PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 117
TRENTON, NJ 08625-0117

MATTHEW J. PLATKIN
Attorney General

MICHAEL C. WALTERS
Acting Director

February 25, 2025

Via Electronic Filing
Heather Joy Baker, Clerk
Supreme Court of New Jersey
R.J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, New Jersey 08625

Re: Allstate New Jersey Insurance Company, et al. v. Carteret Comprehensive Medical Care, P.C., et al.
Supreme Court Docket No.: 090337

Civil Action: On Petition for Certification to the Supreme Court of New Jersey from the Judgment of the Superior Court, 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.

Letter Brief of Amicus Curiae, the New Jersey Department of Banking and Insurance and the New Jersey Office of the Insurance Fraud Prosecutor, in Opposition to Joint Petition for Certification.

Dear Ms. Baker:

Please accept this letter brief pursuant to Rule 2:6-2(b) on behalf of

Amicus Curiae, the New Jersey Department of Banking and Insurance and the New Jersey Office of the Insurance Fraud Prosecutor, in opposition to the Joint Petition for Certification ("Joint Petition") of the Sood Defendants, Carteret Defendants, and John S. Cho, M.D., in the above matter.

TABLE OF CONTENTS

PRELIMINARY STATEMENT..... 2

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS..... 5

ARGUMENT

CERTIFICATION IS NOT WARRANTED HERE AS THE APPELLATE DIVISION APPLIED THE CORRECT LEGAL STANDARDS AND THE MATTER DOES NOT MERIT FURTHER REVIEW..... 12

CONCLUSION 20

PRELIMINARY STATEMENT

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's powerful remedies include authorizing the Commissioner of the Department of Banking and Insurance ("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]."

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 the Department and the 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).

The Department is also the agency charged by the Legislature with promulgating regulations for and supervising the administration of the Personal Injury Protection ("PIP") no-fault dispute resolution 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).

New Jersey has a strong public policy against insurance fraud. This 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 the goal of reducing such fraud, 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 handle only 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 dispute resolution 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 Appellate Division's published decision in Allstate v. Carteret Comprehensive Medical Care, P.C., ___ N.J. Super. ___ (App. Div. 2025) (DPa10-42)[1] held that no part of a Superior Court case asserting fraud claims under the IFPA is subject to PIP no-fault dispute resolution under AICRA. The Appellate Division properly applied the plain language of the applicable statutes and settled principles of law. The matter does not merit further review.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS[2]

The Department and the OIFP rely primarily on their brief filed in the Appellate Division, four copies of which accompany this letter brief, supplemented as follows.

In March 2023, Allstate filed a nine-count complaint against Defendants in

---

[1] A copy of the Appellate Division's decision is included in Defendants' Appendix to the Joint Petition for Certification at DPa10-42.

[2] Because they are closely related, the factual and procedural histories are combined for efficiency and the court's convenience.

Superior Court, Middlesex County, Law Division. (Pa23).[3] 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, the Defendants 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 Defendant Carteret Comprehensive Medical Care ("CCMC") was illegally structured, and that numerous Defendants 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 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

[3] Pa refers to Appellant Allstate's Appendix in the Appellate Division. DPa refers to Defendants' Appendix to the Joint Petition for Certification. DP refers to Defendants' Joint Petition for Certification.

law (N.J.S.A. 2C:41-1 to -6.2) ("RICO") based on violations of the Corporate Practice of Medicine Doctrine ("CPMD") and for self-referrals/kickbacks. (Pa34-37).

In October 2023, the trial court granted three motions by Defendants to compel arbitration of the allegations in Allstate's Complaint. (DPa43-65). The trial court held that the language in AICRA required arbitration, at the election of any party, of "all 'disputes' around the 'recovery' of PIP Benefits." (DPa48-49; DPa56-58; DPa63-65). 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." (DPa48; DPa56-57; DPa64). The trial court dismissed Allstate's claims without prejudice, including against those defendants that did not move to compel arbitration. (DPa51-52).

The Appellate Division's published decision in Allstate v. Carteret, ___ N.J. Super. at ___, held that PIP dispute resolution under AICRA was designed for limited disputes concerning PIP benefits, not complex insurance fraud claims (DPa33), and that insurance fraud claims under the IFPA "are not subject to PIP arbitration under AICRA." (DPa13-14). Therefore, no part of a Superior Court case asserting fraud claims under the IFPA is subject to PIP no-fault dispute

resolution, and the trial court's decisions were reversed. (DPa14).

The Appellate Division based its decision on the plain language of the statutes. (DPa28). 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). Allstate v. Carteret, ___ N.J. Super. at ___. (DPa20-21; DPa29-32). On the other hand, the goal of PIP and AICRA dispute resolution is to "provide prompt medical treatment for those who have been injured in automobile accidents without having that treatment delayed because of payment disputes." Id. at ___. (DPa26) (quoting Selective Ins. Co. of Am. v. Hudson E. Pain Mgmt. Osteopathic Med., 210 N.J. 597, 609 (2012)).

Under the AICRA, N.J.S.A. 39:6A-1.1 to -35, 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. N.J.S.A. 39:6A-4. 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. 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 Allstate v. Carteret, ___ N.J. Super. at ___. (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. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa23). The AICRA provides the following parameters for how PIP claims are resolved:

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

The Appellate Division held that the language of N.J.S.A. 39:6A-5.1(a) clearly states that PIP dispute resolution is applicable to the recovery of medical expense benefits or other benefits provided under the PIP coverage found in automobile insurance policies. (DPa23-24). Thus, 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; Allstate v. Carteret, ___ N.J. Super. at ___. (DPa22-24). Here, Allstate's Complaint seeks compensatory damages and other remedies allowed under the IFPA and RICO based on violations of the CPMD and for self-referrals/kickbacks. (Pa76-86; Pa100-120). The payment of medical expenses is not at issue.

Allstate v. Carteret, ___ N.J. Super. at ___, explained that the purposes and plain language of the IFPA and AICRA are clear. (DPa28). PIP no-fault dispute resolution is 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 claims. Id. at ___. (DPa29; DPa34). Affirmative IFPA cases brought by insurance companies therefore belong in Superior Court, and one-way disputes over the payment of PIP benefits that qualify belong in PIP dispute resolution. Id. at ___. (DPa42).

This result is not only reflected in the language of the IFPA and AICRA respectively, but also in the rules and regulations governing PIP dispute resolution, 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 (last accessed Dec. 16, 2024) ("Forthright's Rules"). See also Allstate v. Carteret, ___ N.J. Super. at ___. (DPa25).

The Appellate Division held that the Department's regulations and Forthright's Dispute Resolution Plan only provide for consolidation of interdependent garden-variety PIP disputes into one proceeding, and do not expand the limited scope of discovery provided for by Forthright under its arbitration rules. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa29-31). Nor do they provide the insurance company with a viable forum to assert affirmative IFPA claims against multiple defendants, many of whom are not insureds or direct providers of medical treatment to the insureds. Id. at ___. (DPa29-34). Further, the Commissioner cannot intervene in, or otherwise be a party to, PIP dispute resolution. Id. at ___. (DPa32).

Finally, Allstate v. Carteret, ___ N.J. Super. at ___, held that not only was the Third Circuit's decision in Government Employees Ins. Co. v. Mount Prospect Chiropractic Ctr., P.A., 98 F.4th 463 (3d Cir. 2024) ("GEICO"), not precedential or binding, but that its conclusions should be completely rejected. (DPa40-41). 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.").

As the Appellate Division correctly held, as is discussed herein, 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 PIP dispute resolution, much less the remedies allowed by the IFPA. (DPa28-33). Therefore, no part of an IFPA claim brought by an insurance company in Superior Court is subject to PIP dispute resolution. (DPa42).

ARGUMENT

CERTIFICATION IS NOT WARRANTED HERE AS THE APPELLATE DIVISION APPLIED THE CORRECT LEGAL STANDARDS AND THE MATTER DOES NOT MERIT FURTHER REVIEW.

The Department and the OIFP submit that the Appellate Division properly applied the plain language of the applicable statutes and settled principles of law. For the reasons that follow, any further review by this Court is unwarranted and would not serve the interests of justice.

A petition for certification to this Court of a final decision of the Appellate Division will be granted only when this Court's supervision is truly required—if the

petition presents an unsettled question of general public importance, if the decision below is in conflict with other appellate or Supreme Court decisions, or if the interest of justice so requires. R. 2:12-4. Certification will not be granted where the decision of the Appellate Division is essentially an application of settled principles to the facts of a case. Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 515-16 (1985) (O'Hern, J., concurring); In re Route 280 Contract, 89 N.J. 1, 1-2 (1982).

The Joint Petition should be denied because it satisfies none of these criteria, and simply reiterates the same arguments that the Appellate Division's well-reasoned opinion considered and rejected. The Appellate Division's opinion does not conflict with other appellate decisions. And the Joint Petition presents no unsettled question of general public importance such that this Court must weigh in, nor is certification required in the interests of justice. There is nothing "exceptional" in this case that warrants the grant of petition. See State v. Bieniek, 200 N.J. 601, 613 (2010) (petitions should be denied in "legally unexceptionable" cases). As Defendants present no sufficient grounds justifying certification, the Joint Petition should be denied.

Defendants argue that this case is principally a matter of statutory interpretation, but rely on only a few words in AICRA. (DP at p. 8-10). Unlike the Appellate Division, which provided a thorough analysis of the complete text in the

IFPA, RICO and AICRA, and interpreted and harmonized same, Defendants improperly use isolated phrases in AICRA, like "any dispute," in a vacuum. (Id. at p. 10-11). Defendants make no attempt to explain how now having a limited purpose PIP dispute resolution handle complex IFPA and RICO cases even fits within the complete statutory text of AICRA, much less how that result can be harmonized with the IFPA and RICO.

Further, the IFPA, N.J.S.A. 17:33A-1 to -30, was enacted in 1983, and AICRA, N.J.S.A. 39:6A-1.1 to -35, in 1998. There is a reason why there never has been an IFPA or RICO case brought by an insurance company in PIP dispute resolution seeking an affirmative recovery over all the years since these statutes were enacted—because litigating those complex cases in PIP dispute resolution was not intended by the Legislature, and is impossible.

The trial court's decisions held that AICRA required that the causes of action in Allstate's multi-faceted IFPA complaint against thirty-six defendants be determined in PIP dispute resolution rather than in Superior Court. (DPa48-49; DPa56-58; DPa63-65). But as the Appellate Division found, PIP dispute resolution under AICRA was not designed to adjudicate the types of IFPA claims at issue here. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa33). The trial court's decision to send Allstate's IFPA complaint to PIP dispute resolution

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. Id. at ___. (DPa20-21; DPa26; DPa29-32).

Moreover, the rules and regulations governing PIP dispute resolution make clear that they are in no way designed to properly adjudicate IFPA and RICO claims. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa25). Finally, the trial court's decisions would have far reaching consequences that impact 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. Id. at ___. (DPa29-34).

The Legislature could not have intended IFPA claims to be subject to PIP dispute resolution because an insurance company who claims fraud cannot obtain any of the relief permitted by the IFPA in PIP dispute resolution. 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 carrier alleging a violation of the IFPA. N.J.S.A. 17:33A-7(d). See Allstate v. Carteret, ___ N.J. Super. at ___. (DPa29-34).

PIP dispute resolution, 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. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa28-29).

The possible remedies in PIP dispute resolution are therefore very limited, further evidencing the Legislative intent that PIP dispute resolution 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. N.J.S.A. 39:6A-5.1(d) and (e). No other remedy is authorized. Ibid.

Specifically, 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. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa29-32).

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) to (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). 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. The Appellate Division has repeatedly held "that an insurer is not entitled to attorneys' fees in a PIP arbitration." Allstate v. Carteret, ___ N.J. Super. at ___ (DPa30-31); 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 dispute resolution 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. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa30).

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 PIP dispute resolution. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa29-31).

Finally, the very limited discovery allowed in PIP dispute resolution 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, such as the 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. (Pa383-385). Had the Legislature intended PIP dispute resolution to include IFPA claims, its discovery parameters would not have been so narrow. Allstate v. Carteret, ___ N.J. Super. at ___. (DPa31-32).

In sum, a fair reading of the Appellate Division's published decision shows that it thoroughly considered the statutes, the trial court's orders, and all

of Defendants' arguments before rejecting them. That Defendants disagree with its decision does not constitute a sufficient basis for certification. Nor is certification warranted in the interests of justice or for any "special reasons." Defendants repeat arguments that were presented to and considered by the Appellate Division. The Appellate Division addressed those challenges below and correctly applied the plain language of statutes and well-settled law to the facts in this matter. Thus, further review by this Court is unwarranted.

CONCLUSION

For these reasons, the Joint Petition for Certification should be denied.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/Jeffrey S. Posta
Jeffrey S. Posta (023971982)
Deputy Attorney General

Janet Greenberg Cohen
Assistant Attorney General
Of Counsel

Adedayo Adu
Assistant Attorney General
Of Counsel

cc: All Counsel (via Electronic Filing)