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 FASST 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 DAY PROCEDURES, L.L.C., MIDSTATE ANESTHESIA CONSULTANTS, L.L.C., NORTH JERSEY PERIOPERATIVE CONSULTANTS, P.A., INTERVENTIONAL PAIN CONSULTANTS OF NORTH

SUPREME COURT OF NEW JERSEY
DOCKET NO. 090337

Civil Action

On Petition for Certification from a Final Judgment of the Appellate Division, Docket No.: A-0778-23

Sat Below:

Hon. Robert J. Gilson, P.J.A.D.
Hon. Lisa Firko, J.A.D.
Hon. Avis Bishop-Thompson, J.A.D.

Submitted on: October 2, 2025

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. 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 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

Pages

Cases

Statutes

Other Authorities

INTEREST OF AMICI CURIAE

This appeal concerns the proper forum for an insurance company to litigate affirmative claims of fraud under the Insurance Fraud Prevention Act ("IFPA"), N.J.S.A. 17:33A-1 to -30. As the agencies charged with combating insurance fraud and with enforcing the IFPA, the Department of Banking and Insurance ("Department") and Office of the Insurance Fraud Prosecutor ("OIFP") have a substantial interest in ensuring the proper interpretation of the IFPA and that its remedial goals are not unduly hindered. The agencies thus have a strong interest in the outcome of this case: because insurance companies also play a significant role in combating insurance fraud through IFPA suits, including in ways that impact the agencies' work, both the Department and the OIFP appear as amicus to highlight the troubling consequences that Petitioners' position would have for insurance fraud prevention writ large.

The Department's interest in this case stems further from its statutory responsibility to promulgate regulations for and supervise 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, authorizes the Commissioner to promulgate rules and regulations regarding dispute resolution and designate an organization to administer the proceedings. N.J.S.A. 39:6A-5.l(b); N.J.S.A. 39:6A-1.2. The Commissioner designates the

organization that administers the dispute resolution proceedings regarding PIP medical expense benefits. N.J.S.A. 39:6A-5.1(b). The Department is therefore uniquely positioned to provide 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. A rule subjecting IFPA claims to PIP no-fault arbitration will impact civil and criminal insurance fraud enforcement, in turn undermining 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 complete understanding of the case's practical impacts, and to offer their perspectives regarding the proper forum for litigating IFPA claims.

PRELIMINARY STATEMENT

This appeal requires the Court to reconcile an apparent conflict between two related legislative schemes. The IFPA, on the one hand, authorizes an express private right of insurance companies to sue in Superior Court and allows for broad remedies, including attorneys' fees and treble damages—and thereby effectuates our State's strong public policy against insurance fraud. The IFPA further authorizes the Commissioner to intervene in any case brought by an insurance company alleging a violation of the IFPA. AICRA, by contrast, establishes a specialized PIP arbitration designed to handle simpler disputes between insureds and insurance companies regarding whether PIP benefits are owed and to what amount. PIP arbitration is designed to resolve disputes arising out of one accident involving one policyholder, where the dispute turns on the binary question of whether the claim should be allowed or denied.

Harmonizing these statutory schemes, the Appellate Division correctly held that AICRA does not channel insurance fraud claims under the IFPA to PIP arbitration. Compelling arbitration of IFPA claims would impede the IFPA's text, structure, and "broad remedial goals," Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 173 (2006), as PIP arbitrators lack authority to grant affirmative relief to insurance companies in the form of any of the IFPA's remedies. The limited discovery available in PIP arbitration is likewise ill-suited to adjudicating such

complex insurance fraud claims—like Allstate's multi-faceted complaint here, which has alleged a complex insurance fraud ring against thirty-six defendants. Perhaps unsurprisingly, in the more-than-twenty-five years since AICRA's enactment, IFPA claims have therefore historically been adjudicated in Superior Court, not PIP arbitration. The Third Circuit's contrary interpretation of AICRA carries no binding or persuasive weight, and it misapplied state statutory interpretation principles and minimized the extent of the statutory conflict.

Further, construing AICRA to compel arbitration of IFPA claims would have far reaching consequences. Because public enforcement of the IFPA often depends on facts developed in private-party litigation, forcing these claims to PIP arbitration would undermine the efforts of the Department and OIFP, whose work in carrying out our State's strong public policy against insurance fraud is supported by allowing insurance companies to bring IFPA claims in court. The Legislature did not intend that result, and therefore this Court should affirm.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

A. Statutory Background.

Under AICRA, N.J.S.A. 39:6A-1.1 to -35, New Jersey operates under a no-fault insurance system, meaning that if a person is involved in an auto accident, their own insurance company covers their medical expenses and other related costs, regardless of who was at fault. N.J.S.A. 39:6A-4. Every standard automobile liability insurance policy issued or renewed in this State thus must provide for payment of PIP benefits to the named insured and other covered insureds without regard to negligence, liability or fault. Ibid. Those benefits include medical expenses, lost wages, and certain other costs resulting from an auto accident, up to the policy limits. Ibid.; see also (DPa22).

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. See N.J.S.A. 39:6A-5.1(a), (c). AICRA states, in relevant part:

> 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, as hereinafter provided.

[1] These related sections are combined for the Court's convenience.

[N.J.S.A. 39:6A-5.1(a).]

In enacting the IFPA, the Legislature intended to "confront aggressively the problem of insurance fraud" by "facilitating the detection of insurance fraud," preventing its occurrence, "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. Consistent with that broad remedial aim, the IFPA authorizes not only insurers but also OIFP, under the direction of the Attorney General, and the Department to bring actions in court. N.J.S.A. 17:33A-5, -7. It specifically states that insurance companies damaged by violations of the Act "may sue therefor in any court of competent jurisdiction to recover" compensatory damages (including investigation expenses and attorneys' fees) and treble damages if a pattern of fraud is proven. N.J.S.A. 17:33A-7(a), (b). To facilitate public enforcement, the IFPA requires notice of such a suit to the Commissioner, who is authorized to intervene in the action to seek civil penalties and may be awarded costs and reasonable attorneys' fees as a prevailing party. N.J.S.A. 17:33A-7(c), (d).

B. Proceedings Below.

In March 2023, Allstate filed a nine-count complaint in the Law Division against Petitioners, a group that includes medical practices, the owners of those practices, and physicians and administrators associated with those practices.

(Pa23).[2] Allstate provides 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. Allstate alleged that, from 2008 through 2022, Petitioners conspired to obtain over $1.7 million in PIP benefits through hundreds of false and misleading insurance claims. (Pa37, 74). Allstate alleged that after making these benefit payments, it learned that Petitioner Carteret Comprehensive Medical Care ("CCMC") was illegally structured to allow non-physicians to exert control over the medical practice in violation of the Corporate Practice of Medicine Doctrine ("CPMD"). (Pa37-68, 448); N.J.A.C. 13:35-6.16(f). Allstate alleges that numerous Petitioners 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, 87-99).

Allstate asserted claims that those actions violated the IFPA, RICO, the CPMD, and New Jersey's Anti Self-Referral Law, N.J.S.A. 45:9-22.4 to -22.9. (Pa76-120). Its complaint sought disgorgement of the $1.7 million in PIP benefits payments; compensatory and treble damages, attorneys' fees and other

[2] "Pa" refers to Allstate's Appellate Division Appendix; "DPa" refers to Petitioners' Appendix to the Joint Petition for Certification; and "DP" refers to Defendants' Joint Petition for Certification.

remedies pursuant to the IFPA; and damages and other remedies under RICO based on violations of the CPMD and self-referrals and kickbacks. (Pa34-37).

The Law Division granted motions filed by Petitioners to compel arbitration of Allstate's claims based on AICRA, finding that these are "'disputes' around the 'recovery' of PIP Benefits" covered by AICRA's arbitration provision, N.J.S.A. 39:6A-5.1(a). (DPa56-58, 63-65). The trial court reasoned that this statutory 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." (DPa48, 56-57, 64). It dismissed all of Allstate's claims without prejudice, even against defendants who did not move to compel arbitration. (DPa51-52).

The Appellate Division reversed, holding that insurance fraud claims under the IFPA and RICO are not subject to PIP arbitration under AICRA. (DPa42). Writing for the panel, Judge Gilson noted an apparent tension between the IFPA and AICRA; whereas the IFPA confers an express private right to sue, AICRA is designed to avoid litigation via a streamlined process to ensure prompt benefits payments. (DPa26, 28-31). Likewise, the Appellate Division recognized, PIP arbitration rules may not allow for the "broad discovery" typical of insurance fraud litigation, and do not provide a viable forum for insurance companies to assert affirmative claims for relief against parties who are not

insureds or direct medical providers. (DPa31; DPa29-34). Further, certain remedies authorized by the IFPA are unavailable in PIP arbitration, including an award of attorneys' fees to an insurer. (DPa30-31). The panel thus found that the "[PIP] arbitration process is not set up to handle complex insurance fraud claims." (DPa33).

As Judge Gilson explained, however, when a court's analysis turns on the interpretation of two statutory schemes, "courts seek to harmonize them, under the assumption that the Legislature was aware of its actions and intended for related laws to work together." (DPa28) (cleaned up) (quoting N.J. Ass'n of Sch. Adm'rs v. Schundler, 211 N.J. 535, 555 (2012)). And the panel recognized that these schemes could be "harmonized" by construing each statute's text "in the context of the legislative goals." (DPa32). The panel noted that AICRA arbitration "is limited to disputes 'regarding the recovery of' PIP benefits." (DPa32) (quoting N.J.S.A. 39:6A-5.1(a)). That is well-suited to disputes over the binary question of whether an insured should receive coverage for medical expenses (and if so, in what amount). Ibid. "[C]omplex fraud claims rooted in tort law," by contrast, do "not seek benefits [under the insurance policy]" and instead seek "money damages as compensation." (DPa34) (quoting Rodriguez v. Shelbourne Spring, LLC, 259 N.J. 385, 400 (2024)). Such insurance fraud claims thus "do not fall within the ambit of PIP arbitration under AICRA, which

is designed for disputes over the 'recovery of medical expense benefits.'" Ibid. (quoting N.J.S.A. 39:6A-5.1(a)). The panel added that this avoids the problem that would arise if AICRA were read to require arbitration of IFPA claims, noting that private parties have a right to jury trial under the IFPA. (DPa21, 38).

Finally, the Appellate Division disagreed with the Third Circuit's contrary construction of AICRA in Government Employees Insurance Co. v. Mount Prospect Chiropractic Center, P.A., 98 F.4th 463 (3d Cir. 2024) ("GEICO"), reasoning that the Third Circuit did not "fully consider the legislative goals of AICRA and the Fraud Act." (DPa40). The Appellate Division noted that as this is a question of whether a state statute should be interpreted to compel arbitration of claims, the Third Circuit's interpretation is not binding. (DPa41).

This Court granted several defendants' joint petition for certification.

ARGUMENT

POINT I

IFPA LAWSUITS ARE NOT SUBJECT TO PIP ARBITRATION UNDER N.J.S.A. 39:6A-5.1(a).

Construing AICRA's and the IFPA's text to avoid any conflicts, fraud claims under the IFPA are not subject to mandatory PIP arbitration. See DiProspero v. Penn, 183 N.J. 477, 492 (2005) (the "paramount goal" in interpreting statutes is carrying out "[t]he Legislature's intent," and the "best indicator" of intent is "the statutory language"); see also State v. Gomes, 253 N.J. 6, 15 (2023) ("When interpreting different statutory provisions, we are obligated to make every effort to harmonize them, even if they are in apparent conflict."); Richter v. Oakland Bd. of Educ., 246 N.J. 507, 538-39 (2021) (same); Schundler, 211 N.J. at 555 ("Whenever statutory analysis 'involves the interplay of two or more statutes, we seek to harmonize [them], under the assumption that the Legislature was aware of its actions and intended' for related laws 'to work together.'") (internal citations omitted).

Resolving this appeal requires the Court to reconcile two statutes with ostensibly conflicting textual directives: Allstate asserts claims under the IFPA, which states that an insurance company "may sue [for a violation of the IFPA] in any court of competent jurisdiction," N.J.S.A. 17:33A-7(a), while AICRA provides that certain disputes regarding PIP benefits "may be submitted to" a

specialized PIP arbitration process, N.J.S.A. 39:6A-5.1(a). But these schemes are easily harmonized, and the Legislature did not intend for fraud claims under the IFPA to be covered by AICRA's mandatory arbitration for PIP disputes.

Initially, AICRA's arbitration provision, even if read in isolation, is hardly clear that it covers fraud claims under the IFPA. Petitioners rely almost exclusively on N.J.S.A. 39:6A-5.1(a), which provides for arbitration of "[a]ny dispute regarding the recovery of medical expense benefits or other benefits provided under [PIP] coverage pursuant to [N.J.S.A. 39:6A-4, -3.1 or -3.3] arising out of the operation, ownership, maintenance or use of an automobile." But a fraud-based claim for damages does not seek "recovery of medical expense benefits" under an insurance policy; "instead, it seeks money damages as compensation." See Rodriguez v. Shelbourne Spring, 259 N.J. 385, 400 (2024) (distinguishing negligence-based damages claims from "benefits . . . required by a workers' compensation law"). And N.J.S.A. 39:6A-5.1(c)'s illustrative list of "[d]isputes involving medical expense benefits" covered by arbitration focuses on garden-variety disputes over interpretation of the insurance contract, and notably lacks an express reference to fraud claims under the IFPA.

Moreover, this provision of AICRA "should not be read in isolation," Keyworth v. CareOne at Madison Ave., 258 N.J. 359, 379 (2024), but instead "harmonize[d]" with the IFPA's own text and structure, particularly "in light of

[AICRA's and the IFPA's distinct] purposes." See Am. Fire & Cas. Co. v. N.J. Div. of Tax'n, 189 N.J. 65, 79-80 (2006). This Court has long stressed the importance of harmonizing the text, structure, and purposes of state statutes, a rule that takes on particular importance given this Court's instruction that the IFPA's provisions shall be construed "liberally to accomplish the Legislature's broad remedial goals." Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 173 (2006). That is dispositive, because the IFPA's text and structure confirm that the Legislature contemplated litigation, not PIP arbitration—and compelling an insurer's IFPA claim to PIP arbitration thereby severely undermines the IFPA's purposes. Indeed, the IFPA itself explicitly says that a private claimant may sue in Superior Court—an indication the Legislature did not believe such claims categorically belong in PIP arbitration. N.J.S.A. 17:33A-7(a). And the IFPA's structure and purpose make that clearer still.

For one, many of the IFPA's remedies are unavailable in PIP arbitration. Indeed, AICRA does not authorize arbitrators to award any affirmative relief to insurance companies, and limits an arbitrator's role to deciding that the insured (or assignee) is or is not entitled to benefits and the amount of such benefits. See N.J.S.A. 39:6A-5.1(d), (e). Courts have thus held that a prevailing insurance company in PIP arbitration may not be awarded its counsel fees, N.J. Coal. of Healthcare Pros., Inc. v. DOBI, 323 N.J. Super. 207, 263 (App. Div. 1999)—

which is one of the remedies authorized by the IFPA, see N.J.S.A. 17:33A-7(a). Petitioners appear to agree that most of the IFPA's remedies would be off the table, as the IFPA arbitration they envision would evidently limit the available relief to "claw[ing] back paid PIP benefits," (DP13), notwithstanding that the IFPA's remedies also include reasonable investigation expenses and treble damages, N.J.S.A. 17:33A-7(a), (b). Nor does AICRA authorize arbitrators to grant equitable relief, notwithstanding that an insurer in an IFPA lawsuit could seek equitable remedies available at common law, see Allstate N.J. Ins. Co. v. Lajara, 222 N.J. 129, 144 (2015). The unavailability of the IFPA's textually-express remedies in PIP arbitration offers a strong sign that the Legislature did not channel the former into the latter.

Other structural features of the IFPA likewise contemplate the availability of a court action. AICRA provides for limited discovery in PIP disputes related to matters like lost earnings, medical reports, and physical or mental examinations, but does not include the complex factual issues typical of IFPA litigation. See N.J.S.A. 39:6A-13; Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 607-09 (2012) (disallowing discovery in PIP dispute regarding the ownership structure and billing practices of insured's medical providers); see also (DPa31) (noting it is unclear whether PIP arbitrators can order discovery from third parties). That is a far cry from the

discovery needed for the kinds of claims the IFPA establishes, a point well exemplified here, as Allstate's complaint names thirty-six defendants in a complex fraud ring. (DPa48-49, 56-58, 63-65). Similarly, it is unclear how an insurer in arbitration would have an opportunity to prove a "pattern of violating [IFPA]" required for an award of treble damages under the IFPA, see N.J.S.A. 17:33A-7(b), when AICRA does not permit aggregation of claims. See N.J.S.A. 39:6A-5.1. That much of the record development required to adjudicate an IFPA claim is unavailable in PIP arbitration underscores that the Legislature did not compel IFPA suits into this specialized arbitration scheme. There is no indication that in enacting AICRA to expeditiously resolve PIP disputes, the Legislature intended to erect those barriers to realization of the text and structure of the IFPA—let alone to realization of its explicit and broader remedial goals.

Moreover, and critically to the State, compelling IFPA claims to proceed in PIP arbitration is also difficult to reconcile with the notice-and-intervention procedures the IFPA provides for the Commissioner. The IFPA requires notices of all suits to the Commissioner, who is authorized to intervene in the action to seek civil penalties and may be awarded costs and reasonable attorneys' fees as a prevailing party. N.J.S.A. 17:33A-7(c), (d). In other words, beyond its own civil enforcement actions and its own efforts to obtain civil penalties, attorneys' fees and costs, N.J.S.A. 17:33A-5, -8, the Department can and does intervene in

IFPA cases filed by insurance companies and then works closely with them to seek civil penalties, N.J.S.A. 17:33A-7(d); Lajara, 222 N.J. at 152. But no authority provides for the Department to intervene in IFPA cases that are sent to PIP arbitration, since those arbitrations do not contemplate its intervention. That provides yet another textual and structural clue that the Legislature viewed IFPA claims as falling outside the AICRA's targeted mandate.

Finally, adopting a rule that mandates all IFPA claims for fraud-based damages instead go to arbitration would raise constitutional questions. As this Court has held repeatedly, when faced with two plausible interpretations of a statutory scheme but where one raises serious constitutional questions, this Court assumes the Legislature would have intended the constitutional approach. See, e.g., Whirlpool Props., Inc. v. Dir., Div. of Taxation, 208 N.J. 141, 172 (2011). This Court has already concluded that "defendants in a private action brought under the IFPA have a right to trial by jury." Lajara, 222 N.J. at 139. But AICRA allows for PIP arbitration "on the initiative of any party to the dispute"—meaning even where a particular defendant is not requesting it. N.J.S.A. 39:6A-5.1(a). Because that would, in certain cases, abrogate the jury-trial right for IFPA claims, this is yet one more reason to hold that IFPA claims fall outside of AICRA's PIP arbitration scheme.

The Third Circuit's contrary interpretation in GEICO is not binding and carries no persuasive weight on the issue before this Court. See State v. O'Donnell, 255 N.J. 60, 81 (2023) (explaining federal court interpretations of state statutes are not binding on this Court). Initially, much of GEICO's analysis rests on its finding that the particular language of a private arbitration agreement required arbitration of those IFPA claims. 98 F.4th at 470-71. But that issue is not squarely presented here, as the parties' dispute is whether AICRA, of its own force, compels channeling all IFPA claims to arbitration. See (DP10-15). And even if the parties are disputing whether Allstate's DPR Plan independently requires arbitration, Petitioners themselves stress that GEICO is distinct on this score, since the "content of the arbitration provision in GEICO's DPR Plan ... is completely different than Allstate's DPR Plan." (DP16). Indeed, Allstate's Plan simply incorporates AICRA's arbitration requirement, see (DPa36-37), in contrast to the arbitration clause at issue in GEICO which specifically required arbitration of "any issue ... in connection with any claim for [PIP] benefits." 98 F.4th at 471. Much of the GEICO opinion is thus simply inapposite.

Even on the issues for which GEICO is on point, the Third Circuit erred in several respects. Most notably, AICRA's and IFPA's meaning are determined according to state rules of statutory interpretation, In re Wettach, 811 F.3d 99, 114 (3d Cir. 2016), but GEICO did not apply this State's "overriding principle"

that "every effort be made to harmonize legislative schemes" that are in apparent conflict, Richter, 246 N.J. at 538-39—instead adopting a construction that gives primacy to AICRA over the IFPA. E.g., GEICO, 98 F.4th at 469-70 (favoring state policy that AICRA's arbitration provision be "construe[d] liberally," but not the policy that the IFPA's provisions be "liberally" construed to achieve "its broad remedial goals," Land, 186 N.J. at 173). The Appellate Division in this case instead properly held that both statutes' aims are achieved by compelling arbitration only of disputes over whether an insured "should receive coverage for medical expenses and, if so, in what amount," (DPa32).

Indeed, the Third Circuit minimized the conflict that its interpretation produces. For instance, it found that treble damages would be available in PIP arbitration because American Arbitration Association rules allow arbitrators to grant such relief, 98 F.4th at 469, but PIP arbitration is governed by Forthright rules of arbitration, not AAA rules. See N.J.S.A. 39:6A-5.1(b); N.J.A.C. 11:3-5.4; (DPa30). GEICO likewise did not acknowledge a PIP arbitrator's lack of authority to award the attorneys' fees or other compensatory damages allowed by the IFPA, see N.J.S.A. 17:33A-7(a), or consider the practical effect on public enforcement of the IFPA of disallowing private-party litigation, as discussed in Point II. And the Third Circuit misunderstood the constitutional issue its reading creates; while parties can of course enter private "agree[ments] to

arbitrate," 98 F.4th at 469, that waiver is absent when the Legislature imposes arbitration in place of a jury trial on the initiative of "any party" for any claims implicating that right. See Lajara, 222 N.J. at 142, 151; (DPa38-39). That is the question this case presents—which involves the purported conflict between AICRA and the IFPA, not the scope of a separate private arbitration agreement.

POINT II

SUBJECTING IFPA CLAIMS TO MANDATORY PIP ARBITRATION UNDERMINES PUBLIC AND PRIVATE IFPA ENFORCEMENT.

Petitioners' position not only fails as a matter of statutory interpretation, but would jeopardize the State's efforts to detect and prevent insurance fraud. The Legislature enacted the IFPA "to confront aggressively the problem of insurance fraud in New Jersey." N.J.S.A. 17:33A-2. For good reason: this Court has recognized that insurance fraud "is a problem of massive proportions" that results in higher costs for all policyholders "in the form of increased rates." Merin v. Maglaki, 126 N.J. 430, 436 (1992). And so courts "must construe the [IFPA's] provisions liberally to accomplish the Legislature's broad remedial goals." Land, 186 N.J. at 173. But insurance companies—the primary enforcers of the IFPA—would hardly be able to use the IFPA to combat insurance fraud if an in-court forum were unavailable. That would significantly impair enforcement of the IFPA, and enforcement of the remedies that statute relies on.

That matters to public enforcement in multiple respects, even if AICRA's mandate does not apply (as all agree it does not) to enforcement actions by the Department and OIFP. See GEICO, 98 F.4th at 469. As noted above, to facilitate public enforcement, the IFPA requires notice of a suit to the Commissioner, who can intervene in the action to seek civil penalties and may be awarded costs and reasonable attorneys' fees as a prevailing party. N.J.S.A. 17:33A-7(c), (d). The Department can and does intervene in IFPA cases filed by insurance companies and works closely with them to seek civil penalties. E.g., Lajara, 222 N.J. at 136 n.2; Allstate N.J. Ins. Co. v. Davit, No. UNN-L-217-18 (Law Div.); Allstate Ins. Co. v. Matturro, No. BER-L-2707-20 (Law Div.). But no authority allows it to intervene in IFPA cases that are sent to PIP arbitration, as those arbitrations do not contemplate intervention by the Department to enforce the IFPA. As a result, even if the Department can still bring its own actions in court, it has lost the intervention tool the Legislature granted—a tool critical to its efforts to combat insurance fraud. And beyond the specific loss of actions in which it could intervene, the Department's own enforcement suits are often dependent on investigative files generated by insurance companies. So if insurance companies are barred from bringing IFPA suits in court, that will impact their ability to use discovery and reduce incentives to investigate and assert fraud claims. That loss of information would

also negatively impact the ability of the Department to investigate and prosecute insurance fraud. And that would impede the Legislature's intent (in both the IFPA and AICRA) to marshal the resources of prosecuting agencies and the insurance industry to work collaboratively to combat insurance fraud. A rule that channels all private IFPA fraud claims to PIP arbitration would thus harm public enforcement as well.

OIFP's work would be similarly harmed. In addition to coordinating all insurance-related anti-fraud activities of state and local agencies, OIFP is charged with providing assistance necessary to any state agency in overseeing administrative enforcement activities. N.J.S.A. 17:33A-24(a). 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). It investigates a wide range of insurance fraud schemes and serves as the focal point for prosecuting all insurance fraud in New Jersey. And it is further charged with investigating all referrals it receives from insurers, State agencies, or county and municipal governments, and with prosecuting where appropriate. N.J.S.A. 17:33A-19. In fact, most cases investigated by the OIFP are the result of referrals from Special Investigations Units of insurance companies, which are required to refer suspected insurance fraud to the OIFP. N.J.S.A. 17:33A-9; see Office of the Insurance Fraud Prosecutor, Annual Report 10 (2018),

https://tinyurl.com/m9pkvytd. If the referral is deemed appropriate for a criminal investigation, the case may be assigned to OIFP or a County Prosecutor.[3] But here too, if insurance companies are unable to assert insurance fraud claims in Superior Court, that will doubtless reduce their own internal incentives to investigate insurance fraud, hindering an important source of information for OIFP's criminal investigations.

It is implausible that the Legislature in enacting AICRA intended to undermine the Department and OIFP's enforcement efforts in that way. Indeed, AICRA itself recognized that insurance fraud—whether in the form of inappropriate medical treatments, inflated claims, staged accidents, or other deceits—must be "uncovered and vigorously prosecuted," and to effectuate that goal, this same statute established OIFP to provide for "consolidation of agencies" to promote "sufficient coordination to aggressively combat fraud." N.J.S.A. 39:6A-1.1; see N.J.S.A. 39:6A-16; DiProspero, 183 N.J. at 488 (noting AICRA's goals included "rooting out fraud within the system"). And the IFPA, for its part, directs the Department and the OIFP to prioritize restitution of moneys to insurers and others who are the victims of fraud. N.J.S.A. 17:33A-2, -26. It thus strains credulity that the Legislature, at the same time it established

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

OIFP to take on insurance fraud more aggressively and to recover restitution from wrongdoers, made it more difficult for insurance companies to pursue lawsuits that generate leads for the State and to obtain financial relief that is passed along to consumers through reduced premiums. But that is what a rule subjecting all IFPA claims to PIP arbitration would do.

In short, a rule channeling affirmative insurance fraud claims to PIP arbitration would negatively impact insurance fraud prevention and weaken the ability of insurance carriers, the Department, and OIFP to each combat insurance fraud. The Legislature did not so intend.

CONCLUSION

This Court should hold that claims under the IFPA are not subject to PIP arbitration under N.J.S.A. 39:6A-5.1(a), and affirm the decision below.

Respectfully submitted,

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