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

SUPREME COURT OF NEW JERSEY

Docket No.: 090337

Civil Action

Superior Court of New Jersey,
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.

Superior Court of New Jersey,
Law Division

Dkt. No. MID-L-1469-23

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

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 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.

REPLY BRIEF OF SOOD DEFENDANTS, CARTERET DEFENDANTS, AND JOHN S. CHO, M.D. IN FURTHER SUPPORT OF THE JOINT PETITION FOR CERTIFICATION

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Dated: March 6, 2025

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PRELIMINARY STATEMENT

Defendants submit this reply brief pursuant to Rule 2:12-8 in further support of their Joint Petition for Certification, which asks this Court to resolve a question of public importance on which state and federal courts sharply diverge. Allstate argues that the Appellate Division's published decision was nothing more than applying settled law and that the decision clears up a split in the courts. That argument is not aligned with the current state of the law. Both the Appellate Division and the Third Circuit felt compelled to publish decisions addressing the law concerning arbitration under the Arbitration Statute, N.J.S.A. 39:6A-5.1(a), and came to diametrically opposed conclusions, demonstrating that the law is unsettled.

Allstate's assertion that the Appellate Division's decision here "will clear up any confusion in the federal courts" is wrong too. Intermediate appellate decisions do not override binding Third Circuit decisions in the federal court. The Appellate Division's decision below does nothing to change the deep split in binding authority.

The Court should grant certification pursuant to Rule 2:12-4 to resolve the unsettled question of law about whether IFPA, RICO, and other claims must be arbitrated under the Arbitration Statute if a defendant so-elects.

LEGAL ARGUMENT[1]

I. Whether arbitration of an insurer's claims can be compelled under the Arbitration Statute is an unsettled legal question of public importance.

Allstate first argues that certification should be denied because the Appellate Division applied "settled law" to interpret the Arbitration Statute and regulations. Allstate repeats this refrain no fewer than five times in its opposition. (Pb1, 2, 13, 14, 16). Allstate's argument misses the point. It's one thing to apply a settled question of substantive law to a particular set of facts. See Kimmel v. Dayrit, 154 N.J. 337, 341 (1998). But it's something quite different to apply settled rules of statutory interpretation to answer an unsettled question about how to interpret a statute the Court has never had occasion to interpret. The latter is the situation here. Allstate admits as much in its opposition. (Pb2, 14 (arguing the panel's decision used a list of settled statutory interpretation principles from this Court)).

If certification was inappropriate merely because the answer to the question of statutory interpretation presented required the Court to apply settled law governing how to go about interpreting a statute, then this Court could never interpret statutes that it had never before had a chance to examine. That, of course, is not the case. See R. 2:12-4 (stating certification is appropriate to answer a question of general public

[1] All capitalized terms have the same meaning as set forth in Defendants' Joint Petition for Certification. "Pb" refers to Allstate's Opposition to the petition.

importance that should be settled). This Court has, on innumerable occasions, granted certification and applied its own settled statutory interpretation principles to interpret statutes. See, e.g., Matter of H.D., 241 N.J. 412, 418-19 (2020) (granting certification and applying "well-settled rules of statutory construction" to interpret a statute); In re Plan for Abolition of Council on Affordable Hous., 214 N.J. 444, 467 (2013) (similar); McGovern v. Rutgers, 211 N.J. 94, 108 (2012) (similar). Every term this Court sits, it interprets statutes to answer new legal questions that are important to the general public.

This case is about the novel question of whether an insurer's IFPA, RICO, and related claims are subject to arbitration under the Arbitration Statute. The Third Circuit said yes. See Gov't Employees Ins. Co. v. Mount Prospect Chiropractic Ctr. PC, 98 F.4th 463, 469-70 (3d Cir. 2024) ("Mount Prospect"). The Appellate Division said no. (Da10-42). It could hardly be more apparent, then, that there exists an unsettled question of law pertaining to this area of PIP insurance that is important to both medical providers and insurers.

Allstate makes several arguments why the Appellate Division's holding about the arbitrability of the IFPA, RICO, and other claims is correct. (See Pb.14-16). But those arguments underscore that certification is warranted. Arguments about how to interpret the Arbitration Statute, which outcome makes for good or bad policy for

insurers, or the practicality of a certain holding, are all arguments directed at the merits of Allstate's position rather than reasons to deny certification. This Court is not a mere court of error correction. The Court does not grant certification only when it would reverse a decision below, albeit it should reverse here. See, e.g., Goyco v. Progressive Ins. Co., 257 N.J. 313 (2024) (affirming an Appellate Division decision concerning the statutory interpretation of AICRA); AC Ocean Walk, LLC v. Am. Guarantee & Liab. Ins. Co., 256 N.J. 294 (2024) (affirming). Allstate is free to make its merits arguments to this Court when the Court examines the merits.

Like Allstate, the DOBI/OIFP, too, presses several pages worth of arguments that try to defend the alleged correctness of Appellate Division's holding rather than rebut why certification would not be appropriate. (See DOBIb2-20). If this case merely involved the application of settled law to particular facts of the case, then why did DOBI/OIFP leap to get involved as amicus curiae? DOBI/OIFP did so because it believed this case presents a substantial question of general public importance regarding the interpretation of AICRA, its regulations, and insurance fraud.

Certification is warranted because the Joint Petition presents grounds that satisfy Rule 2:12-4. Whether the Arbitration Statute requires arbitration of an insurers' IFPA, RICO, and related claims is certainly a question of general importance that has split courts but that this Court should have the final say on.

II. The Appellate Division decision does not bind federal courts or otherwise erase the binding effect of the Third Circuit's Mount Prospect decision.

Allstate also argues that the Appellate Division's decision effectively overrules Mount Prospect in federal courts or otherwise frees district courts from following the binding Mount Prospect decision. (Pb16-17). Not so. Federal courts remain bound by the Third Circuit's decision in Mount Prospect unless and until this Court opines on the issue under the Arbitration Statute. So, the split between the Appellate Division and Third Circuit means that outcomes will continue to be different depending on whether an insurer sues in state or federal court. Certification is thus warranted for that reason too. See R. 2:12-4.

A district court "is of course bound by any Third Circuit decisions regarding how the New Jersey Supreme Court would rule." Itzkoff v. F & G Realty of New Jersey, Corp., 890 F. Supp. 351, 356 (D.N.J. 1995); see also In re Brown, 311 B.R. 702, 710 (Bankr. E.D. Pa. 2004). Once the Third Circuit has predicted how the state's highest court would rule, the decisions of a lower state court are "irrelevant" to how a district court can rule. Heindel v. Pfizer, Inc., 381 F. Supp. 2d 364, 385-86 (D.N.J. 2004); see also DeFebo v. Andersen Windows, Inc., 654 F. Supp. 2d 285, 294 (E.D. Pa. 2009) (stating the district court is bound by the Third Circuit's prediction regardless of lower state court rulings).

District courts are bound by controlling decisions of the Third Circuit on questions of state law unless and until either the state's highest court disagrees with the Third Circuit or until the Third Circuit itself overrules its decision. See Doe v. Trustees of the Univ. of Pa., 270 F. Supp. 3d 799, 829 (E.D. Pa. 2017); McGuckin v. Allstate Fire & Cas. Ins. Co., 118 F. Supp. 3d 716, 720 (E.D. Pa. 2015); In re Brown, 311 B.R. at 710; Booker v. Lehigh Univ., 800 F. Supp. 234, 239 (E.D. Pa. 1992), aff'd, 995 F.2d 215 (3d Cir. 1993). As Judge Frank Easterbook explained: While the decision of a state's highest court terminates the authoritative force of a federal circuit court's prediction of state law, "decisions of intermediate state courts lack similar force" because they "are just prognostications" that "could in principle persuade [a circuit court] to reconsider and overrule [its] precedent; assuredly they do not themselves liberate district judges from the force of [circuit court] decisions. Reiser v. Residential Funding Corp., 380 F.3d 1027, 1029 (7th Cir. 2004) (Easterbrook, J.); accord Whitaker v. Herr Foods, Inc., 198 F. Supp. 3d 476, 488 n.6 (E.D. Pa. 2016) (stating same and collecting cases for same rule of law).

It is, of course, hardly surprising that a district court cannot depart from a Third Circuit's holding on a question of state law when the Third Circuit itself could not do so unless in the interim the state's highest court spoke on the issue or the Third Circuit changed course—through *en banc* review or otherwise. See Poulis v.

State Farm Fire & Cas. Co., 747 F.2d 863, 867 (3d Cir. 1984) ("If the judges of this court are bound by earlier panels, *a fortiori* district court judges are similarly bound. Recognition of the hierarchical nature of the federal judiciary requires no less."); see also Ciba-Geigy Corp. v. Bolar Pharm. Co., 747 F.2d 844, 856 n.10 (3d Cir. 1984) (holding a panel must follow prior panel's construction of New Jersey law even if the current panel thinks it might have been incorrect).

Therefore, contrary to Allstate's argument, federal district courts in New Jersey are not freed from the Third Circuit's holding in Mount Prospect because the Appellate Division, an intermediate state appellate court, disagreed with the Third Circuit. There remains a split of authority that will lead to opposite outcomes depending on the forum. To this point, each of the three different district courts on remand from Mount Prospect rejected GEICO's recent attempt to stay their orders compelling arbitration, which GEICO premised on an argument that the Appellate Division's decision here now controls. See Order, Gov't Employees Ins. Co. v. Caring Pain Management P.C., No. 22-cv-05017, at ECF 73 (D.N.J. Jan. 31, 2025) (denying GEICO motion to stay order compelling arbitration); Order, Gov't Employees Ins. Co. v. Elkholy, No. 21-cv-16255, at ECF 122 (D.N.J. Feb. 4, 2025) (same); Order, Gov't Employees Ins. Co. v. Mount Prospect Chiropractic Ctr., P.A., No. 22-cv-0737, at ECF 113 (D.N.J. Feb. 6, 2025) (same).

Allstate claims that, based on a text order from a single district court, the Appellate Division's decision cleared up "any confusion in the federal courts" and that federal district courts "will respect the Appellate Division's precedential ruling in future cases." (Pb16-17 (citing Ra040-041)). This is the slenderest of reeds on which to stand, and, as Defendants explained above, Allstate's argument is off the mark because the Appellate Division decision does not give district courts license to disregard Mount Prospect. The district court's assertion that it was no longer bound by the Third Circuit was wrong. See Heindel, 381 F. Supp. 2d at 385-86; Itzkoff, 890 F. Supp. at 356; see also Poulis, 747 F.2d at 867; Reiser, 380 F.3d at 1029.[2]

Regardless, Allstate also conveniently truncated the district court's text order to leave out what the district court said next. The district court stated that it would stay the pending motion to compel arbitration of the insurer's claims for sixty days "**until the New Jersey Supreme Court decides whether it will take up the appeal**" of the Appellate Division decision and that the parties should notify the district court about the status of this petition for certification within that timeframe.

[2] The unpublished Robinson case that the district court cited for that notion misread precedent. Robinson appears to quote an earlier unpublished district court case, which case supposedly cites Aceto v. Zurich Ins. Co., 440 F.2d 1320, 1322 (3d Cir. 1971). But Aceto does not state that a district court is free to disregard the Third Circuit in favor of an intermediate state appellate court. Indeed, Aceto unremarkably held that a district court properly adopted a subsequent ruling of the Pennsylvania Supreme Court that was contrary to a prior Third Circuit decision. Id. at 1322.

(Ra040-041 (emphasis added)). It is thus crystal clear that the very district court that Allstate is relying on is, in fact, awaiting to hear what this Court has to say on the question of law that Defendants seek for this Court to resolve through this Joint Petition for Certification, before it adjudicates those federal defendants' motion to compel arbitration of the insurer's claims. Nor has the district court opined one way or another how it would rule in the absence of this Court weighing in, undercutting Allstate's entire argument about what federal courts will do now. (See Ra040-041).

Finally, Allstate argues there "is no true conflict between Mount Prospect and the opinion below." (Pb17). Of course there is. Under the heading, "**The Contrary Holding By the Third Circuit**," the Appellate Division said the Third Circuit "reached a different conclusion" and that it "disagreed with the Third Circuit's conclusion regarding New Jersey law." (Pa40 (emphasis added)). Allstate's arguments that Mount Prospect resulted from improper arguments by GEICO (New Jersey's biggest automobile insurer), that the Third Circuit did not have the views of amicus curiae, and that the Third Circuit was "uninformed and confused" about arbitration is not only wrong but, far more importantly, irrelevant to whether certification is appropriate. (Pb17-19). Allstate can belittle GEICO and the Third Circuit all it wants, but it cannot escape that Mount Prospect is the law of the Third

Circuit and that it conflicts directly with the Appellate Division's conclusion here on an important question of New Jersey law.

Accordingly, certification is appropriate given the sharp conflict between the Appellate Division's decision and the Mount Prospect decision. See R. 2:12-4.

CONCLUSION

For these reasons and those in the Joint Petition, the Court should grant certification to settle whether medical providers can compel arbitration of IFPA, RICO, and other claims under the Arbitration Statute.

Respectfully submitted,

MANDELBAUM BARRETT PC

Dated: March 6, 2025

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