difficulties discussed herein, none of which are addressed meaningfully in respondents' papers. Therefore, there was no need for them to opt into or out of the NFADR process to resolve Fraud Act claims.

jurisdiction over the resolution of Fraud Act disputes demonstrates that it was not the Legislature's intent to do so.

To find that AICRA changed jurisdiction over Fraud Act disputes from "courts of competent jurisdiction" to NFADR DRPs would constitute an implied repeal of section 7 of the Fraud Act. In Goff v. Hunt, 6 N.J. 600, 606 (1951), the court stated, "It has also been held many times that implied repealers are not favored in the law and that the requisite intent will not arise by implication unless the subsequent statute is plainly repugnant to the former and is designed to be a complete substitute for the former. Hartman v. Board of Chosen Freeholders, 127 N.J.L. 170, 21 A.2d 351 (Sup.Ct.1941). See also State Board of Medical Examiners v. Coleman, 132 N.J.L. 64, 67, 38 A.2d 689 (Sup.Ct.1944); Kaufman v. Samuelson, 134 N.J.L. 573, 576, 49 A.2d 479 (Sup.Ct.1946)." The Goff court further stated "that the inferential repeal of a statute is a pure question of intention and every reasonable intent will be made against such result. Ruckman v. Ranson, 35 N.J.L. 565 (E.&A.1871)". See 6 N.J. at 607. Similarly, in Swede v. City of Clifton, 22 N.J. 303, 317 (1956), the court stated,

> "The question of repeal is one of legislative intention; and there is a presumption as a matter of interpretative principle and policy against an intent to effect a repeal of legislation by mere implication. The purpose so to do must be free from all reasonable doubt. Repeals by implication are not favored in the law; and where the statutory provisions may reasonably stand

> together, each in its own particular sphere of action, there is not the repugnancy importing the design to repeal the earlier provision."

Reading AICRA as compelling resolution of Fraud Act disputes through NFADR not only ignores the plain language of N.J.S.A. 17:33A-7 and N.J.A.C. 11:3-5.1(a), but it also gives rise to the numerous procedural and constitutional issues discussed below which will serve to only weaken the insurance industry's ability to "confront aggressively the problem of insurance fraud in New Jersey" which is the goal of both the Fraud Act and AICRA. See N.J.S.A. 17:33A-2 and N.J.S.A. 39:6A-1.1(b). The mere fact that these various procedural and constitutional issues exist demonstrates that AICRA's NFADR process was not intended to be a "complete substitute" for the Fraud Act's designation of "courts of competent jurisdiction" as the appropriate venue for resolving Fraud Act claims. It is reasonable to assume that the Legislature and/or DOBI would have resolved these issues if NFADR was intended to replace the courts as the venue for Fraud Act claims. Instead, it is far more reasonable and consistent with the language of the statutes and regulations to read the Fraud Act and AICRA as applying "each in its own particular sphere of action", with the NFADR process resolving disputes over the payment of overdue No-Fault Benefits to claimants and courts of competent jurisdiction resolving disputes over whether, in part, a claimant knowingly misrepresented

material facts to the carrier in connection with a claim for payment and/or conspired with others to do so entitling the carrier to an award of compensatory and, potentially, treble damages.

Moreover, by its own terms, a dispute under the Fraud Act is not a "PIP dispute." In Fraud Act claims, the dispute is whether the defendant(s) violated section 4 of the Fraud Act. In part, the Fraud Act states that a person or practitioner violates the act if he "(1) Presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy or the "Unsatisfied Claim and Judgment Fund Law," P.L.1952, c. 174 (C.39:6-61 et seq.), knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim." N.J.S.A. 17:33A-7(a)(1). Thus, a dispute under the Fraud Act is not "a dispute concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1(a). In a Fraud Act case that arises in the No-Fault setting such as the instant matter, the value of the medical expense benefits that the carrier seeks to recover serves only as a measure of the carrier's damages. (The carrier's attorney's fees and costs serve as other measures of its damages.) Accordingly, since a dispute under the Fraud Act is not a dispute concerning the payment of medical expenses benefits to a

claimant, this matter must be resolved in the Superior Court, "a court of competent jurisdiction" and not via the NFADR process where the DRP has limited jurisdiction and authority.

Moreover, a review of the quarterly reports that Forthright filed with DOBI demonstrate that it is a high volume/low value process not suited for resolving Fraud Act claims. In its report for the first quarter of 2023, Forthright noted that 11,027 new cases were filed. (ICAa 010). 11,128 cases were resolved by awards or settlements. The median amount awarded for medical expense benefits was $985.00. (ICAa 015). The median attorney's fee award constituted $1,000.00. Ibid. In the second quarter of 2023, Forthright reported that 11,798 new cases were filed. (ICAa 026). 11,006 cases were concluded in the quarter. The median amount awarded for medical expense benefits was $1,202.00. (ICAa 031). The median attorney's fee award was $1,000.00. Ibid. In the third quarter of 2023, Forthright reported that 11,272 new cases were filed. (ICAa 039). 10,428 cases were resolved. The median award of medical expense benefits had a value of $936.00. (ICAa 044). The median attorney's fee award was $1,000.00. Ibid. In the fourth quarter of 2023, 11,497 new cases were filed. (ICAa 052). 12,043 cases were resolved. The median award of medical expense benefits was $930.00. (ICAa 057). The median attorney's fee award was $1,000.00. Ibid. In the case of New Jersey Healthcare Coalition

v. New Jersey Department of Banking and Insurance, 440 N.J. Super. 129, 144 (App Div 2014), the Court noted that "few DRP hearings currently involved oral testimony." In fact, many of the matters filed before Forthright are resolved on the papers. See, (ICAa 052) which notes that 20% of the new cases filed were designated to be resolved on the papers. All of the foregoing is consistent with the objective of No-Fault which is to, in part, pay meritorious PIP claims in a quick and efficient manner. See Gambino v. Royal Globe Ins. Cos., 86 N.J. 100, 104 (1981) ("The Reparation objective.")

In contrast, the matter of Allstate v. Lajara, et al, Superior Court of New Jersey, Docket No. UNN-L-4091-08, involved 77 defendants. See E-courts jacket. The case was filed on December 15, 2008. Ibid. The trial of the matter commenced on January 4, 2016. Numerous witnesses testified and numerous documents were marked into evidence during the six-month long trial. Judgments were entered against three groups of defendants on June 29, 2016. (ICAa 062-064). The Judgements totaled $9,999,180. Ibid. Respectfully, it is submitted that Forthright does not have the resources to adjudicate Fraud Act cases such as the instant matter consistent with traditional notions of due process while perserving by the parties' constitutional rights as discussed below.

C. COMPELLING INSURANCE CARRIERS AND/OR DEFENDANTS TO RESOLVE FRAUD ACT CLAIMS THROUGH THE NFADR PROCESS DEPRIVES ALL PARTIES OF THEIR RIGHT TO A JURY TRIAL.

Here, three groups of defendants filed Answers to Allstate's Complaint in which a jury demand was asserted. [See Pa 152-333]. As a result, all parties had a right to rely upon these jury demands and to insist upon a jury trial to resolve the claims asserted under the Fraud Act. In Allstate v. Lajara, 433 N.J. Super 20, 29 (App. Div. 2013), the court stated,

> "Once one party demands a jury trial on all issues, 'the waiver provisions of subsection c of the rule [4:35-1] cannot be the basis for denying a jury trial to a party who has not demanded such a trial.' 500 Columbia Tpke. Assocs. v. Haselmann, 275 N.J. Super. 166, 170, 645 A.2d 1210 (App. Div. 1994). Consequently, trial by jury could be 'dispensed with only by consent of all the parties or their counsel,' including that of plaintiff. Ibid."

The Supreme Court held that all parties to a Fraud Act case have a constitutional right to a jury trial.[5] See Allstate v. Lajara, 222 N.J. 129, 134-135 (2015). Thus, the trial court's order here that compels Allstate and the answering defendants to resolve this matter via the NFADR process deprives Allstate and the answering defendants of their constitutional right to a jury trial. Thus, the trial court's ruling must be reversed.

[5] While all parties may waive their rights to a jury trial, here the trial court made no findings of such a waiver. [Pa001-0022]. Moreover, respondents argue that the Lajara court only recognized the defendants' right to a jury trial. They provide no support for this distinction and ignore the fact that the right to a jury trial depends on the cause of action and the damages available thereunder and not the identity of the party pursuing the claim.

D. INSURANCE CARRIERS CANNOT BE COMPELLED TO RESOLVE FRAUD ACT CLAIMS VIA THE NFADR PROCESS SINCE THEY CANNOT BE AWARDED DAMAGES.

The Fraud Act provides that a successful carrier is entitled to recover compensatory damages, cost of investigation, attorney's fees and cost of suit. The carrier is also entitled to recover treble damages if it demonstrates that the defendant(s) engaged in a pattern of violating the act. See N.J.S.A. 17:33A-7(b). Significantly, the Fraud Act vests the determination as to whether a carrier is entitled to treble damages in the court. It states, "a successful claimant under subsection a. shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating this act." N.J.S.A. 17:33A-7(b) (emphasis added). Thus, a DRP does not have the authority to award treble damages thereby depriving carriers of a substantial remedy that the Legislature created to help them combat insurance fraud aggressively.

Moreover, unlike in the Consumer Fraud Act, attorney's fees are considered an element of the carrier's compensatory damages in the Fraud Act and, thus, are subject to trebling. See Allstate v. Lajara, 222 N.J. at 148 ("Notably, attorneys' fees, investigatory costs, and costs of suit are, by definition, compensatory damages under the IFPA, and therefore a successful

lawsuit initiated by an insurance company will necessarily involve an award of damages.")

However, in the Coalition I case, the Appellate Division stated that an insurance carrier is not entitled to an award of attorney's fees where it is successful in defeating a claim for payment of the No-Fault benefits. It stated, "We find nothing in the Legislature's findings and declarations contained within N.J.S.A. 39:6A-1.1(b) expressing an intention to permit an award of counsel fees to an insurance carrier against an insured or injured person in the statutory dispute resolution process." See Coalition, 323 N.J. Super. at 263. The court further noted that if the carrier is successful in the NFADR process, "there is no 'award.' Under such an interpretation, attorney's fees could not be granted against an injured party or insured." Id. at 263.

Similarly, in the case of Allstate Ins. Co. v. Lopez, 311 N.J. Super. 660 (Law Div. 1998), the Court expressly found that the Fraud Act designates the proper venue for resolution of disputes under the act. The Court stated,

> "The act designates the proper forum for the adjudication of issues of fraud: 'Any insurance company damaged as a result of a violation of any provision of this act may sue therefore in any Court of competent jurisdiction.' … Significantly, the Legislature did not provide for the arbitration of claims under the act; nor did it give arbitrators the power to award any of the specified damages under the act. The role of arbitration in automobile insurance matters is to provide for the prompt payment of PIP benefits to ensure that people legitimately injured as a result of an automobile accident receive reasonable and necessary medical treatment in a

> prompt and expeditious manner. See Kubiak v. Allstate Ins. Co. 198 N.J. Super 115, 119 (App. Div. 1984). As Judge Pressler so aptly expressed, 'arbitration by its nature does not provide a forum conducive to extensive issue and party joinder or to the according of a variety of remedies.'" Citing Jersey City Police v. Jersey City 257 N.J. Super 6, 14 (App. Div. 1992). [311 N.J. Super. at 678.]

In Ohio Casualty v. Garzon-Cardenas, Superior Court of New Jersey, Appellate Division, Docket No. A-6234-03T3 (Dec'd July 15. 2005), the court held that "A PIP arbitrator [sic] lacks the requisite authority to award damages pursuant to the Fraud Act, which awards special remedies to insurance companies. The present Fraud Act claims are not 'disputes' arising pursuant to Chapter 6A. Therefore, these claims can only be heard in the Law Division." Slip op. at 5-6.[6]

Recognizing that monetary awards do not get entered in favor of carriers, the "Demand for Arbitration" forms that are used by Forthright[7] (and approved by DOBI) do not inquire about the damages that an insurance carrier seeks to recover. Instead, the forms only ask claimants to list the No-Fault benefits that they seek to recover from the insurance carrier. See https://www.nj-no-fault.com/forms, page 3 (last visited May 17, 2024)[8]. These forms are consistent with DOBI's statement that the NFADR process is intended to

[6] A copy of this opinion is submitted herewith at ICAa 065.
[7] As is set forth below, Forthright is the current Dispute Resolution Organization contracted by DOBI to operate the NFADR process.
[8] The court may take judicial notice of these forms under N.J.R.E. 201(b)(1)-(3).

resolve disputes "concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance" to claimants and not a carrier's claim for damages under the Fraud Act. N.J.A.C. 11:3-5.1(a) The fact that an insurance carrier cannot even assert a claim for damages on Forthright's DOBI approved forms strongly suggests that carriers cannot recover any Fraud Act damages in an NFADR process.

As is stated above, the Legislature stated in 1983 that it is the purpose of the Fraud Act to "confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium dollars used to pay fraudulent claims." N.J. S.A. 17:33A-2. Nine years after the Fraud Act was enacted, the Supreme Court stated, "Insurance fraud is a problem of massive proportions that currently results in substantial and unnecessary costs to the general public in the form of increased rates. In fact, approximately ten to fifteen percent of all insurance claims involve fraud. New Jersey Dep't of Ins. 1989 Annual Report, at 62–63." Merin, 126 N.J. at 436. AICRA was enacted in 1998, six years after the Merin decision. In passing AICRA, the Legislature declared,

> "Whereas, It is generally recognized that fraud, whether in the form of inappropriate medical treatments, inflated claims, staged accidents, falsification of records, or in any other form, has increased premiums, and must be uncovered and vigorously prosecuted, and while the pursuit of those who defraud the automobile insurance system has heretofore been addressed by the State through various agencies, it has been without sufficient coordination to aggressively combat fraud, leading to the conclusion that greater consolidation of agencies which were created to combat fraud is necessary to accomplish this purpose." [N.J.S.A. 39:6A-1.1(b)].

Given that fraud in the No-Fault system continued to grow from a "problem of massive proportions" in 1992 to one that required a restructuring of the State's fraud-fighting agencies to more "aggressively combat fraud" in 1998, it defies credibility to suggest that the Legislature intended to relegate the resolution of claims under the Fraud Act to the NFADR process despite the fact that this process is incapable of achieving one of the primary goals of the Fraud Act, namely providing for the restitution of fraudulently obtained insurance benefits. Since insurance carriers cannot recover their statutory remedies of compensatory damages, attorney's fees and/or treble damages in the NFADR process, it is evident that Fraud Act claims must be resolved in a "court of competent jurisdiction." To hold otherwise would leave an insurance carrier that has been successfully hoodwinked into paying claims with no ability to recover "restitution of fraudulently obtained insurance benefits" to the ultimate detriment to the rate paying public. See N.J.S.A. 17:33A-2.

In the case of GEICO v. Mt. Prospect Chiropractic Center, 98 F. 4th 463, 469 (3rd Circuit 2024), the court found that GEICO would be entitled to recover damages in an arbitration proceeding citing to the American Arbitration Association's Commercial Arbitration rules.[9] However, as is stated above at length, those rules do not apply to NFADR. DOBI's rules and the rules promulgated by Forthright govern the NFADR process. See N.J.S.A. 39:6A-5(i), N.J.A.C. 11:3-5-1, et seq. generally and N.J.A.C. 11:3-5.3 to 5.6 in particular. Thus, this holding must be rejected.

E. THE INABILITY OF PARTIES TO OBTAIN DISCOVERY IN AND/OR TO COMPEL WITNESS ATTENDANCE AT NFADR PROCEEDINGS DEMONSTRATES THAT FRAUD ACT CASES ARE MEANT TO BE RESOLVED IN THE SUPERIOR COURT.

Under N.J.A.C. 11:3-5.2, DOBI is responsible for designating an organization to administer the NFADR process. Forthright is the current administrator of the New Jersey No-Fault PIP program. See www.nj-no-fault.com/home (last visited May 9, 2024).

Forthright's rules governing the NFADR process do not provide for discovery. See www.nj-no-fault.com/rules. [See also Pa0377] They do not mention interrogatories, depositions, subpoenas or document requests. This is

[9] Despite their citations to the GEICO case, respondents do not contest the point that damages are not available to a carrier under the actual NFADR rules that actually apply here.

understandable given that, during the No-Fault claims process, a medical provider is required to obtain pre-certification for the treatment and/or testing. If precertification is denied, the patient or treating provider is required to submit one or more appeals before filing a demand for NFADR. [Pa0504] Thus, the parties are well aware of the patient's/provider's basis for seeking additional care and the basis for the carrier's denial of same.

In Selective Ins. Co. of America v. Hudson East Pain Management, 416 N.J. Super. 418, 429-430 (App. Div. 2010), the court confirmed that carriers are only entitled to the limited discovery provided for by N.J.S.A. 39:6A-13(g) in the NFADR setting. Significantly, the Selective court advised that a carrier would be entitled to the broad discovery permitted under the Rules of Court upon the filing of a Fraud Act claim. It stated, "In an action filed pursuant to the IFPA for substantive remedial relief from claimed violations thereof, plaintiff would be bound by, and subject to, the ordinary rules of discovery governing civil actions in the Law Division, with their usual limitations as to relevance and protections against oppression and harassment." Id. at 435.

Here, the Complaint discusses various statements that Allstate obtained as part of its pre-suit investigation. [Pa0023] In an NFADR process, Allstate would be under no obligation to turn over those full statements to the adversaries until the hearing given the lack of discovery in NFADR.

Similarly, requiring parties to resolve a Fraud Act claim via the NFADR process also deprives them of the opportunity to compel non-party witnesses to appear and testify and produce documents at depositions and, ultimately, at a trial since Forthright's rules and/or DOBI's regulations do not grant subpoena power. Therefore, the defendants here would be unable to compel the above witnesses who gave favorable statements to Allstate to appear and testify and produce records at depositions so they could explore the strengths and weaknesses of those statements. Similarly, no party would be able to compel those witnesses to appear and testify in person at the NFADR hearing so that the DRP could assess their credibility.

Quoting its prior opinion in Greene v. McElroy, 360 U.S. 474, 496-497 (1959), the United States Supreme Court stated,

> "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses. e.g., ICC v. Louisville & N.R. Co., 227 U.S. 88, 93—94, 33 S.Ct. 185, 187—188, 57 L.Ed. 431 (1913); Willner v. Committee on Character & Fitness, 373 U.S. 96, 103-104, 83 S.Ct. 1175, 1180—1181, 10 L.Ed.2d 224 (1963). What we said in Greene v. McElroy, 360 U.S. 474, 496—497, 79 S.Ct. 1400, 1413, 3 L.Ed.2d 1377 (1959), is particularly pertinent here:
>
> 'Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action[10] seriously injures an individual, and the reasonableness of

[10] Since use of the NFADR process is mandated by the State, government action is present here. See N.J.S.A. 39:6A-5.1.

> the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment * * *. This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases, * * * but also in all types of cases where administrative * * * actions were under scrutiny.'" [Goldberg v. Kelly, 397 U.S. 254, 269-270 (1970).]

In State v. McAllister, 184 N.J. 17 (2005), the Supreme Court noted that proving actions grounded in financial crimes such as insurance fraud are particularly difficult. It stated,

> "identity theft and insurance fraud, often involve the shifting of money and other illicit dealings that are documented by bank records. See, e.g., N.J.S.A. 2C:21–17 (criminalizing impersonation of another person to obtain benefit by fraud). Finally, bank transfers can reveal the funding of terrorist activity. See Eric Lichtblau, U.S. Seeks Access to Bank Records to Deter Terror, N.Y. Times, April 9, 2005, available at 2005 WLNR 5598007 (quoting former 9/11 Commission member: "The idea is for the government to make it more difficult and more risky for terrorists to move money....").
>
> Crimes involving corruption and fraud depend on secrecy and misinformation. Those who commit them, when confronted, hide behind walls of silence, making detection difficult. See Addonizio, supra, 53 N.J. at 135, 248 A.2d 531 (recognizing that "a direct inquiry" of offender "is not likely to be productive"); United States v. Alexandro, 675 F.2d 34, 43 (2d Cir.) (acknowledging need for "special investigative techniques to

> uncover insidious corruption"), cert. denied, 459 U.S. 835, 103 S.Ct. 78, 74 L.Ed.2d 75 (1982)." [184 N.J. at 39.]

Depriving all parties of their ability to obtain discovery (first-party and third-party) and the lack of an ability to compel witness testimony will prevent Fraud Act claims from being resolved on their merits at an NFADR hearing, to the detriment of the due process rights of all parties and the interests of justice.

F. RESOLVING FRAUD ACT CLAIMS VIA NFADR VIOLATES THE GOALS OF THE ENTIRE CONTROVERSY DOCTRINE.

Arbitration and alternative dispute resolutions are the byproduct of a parties' agreement. The availability of compulsory arbitration is a contract question, which is "dependent solely on the parties' agreement." Cohen v. Allstate Ins. Co., 231 N.J. Super. 97, 101 (App. Div.), certif. denied, 117 N.J. 87 (1989). "Only those issues may be arbitrated which the parties have agreed shall be." Grover v. Universal Underwriters Ins. Co., 80 N.J. 221, 228 (1979). See also N.J.S.A. 2A:23A-2 (governing contracts to resolve disputes via alternative resolution.) In the No-Fault setting, the relevant contract is the policy of insurance. Under N.J.A.C. 11:3-5.6, the parties to an NFADR proceeding are the "injured party, the insured, a provider who is an assignee of PIP benefits pursuant to N.J.A.C. 11:3-4.9 … [and] the insurer" (emphasis added). Significantly, absent an assignment, even a patient's billing medical entity is not a proper party to an NFADR proceeding.

Here, in addition to the defendant medical providers who billed Allstate, Allstate sued a management company, several realty companies, Jennifer M. O'Brien, Esq., and layperson, Christopher Bufano, an alleged paper owner of defendant Carteret Comprehensive. Allstate is unable to join the foregoing individuals and entities in an NFADR proceeding, since they are neither parties to the insurance policy with Allstate nor billing medical entities who have taken an assignment of their patients' claims for payment. Similarly, since the billing medical entities (e.g. Carteret Comprehensive Medical Care, P.C.) are likely the parties that received the assignment of benefits from their patients, Allstate could not even join the principals of the defendant medical entities as parties in an NFADR proceeding since those principals have not individually taken assignments from their patients and, thus are not parties to a contract with Allstate or providers with an assignment of rights.

If the trial court's decision is upheld, Allstate will be required to litigate with the defendant medical provider entities via an NFADR process and it will be required to forego its claims against the realty entities, the laypersons, the attorney, and the real and paper owners of the medical entities (collectively the dismissed defendants) because plaintiffs' Complaint against all defendants was dismissed in its entirety. [Pa0001-23] Even if plaintiffs' Complaint against the dismissed defendants were reinstated, Allstate would be obligated to engage in

wasteful and duplicative litigation in court against the dismissed defendants and in NFADR against the billing medical entities who possess assignments of their patients' claims. This multi-track litigation gives rise to the possibility of inconsistent results and is highly inefficient for both the parties and the adjudicating bodies.

The purpose of the entire controversy doctrine is to "encourage comprehensive and conclusive litigation determinations, avoid fragmentation of litigation, and promote party fairness and judicial efficiency…. The rule as to claim joinder generally requires that all aspects of the controversy between those who are parties to litigation be included in a single action." See Pressler & Verniero, CURRENT N.J. Court Rules, (GANN), Comment R. 4:30A-1. The Court in Westinghouse Electric Corp. V. Liberty Mutual Insurance Company, 233 N.J. Super 463, 470-471 (App. Div. 1989), stated,

> "This kind of fractionalization is a most potent weapon in the arsenal of the litigant whose primary and subversive aim is to impose both upon the judicial system and the adversary by endlessly delaying the day upon which the entire controversy will finally come to an end and the respective rights of the litigants resolved – clearly, consistently and finally. It is only the single comprehensive action, designed to adjudicate the entire controversy between the litigants which can protect both the Court and the parties from that calculated imposition."

Insurance carriers should not be obligated to engage in fractionalized litigation to prove their claims under the Fraud Act. Thus, the entire matter should be

remanded to the trial court so it can be resolved in one consistent and comprehensive action by a "court of competent jurisdiction" as specifically required by the Fraud Act.

G. COMPELLING FRAUD ACT CLAIMS TO BE RESOLVED THROUGH THE NFADR PROCESS DEPRIVES THE COMMISSIONER OF INSURANCE OF ITS ABILITY TO INTERVENE IN THIS MATTER.

N.J.S.A. 17:33A-7(d) grants the Commissioner of the Department of Banking and Insurance the ability to intervene in Fraud Act cases to protect the public's interests and to penalize those who have engaged in insurance fraud. The Fraud Act imposes an obligation upon carriers who have filed Fraud Act claims to notify the Commissioner of its filing. Id. at 7(c). However, given that the Commissioner of Insurance is not a party to an insurance contract, it is not a party who can be joined to an NFADR proceeding under N.J.A.C.11:3-5.6. It also cannot initiate an NFADR case. Thus, compelling Fraud Act claims to be resolved through NFADR proceedings deprives the Commissioner of its ability to intervene. Compelling the Commissioner to file an independent action against the defendants also gives rise to the sort of disfavored fractionalized litigation discussed above.

Importantly, N.J.S.A. 39:6A-15 grants the Commissioner the ability to petition a "court of competent jurisdiction" to suspend the driving privileges of any person found to have violated the Fraud Act in the automobile insurance

setting. A DRP is without authority to grant this relief. The inability of the DRP to grant complete and consistent relief to the Commissioner strongly suggests that Fraud Act cases should be resolved in the Superior Court, a "court of competent jurisdiction."[11]

CONCLUSION

Based on the foregoing, the trial court's orders dismissing Allstate's complaint should be reversed and the matter remanded to the trial court.

METHFESSEL & WERBEL, ESQS.
Attorneys for Amici Curiae Insurance Council of New Jersey and American Property Casualty Insurance Association

By:_____
Thomas O. Mulvihill, Esq.

Dated:

[11] The fact that the Commissioner has not yet intervened in this matter, which was filed only recently, should not deprive the Commissioner of its ability to do so on a going-forward basis in this or other similar matters.

ALLSTATE NEW JERSEY INSURANCE COMPANY; ALLSTATE NEW JERSEY PROPERTY AND CASUALTY INSURANCE COMPANY; ALLSTATE INSURANCE COMPANY; ALLSTATE FIRE & CASUALTY INSURANCE COMPANY; ALLSTATE NORTHBROOK INDEMNITY COMPANY; and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiffs, v. CARTERET COMPREHENSIVE MEDICAL CARE P.C. d/b/a MONROES COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, COMPREHENSIVE VEIN CARE; INIMEG MANAGEMENT COMPANY, INC.; 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C.; 72 ROUTE 27 REALTY, L.L.C.; MID-STATE ANESTHESIA CONSULTANTS, L.L.C.; NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A.; INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY L.L.C., d/bB/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY d/b/a METRO PAIN AND VEIN, Defendants.	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION Docket No.: A-778-23T1 ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY Docket No.: MID-L-1469-23 Sat Below: Hon. Chrisotpher D. Rafano, J.S.C.

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BRIEF OF *AMICUS CURIAE* ASSOCIATION OF NEW JERSEY CHIROPRACTORS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Other Authorities

Preliminary Statement

Allstate New Jersey Insurance Company, together with its various corporate affiliates (collectively, "Allstate"), argues that the Trial Court's dismissal of this action in favor of mandatory arbitration violates the New Jersey Constitution. Specifically, Allstate claims that compelling the parties to arbitrate the fraud claims in this action will deprive Allstate of its right to have those claims tried to a jury. Allstate ignores, however, that its own insurance policies require submission to mandatory arbitration of all disputes involving the payment of PIP benefits. It is, of course, the settled law of New Jersey that a party may waive its right to a jury trial. Since there is no legitimate dispute that Allstate waived its right to a trial by jury in this case, its claim that the Trial Court's decision was unconstitutional lacks merit.

Procedural History and Statement of Facts

Amicus Association of New Jersey Chiropractors incorporates here the Procedural History set forth in the briefs of Allstate and of Defendant Carteret Comprehensive Medical Care, P.C. ("CCMC") on this appeal and the Statement of Facts set forth in the brief of CCMC on this appeal.

Legal Argument

I. A party may waive its right to a jury trial.

As CCMC explains in its brief on this appeal, the New Jersey legislature implemented a system of mandatory arbitration of no-fault Personal Injury

Protection, or "PIP," disputes under the Automobile Insurance Cost Reduction Act of 1998 ("AICRA"). Db2. Among the arguments Allstate presents on appeal is that "AICRA's dispute-resolution clause would be unconstitutional if it required arbitration of Plaintiffs' fraud claims." Pb18. In support, Allstate cites the Supreme Court's decision in *Allstate N.J. Ins. Co., et al. v. Lajara, et al.*, 222 *N.J.* 129 (2015). Pb18. In *Lajara*, the Supreme Court held that the defendants in a private-party New Jersey Insurance Fraud Prevention Act claim have the right to a trial by jury. *Lajara*, 222 *N.J.* at 134-35.[1]

Allstate also cites *Jersey Cent. Power & Light Co. v. Melcar Utility Co*., 212 *N.J.* 576 (2013) ("*JCP&L*"), which held that it is impermissible for the legislature to require mandatory binding arbitration if doing so would deny a private party its constitutional right to a jury trial of a common-law cause of action. Pb20. Neither *Lajara* nor *JCP&L* addressed the salient fact in this case: That a party may waive its right to a jury trial.

The New Jersey Rules of Court provide that a party may waive his or her right to a jury trial. "Issues in civil actions triable of right by a jury shall be so tried only if a jury trial is demanded by a party in accordance with R. 4:35-1 or R. 6:5-3." *R.*

[1] In the interest of full disclosure: Counsel for *amicus* Association of New Jersey Chiropractors was counsel for the successful Appellants in *Lajara*. Counsel for *amici* Insurance Counsel of New Jersey and American Property Casualty Insurance Association, Thomas O. Mulvahill, Esq., was counsel for Appellee Allstate New Jersey Insurance Company, *et al.,* in *Lajara.*

1:8-1(b). A party may also waive such rights in an arbitration agreement. "By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court." *Atalese v. U.S. Legal Servs. Grp., L.P.*, 219 *N.J.* 430, 442 (2014) (quoting *NAACP of Camden Cnty. E. v. Foulke Mgmt.,* 421 *N.J.Super.* 404, 425 (App. Div.), *certif. granted,* 209 *N.J.* 96 (2011), *and appeal dismissed,* 213 *N.J.* 47 (2013)).

There is a strong policy that favors resolving claims in arbitration. In enacting New Jersey's Arbitration Act, the Legislature codified the existing judicial policy favoring arbitration as "a means of dispute resolution." *Hojnowski v. Vans Skate Park,* 187 *N.J.* 323, 342 (2006). *See also Martindale v. Sandvik, Inc.,* 173 *N.J.* 76, 92 (2002) ("[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes."). "Arbitration clauses—and other contractual clauses—will pass muster when phrased in plain language that is understandable to the reasonable consumer." *Atalese,* 219 *N.J.* at 444.

The waiver of the right to resolve any disputes involving the payment of PIP benefits is set forth in Allstate's own insurance contracts. Allstate can hardly claim that it did not understand that it was waiving its right to a jury trial of PIP claims when the mandatory arbitration clauses appear in the policies that Allstate, itself, drafted.

II. Allstate has expressly waived its right to trial by jury in its own insurance policies.

There appears to be no dispute among the parties that they are not entitled to a jury trial in a PIP action under AICRA. "'[S]ince 1951, the right to a jury trial for newly created statutory causes of action has been denied unless the statute so provides." *JCP&L*, 212 *N.J.* at 590 (quoting *State v. Sailor,* 355 *N.J.Super*. 315, 320 (App. Div. 2001)). Indeed, Allstate argued to the Appellate Division in the *Lajara* matter that the case was, "at its core, a reverse PIP suit" and that, "there is no right to a jury trial in a PIP suit such as this."[2] Appendix A, p. 7-8. In both this action and the *Lajara* action, Allstate cited *Manetti v. Prudential Property and Cas. Ins. Co*., 196 *N.J.Super*. 317 (1984) and *Endo Surgi Center, P.C. v. Liberty Mut. Ins. Co*., 391 *N.J.Super*. 588 (2007), two cases that, in fact, found that there is no right to a jury trial in PIP matters. Pb19-20; Appendix A, p. 7-8.

Allstate observed in its brief on appeal to this Court in *Lajara*: "Defendants [that is, the providers] do not argue that they are entitled to a jury trial on Plaintiffs' [Allstate's and the Attorney General's] PIP Declaratory Judgment counts." Appendix A, p. 8. The same is true here. Allstate, no doubt, would respond that it lost the jury-trial argument in *Lajara* and that, therefore, the *Lajara* decision supports its position on this appeal. The problem with this response is that the

[2] Despite the mirror-image quality of the allegations in this matter and in *Lajara*, Allstate takes the inconsistent position here that this is not a PIP suit.

Supreme Court did not face, or address, the same issue in *Lajara* that this Court faces here, because the waiver of the right to a jury trial was not in dispute in *Lajara*. In addition, none of the parties raised the issue in *Lajara* that the parties to this action raise: Whether the claims at issue were subject to arbitration under AICRA.

Moreover, the defendant providers in *Lajara* did not argue that Allstate had waived its right to a jury trial by opting into the arbitration protocol of AICRA; therefore, the trial court, the Appellate Division, and the Supreme Court were not called upon to resolve that issue in *Lajara*. The converse is also true. None of the defendants in *Lajara* demanded that the claims be resolved in arbitration, as the Defendants do here. The issue presented on this appeal simply was not before the Court in *Lajara.* As the Defendants in this action have correctly pointed out: Until Judge Rafano addressed the issue below, no provider had ever objected to the attempt by insurance companies such as Allstate to – as the Trial Court expressed it – make an "end-run around" their voluntary participation in arbitration under AICRA by cloaking their PIP claims in causes of action for fraud under the NJIFPA and RICO.

Amici curiae Insurance Council of New Jersey ("ICNJ") and American Property Casualty Insurance Association ("APCIA") argue that, "While all parties may waive their rights to a jury trial, here the trial court made no findings of such a waiver." Brief at 18, n.5. While it is true that the Trial Court's Statement of Reasons does not address the jury-trial issue, the short response to that argument is: It does

not matter.

"'It must be perfectly obvious that, if the court below reached a right conclusion, even if upon a wrong reason, the judgment should not be disturbed; and therefore it is that errors may be assigned upon matters in the record only, and not upon the reasoning which induced the rendering of the judgment under review.'" *R. Krevolin & Co. v. Brown*, 20 N.J. Super. 85, 92 (App. Div. 1952) (quoting *McCarty v. West Hoboken*, 93 N.J.L. 247, at page 248, 107 A. 265 (E. & A.1919)). *See also Driscoll v. Burlington-Bristol Bridge Co.*, 28 N.J. Super. 1, 7 (App. Div. 1953) ("Nor is anything to be made of the fact that the matter of a constructive trust was not expressly dealt with below, nor considered on the appeal except when presented by the court on the argument. We are concerned only with the soundness of the order appealed from.").

Allstate, of course, does not argue that its waiver of a jury trial in disputes involving recovery of PIP benefits was "wrongly decided" by the Trial Court. Even if it did, however, New Jersey law is clear that it is the result that matters, not the reasoning. In any event, Allstate argues instead, as the appellees apparently did in *Driscoll*, that the Trial Court simply did not deal with the waiver issue. As in *Driscoll*, this Court should be concerned only with the soundness of the decision and not with the absence of a question this Court will resolve for the first time on appeal. Moreover, since Allstate argues on this appeal that the Trial Court's decision was

unconstitutional, it has placed the relevance of its waiver of a jury trial directly in issue, irrespective of whether the Trial Court addressed that question below.

Here, it is not the subject of any legitimate dispute that Allstate voluntarily opted into the AICRA regime. It is undisputed, as well, that Allstate's own policies – the contracts that it issued to its insureds in exchange for the payment, up front and in full, of premiums for coverage – require mandatory arbitration of all disputes relating to PIP benefits. Those contracts expressly prohibit medical providers such as the Defendants from accepting an assignment of benefits from an injured insured unless the provider agrees to "[s]ubmit disputes to alternative dispute resolution pursuant to N.J.A.C. 11:3." CCMC Appendix, Da138. The waiver of a jury trial set forth in Allstate's policies could hardly be clearer.

In a recent precedential case that is indistinguishable from this one, the United States Court of Appeals for the Third Circuit persuasively predicted that the New Jersey Supreme Court would compel arbitration where the insurer's own contracts required it. *GEICO v. Mt. Prospect Chiropractic Center, PA*, Consol. Case Nos. 23-1378, 23-2019 & 23-2053 (April 15, 2024). CCMC Appendix, Da158. *Mt. Prospect* was a consolidation of three cases involving different medical practice defendants (the "Practices"). The Complaint by GEICO alleged – as Allstate alleges here – that "the Practices filed exaggerated claims for medical services (sometimes for treatments that were never provided), billed medically unnecessary care, and

engaged in illegal kickback schemes. GEICO's suits against the Practices each included a claim under the IFPA, which gives insurers a fraud-like action with fewer elements than common-law fraud." CCMC Appendix, Da162-63 (citing *Allstate N.J. Ins. Co. v. Lajara*, 117 A.3d 1221, 1231-32 (N.J. 2015)).

As Allstate did here, GEICO opted into the AICRA PIP regime and issued two documents to its insureds, a Decision Point Review Plan (the "Plan") and an Assignment of Benefits, as endorsements to its policies. The Third Circuit found that the Plan "governs GEICO's reimbursement of PIP claims." (Citing *Coal. for Quality Health Care v. N.J. Dep't of Banking & Ins.*, 791 A.2d 1085, 1092-94 (N.J. App. 2002) and N.J. Admin. Code § 11:3-4.7. CCMC Appendix, Da170. "The Practices bind themselves to the Plan through the second document – GEICO's assignment of benefits form, which must be submitted before GEICO will pay doctors for PIP claims. That form requires the Practice 'comply with all the requirements of the Plan.' These documents facially suggest that the Practices entered into an arbitration agreement with GEICO." *Id.* (citation omitted).

Although GEICO attempted to attack the validity of the assignments and, therefore, the arbitration agreements, the Third Circuit rejected the attack on the ground that "it is not believable that the Practices never submitted a valid assignment of benefits given GEICO paid them more than $10 million." *Id* at 171. Here, Allstate admits that it paid the Defendants "more than $1.7 million in PIP benefits."

Pb7.

GEICO also argued that requiring arbitration of its NJIFPA claims would deny it the right to a jury trial. The Third Circuit rejected that claim with dispatch: "GEICO suggests that a laundry list of factors shows that the IFPA implicitly prohibits arbitration. None persuades us. It notes that IFPA plaintiffs have a jury trial right. *Lajara*, 117 A.3d at 1234. But GEICO does not explain why it cannot waive that right by agreeing to arbitrate." *Id.* at 167. Likewise, neither Allstate nor *amici* ICNJ/APCIA explain why they cannot waive the right to a jury trial by agreeing to arbitrate.

Conclusion

For all of the foregoing reasons, this Court should reject the arguments by Allstate and *amici curiae* ICNJ/APCIA and find that Allstate waived its right to a jury trial when it opted into the AICRA regime and made arbitration of all PIP benefits mandatory.

Respectfully submitted,
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By: */S/ Carl A. Salisbury*
Carl A. Salisbury

cc: All counsel, via eCourts filing

APPENDIX A

ALLSTATE NEW JERSEY INSURANCE COMPANY and ENCOMPASS INSURANCE f/k/a CONTINENTAL INSURANCE COMPANY, et al.,	SUPERIOR COURT OF THE STATE OFNEW JERSEY
Plaintiffs,	APPELLATE DIVISION
	Appellate Docket No. A-684-11
vs.	
GREGORIO LAJARA, et als.,	Sat Below: Kenneth J. Grispin, PJ.Cv.
Defendants.	

PLAINTIFFS' BRIEF AND APPENDIX IN OPPOSITION TO A.P. DIAGNOSTIC IMAGING'S AND HARSHAD PATEL'S INTERLOCUTORY APPEAL

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TABLE OF CITATIONS

Cases

Statutes and Regulations

Other Authorities

INTRODUCTION

The instant matter is a No-Fault insurance fraud declaratory judgment action. Plaintiffs allege that various Defendants knowingly submitted or caused to be submitted bills to Plaintiffs for No-Fault benefits for services which were rendered in violation of laws of the State of New Jersey. Plaintiffs (hereinafter "Allstate") assert claims for three forms of relief against the various Defendants:

A. Initially, the Plaintiffs assert, in essence, a reverse PIP suit, and seek a declaration that the bills issued by the various Defendants are not entitled to no-fault coverage.[1] See, e.g., complaint at Count One. It is Black Letter Law that a PIP dispute does not give rise to a jury trial and Defendants does not argue to the contrary. See Manetti v. Prudential Prop. & Cas. Co., 196 N.J. Super. 317 (App.Div.1984).

B. Secondly, the Plaintiffs seek the entry of an Order compelling Defendants to disgorge the monies which Plaintiffs previously paid to them. See, e.g. complaint at Count Two. It is undisputed that this claim for restitutionary relief is equitable and does not give rise to a jury trial. See Wanaque Borough Sewerage Auth. v. Township of West Milford, 144 N.J. 564, 575 (1996).

C. Lastly, the Plaintiffs similarly seek restitution plus an award of attorneys' fees under the New Jersey Insurance Fraud Prevention Act. See, e.g., complaint at Count Three. It is also undisputed that Plaintiffs' claim for an award of attorneys' fees seeks an equitable remedy.

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[1] The characterization of this matter as "a reverse PIP suit" obviously apply only to the Counts of the Complaint that seek declaratory relief in which Plaintiffs seek a ruling that they do not have to pay Defendants' outstanding bills such as Count One. Defendants' efforts to expand this comment (see Db 18) to the entire Complaint are overreaching and should be ignored.

See Shaner v. Horizon Bancorp, 116 N.J. 433, 451 (1989). Plaintiffs also seek an award of treble damages.[2]

Defendants do not dispute that all of the forms of relief which Plaintiffs seek to recover are equitable in nature. Despite this, Defendants continued to argue before this Court that they are entitled to a jury trial on Plaintiffs' Fraud Act claims only.[3] In doing so, Defendants ignore the above analysis and argue that they are entitled to a jury trial of Plaintiffs' Fraud Act claims simply because Plaintiffs seek an award of "money damages." The Defendants' argument ignores the fact that damages are not an element of a cause of action under the New Jersey Insurance Fraud Prevention Act. Thus, whether a party is entitled to a jury trial for having violated the Fraud Act cannot be determined by analyzing the nature of damages which may be sought in the case since an insurance carrier in a Fraud Act case may not seek an award of damages beyond attorney's fees. The Defendants similarly ignore the fact that the Appellate Division has already declared in the case of Liberty Mutual v. Land, 2010 N.J. Super. Unpub. LEXIS 89 (App. Div. 2010), that an insurance carrier's claim for damages under the Fraud Act was properly resolved by the Court and not a jury

[2] Defendants do not argue that Plaintiffs' claim for trebling of the damages that they are otherwise entitled to triggers a right to a jury trial and they cite to no authority for this proposition.

[3] Defendants do not seriously argue that they are entitled to a jury trial on the DJ and disgorgement counts of the complaint.

thereby rejecting the very argument that the Defendants now make.

Finally, Defendants ignore the fact that the Legislature specifically described the damages that a carrier has the option of seeking under the Fraud Act as restitutionary in nature. See N.J.S.A. 17:33A-2. In short, since it is undisputed that all of the damages sought by the Plaintiffs here are equitable in nature and since damages are not even an element of a cause of action under the Fraud Act, the court should affirm the Trial Court's orders granting Plaintiffs leave to withdraw their jury demand and striking Defendants' jury demands.[4]

[4] The Trial Court accurately described Plaintiffs' motion as a "motion to compel a bench trial." See Da7a and Da18a.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For purposes of this appeal only, Plaintiffs adopt the Statement of Facts and Procedural History as set forth in the Defendants' brief except as supplemented herein.

The State of New Jersey's Department of Banking and Insurance has intervened in the within matter and asserted a claim for damages against all Defendants named in Allstate's Complaint. See Da 5a.

The allegations of Plaintiffs' complaint which set forth a cause of action under the New Jersey Insurance Fraud Prevention Act, N.J.S.A. 17:33A-1, et seq., make explicitly clear that the damages sought are restitutionary in nature. For example, ¶¶ 93 and 94 of the complaint detail the monies that the Respondents previously paid to the various corporate Defendants. See Da 51a-52a. Count Three's *ad damnum* clause prays for an award of compensatory damages "equal to all PIP medical expense benefits Plaintiffs Allstate and Encompass [previously] paid in connection with the claims of the Allstate/Encompass claimants for services allegedly rendered." See Da 70a.

POINT I

THE TRIAL COURT PROPERLY FOUND THAT DEFENDANTS ARE NOT ENTITLED TO A JURY TRIAL

The instant matter is, at its core, a reverse PIP Suit. The Declaratory Judgment counts of Allstate's complaint seek, in

part, a declaration that it is not obligated to make payment on the bills issued by the Defendant facilities since they were operating unlawfully. See, for example, Plaintiffs' complaint, Count One, found at Da53a. The law is clear that there is no right to a jury trial in a PIP dispute such as this. See Manetti v. Prudential Property & Casualty Insurance Company, 196 N.J. Super. 317, 320-321 (App. Div. 1984) and Endo Surgi Center, P.C. v. Liberty Mutual Insurance Company, 391 N.J. Super. 588 (App. Div. 2007). See also N.J.A.C. 11:3-5.1. Defendants do not argue that they are entitled to a jury trial on Plaintiffs' PIP Declaratory Judgment counts.

In Count Two of the complaint, Plaintiffs seek disgorgement of the monies which they previously paid to the Defendants in satisfaction of the bills which the Defendants prepared and issued for the services rendered while they were operating unlawfully. See Da 59a to Da63a. Count Two's *ad damnum* clause prays for the entry of a judgment "Ordering these Defendants to disgorge any and all sums paid to them by Plaintiffs Allstate and Encompass on behalf of the Allstate/Encompass claimants caused by the rendering of health care services by Defendants' unlawful practice structures." See Da 62a-63a. The amount previously paid to the corporate Defendants and for which restitution is sought is detailed in paragraphs 93-94 of the Complaint. See Da51a-52a. It is undisputed that a claim for

restitution is equitable in nature and that it does not entitle a party to a jury trial. See Wanaque Borough Sewerage Auth. v. Township of West Milford, 144 N.J. 564, 575 (1996). Defendants do not seriously argue that they are entitled to a jury trial on these claims for restitution.

In Count Three, Plaintiffs assert a cause of action under the Fraud Act. In accordance with the equitable goals of the Fraud Act, Count Three's *ad damnum* clause states that Plaintiffs seek the entry of a judgment "Awarding Allstate and Encompass compensatory damages . . . in an amount equal to all PIP medical services benefits Allstate and Encompass paid. . . ." See Count Three, *ad damnum* clause, ¶(g) at Da 70a. Allstate also seeks treble damages and attorney's fees as permitted by the Fraud Act. Thus, Allstate's claim for relief in Count Three is, essentially, for statutory disgorgement and other damages as permitted by the Fraud Act.

The Legislature has specifically stated that the remedies available under the Fraud Act are equitable in nature. The Legislature stated that "the purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of premium

dollars used to pay fraudulent claims." N.J.S.A. 17:33A-2 (emphasis added.)

Cases that have construed the Fraud Act have similarly described the remedies available under the Act as being equitable in nature. The instant matter is similar in many regards to the case of Material Damage Adjustment Corporation v. Open MRI of Fairview, et al., 352 N.J. Super. 216 (Law Div. 2002). In both matters, the carriers filed suit against the Defendants seeking to recover compensatory damages as provided for by the Fraud Act. In MDA, the Defendant MRI facility operated for a period of time when it did not possess an ambulatory care facility license. In both cases, the carrier sought a declaration that the facilities' bills issued while they operated illegally were not entitled to payment. Both carriers further sought to recover the monies which they had previously paid in satisfaction of the facilities' bills which were issued while the facilities operated illegally. The MDA Court held that the proper measure of the carrier's damages was "an award of compensatory damages [that] requires the full restoration or 'restitution' to plaintiff of all payments made to Open MRI during the relevant time period." Id. at 232. The Court noted that its holding was consistent with the "expressed public policy and purpose of the statute, 'the restitution of fraudulently obtained insurance benefits.'" Ibid. citing to

N.J.S.A. 17:33A-2. The Court concluded by stating that "Open MRI is liable to Plaintiff for compensatory damages which include the full restitution of any payments received from plaintiff during the time it was not licensed by the State Department of Health & Senior Services and reasonable investigation, expenses, costs of suit, and attorney's fees." Id. at 234.

Similarly, in the case of Allstate v. Greenberg, 379 N.J. Super. 419 (Law Div. 2005), the Court held that Allstate's claim for disgorgement set forth an equitable cause of action. Id. at 444. The Court found that Defendant Greenberg was obligated to disgorge all monies which he received as a result of his improper self-referral of his patients to Neuromuscular Medical Group in violation of the applicable laws. Id. at 442, 445-446.

The Court similarly characterized the remedies available to an insurance carrier under the Fraud Act as restitutionary in nature in the matter of Lesniewski v. W.B. Furze Corporation, 308 N.J. Super. 270 (App. Div. 1998). There, Zenon Lesniewski submitted a workers' compensation claim under a policy issued to WB Furze Corporation (Furze). Lesniewski failed to disclose to Furze that he was working while collecting unemployment insurance benefits. The Defendant argued that the Plaintiff's failure to disclose that he was working violated the Fraud Act permitting it to deny his claim for workers' compensation

benefits. The Court rejected the Defendants' argument stating that the "restitutionary provisions" of the Fraud Act did not provide for the denial of an insurance claim submitted by the injured plaintiff/employee. Id. at 286-287(emphasis added). In light of the fact that the damages available to an insurance carrier under the Insurance Fraud Prevention Act are equitable in nature and since a jury trial is not available at common law in the courts of equity (See Wanaque Borough Sewerage Auth. v. Township of West Milford, 144 N.J. 564, 575, (1996)), the Court properly held that the parties here are not entitled to a jury trial.

Holding that a defendant charged with violating the Fraud Act is not entitled to a jury trial is also consistent with purpose of the Fraud Act. The purpose of the Fraud Act is to confront aggressively the problem of insurance fraud in New Jersey by . . . "reducing the amount of premium dollars used to pay fraudulent claims." N.J.S.A. 17:33A-2. Obviously, resolution of the instant matter through a bench trial would be more cost efficient than resolution of the matter through a jury trial. For example, the numerous parties here would not be required to incur attorney's fees in an effort to select an acceptable jury. Similarly, since a jury is not utilized, the parties will not be required to incur the cost of drafting jury instructions. Obviously, the process of trying a case before a

judge is shorter than trying a case before a Jury. In short, resolution of this matter through a bench trial would be more cost efficient for all parties. Thus, resolution of matters such as the instant case through bench trials is consistent with the goal of encouraging insurance carriers to confront aggressively the problem of insurance fraud in New Jersey by reducing the cost of doing so.

The issue raised here was specifically addressed in the case of State v. Sailor, 355 N.J. Super. 315 (App. Div. 2001). There, the State filed a civil action against the Defendant seeking the imposition of penalties against the Defendant for violating the Fraud Act pursuant to N.J.S.A. 17:33A-5(a) and other relief. The Defendant argued that he was entitled to a jury trial since the State was seeking money damages. The Appellate Division disagreed. The court held that a party to an Insurance Fraud Prevention Act matter is not entitled to a jury trial. The Court stated that:

> "when the Legislature wants to provide for the right to a jury trial, it has done so by express provision. See e.g., N.J.S.A. 2A:15-56 (labor dispute injunctions); N.J.S.A. 2A:62-4 (private title actions); N.J.S.A. 3B:12-24 (civil proceedings for mental incompetency); N.J.S.A. 45:14B-42 (actions regarding confidentiality of patient information). We conclude that

> the lack of a provision authorizing a jury trial under the act means that the Legislature does not intend to create such a right." Id. at 321.

The Sailor decision was rendered in 2001. Significantly, the Legislature has not elected to correct the Court's holding in the Sailor case and insert a right to a jury trial into the Fraud Act (in actions brought by the State or by private parties) in the subsequent 11 years. The Legislature's failure to do so should be deemed a recognition that the Legislature did not intend for causes of action under the Fraud Act to be tried before a jury. As the Sailor court noted, "Had the Legislature intended to create the … right [to a jury trial under the Fraud Act] here, it would have done so and clearly had the chance when the Act was last amended in 1997. Its absence means that there is no statutory right to a jury trial." Id. at 322. We note that the Legislature amended the Fraud Act again in 2010. The Legislature again chose not to provide a right to a jury as part of its 2010 amendments. These amendments occurred on June 29, 2010 – subsequent to the entry of the challenged Order. See N.J.S.A. 17:33A-1.

Significantly, the Appellate Division addressed the exact issue that is before this court in the case of Liberty Mutual Insurance Company v. Land, 2010 N.J. Super. Unpub. LEXIS 89

(App. Div. 2010).[5] There, Liberty Mutual filed suit against the Defendants seeking a declaration that the Defendants were not entitled to payment under the Liberty Mutual homeowner's insurance policy on the grounds that the Defendants knowingly misrepresented material facts to Liberty Mutual in connection with their homeowner's claim and for relief under the Insurance Fraud Prevention Act. Id. at 2-3. For reasons known only to the parties, the matter was tried before a jury which rendered a verdict in favor of Liberty Mutual. Id. at 3. However, the issue of the damages to which Liberty Mutual was entitled was presented to the trial judge. Id. at 4. The trial court entered a judgment against the Defendants for trebled damages in the amount of $175,302.88. Id. at 4.

On appeal, the Defendants argued that the judgment should be reversed since they were denied the right to a jury trial on damages. Id. at 5. The Appellate Division disagreed. The court noted, citing to the Supreme Court's related opinion in the Land case found at 186 N.J. at 175, that:

> "the statutory language of IFPA does not require proof of reliance on a false statement or resultant damages… The penalties permitted by the act are not designed to remedy direct monetary damage to the insurer. Sailor, supra 355 N.J. Super. at 324 (stating that under IFPA "the State is not seeking damages, as in a common law fraud

[5] A copy of this opinion is attached hereto.

> action, but rather is seeking a statutory penalty designed to reduce the incidence of insurance fraud."
>
> "Thus, the presentation of only the liability issue to the jury, without a separate damages component, did no violence to the IFPA and perforce, was not unduly prejudicial to Defendants. The statutory frame work provides that it is left to the Court to admeasure the compensatory damages - - a blend of "reasonable investigation expenses, costs of suit and attorneys' fees," N.J.S.A. 17:33A-7(a) - - and then determine whether "the defendant has engaged in a pattern of violating this act," for purposes of imposing treble damages. N.J.S.A. 17:33A-7(b). The trial judge adhered to that process in this case." [Land, slip op. at 9.]

Thus, it is clear that a party is not entitled to a jury trial in a private action brought by an insurance carrier under the Fraud Act. Had the Lands been entitled to a jury trial under the Fraud Act because the carrier was seeking "monetary damages" as argued by the Defendants here, the Appellate Division in Land would have been required to vacate the Order for Judgment since the Lands would have been deprived of their constitutional right to a jury trial. Instead, the Land opinion clearly stands for the proposition that the court, not a jury, should resolve a carrier's claims for damages against a private party under the Fraud Act, including a determination as to whether the carrier is entitled to an award of trebled damages.

Importantly, the Land court noted that it was the Trial Court's obligation to "admeasure" and blend the damages that a successful carrier is entitled to recover from a private party under the Fraud Act. Land, slip op. at 9. The Sailor court noted that "when a trial court has the discretion to invoke a remedy based upon a legislative design, that discretion is equitable in nature. 355 N.J. Super. at 323, citing to Albemarle Paper Company v. Moody, 422 US 405, 416, 95 S.Ct. 2362, 2371 (1975). Thus, given that the Trial Court has the authority exercise its discretion when admeasuring and blending the damages to which a successful carrier is entitled to under the Fraud Act, that Act's remedy is equitable in nature.

The Land court also hinted that the liability aspect of Liberty Mutual's complaint should not have been tried to a jury. In ruling upon the parties' appeal, the court stated that "We start with the proposition that Liberty Mutual's recovery in this case was solely enabled by a statutory - - not a Common Law - - remedy. The I.F.P.A. is a comprehensive statue designed to help remedy high insurance premiums with the legislature deemed to be a significant problem." Slip op. at 14-15. In footnote 4, the court stated,

> "The provisions preserving the right of a trial by jury have appeared in each of New Jersey's Constitutions. Pursuant to Article

> 1, ¶9 of the New Jersey Constitution (1947), a litigant has the right to a trial by jury [that] shall remain inviolate . . . ." In construing this provision, the New Jersey Supreme Court has been consistent in denying a right to jury trial unless the right existed prior to the adoption of the State Constitution. In re Li Volsi, 85 N.J. 576 (1981). We note that where actions created by statute have distinctive features with respect to substantive and procedural standards that would render them virtually unknown to the common law, there is no right to jury trial." See, e.g., Manetti v. Prudential Property and Casualty Insurance Company, 196 N.J. Super 317 (App. Div. 1984); Van Dissel v. Jersey Central Power & Light Company, 181 N.J. Super 516 (App. Div. 1981). [Land, slip op. at 8, n.4]

Had the Appellate Division believed that the liability aspect of the Land case was properly tried before a jury there would have been no need for the court to discuss the parties' constitutional right to a jury trial. The fact that the Appellate Division elected to discuss this issue and its citation to the Manetti case, wherein the court held that a party to a PIP suit is not entitled to a jury trial, suggests that the Appellate Division believed that the Land case was not properly tried before a jury.

As is noted above, the Land court stated that "where actions created by statute have distinctive features with respect to substantive and procedural standards that would render them virtually unknown to the common law, there is no

right to jury trial." Land, slip op. at 8, n.4. Here, the Fraud Act utilizes distinctive substantive and procedural standards which did not exist at Common Law and, therefore, there is no right to a jury trial. As is discussed above, a cause of action under the Fraud Act does not require proof of reliance and damages thereby distinguishing it from common law fraud claims. See Liberty Mutual v. Land, 186 N.J. at 175. Moreover, the Commissioner of the Department of Banking & Insurance is entitled to bring his own action under the Fraud Act and similarly is entitled to intervene in a Fraud Act suit filed by an insurance carrier. See N.J.S.A. 17:33A-5. The State has filed such an action here and the court has declared that the Defendants are not entitled to a jury trial on the State's Complaint. See Da 5a. Defendants do not challenge that ruling.

Similarly, the Fraud Act creates a mechanism for the imposition of surcharges against those alleged to have engaged in insurance fraud. See N.J.S.A. 17:33A-5. The Fraud Act also requires that certain warnings appear on insurance claim forms. See N.J.S.A. 17:33A-6. Insurance carriers damaged under the Fraud Act are required to mail a copy of their initial pleadings to the Commissioner so that the Commissioner can consider whether to intervene in the action. See N.J.S.A. 17:33A-7(c) and (d). In fact, the Insurance Fraud Prevention Act created a

whole division within the Department of Banking and Insurance devoted exclusively to the investigation and prosecution of insurance fraud matters. See N.J.S.A. 17:33A-8. The Fraud Prevention Act also imposes an obligation upon individuals who believe that a violation of the Act has occurred to notify the Department of Banking and Insurance of their belief. See N.J.S.A. 17:33A-9. The Fraud Act provides State insurance investigators with the ability to subpoena those believed to possess relevant evidence. See N.J.S.A. 17:33A-10 and 11. Lastly, the Fraud Act preserved the State's ability to criminally prosecute individuals suspected of having engaged in insurance fraud. See N.J.S.A. 17:33A-14. In light of these distinctive features which did not exist at common law, this Court should conclude that there is no right to a jury trial in the instant matter.

Conveniently, the Defendants do not mention the majority of these authorities and do little to distinguish this case from the controlling body of law cited above. Instead, the Defendants rely upon the case of Zorba Contractors, Inc. v. Housing Authority, City of Newark, 362 N.J. Super. 124 (App. Div. 2003), for the proposition that they are entitled to a jury trial. However, that case is distinguishable from the facts before this Court.

Initially, the statute dealt with in Zorba was the Consumer Fraud Act (CFA). Unlike the Insurance Fraud Prevention Act, the CFA specifically states that "in any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest." N.J.S.A. 56:8-19. The Zorba Court latched onto the statute's use of the word "legal relief" and stated that "the word legal is a term of art." 362 N.J. Super. at 137. The court further stated that "if an action is 'legal' in nature, the right to a jury trial attaches. Consequently, the Legislature's characterization of a cause of action as legal may justify an inference that it intended to authorize a jury trial." Ibid. (Citation omitted).

In contrast, the Insurance Fraud Prevention Act does not use the term "legal relief." Instead, it expressly characterizes the forms of relief granted to carriers under the statute as being restitutionary. See N.J.S.A. 17:33A-2. See also, State v. Sailor, 355 N.J Super. 315, 323-324 (App. Div. 2001), wherein the court concluded that the statutory remedies sought under the Fraud Act were "equitable in nature." The Legislature's description of the Fraud Act's remedies as restitutionary justifies the conclusion that the Legislature did not intend to authorize a right to a jury trial.

Moreover, damages are an element of a cause of action under the CFA. Only parties who have sustained an "ascertainable loss" may file suit under the CFA. See N.J.S.A. 56:8-19 and Zorba, 362 N.J. Super. at 138. In contrast, damages are not an element of a cause of action under the Fraud Act.[6] ("The statutory language of IFPA does not require proof of reliance on a false statement or resultant damages.") Land, 186 N.J. at 175. Since a carrier is not required to prove damages as an element of its cause of action, whether a party is entitled to a jury trial in a Fraud Act case cannot be determined by reviewing the nature of the damages sought by the carrier. Thus, the Zorba court's analysis cannot be applied to the Insurance Fraud Prevention Act.[7]

Even under the Zorba court's analysis, Plaintiffs here are seeking restitution of the monies they previously paid to the Defendants. See, e.g., ¶¶ 93-94 of the complaint and ¶(g) of Count Three's *ad damnum* clause. Thus, they seek traditional equitable damages and, therefore, there is no right to a jury trial.

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[6] In Land, Liberty Mutual did not seek and was not awarded any traditional "compensatory damages" since it had denied the Lands' claim for insurance benefits. Thus, there were no improperly obtained insurance benefits to seek restitution of. Instead, Liberty Mutual was awarded a judgment for trebled attorney's fees and costs. See 186 N.J. at 168.

[7] Even under the Zorba court's analysis, Plaintiffs here are seeking reimbursement of the monies they paid to the Defendants plus attorney's fees. See, e.g. ¶¶ 93-94 of the complaint and ¶(g) of Count Three's *ad damnum* clause. Thus, they seek traditional equitable damages and, therefore, there is no right to a jury trial.

The Zorba court also based its holding that the CFA triggered a right a jury trial upon the failure of the Legislature to amend the CFA to explicitly provide that there was no right to a jury trial after 30 years of litigation under the CFA using model jury charges. Zorba, 362 N.J. Super. at 140-14. Here, there are no model jury charges for use in Fraud Act litigation such as the instant case. This factor militates in favor of the conclusion that there is no right to a jury trial under the Fraud Act.

Lastly, the State has been granted leave to intervene in the within matter and has filed an action against the Defendants for the remedies permitted under the Fraud Act, as was the case in the matter of State v. Sailor. See Da5a. It is undisputed that the Defendants are not entitled to a jury trial of the State's claims, which claims mirror the allegations raised in the Plaintiffs' Complaint. See Da5a. Compelling Allstate to try its case before a jury would have the result of depriving the State of its statutory right to have allegations raised by its complaint resolved by the Court and would result in numerous other procedural difficulties which would serve only to lengthen the trial of this matter. Instead, the resolution of both complaints via a bench trial will result in numerous procedural efficiencies, which efficiencies would eventually inure to the Defendants' benefit in the event they are found liable under the

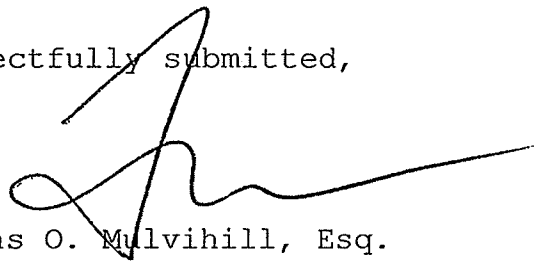
Fraud Act since these efficiencies will result in a reduced claim for attorney's fees against the Defendants.

CONCLUSION

Based on the foregoing, this Court should affirm the Trial Court's order so that this matter may properly be tried by the Court since the damages sought by the Plaintiffs are equitable in nature.

Thank you.

Respectfully submitted,



Thomas O. Mulvihill, Esq.

Date: December 21, 2013

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ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE NORTHBROOK INDEMNITY COMPANY, and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Appellants V. CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROE COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE, INIMEG MANAGEMENT COMPANY, INC., 311,	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-778-23 LAW DIVISION: DOCKET NO. MID-L-1469-23 Civil Action SAT BELOW: Hon. Christopher D. Rafano, J.S.C.

POTSWOODENGLISHTOWN ROAD REALTY, L.L.C., 72 ROUTE 27 REALTY, L.L.C., SAME DAY PROCEDURES, L.L.C., MIDSTATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN CENTERS, d/b/a METRO PAIN and VEIN, SOOD MEDICAL PRACTICE, L.L.C., ONE OAK MEDICALGROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC, ONE OAK ORTHOPAEDIC & SPINE GROUP, L.L.C., ONE OAK HOLDING, L.L.C., JOSEPH BUFANO, JR., D.C., CHRISTOPHER BUFANO, MICAH LIEBERMAN, D.C., RICHARD J. MILLS, M.D., JENNIFER M. O'BRIEN, ESQ., GERALD M. VERNON, D.O., D.C., ALVIN F. MICABALO, D.O., JOSE CAMPOS, M.D., JOHN S. CHO, M.D., MICHAEL C. DOBROW, D.O., RAHUL SOOD, D.O., SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D.,

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Defendants-Respondents.

BRIEF IN SUPPORT OF MOTION FOR LEAVE BY THE COALITION AGAINST INSURANCE FRAUD TO APPEAR AS AMICUS CURIAE

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TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

RULES

STATEMENT OF INTEREST

The Coalition Against Insurance Fraud (the "Coalition") is a national consumer advocacy organization that was founded more than thirty years ago that draws upon the combined energy and resources of consumers, government organizations, and insurers to fight the more than $308.6 billion per year nationally in insurance fraud,[1] and the over $1300 annual cost to each New Jersey family according to the New Jersey Office of Insurance Fraud Prosecutor.[2] The Coalition is comprised of approximately 300 member organizations encompassing a broad array of consumer groups, state and national governmental organizations (including insurance regulatory agencies and the offices of state Attorneys General), insurance providers, and related organizations. The Coalition's aims are to: (1) combat all forms of insurance fraud, (2) reduce costs for consumers, (3) protect the health and safety of consumers, and (4) promote fairness and integrity in the insurance system.[3] To this end, the Coalition plays an active role in advocating for laws, regulations,

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[1] See, https://insurancefraud.org/wp-content/uploads/The-Impact-of-Insurance-Fraud-on-the-U.S.-Economy-Report-2022-8.26.2022-1

[2] See, www.youtube.com/watch?v=zlpRfryV39c

[3] *Members*, COALITION AGAINST INS. FRAUD, see, https://insurancefraud.org/members/ (last visited Nov. 15, 2022) (comprehensive list of the Coalition's constituent organizations, including insurance organizations, state and federal law enforcement and regulatory agencies, as well as many state and national consumer and public advocacy organizations).

and policies that help detect, prevent, deter, and prosecute insurance fraud.

In the present case, the Coalition supports the position taken by Plaintiffs-Appellants Allstate New Jersey Insurance Company et al. ("Allstate" or "Appellant") as the Trial Court's decision eviscerates the Coalition Member's abilities to combat insurance fraud, reduce costs for New Jersey consumers and protect their health and welfare.

PRELIMINARY STATEMENT

The decision below poses a serious threat to New Jersey consumers, insurers, and the State in their ability to combat insurance fraud, thereby protecting consumers from higher premiums and other serious harms that flow from the fraudulent practices. The lower court's decision requiring healthcare fraud violations under the IFPA and RICO to be resolved in the Forthright[4] No-Fault dispute resolution forum is *carte blanche* for criminals to financially profit at the expense of New Jersey consumers, understanding that under the Forthright dispute resolution system the rules do not provide for:

- the exchange of any meaningful discovery;
- subpoena powers of non-parties;
- Constitutional rights, such as the right to a jury trial or due process;
- DOBI's right to intervene and collect statutory penalties, and

[4] See, https://www.nj-nofault.com/rules

- The award of compensatory damages, attorney's fees; investigation costs, restitution with the trebling of same under the IFPA.

Without the ability to engage in meaningful discovery of parties and non-parties alike, without the Constitutional rights and protections, and without their entitlement to compensatory damages, costs of investigation, attorney's fees and costs, as well as treble damages as expressly provided for under the IFPA, insurance fraud and the financial and physical costs to New Jersey consumers will explode exponentially.

The Legislature enacted the New Jersey Insurance Fraud Prevention Act ("IFPA") in 1983, with the goal to, amongst other things, protect New Jersey consumers. The Legislature stated that:

> The purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of dollars used to pay fraudulent claims.

Since the IFPA's enactment, the Coalition, its members, and the State of New Jersey have for over 40 years sought to root out insurance fraud by following the Legislatures directive and aggressively combating insurance fraud through the significant investment into the investigation and prosecution of fraud. Insurance companies and the State of New Jersey have used the IFPA to successfully prosecute cases, both civil and criminal, in the courts as intended

by the Legislature. The IFPA expressly provides that:

> For actions brought by the Commissioner:
> N.J.S.A. § 17:33A-5. Remedies; penalties; fund established
>
> b. Any person who violates any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) shall be liable, in a civil action brought by the commissioner in a court of competent jurisdiction, for a penalty of not more than $ 5,000 for the first violation, $10,000 for the second violation and $15,000 for each subsequent violation. The penalty shall be paid to the commissioner to be used in accordance with subsection e. of this section. The court shall also award court costs and reasonable attorneys' fees to the commissioner. (emphasis added)

The Legislature made it clear that the Commissioner shall bring an action in a court of competent jurisdiction, and it is the court which shall award damages, including court costs. Additionally, pursuant to subsection c, "[t]he Superior Court shall have jurisdiction to enforce the provisions of 'the penalty enforcement law' in connection with P.L.1983, c.320 (C.17:33A-1 et seq.)." See N.J.S.A. § 17:33A-5c.

> Similarly, for actions by an insurance company the IFPA provides:
>
> N.J.S.A. § 17:33A-7. Actions by insurance companies against violators
>
> a. Any insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorneys fees. (emphasis added)

Notwithstanding this foregoing language and the resolute intent of the

Legislature to aggressively combat insurance fraud, the court below inappropriately elected to ignore this precedent and ignore the canons of statutory interpretation finding that matters under the IFPA and RICO must be submitted to Forthright for dispute resolution. This poorly reasoned decision must be reversed to provide insurers and the State of New Jersey the ability to aggressively fight insurance fraud in the courts, while providing no-fault disputes over medical expenses to be expeditiously reviewed and decided in the Forthright dispute resolution forum.

NO-FAULT INSURANCE FRAUD IS RAMPANT IN NEW JERSEY

Insurance fraud is a pervasive nationwide problem, and New Jersey is a particular hotbed for auto and health care fraud. A study published in 2024 identified that the insurance industry lost around $308.6 billion dollars due to fraud in 2022, with $112.4 billion from health insurance alone.[5]

In its 2018 Annual Report from the New Jersey Office of Insurance Fraud Prevention ("OIFP"), it was highlighted that over its 20-year history, the OIFP has aggressively confronted the problem with insurance fraud in the state and in 2018 alone had investigated over 300 criminal cases based upon 5441 referrals from outside sources, obtained $9.7 million in restitution as ordered by the court

[5] See, https://valuepenguin.com/auto-home-insurance-fraud

and $4.4 million in forfeiture of seized assets.[6]

Due to the pervasive harms flowing from no-fault fraud schemes, insurance carriers, federal, state and local law enforcement agencies have worked together to prosecute and obtain criminal convictions of a host of medical providers, "runners" and attorneys who have created a cottage industry of no-fault fraud through which they line their own pockets without regard to the harm to consumers, insurers or the integrity of the no-fault system. The following civil and criminal cases are but a few demonstrating the rings of health care providers, runners and attorneys who operate independently of each other but follow the same fraud script: the health care providers pay kickbacks to runners to refer patients from staged or real accidents for treatment not needed or not rendered, and lawyers pay kickbacks to runners to refer those patients as clients to make fraudulent injury claims.

For instance, in 2008, Allstate Insurance Company sued Manoj Patharkar, M.D., a pain management specialist, along with forty-four (44) other defendants for financial kickback schemes with chiropractors and attorneys, as well as money laundering and overbilling for services purportedly provided. See, Allstate v. Lajara, UNN-L-4091-08. The New Jersey Commissioner for Insurance intervened in the case and after years of extensive discovery of parties,

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[6] See, https://www.nj.gov/oag/insurancefraud/report/oifp-ar-2018-complete

non-parties and numerous financial institutions, in 2016, after a six-month trial, Dr. Patharkar was found to have laundered $3.29 million in cash, paid for the referral of patients, performed unnecessary testing to increase his financial position, and over-diagnosed patients to manufacture a basis to refer for additional testing and procedures for which he received kickbacks. See, CAIFa0001-0048.[7] Judgement was entered against him for $699,799 in compensatory damages and $2,295,300 in attorney's fees and costs. See, CAIFa0049-0049.

In 2020, Dr. Patharkar plead guilty to first-degree conspiracy, first-degree money laundering, seven counts of third-degree filing fraudulent tax returns, three counts of third-degree failure to pay taxes and second-degree commercial bribery in connection with the illegal kickback scheme. Additionally, the New Jersey State Board of Medical Examiners permanently stripped him of his medical license finding that he indiscriminately prescribed Subsys, a powerful painkiller used in cancer treatment. See, CAIFa0050-0052. Without the ability to have engaged in significant financial discovery, which is not available in no-fault dispute resolution, neither Allstate nor the New Jersey Attorney General's office would have discovered the money laundering, which monies were used to

[7] The prefix CAIFa is for the Amicus, Coalition Against Insurance Fraud Appendix.

pay the kickbacks for the referrals, the tax evasion and the extensive kickback scheme. See, CAIF0001, at 51:17-68:13.

Similarly, from the discovery obtained through the Allstate v. Lajara civil suit, the State of New Jersey, in 2011, arrested Christopher Montana, D.C., Fernando Baresse, D.C., Oleg Gorodetsky and Alcinder Robin charging them with conspiracy to commit health care fraud, specifically, soliciting potential patients and referring same in exchange for kickbacks. On November 28, 2012, Montana plead guilty to referring approximately 100 patients from his chiropractic facility for other healthcare services in exchange for cash kickbacks as well as filing a false tax return and was sentenced to seven years in prison. Oleg Gorodetsky, a layperson and office manager for Montana and Baresse, was also charged with illegally accepting thousands of dollars in exchange for the referral of patients.[8]

Once again, without the ability to engage in non-party discovery or to subpoena lay witnesses, which avenues of discovery are not available in no-fault dispute resolution, individuals such as Mr. Gorodetsky or Mr. Robin, who were the runners and facilitators of the kickback scheme involving Drs. Montana and Baresse, could not be subpoenaed or called as witnesses. This inability to investigate and prosecute insurance fraud in the courts is contrary to the clear

[8] https://www.law.com/njlawjournal/almID/1202653572302/

and unequivocal intent of the New Jersey Legislature rendering the IFPA meaningless.

The most shocking discovery obtained in the Allstate v. Lajara civil suit was the number of corrupt personal injury attorneys who also participated in and profited from these schemes. For instance, David Walker, Esq. was a named defendant who ultimately admitted to paying kickbacks for the referral of individuals to his law practice. He admitted to splitting his legal fees with Ms. Gallegos, his office manager, as she procured the clients for his office and was responsible for paying the runners who brought the prospective clients to his office. See, CAIFa0053. Based upon this and additional discovery from the civil action, the State charged Mr. Walker, along with ten other individuals, in a conspiracy to use runners to obtain automobile accident victims and then bill insurance companies for unnecessary treatments. In 2017, Mr. Walker plead guilty to conspiracy to use a runner after admitting that from 2009 to 2014 he conspired with non-licensee brothers Karim and Anhuar Bandy to use runners and pay the Bandys for these referrals of clients. In re Walker, DRB 17-379 (N.J. Apr, 17, 2018)[9]. See also, CAIFa0053 and CAIFa0057[10]. Certifications of

[9] https://casetext.com/case/in-re-walker-395

[10] The exhibits to this certification have been omitted in compliance with HIPAA regulations. A complete copy of the certification can be made available for in camera review upon request.

David Walker and Alexandra Gallegos detailing the criminal enterprises conducted in the names of professionals which would never have been discovered without extensive discovery on parties and non-parties.[11]

But for discovery afforded under the New Jersey Rules of Court, neither of the Bandy brothers nor Mr. Walker or any of the other criminals involved in the kickback scheme would have been discovered, sued, prosecuted and shut down, ultimately saving the consumers of New Jersey from fraudulent billing and ultimately higher rates. See, CAIFa0062.

These civil litigations along with the criminal indictments and convictions, coupled with the civil litigation noted below, and the statistics demonstrate the pervasiveness and harms resulting to consumers from predatory health care providers involved in no-fault fraud schemes in the country and New Jersey.

Requiring these complex fraud litigations where there are multiple parties and non-parties involved, with tens of thousands of documents, where co-conspirators have secreted records and documents in an attempt to avoid being

---

[11] The Certifications of Walker and Gallegos, which were produced in the Allstate v. Lajara and Allstate v. Bandy litigations, are truly shocking in their description of the breadth of insurance fraud in New Jersey and are a prime example of what would have been a continuing criminal enterprise but for the filing of a civil fraud action, where there is a broad and meaningful exchange of discovery, and the State could then use that discovery and other information to indict and criminally prosecute insurance fraud criminals.

found out to be adjudicated in the Forthright ADR forum, where the exchange of meaningful discovery with parties and non-parties is not available, where there is no ability to subpoena third parties or compel testimony, where there is no right to a jury trial or the statutory right to attorney's fees and costs of suit, investigation costs and treble damages, is unequivocally contrary not only common-sense and logic, but also in direct contravention of the Legislature's express language seeking to aggressively combat insurance fraud.

STATEMENT OF FACTS

The Coalition adopts the Appellant's statement of facts as if set forth herein in their entirety.

PROCEDURAL HISTORY

The Coalition adopts the Appellant's procedural history as if set forth herein in their entirety.

POINT I

THE TRIAL COURT'S "LEGAL ANALYSIS" IS WOEFULLY DEFICIENT.

In 1998, the Honorable Charles E. Villanueva, J.A.D. (retired and temporarily assigned on recall) considered the same argument of the current Defendants, to wit, is the IFPA subject to No-Fault arbitration. See Allstate v. Lopez, 311 N.J. Super. 660 (Law Div. 1998). After extensive briefing and oral argument Judge Villanueva ruled to the contrary. In a well-reasoned opinion

based upon common sense, pragmatism, and the plain language of the statute he stated that:

> Significantly, the Legislature did not provide for the arbitration of claims under the Act; nor did it give arbitrators the power to award any of the specified damages under the Act. The role of arbitration in automobile insurance matters is to provide for the prompt payment PIP benefits to ensure that people legitimately injured as a result of an automobile accident receive reasonable and necessary medical treatment in a prompt and expeditious manner. See Kubiak v. Allstate Ins. Co..198 N.J. Super. 115, 119 (App. Div. 1984). As Judge Pressler so aptly expressed, "arbitration by its nature does not provide a forum conducive to extensive issue and party joinder or to the according of a variety of remedies. " Jersey City [P.B.A.] v. Jersey City, 257 N.J. Super. 6, 14, (App. Div. 1992).

Nothing has changed since the Lopez decision -- the language of the IFPA still provides the courts with jurisdiction over IFPA claims; the language of the IFPA still provides a successful insurance carrier and the government with compensatory damages, costs of investigation, attorney's fees and costs, as well as treble damages and a right to a trial by jury; while the rules under Forthright provide NONE of these protections and/or rights to insurance carriers and the government and ultimately New Jersey consumers under the IFPA.

Similarly, the decisions of this court haven't changed. In N.J. Coalition of Health Care Providers, Inc. v. DOBI, 323 N.J. Super. 207-262 (App. Div. 1999) this court found that although an injured party or medical provider would be entitled to an award of money with a discretionary award of counsel fees, an insurance carrier if successful would not be entitled to an "award" of any such fees. This court stated that "[it found] nothing in the Legislature's findings and

declarations contained in N.J.S.A. 39:6A-1.1(b) expressing an intention to permit an award of counsel fees to an insurance carrier against an insured or injured person in the statutory dispute – resolution process." Id., at 263.

Additionally, in Nationwide Mutual Fire Insurance Co. v. Fiouris, 395 N.J. Super. 156 (App. Div. 2007) this court opined that based upon the IFPA's language that "an insurance company damaged as a result of a violation of any provision of this act may sue therefore in any court of competent jurisdiction" "It [was] clear from this provision that the Legislature did not contemplate that a claim of a violation of the Insurance Fraud Prevention Act would be heard by an arbitration." citing to Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 173-74 (2006).

However, notwithstanding the foregoing, the trial court below failed to follow this court's legal precedent, failed to give any effect to the plain and unambiguous language of the statute as written, failed to take into consideration the legal and administrative inadequacies and short comings of the Forthright ADR forum rather choosing to inappropriately engage in statutory construction when the language of the IFPA is plain and unambiguous.

The decision below will deprive parties of their constitutional rights to juries and due process, will preclude insurance carriers from their statutory remedies as Dispute Resolution Professionals ("DRPs") cannot award treble

damages or investigations fees and costs, and will ultimately deprive insurance carriers and the State of New Jersey in their ability to aggressively fight insurance fraud, which costs will be ultimately passed along to the consumers.

NEW JERSEY HAS ALWAYS RELIED UPON THE "PLAIN LANGUAGE" OF STATUTES.

The New Jersey Supreme Court has stated that "when interpreting a statute, courts must first look at the evident wording of the statute to ascertain its plain meaning and intent." Bergen Commercial Bank v. Sisler, 157 N.J. 188, 202 (1999) "Moreover, where the language is clear, courts will enforce the statute according to its terms." Ibid., at 202. It is not the courts' function "to 'rewrite a plainly written enactment of the Legislature or presume that the Legislature intended something other than that expressed by way of the plain language.'" DiProspero v. Penn, 183 N.J. 466, 492 (2005) (citing Frugis v. Bracigliano, 177 N.J. 250 (2003)). "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." Ibid. The goal of statutory construction is to determine the intent of the Legislature, Strasenburgh v. Straubmuller, 146 N.J. 527, 539, (1996), and it is not for the court to "write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment," Craster v. Bd. Of Comm'rs of Newark, 9 N.J. 225, 230 (1952), or

"engage in conjecture or surmise which will circumvent the plain meaning of the act." In Re Closing of Jamesburg High School, 83 N.J. 540, 548 (1980).

Herein, the Legislature enacted the New Jersey Insurance Fraud Prevention Act ("IFPA") in 1983 with clear intent.

> The purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of dollars used to pay fraudulent claims.

N.J.S.A. § 17:33A-7 expressly provides that:

> a. Any insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorneys fees. (emphasis added)
>
> b. A successful claimant under subsection a. shall recover treble damages if the court determines that the defendant has engaged in a pattern of violating this Act. (emphasis added)

The Legislature made it clear that to pursue IFPA violations, a court of competent jurisdiction is the proper forum for addressing IFPA violations. The Legislature also used the word "court" when addressing damages in subsection b. thereby expressly providing for the court to be the proper forum to bring IFPA actions. Therefore, following the basic tenets of statutory interpretation, if the language of a statute is plain and unambiguous the courts are not to engage in statutory construction, and because the language in the IFPA is clear without

varying plausible interpretation, it is abundantly evident that the trial court's analysis going beyond plain language statutory interpretation and delving into statutory construction was unnecessary and incorrect.

Not only does the plain language support such conclusion, but a common sense analysis can find no conclusion other than IFPA claims having to proceed in court when one analyzes the Commissioner of Insurance's claims under the IFPA. It is unquestionable that a lawsuit by the Commissioner alleging any type of IFPA fraud would stay in Superior Court and would never under any scenario be dismissed to the Forthright ADR forum. It logically then follows that the same would apply to an insurance company as there is no reason to treat the insurance company differently and moreover, treating them differently may result in inconsistent results and issues with the entire controversy doctrine.

The logic of an insurance company's IFPA claims staying in Superior Court rather than being forced into Forthright ADR comes full circle when considering the practical aspects of the Commissioner's involvement. The Commissioner, after receiving notice of an insurer's IFPA filing, has the right to join in the insurer's lawsuit. See N.J.S.A. § 17:33A-7d. If the Commissioner joins the insurer's lawsuit and prevails, "the court may also award court costs and reasonable attorney fees actually incurred by the commissioner." Id. If the Commissioner joins an insurer's lawsuit and the insurer's IFPA claims are

dismissed in favor of arbitration while the same claims by the Commissioner are not, then under the trial court's decision the Commissioner would be litigating IFPA claims in the Superior Court while the insurer would be litigating the same IFPA claims in the Forthright ADR forum. Not only will there be increased costs to the parties involved, but also there will be potentially, and likely, inconsistent decisions. The insurer would be unable to recover compensatory damages, court costs and attorney's fees which are statutorily mandated, whereas the Commissioner would have no impediment to recovering its remedies. The Legislature's clear IFPA remedies, including "court costs" make it unmistakable that IFPA actions belong in court and not in the Forthright ADR forum.

THE COMMON SENSE CANON

When considering the language of a statute, the court should construe statutory terms according to their plain, obvious and rational meanings in accordance with common sense and reason. A review of the trial court's opinion evidences the absence of any analysis of the NAF dispute resolution forum's rules and how those rules comply with the Legislatures express intent to aggressively confront insurance fraud, with statutory obligation for insurance carriers to combat fraud or the current legal precedent. Had the trial court considered same, it could have only concluded that, as in Lopez, Fiouris, and the Coalition cases, the Forthright ADR forum does not provide for discovery

in complex matters of fraud but is reserved for the arbitration of medical bills.

The following highlights the deficiencies in the lower court's rulings asserting that Forthright is a proper forum:

	NJAPDRA	**Forthright ADR Forum**
Interrogatories	2A:23A-10	**NO**
Document Exchange	2A:23A-10	**NO**
Oral Depositions	2A:23A-10	**NO**
Subpoenas 3rd Party Witnesses	2A:23A-11, 24	**NO**
Cross Examination at the Hearing	2A:23A-11, 24	**NO**
Counterclaims	2A:23A-11, 24	**NO**
Consolidation of Claims	2A:23A-3	R-9
Right To Jury Trial	**NONE**	**NONE**

Not only does the Forthright ADR forum violate the due process rights of insurance carriers as detailed above, it also precludes insurance carriers from exercising their constitutional right to a jury trial. In Allstate v. Lajara, 222 N.J. 129, 134-135 (2015), the New Jersey Supreme Court held that parties to a fraud suit, the IFPA, have a constitutional right to a jury trial. However, the Forthright ADR forum does not provide for jury trials, thereby depriving

Allstate and all parties of their constitutional right to a jury trial. Therefore, given the foregoing, common sense dictated that the trial court should have considered this legal precedent when ruling the IFPA claims should be heard in Forthright where there is NO right or facility for a trial by jury.

Similarly, the trial court below, presumably having reviewed the Forthright ADR rules pertaining to the award of damages in its analysis, failed to use any common sense in its application of same to the statutory remedies provided for under the IFPA. The IFPA, at N.J.S.A. 17:33A-7(a) and (b) provides that:

> a. Any insurance company damaged as the result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction to recover compensatory damages, which shall include reasonable investigation expenses, costs of suit and attorney's fees. (emphasis added)
>
> b. A successful claimant under subsection a. shall recover treble damages if the court determines that the defendant has engaged in a pattern of violation this Act. (emphasis added)

Therefore, the statute expressly provides for the award of compensatory damages, inclusive of attorney's fees, investigating costs and costs of suit, including the award of treble damages "if the court determines that the defendant engaged in a pattern of violation the [IFPA]" (emphasis added) Id. Notwithstanding same, the trial court dismissed Allstate's complaint alleging IFPA violations, ruling that the Forthright ADR forum is the proper forum to

litigation IFPA claims even though the Dispute Resolution Professionals have no authority to award treble damages. See also, Coalition I where the Appellate Division stated that an insurance carrier would not be entitled to an award of attorney's fees if it were successful in a No-Fault arbitration because there was no language in N.J.S.A. 39:6A-1.1(b) expressing such intent. Id., at 263.

Had the court below considered the constitutional and legislative arguments of Plaintiff-Appellant and its claims under the IFPA and how they interact with No-Fault ADR in Forthright, it would have found that its conclusion was clearly contrary to not only the law but common sense and logic.

POINT II

THE IFPA AND NO-FAULT STATUTES – SIMILAR LEGISLATIVE GOALS WITH TWO SEPARATE AND DISTINCT PATHS

"The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." Diprospero v. Penn, 183 N.J. 466, 492 (2005)(citing Frugis v. Bracigliano, 177 N.J. 250 (2003)). The court's analysis therefore begins with the statute's plain language, Miah v. Ahmed, 179 N.J. 511 (2004) and such language should be given its ordinary meaning. Town of Morristown v. Woman's Club, 124 N.J. 605, 610 (1991). It is the obligation for the court to "effectuate the legislative intent in light of the language used and the object sought to be achieved." Merin v. Maglaki, 126 N.J. 430, 435 (1992)(citing State v. Maguire, 84 N.J. 508

(1980). To that end, and when faced with seemingly disparate but unambiguous statutes, courts should work to harmonize the statutes advancing their manifest purposes. State v. Gomes, 253 N.J. 6 (2023).

Therefore, the court is to give effect to the plain and unambiguous statutory language as written while harmonizing the statutes to give effect to the Legislative goal in aggressively pursuing insurance fraud.

IFPA

The Legislature's intent in enacting the IFPA could not have been clearer. It expressly provides that:

> "The purpose of this act is to confront aggressively the problem of insurance fraud in New Jersey by facilitating the detection of insurance fraud, eliminating the occurrence of such fraud through the development of fraud prevention programs, requiring the restitution of fraudulently obtained insurance benefits, and reducing the amount of dollars used to pay back fraudulent claims"

To accomplish this, the express language of the IFPA provides for actions brought by the Commissioner to be filed in a "court of competent jurisdiction." N.J.S.A. 17:33A-5. Similarly, for actions brought by an insurance company for damages as a result of a violation of the IFPA, they may sue in a court of competent jurisdiction. N.J.S.A. 17:33A-7.

The IFPA was enacted to combat a broad range of fraudulent conduct, including the following as set forth in N.J.S.A. 17:33A-4(a):

> a. A person or a practitioner violates this act if he:[12]
> (l) presents or causes to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy ... knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or
> (2) Prepares or makes any written or oral statement that is intended to be presented to any insurance company ... in connection with, or in support of or opposition to any claim for payment or other benefit pursuant to an insurance policy ... knowing that the statement contains any false or misleading information concerning any fact or thing material to the claim; or
> (3) Conceals or knowingly fails to disclose the occurrence of an event which affects any person's initial or continued right or entitlement to (a) any insurance benefit or payment or (b) the amount of any benefit or payment to which the person is entitled;

Additionally, N.J.S.A. § 17:33A-4(b) prohibits an individual from assisting, conspiring with, or urging another individual to violate the Act, while N.J.S.A. § 17:33A-4(c) prohibits an individual from knowingly benefiting, directly or indirectly, from a violation of the Act due to the assistance, conspiracy, or urging of another individual. Finally, pursuant to N.J.S.A. § 17:33A-4(e), a person or practitioner violates the act if, for pecuniary gain, he directly or indirectly solicits any person or practitioner to engage, employ or

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[12] A "person" is broadly defined to include individuals, practitioners, corporations, companies, associations, societies, firms, partnerships and joint stock companies. A "practitioner" also broadly includes a licensee of this State authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of this State whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations, or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing. See N.J.S.A. 17:33A-3.

retain himself or any other person to bring causes of action for personal injuries or death or if, for pecuniary gain, he directly or indirectly solicits other persons to make a claim for personal injury protection benefits. The IFPA's statutory violations are inclusive rather than exclusive. Nowhere in the IFPA does it state that only certain examples of fraudulent conduct, such as runner and kickback allegations, fall within the IFPA to the exclusion of other fraudulent conduct, such as fraudulent PIP benefit payments. Rather, the plain statutory language makes it clear that as long as an insurer satisfies the elements of at least one of the IFPA's liability violation provisions, the insurer is entitled to damages.

Therefore, the Legislature's plain language expressly provides for the broad range of potential IFPA violations to be filed in a court.

NO-FAULT

In 1998 the No-Fault statute was amended in a relevant way to the issues herein, with the Automobile Insurance Cost Reduction Act ("AICRA"). N.J.S.A. 39:6A-1.1 et seq. The Legislature indicated that it was caused to make the amendment after 26 years because of the overutilization of benefits for medical unnecessary treatments and testing resulting in higher costs to New Jersey residents and the failure of the then arbitration system, AAA, in eliminating payments for the unnecessary treatments and diagnostic tests. To that end, N.J.S.A. 39:6A-5.1 and its implementing subchapter N.J.A.C. 11:3-5.1 and 5.2

provided for the Commissioner of Banking and Insurance to establish a forum for the resolution of "a dispute concerning the payment of medical expenses and other benefits provided by the personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1(a)

"The goal of PIP is to provide prompt medical treatment for those who have been injured in automobile accidents without having that treatment delayed because of payment disputes." Selective v. Hudson East, 210 N.J. 597, 609 (2012). In Selective v. Hudson East, the Appellate Division explained that:

> New Jersey's PIP statute[. . .] provides a limited discovery remedy, permitting disclosure only to the extent delineated in the statute. [. . .] Nothing in this statute provides for disclosure of the broad range of materials Selective sought in its declaratory judgment action, namely corporate charters, partnership agreements, annual reports, shareholder agreements and lease agreements. None of the requested documents relates to the "history, condition, treatment, dates and costs of such treatment of the injured person," N.J.S.A. 39:6A-13(b), and thus Selective's discovery request falls far outside the limited reach of the PIP statute.
> [. . .]
>
> Obviously, if the Legislature had intended to allow for broader discovery of all suspected PIP abuses, it would not have explicitly and specifically enumerated the types of information deemed disclosable. See, [Prudential v. Nardone, 332 N.J. Super.126, 136 (Law Div. 2003)](noting that N.J.S.A. 39:6A-13(g) is a limited discovery mechanism).

Significantly, the Selective court advised that a carrier would be entitled to the broad discovery permitted under the Rules of Court upon the filing of a Fraud Act claim. It stated, "in an action filed pursuant to the IFPA for substantive

remedial relief from claimed violations thereof, plaintiff would be bound by, and subject to, the ordinary rules of discovery governing civil actions in the Law Division, with their usual limitations as to relevance and protections against oppression and harassment." Id. at 435.

Similarly, the court in Allstate v. Lopez, supra, explained:

> Significantly, the Legislature did not provide for the arbitration of claims under the Act; nor did it give arbitrators the power to award any of the specified damages under the Act. The role of arbitration in automobile insurance matters is to provide for the prompt payment of PIP benefits to ensure that people legitimately injured as result of an automobile accident receive reasonable and necessary medical treatment in a prompt and expeditious manner. See Kubiak v. Allstate Ins. Co., 198 N.J. Super. 115, 119 (App. Div. 1984). As Judge Pressler so aptly expressed, "arbitration by its nature does not provide a forum conducive to extensive issue and party joinder or to the according of a variety of remedies." Jersey City [P.B.A.] v. Jersey City, 257 N.J. Super. 6,14 (App. Div.1992).
>
> 311 N.J. Super. at 678.

The Lopez court further stated that "the Legislative and judicial mandates to aggressively fight fraud cannot be ignored; nor can the strong public policy to curb rampant and blatant abuses of the so-called 'no fault' system be disregarded." Id., at 679

Thus, two statutes with the common goal of reducing insurance premiums and reducing fraud for New Jersey citizens – one to pursue fraud in the courts where the full complement of discovery is available, and a second to timely resolve disputes concerning the payment of medical expenses.

CONCLUSION

Amici submits this brief because the Trial Court's rulings are absolutely inconsistent with the law, the express language of the IFPA and the IFPA's legislative directive to aggressively fight fraud, thereby jeopardizing the health, safety and welfare of New Jersey citizens. The fact that the Trial Court ignored the Constitutional right to a jury trial and the guarantee to due process arguments, as well as the controlling legal precedent is truly concerning. As such, the decision below should be reversed, permitting the insurers in and the State of New Jersey to continue its aggressive investigation and litigation in the courts against individuals and entities perpetrating healthcare fraud, while supporting the Legislative goal of prompt payment of PIP benefits and disputes arising thereunder to continue to be heard in the Forthright arbitration forum.

Respectfully submitted,

BRUNO GERBINO SORIANO & AITKEN, LLP
Attorneys for Amicus, Coalition Against Insurance Fraud

By: _____
Daniel S. Hunczak, Esquire

Dated: June 24, 2024

ALLSTATE NEW JERSEY INSURANCE COMPANY; ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY; ALLSTATE INSURANCE COMPANY; ALLSTATE FIRE & CASUALTY INSURANCE COMPANY; ALLSTATE NORTHBROOK INDEMNITY COMPANY; and ALLSTATE PROPERTY AND CASULATY INSURANCE COMPANY,

Plaintiffs,

v.

CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROES COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE; INIMEG MANAGEMENT COMPANY, INC.; 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C.; 72 ROUTE 27 REALTY, L.L.C.; MID-STATE ANESTHESIA CONSULTANTS, L.L.C.; NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A.; INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a/ METRO PAIN and VEIN; SOOD MEDICAL

SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Docket No. A-00778-23

Civil Action

On Appeal From:
Superior Court of New Jersey, Law Division, Dkt. No. MID-L-1469-23

Sat Below:
Honorable Christopher D. Rafano, J.S.C.

PRACTICE, L.L.C.; ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC; ONE OAK TREATMENT CLINIC; ONE OAK ORTHOPAEDIC & SPINE GROUP, L.L.C.; ONE OAK HOLDING, L.L.C.; JOSEPH BUFANO, JR., D.C.; CHRISTOPHER BUFANO; MICAH LIEBERMAN, D.C.; RICHARD MILLS, M.D.; JENNIFER M. O'BRIEN, ESQ.; GERALD M. VERNON, D.O., D.C.; ALVIN F. MICABALO, D.O.; JOSE CAMPOS, M.D.; JOHN S. CHO, M.D.; MICHAEL C. DOBROW, D.O.; RAHUL SOOD, D.O.; SACHIN SHAH, M.D.; FAISAL MAHMOOD, M.D.; RAVI K. VENKATRAMAN, M.D.; MANGLAM NARAYANAN, M.D.; SHANTI EPPANAPALLY, M.D.; JOHN AND JANE DOES 1 through 10; and XYZ CORPORATIONS 1 through 10,

Defendants.

BRIEF OF DEFENDANTS MID-STATE ANESTHESIA CONSULTANTS, L.L.C., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., SOOD MEDICAL PRACTICE, L.L.C., RAHUL SOOD, D.O., AND SACHIN SHAH, M.D. IN RESPONSE TO BRIEFS OF AMICI CURIAE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Court Rules

Regulations

PRELIMINARY STATEMENT

The Sood Defendants submit this brief in response to the amicus curiae briefs of the New Jersey Department of Banking and Insurance ("DOBI"), the Coalition Against Insurance Fraud, the Insurance Council of New Jersey and American Property Casualty Insurance Association, and Citizens United Reciprocal Exchange (collectively, the "Amici Curiae").

The Amici Curiae, to varying degrees, present the Court with a picture of the collapse of the insurance industry's and DOBI's ability to investigate and remediate insurance fraud in connection with PIP benefits. But those alleged concerns about the collapse of fighting insurance fraud are nothing more than scare tactics designed to salvage the for-profit insurance industry's ability to maximize their profits by dragging health care providers and their employees and agents into court with respect to claims previously decided against insurers by an arbitrator.

To be clear, this is not a public policy matter. This a private litigation between a for-profit insurance carrier and for-profit healthcare providers in which Allstate seeks to recoup PIP benefits from the Sood Defendants and other defendants. Indeed, any recovery by Allstate in this case would accrue solely to the benefit of Allstate and its shareholders and not to the State of New Jersey or its consumers, unless, of course, the Commissioner of DOBI intervenes in the action, a right that the

Commissioner continues to have to this day despite the trial court's decision compelling Allstate to arbitrate its claims.

Unlike DOBI, Allstate's mission here is not to protect the New Jersey consumer. Indeed, Allstate is a publicly traded company worth more than $50 billion, which, like all publicly traded companies, has a mission to generate profits for its shareholders. Although DOBI invokes public policy in its amicus brief, DOBI does not explain the actual harm to the public if a private litigant–to which DOBI has not delegated any of its authority under the IFPA–is forced to prosecute their insurance fraud claims in arbitration instead of in court.

The question before the Court is one of statutory interpretation. The No-Fault Law requires **any dispute** related to recovery of PIP benefits to be resolved in binding arbitration. Insurers, however, want to file fraud claims in court regardless of the plain language of the statute. Because the statutory language is clear and without doubt, the Amici Curiae try to sow doubt by claiming that fraud claims cannot be arbitrated because the arbitration forum established by DOBI cannot handle IFPA and other similar claims.

But the only way to make that argument is to ignore the statutory language and DOBI's regulations. DOBI is tasked with adopting regulations setting forth arbitration procedures, identifying a dispute resolution organization to administer dispute resolution, and approving the organization's plan to conduct arbitration.

DOBI adopted those regulations, and the regulations are sweeping in scope.

Among other things, the regulations allow parties to consolidate claims. The regulations require a dispute resolution professional to grant all relief necessary and decide all claims brought. The regulations require that matters be resolved consistent with due process and fundamental fairness, including by providing the parties with discovery on claims and defenses.

The Amici Curiae ignore all of those regulations and argue, instead, it just cannot be done. It can be done. Many statutory claims are arbitrated, including Consumer Fraud Act claims, the closest statutory analog to the IFPA. No party has yet explained how CFA claims can be arbitrated but IFPA claims cannot. The reason is that no rational explanation exists.

At bottom, the regulations and statutes are consistent and require arbitration of all disputes related to PIP benefits. The regulations contemplate a broad arbitration plan to ensure claims are decided efficiently and with full opportunity for the parties to be heard. If the dispute resolution organization tasked by DOBI cannot handle those procedures, DOBI must require the organization to amend its plan consistent with the statutes and regulations or select a new organization that can.

For all of those reasons and as set forth below and in the Sood Defendants merits brief, the Sood Defendants respectfully submit that the Court should affirm the decision of the trial court ordering the claims filed by Allstate to arbitration.

LEGAL ARGUMENT

I. The plain language of the No-Fault Law and the IFPA requires arbitration of all claims related to a medical provider's eligibility to recover PIP benefits.

The "best indicator" of statutory "intent is the plain language chosen by the Legislature." Matter of H.D., 241 N.J. 412, 418 (2020) (citations omitted). Courts give the words of a statute "their ordinary meaning and significance," and courts "will not rewrite a plainly written enactment of the Legislature [or] presume that the Legislature intended something other than that expressed by way of the plain language." Ibid. (citations omitted). Courts also interpret statutory language "in context with related provisions" because "the context is [often] determinative of the meaning." Id. at 418-19 (internal citation omitted) (alteration in original).

The Amici Curiae all agree the Court should look to the plain language of the No-Fault Law, but their analysis of the No-Fault Law twists the plain language of the statute and ignores the overall context. Further, the Amici Curiae take positions that are contrary to the regulations adopted by the Department of Banking and Insurance.

A. The "compensatory" damages sought by Allstate relate to the payment of PIP benefits under the No-Fault Law.

The No-Fault Law expressly requires "**[a]ny** dispute regarding the recovery of" PIP benefits to be submitted to arbitration. N.J.S.A. 39:6A-5.1(a) (emphasis added). "[T]he word 'dispute' is unqualified" in the statute and thus encompasses

entitlement to PIP benefits under the statute. State Farm Mut. Auto. Ins. Co. v. Molino, 289 N.J. Super. 406, 410 (App. Div. 1996)

"[T]he language of [N.J.S.A. 39:6A-5.1] should be read as broadly as the words themselves indicate." State Farm Ins. Co. v. Sabato, 337 N.J. Super. 393, 396 (App. Div. 2001). Insurers, therefore, are "not empowered" to avoid the arbitration mandate merely "by characterizing PIP disputes" in a certain way to be able to seek resolution in court." Id. at 396-97 (quoting Molino, 289 N.J. Super. at 411).

To get around this broad and all-encompassing language, the Amici Curiae argue that Allstate is seeking compensatory damages, not the recovery of PIP benefits. In fact, DOBI goes as far as claiming "[t]he payment of medical expenses is not at issue." (Br. of DOBI at 11). That is the tail wagging the dog.

Allstate's claims, whether labeled as a violation of the IFPA or New Jersey's RICO statute, all seek to litigate whether the Sood Defendants were eligible to recover PIP benefits. There is no issue in this case other than this: Allstate paid PIP benefits to the Sood Defendants, and now, Allstate wants to recover the benefits it paid to the Sood Defendants. And Allstate's allegations and claims rest on whether or not the Sood Defendants should have received payment for the medical services they rendered. Allstate's choice to pay claims and later consolidate the claims and label them as fraud should not work as an end around the No-Fault Law's arbitration mandate.

Indeed, the No-Fault Law includes provisions that demonstrate the Legislature intended issues of fraud to be resolve through the No-Fault Law's arbitration process. Arbitrable PIP benefits disputes "include, but not necessarily be limited to, matters concerning" a wide array of issues including whether the treatment is eligible for compensation, whether medical practice is eligible to be compensated based on governing regulations, and whether a treatment was performed at all. N.J.S.A. 39:6A-5.1(c)(3)-(5); see also N.J.A.C. 11:3-5.6(a)(2)-(4). As such, the Legislature, in the plain language of the No-Fault Law, envisioned insurers like Allstate arbitrating matters involving alleged fraud. See Sabato, 337 N.J. Super. at 396.

B. The Court should reject the argument that the IFPA requires claims to be brought solely in court.

The IFPA provides that an "insurance company damaged as a result of a violation of any provision of this act may sue therefor in any court of competent jurisdiction." N.J.S.A. 17:33A-7. The Amici Curiae contend this provision requires IFPA claims to be brough in court rather than arbitration. The weight of authority does not support that argument.

That language is garden-variety statutory forum language found in innumerable remedial state statutes. See N.J.S.A. 34:19-5 (stating aggrieved employee "may . . . institute a civil action in a court of competent jurisdiction" under CEPA); N.J.S.A. 56:8-19 (stating consumer "may bring an action . . . in any court

of competent jurisdiction" under CFA); N.J.S.A. 10:5-13(a)(2) (stating plaintiff "may initiate suit in Superior Court" under LAD); N.J.S.A. 34:11-56a25 (stating plaintiff "may bring [an] action" to recover wages and obtain relief "in the Superior Court" under New Jersey's Wage and Hour Law ("WHL")).

And it is well-settled that CEPA, CFA, LAD, and WHL claims are all subject to arbitration. See Arafa v. Health Express Corp., 233 N.J. 147, 171-72 (2020) (WHL); Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 446-48 (2014) (CFA); Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124, 131-32 (2001) (LAD); Littman v. Morgan Stanley Dean Witter, 337 N.J. Super. 134, 145-48 (App. Div. 2001) (CEPA). So, the argument that the IFPA's judicial forum language exempts those statutes from arbitration should be rejected with finality. See Gov't Emps. Ins. Co. v. Mount Prospect Chiropractic Ctr., P.A., 98 F.4th 463, 468 (3d Cir. 2024) (rejecting insurer's reliance on the boilerplate language in N.J.S.A. 17:33A-7(a) of IFPA as indicative of an intent to exempt the statute from arbitration).

C. The Amici Curiae's interpretation of the No-Fault Law would undermine the objective of reducing court congestion.

One of the "overwhelming goals" of adopting the No-Fault Law was "reducing court congestion." Roig v. Kelsey, 135 N.J. 500, 516 (1994); see also Sabato, 337 N.J. Super. at 396 (explaining that insurers cannot be permitted to sidestep arbitration under the No-Fault Law "simply by characterizing PIP disputes"

as some of the kind of dispute and then "seeking judicial resolution of those issues"). Allowing insurers to avoid arbitration undermines that objective.

In this case alone, Allstate has repackaged as "fraud" eight-hundred-plus individual PIP claims submitted from 2009 through 2022, many of which Allstate either pre-authorized or have been arbitrated to finality. Allstate wants the court system to sort through those hundreds of claims to determine whether the claims should have been paid, in many cases despite an arbitrator's ruling the claims must be paid. But that it not the court's role under the No-Fault Law. The Legislature expressly mandated that those disputes be resolved through binding arbitration. See N.J.S.A. 39:6A-5.1(a).

This Court should echo the decisions made decades ago in Molino and Sabato. Molino cautioned against reading the arbitration requirement "too narrowly" and noted that the statute's requirement to arbitrate any dispute was "unqualified." 289 N.J. Super. at 409. The statute "must" be construed "liberally to harmonize the arbitration provision with our firm policy favoring prompt and efficient resolution of PIP disputes without resort to judicial process" and to advance the "overwhelming goals" of the No-Fault Law by "reduc[ing] court congestion" and "comport[ing] with New Jersey's long-standing and strong public policy favoring arbitration in general." Id. at 410 (citing Roig, 135 N.J. at 516).

Insurance carriers should not be allowed to "frustrate[] these salutary policies" and "should not be empowered to avoid arbitration simply by characterizing PIP disputes as questions of 'entitlement' or 'coverage' and then seeking judicial resolutions of those issues." Ibid. All disputes related to the payment of PIP Benefits are subject to arbitration with the arbitrator "charged with applying the PIP statute as a whole, guided by pertinent case law, and deciding both legal and factual questions in the process." Ibid.

Sabato, reaffirming Molino, added that arbitrators, in a PIP benefits dispute, are "empowered to determine the issues of coverage and fraud." 337 N.J. Super. at 394-97. Specifically, the panel concluded that defenses, including fraud, should be resolved by an arbitrator and that the "statutorily mandated arbitration [was] not as narrow and circumscribed as" the insurance carrier claimed. Id. at 396. Arbitration "is mandated by statute" and cannot be evaded by insurances carriers bringing claims in courts, "characterizing PIP disputes as questions of 'entitlement' or 'coverage' and then seeking judicial resolutions of those issues." Id. at 396-97. (noting "[a]rbitration proceedings shall be administered and subject to procedures established by the American Arbitration Association").

If insurers are permitted to evade arbitration and bring claims in court at a later date, insurance companies will have no incentive to resolve claims related to the payment of PIP benefits through the statutory arbitration mechanism.

Indeed, although it is settled that an insurance company can assert fraud as a defense in PIP arbitration, there would be no reason for an insurance company to ever do so and risk losing on that defense and later facing issue preclusion or estoppel in court when the insurance company repackages the claims under the IFPA. See Reid v. Reid, 310 N.J. Super. 12, 24 (App. Div. 1998) (stating claim preclusion applies to matters "determined in an earlier action").

Insurers should not be able to avoid arbitration where arbitration is the only recourse for health care providers to be paid under the No-Fault Law. The statute requires it, and, if insurers can avoid arbitration and run to the court, the finality of a binding arbitration award under the No-Fault Law would be illusory and would allow insurance companies to continue to bog down the courts with hundreds and thousands of individual PIP claims labeled as fraud.

II. The New Jersey Administrative Code regulations related to the No-Fault Law do not prohibit arbitration.

DOBI is responsible for designating an organization to administer the arbitration process required by the No-Fault Law. N.J.S.A. 39:6A-5.1(b). DOBI also is responsible for promulgating "rules and regulations with respect to the conduct of the dispute resolution proceedings. Ibid. The regulations implemented by DOBI with respect to the arbitration process are codified at N.J.A.C. 11:5-1 to -5.12. The organization designated by DOBI to administer the arbitration proceedings must, in turn, establish a dispute resolution plan

("Arbitration Plan") that is consistent with the rules and regulations adopted by DOBI. Ibid.

A. Courts do not defer to an administrative agency where the agency's interpretation of a statute or regulation is at odds with the statutory or regulatory language.

In its amicus brief, DOBI sets forth what it maintains is the agency's interpretation of the No-Fault Law and its corresponding regulations. DOBI posits that, as the agency tasked with enforcing the statute, the Court should defer to its interpretation.

As set forth above (statutory interpretation) and below (regulatory interpretation), DOBI's interpretation of the statutory scheme is inconsistent with the plain language used by the Legislature and promulgated by DOBI itself in the relevant provisions of the N.J.A.C. Because DOBI's interpretation of the No-Fault Law is at odds with the statutory language, the Court is not obligated to defer to DOBI's interpretation. Saint Peter's Univ. Hosp. v. Lacy, 185 N.J. 1, 15 (2005) (quoting Smith v. Director, Div. of Taxation, 108 N.J. 19, 25-26 (1987)); In re M.F., 169 N.J. 45, 56 (2001) (same).

B. The N.J.A.C. regulations adopted by DOBI are inconsistent with the position of Allstate and the Amici Curiae.

The Amici Curiae advance numerous arguments that the No-Fault Law and its regulations prohibit arbitration of an IFPA claim or other similar claims. To reach that result, however, the Amici Curiae narrow the statutory language as much as

possible, despite admonitions form the courts that the language should be read broadly. The Amici Curiae also ignore the regulations adopted by DOBI, which are exceedingly broad and contrary to the argument that the No-Fault Law arbitration process cannot be used to resolve IFPA claims.

1) The regulations provide broad powers to the arbitrator and are designed to promote efficient resolution of disputes.

The Amici Curiae contend that an insurer could not file for arbitration to recover PIP benefits it paid to a health care provider and that the regulations governing arbitration preclude anything other than "medical benefits stemming from single accidents." (DOBI Br. at 11). That is inconsistent with the No-Fault Law.

At the outset, it bears repeating that the No-Fault Law requires arbitration, at either party's request, of **any dispute** related to the "recovery of medical expense benefits or other benefits" provided under the No-Fault Law. N.J.S.A. 39:6A-5.1. (emphasis added). Notably, the statute does not preclude an insurer from bringing a claim in arbitration, and the statute does not preclude who may be required to appear to answer to a claim in arbitration, whether a health care provider or an employee or agent of a health care provider as either a licensed professional or layperson.

Indeed, DOBI's regulations require any Arbitration Plan to "provide that PIP dispute resolution be initiated by written notice to the administrator and **to all other parties** of the party's demand for dispute resolution." N.J.A.C. 11:3-5.4(b)(1) (emphasis added). The written notice must "set forth concisely the claims, and where

appropriate the defenses, in dispute and the relief sought." Ibid.; compare N.J.A.C. 11:3-5.4(b)(1) (requiring arbitration notice to set for claims concisely), with R. 4:5-7 (requiring pleadings filed in court to "be simple, concise and direct, and no technical forms of pleading are required").

Moreover, the notion that arbitration can only be based on a single accident and that party or claim aggregation is impossible is undercut by DOBI's regulations. (See Br. of DOBI at 21). The regulations require that an Arbitration Plan "**shall provide for consolidation of claims into a single proceeding** where appropriate in order to promote prompt, efficient resolution of PIP disputes consistent with fairness and due process of law." N.J.A.C. 11:3-5.4(b)(2) (emphasis added). The regulations make no mention of a "single accident" and, read broadly as is required, this provision plainly allows an insurance company to consolidate claims. Thus, an insurance company would not be required to arbitrate fraud in multiple individual arbitrations. If an insurer, like Allstate here, sits back and pays claims for years and then wants to allege fraud, it can consolidate the claims consistent with DOBI's regulations.

The Amici Curiae's argument that an arbitrator cannot award treble damages, attorneys' fees, equitable relief, or any other relief allowed under the IFPA or related statutes also has no support in the regulations. In fact, DOBI's regulations require an Arbitration Plan to "provide the assigned dispute resolution professional with

sufficient authority to provide all relief and to determine all claims arising under PIP coverage." N.J.A.C. 11:3-5.4(b)(3) (emphasis added). This is consistent with other arbitrable statutes that, like the IFPA, call for treble damages and fee shifting. See N.J.S.A. 56:8-19. Moreover, the power to provide **all relief** undermines the argument that an arbitrator "cannot award damages to insurance companies." (Br. of DOBI at 14).

The Arbitration Plan also must empower the dispute resolution professional to hear "emergent matters" and provide "[e]mergent or expedited relief . . . upon a demonstration that immediate and irreparable loss or damage will result in the absence of such relief." N.J.A.C. 11:3-5.4(b)(3)(i). In other words, the Arbitration Plan must grant the dispute resolution professional the power to grant equitable relief or injunctive relief in a manner similar to that of a court. See Crowe v. De Gioia, 90 N.J. 126, 132 (1982) (stating injunctive relief is appropriate to "prevent irreparable harm").

The regulations also further the intent of the No-Fault Law by requiring "prompt, fair resolution of PIP disputes." N.J.A.C. 11:3-5.4(b)(5). DOBI's regulations require an Arbitration Plan to provide flexibility to allow the dispute resolution professional to use alternate procedures to resolve matters, such as directing mediation, settlement conferences, or expedited hearings. Ibid.

DOBI's regulations, consistent with the No-Fault Law, also call for the use of a medical review organization to streamline determinations of the medical treatment provided, such as medical necessity or appropriateness of the treatment. N.J.A.C. 11:3-5.4(b)(4); N.J.S.A. 39:6A-5.2. Nothing in the regulations, however, mandates the use of a medical review organization or otherwise limits the issues in the arbitration to a review of the medical treatment.

The Amici Curiae also argue that appropriate discovery could not be conducted in arbitration. That, too, is inconsistent with DOBI's regulations. An Arbitration Plan must "provide for the fair and efficient conduct of adversarial proceedings . . . consistent with traditional notions of due process and fundamental fairness." N.J.A.C. 11:3-5.4(b)(7). DOBI's regulations then identify what is first in the list of requirements to satisfy due process and fundamental fairness: **"Discovery."** Ibid. (emphasis added)

> An Arbitration Plan must also account for, at least:
>
> > Receipt of evidence by the dispute resolution professional;
> >
> > Submission of briefs or memoranda of law and fact;
> >
> > Provision for decisions without testimony on consent of the parties;
> >
> > Notice and place of hearing;
> >
> > Methods to request adjournments;
> >
> > Presentation of testimony and evidence at a hearing; and

Supplementation of the record.

[Ibid.]

These provisions set the floor for what must be provided in an Arbitration Plan. And, taken together, these provisions provide a clear requirement to satisfy due process to prosecute or defend claims but do so efficiently—the precise purpose of the No-Fault Law and, generally, alternate dispute resolution. See Wein v. Morris, 194 N.J. 364, 384-85 (2008) (noting general purpose of arbitration is to obtain "final disposition, in a speedy, inexpensive, expeditious and perhaps less formal manner").

Aside from being inconsistent with the No-Fault Law, the Amici Curiae's claim that arbitration is not suitable for the adjudication of IFPA disputes is speculative because they have failed to cite a single arbitration or case in which an insurer attempted but failed to secure affirmative relief in arbitration or to demonstrate that arbitration would be futile.

2) Forthright's plan is inconsistent with the statutes and regulations.

DOBI argues at length that Forthright's Arbitration Plan, the current dispute resolution organization selected by DOBI, cannot accommodate arbitration of IFPA claims. (Br. of DOBI at 20-24). If Forthright's Arbitration Plan cannot accommodate an IFPA claim, however, the fault lies with DOBI and Forthright for adopting a plan that is inconsistent with the statutes and regulations. The Sood Defendants should not be punished for DOBI's error in sanctioning a deficient plan.

DOBI has the power to promulgate rules governing PIP arbitration. DOBI has the authority to designate a dispute resolution organization and approve the organization's Arbitration Plan. It did so, and the rules are broad and allow for far more power vested in the dispute resolution professionals and procedures to adjudicate adversarial proceedings than apparently Forthright's plan contemplates.

The solution to the problem created by DOBI and Forthright is not to conclude that arbitration should be construed narrowly and inconsistently with the statute and regulations DOBI adopted. The solution is for DOBI to require Forthright to amend its plan to be consistent with the No-Fault Law and DOBI's regulations, or otherwise choose a dispute resolution organization that can accommodate the statutory and regulatory requirements currently in place. (e.g., AAA, JAMS).

In the alternative, if DOBI's interpretation of the No-Fault law is consistent with its amicus brief, DOBI must follow the statutory process, including public notice and time to be heard, to amend its regulations. "An agency must give notice that it intends to adopt or amend any rule at least thirty days before the adoption of the regulation." N.J.S.A. 52:14B-4(a)(1). "The notice must include a statement of the terms or substance of the intended action and the time, place and manner in which comments may be presented, and must be published in the New Jersey Register along with other means of public notice required by law." Ibid.; N.J.A.C. 1:30-5.1(b)(9); N.J.A.C. 1:30-5.2(2).

"The agency must prepare a report for public distribution which provides a set of analyses of the expected impact of the proposed rule." N.J.S.A. 52:14B-4(a)(2). "Interested persons must be given a reasonable opportunity to submit either orally or in writing 'data, views, or arguments,' and the agency must 'consider fully all written and oral submissions respecting the proposed rule.'" N.J.S.A. 52:14B-4(a)(3). The agency also must "[p]repare for public distribution, and make available for public viewing through publication on the agency's Internet website, a report listing all parties offering written or oral submissions concerning the rule, summarizing the content of the submissions and providing the agency's response to the data, views, comments, and arguments contained in the submissions." N.J.S.A. 52:14B-4(a)(4). And no agency rule is valid with complying with those statutory requirements. N.J.S.A. 52:14B-4(d).

What an agency cannot do is what DOBI is trying to do here, namely, adopt broad regulations and then narrow and substantially alter them in practice. Put simply, the Court should not interpret the statutes and regulations to fit Forthright's plan where Forthright's plan does not comply with the statutes and regulations. Cf. E.B. v. Div. of Med. Assistance & Health Servs., 431 N.J. Super. 183, 206-07 (App. Div. 2013) (stating "an agency may not use its power to interpret its own regulations as a means of amending those regulations or adopting new regulations"). DOBI

should require Forthright to amend its plan to be consistent with the regulations DOBI already adopted.

3) DOBI and the public would not be prejudiced by arbitration of IFPA claims.

The Amici Curiae allege that the ability to investigate and root out insurance fraud will be hampered by arbitration of IFPA claims. The Amici Curiae do not cite to any evidence to support that allegation. Nor do the Amici Curiae explain how consumer fraud can be arbitrated but insurance fraud cannot. See Atalese, 219 N.J. at 446-48 (noting arbitrability of CFA claims).

At bottom, insurance companies will still be able to investigate fraud and seek recoupment of payments through the arbitration process. DOBI will maintain its authority to investigate fraud and initiate its own action, irrespective of how or whether the insurer files for arbitration. Mount Prospect Chiropractic Ctr., P.A., 98 F.4th at 469 (citing N.J.S.A. 17:33A-5 and explaining that this provision allows DOBI to file an independent action). And, if an insurer does elect to file a notice of arbitration for an IFPA claim, DOBI can intervene if it chooses to do so.

Although DOBI claims it cannot intervene in an arbitration, (Br. of DOBI at 27), nothing in the statutes or regulations prohibits DOBI from intervening. See Mount Prospect Chiropractic Ctr., P.A., 98 F.4th at 469. Indeed, it is hard to fathom that DOBI would adopt a regulation that curtails its own rights or prevents the agency from participating in a proceeding. These arguments are nothing more than

a pretext to justify a position that is inconsistent with the statutes adopted by the Legislature and the regulations adopted by DOBI.

CONCLUSION

For all of the foregoing reasons, and as set forth in the Sood Defendants merits brief, the Sood Defendants respectfully submit that the Court should affirm the trial court's order compelling Allstate to arbitrate its claims.

Respectfully submitted,

MANDELBAUM BARRETT PC

Dated: September 25, 2024

By: */s/ Andrew Gimigliano*
Andrew Gimigliano
Brian M. Block

ALLSTATE NEW JERSEY INSURANCE COMPANY, ALLSTATE NEW JERSEY PROPERTY and CASUALTY INSURANCE COMPANY, ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE & CASUALTY INSURANCE COMPANY, ALLSTATE NORTHBROOK INDEMNITY COMPANY, and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiffs-Appellants,

v.

CARTERET COMPREHENSIVE MEDICAL CARE, P.C., d/b/a MONROE COMPREHENSIVE MEDICAL CARE, d/b/a COMPREHENSIVE MEDICAL CARE, d/b/a FASSST SPORT, d/b/a COMPREHENSIVE VEIN CARE, INIMEG MANAGEMENT COMPANY, INC., 311 SPOTSWOOD-ENGLISHTOWN ROAD REALTY, L.L.C., 72 ROUTE 27 REALTY, L.L.C., SAME DAYPROCEDURES, L.L.C., MID-STATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, L.L.C., d/b/a PAIN MANAGEMENT PHYSICIANS OF NEW JERSEY, d/b/a METRO PAIN CENTERS, d/b/a METRO PAIN and VEIN, SOOD MEDICAL PRACTICE, L.L.C., ONE OAK MEDICAL GROUP, L.L.C., d/b/a NEW JERSEY VEIN TREATMENT CLINIC, ONE OAK ORTHOPAEDIC & SPINE GROUP,

SUPERIOR COURT OF THE STATE OF NEW JERSEY

APPELLATE DIVISION
DOCKET NO. A-000778-23

On Appeal From:
Superior Court of New Jersey
Law Division, Middlesex County

Sat Below:
Hon. Christopher D. Rafano J.S.C.

Trial Court Docket No.:
Docket No. MID-L-1469-23

L.L.C., ONE OAK HOLDING, L.L.C., JOSEPH BUFANO, JR., D.C., CHRISTOPHER BUFANO, MICAH LIEBERMAN, D.C., RICHARD J. MILLS, M.D., JENNIFER M. O'BRIEN, ESQ., GERALD M. VERNON, D.O., D.C., ALVIN F. MICABALO, D.O., JOSE CAMPOS, M.D., JOHN S. CHO, M.D., MICHAEL C. DOBROW, D.O., RAHUL SOOD, D.O., SACHIN SHAH, M.D., FAISAL MAHMOOD, M.D., RAVI K. VENKATARAMAN, M.D., MANGLAM NARAYANAN, M.D., SHANTI EPPANAPALLY, M.D.,

Defendants-Respondents.

BRIEF OF PLAINTIFFS-APPELLANTS IN RESPONSE TO BRIEF OF AMICUS CURIAE ASSOCIATION OF NEW JERSEY CHIROPRACTORS

Submitted August 16, 2024

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

PRELIMINARY STATEMENT

Plaintiffs-Appellants (Plaintiffs) respond to the brief of amicus curiae Association of New Jersey Chiropractors (the Chiropractors). The Chiropractors' brief (CHb) does not address the key issue on this appeal, provides vague and unsubstantiated contentions, and either overlooks or distorts the record and Plaintiffs' arguments.

The issue before the court is whether the Automobile Insurance Cost Reduction Act (AICRA) requires alternative dispute resolution (PIP ADR) of Plaintiffs' affirmative claims that Defendants fraudulently obtained PIP benefits or conspired in, or aided and abetted, that fraud. Plaintiffs have explained that it would violate the constitutional right to a jury trial for the Legislature to require insurers to submit fraud claims for damages to PIP ADR. Under settled precedent, this court should presume that the Legislature did not intend that unconstitutional result and interpret AICRA as Plaintiffs and other amici, including the New Jersey Department of Banking and Insurance (DOBI) and the Office of the Insurance Fraud Prosecutor (OIFP) have suggested—to require PIP ADR of disputes about whether PIP benefits are due and in what amounts, but not claims for damages based on widespread fraudulently obtained benefits.

The Chiropractors ask the court to ignore those arguments and affirm on the alternative ground, not addressed below, that Plaintiffs purportedly agreed by contract to arbitrate their damages claims through their Decision Point Review Plan (DPRP), therefore waiving the right to a jury trial. That argument is meritless.

First, as Plaintiffs explained in their reply brief, their DPRP requires healthcare providers that are assigned patients' rights to no-fault insurance benefits to agree, as a condition of assignment, to submit disputes to PIP ADR when those disputes fall within the PIP regulation cited in the DPRP. Under AICRA and DOBI's PIP regulations, assignee healthcare providers have the option to submit, to PIP ADR, disputes about whether they are entitled to PIP benefits. The DPRP provision on which the Chiropractors rely simply converts that option into an obligation to raise disputes about unpaid or denied PIP benefits to PIP ADR rather than in court. The DPRP's assignment provision tracks DOBI's regulation permitting insurers to require providers to submit to PIP ADR as a condition of the assignment of PIP benefits to them.

The assignment provision in Plaintiffs' DPRP is much different from the DPRP provision that the Third Circuit held in Government Employees Insurance Co. v. Mount Prospect Chiropractic Center, P.A. contractually required

arbitration of fraud damages claims. GEICO's DPRP did not merely incorporate the PIP ADR regulations but was written more like a traditional arbitration clause requiring arbitration of "any issue arising under [the DPRP], or in connection with any claim for [PIP] benefits."

Second, this court should not bypass the issue of statutory interpretation presented by this case. That issue is of such importance that DOBI and OIFP urge this court to correct the Law Division and Third Circuit's erroneous interpretation of AICRA because it will cause serious harm to the public. Their message is critical because DOBI promulgated the dispute-resolution regulations at issue and is tasked with civil enforcement of the Insurance Fraud Prevention Act (IFPA), and OIFP is charged with investigating and prosecuting insurance fraud. The court should reverse the Law Division's decision to ensure that insurers and the State retain essential tools to protect the public from insurance fraud.

ARGUMENT

I. Plaintiffs' DPRP requires assignees to participate in PIP ADR for disputes falling within AICRA's dispute-resolution provision and does not contain any independent contractual obligation to arbitrate.

The Chiropractors maintain that Plaintiffs "opted into the AICRA regime" and that "[i]t is undisputed" that Plaintiffs' insurance policies "require

mandatory arbitration of all disputes relating to PIP benefits." CHb7. Those arguments are wrong.

The Chiropractors do not cite any authority for the proposition that insurers "opt in" to PIP ADR. Insurers that issue automobile-insurance policies in New Jersey are required by statute to include no-fault "personal injury protection" (or PIP) benefits in their policies: "[E]very standard automobile liability insurance policy issued or renewed on or after the effective date of P.L.1998, c. 21 (C.39:6A-1.1 et al.) shall contain personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind . . . ." N.J.S.A. 39:6A-4. In addition, this court has explained that "PIP arbitration elected by the insured becomes mandatory for the carrier." Habick v. Liberty Mut. Fire Ins. Co., 320 N.J. Super. 244, 253 (App. Div. 1999).

Thus, the only way for Plaintiffs to avoid the PIP ADR system is to stop selling automobile insurance in New Jersey. It is unclear if that is what the Chiropractors suggest by "opting out," but the Legislature cannot condition the privilege of doing business in the state on the waiver of a constitutional protection like the right to a jury trial on damages claims. See, e.g., Kutcher v. Hous. Auth. of City of Newark, 20 N.J. 181, 188-89 (1955) ("The State may not condition a privilege which it may deny altogether on a surrender of

constitutional right."). So AICRA could not constitutionally require insurers to waive their right to a jury trial on fraud claims in exchange for the privilege of selling no-fault insurance in New Jersey. And nothing suggests that the Legislature attempted to put such an unconstitutional condition in AICRA. There is no voluntary act by which Plaintiffs could opt in to, or out of, PIP ADR that might affect this court's analysis of whether AICRA could constitutionally require PIP ADR of insurers' damages claims.

Nor is it "undisputed" that Plaintiffs' insurance policies contain a provision requiring arbitration of Plaintiffs' claims. Plaintiffs' reply brief refutes that contention and explains that the DPRP merely incorporates the dispute-resolution regulations that DOBI promulgated under AICRA. Prb6-7, 15. The DPRP in the record below states:

> **ASSIGNMENT OF BENEFITS**
>
> Assignment of a named insured's or eligible injured person's rights to receive benefits for medically necessary treatment, durable medical equipment tests or other services is prohibited except to a licensed health care provider who agrees to:
> (a) Fully comply with ANJ/ANJP&C Decision Point Review Plan, including precertification requirements,
> (b) Comply with the terms and conditions of the ANJ/ANJP&C policy
> (c) Provide complete and legible medical records or other pertinent information when requested by us,

> (d) Utilize the "internal appeals process" which shall be a condition precedent to the filing of a demand for alternative dispute resolution for any issue related to bill payment, bill processing, Decision Point Review Request or Precertification request,
> (e) Submit disputes to alternative dispute resolution pursuant to N.J.A.C. 11:3
> (f) Submit to statements or examinations under oath as often as deemed reasonable and necessary[.]
>
> [Pa0511 (emphasis added).]

The conditions of assignment in Plaintiff's DPRP, including the obligation to submit disputes to PIP ADR—when they are subject to it—tracks the DOBI regulation concerning permissible restrictions on the assignment of PIP benefits to healthcare providers. Under N.J.A.C. 11:3-4.9(a), "an insured may only assign benefits and duties under the policy to a provider of service benefits." Insurers cannot prohibit the assignment of benefits to providers, but can include in policy forms "[r]easonable restrictions" on such assignments. Ibid. The regulation defines reasonable restrictions to include "[a] requirement that as a condition of assignment, the provider agrees to follow the requirements of the insurer's [DPRP]," and "[a] requirement that as a condition of assignment, the provider agrees to submit disputes to alternate dispute resolution pursuant to N.J.A.C. 11:3-5." N.J.A.C. 11:3-4.9(a)(1), (3).

N.J.A.C. 11:3-5.1 to .12 contain the DOBI regulations on PIP ADR. N.J.A.C. 11:3-5.1 explains that the purpose of the regulations "is to establish procedures for the resolution of disputes concerning the payment of medical expense and other benefits provided by the personal injury protection coverage in policies of automobile insurance." N.J.A.C. 11:3-5.1 also states that the regulations codified in N.J.A.C. 11:3-5 "implement[] N.J.S.A. 39:6A–5.1 and 5.2, which provide that PIP disputes shall be resolved by binding alternate dispute resolution as provided in the policy form approved by the Commissioner." N.J.A.C. 11:3-5.1(a).

The DOBI regulations therefore make clear that: (1) disputes regarding the payment of PIP benefits are subject to PIP ADR, and (2) no-fault insurers can require healthcare providers that are assigned PIP benefits to comply with an insurer's DPRP and submit disputes to PIP ADR. An insurer's ability to require assignee providers to submit claims to PIP ADR is important because under DOBI regulations, providers otherwise have the option, but not the obligation, to do so. N.J.A.C. 11:3-5.6(a) states that "[a] request for dispute resolution of a PIP dispute may be made by the injured party, the insured, a provider who is an assignee of PIP benefits pursuant to N.J.A.C. 11:3-4.9 or the insurer, in accordance with the terms of the policy as approved by the

Commissioner." N.J.A.C. 11:3-5.6(a) (emphasis added). This court has explained that "[t]he use of the term 'may' clearly gives plaintiff [assignee healthcare provider] the option of filing for arbitration, but does not require it to do so." Riverside Chiropractic Grp. v. Mercury Ins. Co., 404 N.J. Super. 228, 237 (App. Div. 2008).

Thus, Plaintiffs' DPRP assignment provision converts an assignee's option to submit PIP disputes to ADR into an obligation to do so. It does not define or alter the scope of the disputes that are subject to PIP ADR. Rather, it merely incorporates the PIP regulations that define that scope. The question on this appeal, therefore, is whether those PIP regulations and the AICRA dispute-resolution provision that they implement apply to Plaintiffs' claims. There is no independent contractual basis to resolve the case.

The Chiropractors' contractual argument suffers from another defect. The DPRP assignment provision applies only to assignees—that is, the entities to which insureds sign over their PIP benefits—but Plaintiffs have sued, in addition to the assignee medical practices, approximately twenty other individuals and entities they allege are liable for the fraud. The Chiropractors offer no argument as to how the DPRP assignment provision could apply to claims against non-assignees.

Contrary to the Chiropractors' contention, Plaintiffs' DPRP assignment provision is different from the DPRP at issue in the Third Circuit's Mount Prospect decision. The Third Circuit explained that GEICO's "[DPRP] arbitration provision covers 'any issue arising under [the DPRP], or in connection with any claim for [PIP] benefits.'" Mount Prospect, 98 F.4th at 470 (third alteration in original). The court held that, based on that language, GEICO contractually committed itself to arbitrate fraud claims, separate and independent from any obligation to submit the claims to PIP ADR under AICRA. See ibid. The assignment provision in Plaintiffs' DPRP contains no such language. Thus, the Third Circuit's holding that GEICO contractually agreed to arbitrate fraud claims and thereby waived a right to a jury trial on those claims is irrelevant to this case.

Finally, the Chiropractors' attempt to distinguish the Supreme Court's decision in Allstate New Jersey Insurance. Co. v. Lajara, 222 N.J. 129 (2015), is unavailing. The Chiropractors maintain that Lajara does not require a jury trial on Plaintiffs' claims that they suffered damages due to fraud in the procurement of PIP benefits because: (1) this is a "PIP action" or "PIP matter[]" to which the jury-trial right does not apply, (2) no party in Lajara argued that the claims were

subject to arbitration under AICRA, and (3) there was no argument that the insurers waived the right to arbitrate by contract in Lajara. See CHb4-5.

The Chiropractors' argument that Plaintiffs' claims for fraud damages are statutory PIP disputes not covered by the constitutional right to a jury trial is foreclosed under Lajara. The claims in Lajara are indistinguishable from those here. There, as here, "[t]he complaint allege[d] that defendants engaged in a 'broad, multi-faceted scheme to defraud' plaintiffs of [millions of dollars] in personal injury protection benefits," and the plaintiff insurers sought compensatory and punitive damages as remedies. Lajara, 222 N.J. at 135. The Supreme Court's holding that such claims are subject to the constitutional right to a jury trial because they seek legal relief and are comparable to common-law fraud, id. at 151, necessarily applies to Plaintiffs' fraud claims here.

The Chiropractors' contention that no party in Lajara argued that the claims were subject to PIP ADR is equally deficient. Lajara holds that parties have a constitutional right to a jury trial on damages claims for fraudulently obtained PIP benefits. As Plaintiffs explained in their opening brief, the Supreme Court has also held that the Legislature cannot constitutionally require mandatory ADR without a trial de novo of claims carrying the right to a jury trial. See Pb20-21 (citing Jersey Cent. Power & Light Co. v. Melcar Utility Co.,

212 N.J. 576 (2013)). And the Supreme Court has instructed that courts have a "duty" to avoid "a construction which would render [a statute] unconstitutional or permit its unconstitutional application" when possible. Whirlpool Props., Inc. v. Dir., Div. of Tax'n, 208 N.J. 141, 172 (2011) (emphasis added) (internal quotation marks omitted).

Taken together, those binding Supreme Court decisions establish three principles that suffice to resolve the statutory-interpretation issue in this case: (1) the Legislature enacts an unconstitutional law when it mandates ADR for claims on which parties have a constitutional right to a jury trial, unless the statute also provides for a right to a de novo jury trial after ADR (Jersey Central Power & Light); (2) parties have a constitutional right to a jury trial on insurers' claims seeking damages for PIP benefits allegedly obtained through fraud (Lajara); and (3) courts must interpret a statute to avoid an unconstitutional application if reasonably possible (Whirlpool). Nothing the Chiropractors say undermines the ironclad application of those principles to this case: AICRA's dispute-resolution provision must not be applied to Plaintiffs' (and other insurers') fraud claims for damages to avoid rendering the statute in violation of the constitutional right to a jury trial on those claims.

Finally, the Chiropractors are incorrect that Lajara does not control this case because there was no waiver issue in Lajara. Plaintiffs did not waive a right to a jury trial on their fraud claims, so there is no waiver issue here either. This court should not avoid the important and recurring issue of statutory interpretation that this case presents.

II. The court should not avoid the issue of statutory interpretation presented in this case, which DOBI and OIFP agree is a matter of public importance.

The court should reject the Chiropractors' invitation to avoid the question of statutory interpretation that the Law Division decided. If allowed to go uncorrected, the erroneous decision below and the Third Circuit's Mount Prospect decision on the scope of AICRA's dispute-resolution clause will hobble insurers' and the State's abilities to root out and prevent PIP-related insurance fraud.

DOBI and OIFP, neutral expert agencies guided by their missions to protect the public, are unequivocal about the need for this court to clarify New Jersey law on the scope of PIP ADR. They say in their amicus brief (NJb) that:

- the lower court's decision "will profoundly impact civil and criminal insurance fraud cases, and limit the Department's [i.e., DOBI's] and the OIFP's ability to protect the public," NJb3;

- "New Jersey's strong public policy to confront aggressively the problem of insurance fraud would be hampered if insurance companies cannot litigate IFPA and RICO fraud claims in court," id. at 5;
- "[i]nsurance companies — whose role in investigating and bringing actions to enforce against insurance fraud is significant — would become all but unable to use the IFPA to combat the huge problem of fraud in the insurance industry if an in-court forum were not available," id. at 26;
- "shunting IFPA cases to PIP arbitration is to also foreclose an important tool for the Department's efforts to combat insurance fraud" because DOBI can intervene in an IFPA suit but not in PIP ADR, id. at 27;
- insurers' inability to sue in court "hinders an important source of information for OIFP's own criminal investigations" because "most cases investigated by the OIFP are the result of referrals from the Special Investigations Units of insurance companies," id. at 28;
- "[a]ny statutory interpretation that limits the relief ensured by the IFPA would have the unintended effect of undermining the purpose of the IFPA while also incentivizing insurance fraud," id. at 29; and

- "[a] decision to send affirmative insurance fraud actions to PIP no-fault dispute resolution proceedings will negatively impact the fight against insurance fraud, and will severely weaken the collective ability of carriers, the Department, and the OIFP to combat insurance fraud within the State of New Jersey," id. at 30.

It is therefore no exaggeration to say that this court's failure to address and reject the lower court's and the Third Circuit's statutory interpretation would strike a significant blow to the collective effort of insurance companies, the Legislature, and the Executive Branch to stop what DOBI and OIFP call "the huge problem" of insurance fraud. Id. at 26.

Finally, DOBI and OIFP's amicus brief further underscores the grave errors in the Law Division's and the Mount Prospect federal court's interpretation of New Jersey statutory law. Neither court had the benefit of the agencies' views on the correct interpretation of AICRA or DOBI's own implementing regulations. The New Jersey Supreme Court gives "great deference" to the interpretation of an agency charged with enforcing or implementing a statute. In re Freshwater Wetlands Prot. Act Rules, 180 N.J. 478, 488-89 (2004). The Mount Prospect panel recognized that "[w]hen federal courts answer questions of state law, they rule as they predict the state supreme

court would," Mount Prospect, 98 F.4th at 467, and thus it surely would have applied that same deference if it had had the agencies' views before it.

Among other points, DOBI and OIFP explain that:

- "PIP dispute resolution only applies to disputes over payment of medical expense benefits," and the payment of medical expenses is not at issue on Plaintiffs' claims for compensatory damages and other relief, NJb10-11;
- the Legislature intended PIP ADR "to resolve expeditiously uncomplicated claims by an insured, an injured person, or a medical provider who has an assignment of benefits, related solely to payment of medical benefits stemming from single accidents, and not broad, complex, multi-defendant IFPA and RICO claims," id. at 11;
- the purpose of PIP ADR is to provide an expeditious procedure to resolve disputes about entitlement to payment while the IFPA's purpose is to root out fraud, id. at 13;
- "[a]n IFPA case does not constitute a dispute under N.J.S.A. 39:6A-5.1 because it is not a dispute 'regarding the recovery of medical expense benefits.' (emphasis added). Rather, it is a dispute about whether an entity has defrauded an insurance company," id. at 14;

- "the Legislature could not have intended IFPA claims to be subject to PIP arbitration because an insurance company who claims fraud cannot obtain any of the relief permitted by the IFPA in a PIP no-fault arbitration," ibid.;
- "[a] PIP arbitrator's complete lack of authority to make mandatory damage awards and grant equitable relief plainly shows that the Legislature did not intend that IFPA and RICO claims be decided in a PIP arbitration," id. at 17-18;
- "the very limited discovery allowed in a PIP arbitration clearly shows that the Legislature never intended that broad, multi-defendant IFPA and RICO claims be arbitrated there," id. at 18;
- DOBI's regulations do not provide "parameters" for insurance-fraud cases, which "frequently involve many parties, complex schemes, and require large amounts of fact and financial discovery," id. at 19;
- "[t]hat neither the Commissioner's regulations nor the court rules contemplated such complex disputes in PIP arbitration is a very significant indication that such arbitrations were never intended to cover IFPA or RICO claims," id. at 20;

- "[i]n a PIP arbitration, neither claim, nor party, aggregation is possible," but "both the IFPA and RICO involve the aggregation of claims against multiple defendants who acted in concert, and the aggregation of similar claims, to establish 'patterns' of IFPA or racketeering violations," id. at 20-21;
- the rules adopted by Forthright, the organization that DOBI designated to administer PIP ADR, "do not provide for the types of discovery that a party bringing (or defending) a large and complex case alleging IFPA violations would require to prove (or rebut) the allegations and penalties that are being sought," id. at 22;
- "the Third Circuit's cursory and flawed analysis and holding in GEICO that an insurer's affirmative IFPA claims are subject to PIP arbitration is simply wrong on numerous levels," id. at 24;
- "the Department cannot intervene in IFPA cases that are sent to PIP arbitration, since those proceedings do not contemplate intervenor action by the Department to enforce the IFPA," id. at 27; and
- "AICRA calls for more, not less, statewide fraud fighting capabilities. Thus, arbitration of IFPA claims would be contrary to both the spirit and the letter of not only the IFPA, but also the AICRA," id. at 29-30.

Given DOBI's and OIFP's extensive experience with, and essential roles in, the no-fault regime, their interpretation of AICRA and DOBI's regulations is far more important and persuasive than the view of the Mount Prospect panel, which was based on only the limited record and arguments before it. This court—not the Mount Prospect panel—should resolve whether New Jersey law deprives insurance companies and the State of essential means under the IFPA and RICO to prevent insurance fraud.

This court should therefore defer to the agencies' persuasive analysis and review—and reverse—the Law Division's erroneous statutory interpretation.

CONCLUSION

For the reasons explained, the court should reverse the Law Division's decision requiring PIP ADR of Plaintiffs' claims and remand for further proceedings.

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