**FILED,** Clerk of the Supreme Court, 10 Apr 2025, **090337**, **AMENDED**

# SUPREME COURT OF NEW JERSEY
## Docket No. 090337

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

**Civil Action**

ON PETITION FOR CERTIFICATION FROM:

Superior Court of New Jersey
Appellate Division
Docket No. A-778-23

Sat Below:

HON. ROBERT J. GILSON, J.A.D.
HON. LISA A. FIRKO, J.A.D.
HON. AVIS BISHOP-THOMPSON, J.A.D.

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.

# AMENDED PLAINTIFFS-RESPONDENTS' OPPOSITION TO PETITION FOR CERTIFICATION

Submitted February 25, 2025

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# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Page(s)**

## Cases



## Statutes

**Regulations**

# TABLE OF APPENDIX

# TABLE OF REFERENCES

"_a" refers to the appendix accompanying the petition for certification.

"Ra_" refers to the appendix accompanying this opposition to the petition for certification.

"Pa_" refers to Plaintiffs' Appellate Division appendix Vols. I – III.

"Pra_" refers to Plaintiffs' Appellate Division reply appendix.

"Pet'rs Br." refers to Defendants-Petitioners' brief in support of the petition for certification.

"CCMC Br." refers to the brief filed on behalf of the Carteret Comprehensive Medical Care, P.C. Defendants-Petitioners in the Appellate Division, dated April 23, 2024.

"DOBI Br." refers to the brief filed on behalf of the New Jersey Department of Banking and Insurance and the New Jersey Office of the Insurance Fraud Prosecutor filed in the Appellate Division, dated July 25, 2024.

## PRELIMINARY STATEMENT

In 1998, the Legislature enacted the Automobile Insurance Cost Reduction Act (AICRA). AICRA revised the dispute-resolution system for disputes concerning the payment of personal injury protection (PIP) benefits for injuries sustained in automobile accidents. AICRA also charged the Commissioner of the Department of Banking and Insurance (DOBI) with promulgating implementing regulations. This case involves a straightforward application of settled law to interpret AICRA and the DOBI regulations.

Insureds and covered accident victims typically assign their rights to PIP benefits to the providers who treat them; the providers then submit claims for payment to insurers, which have a maximum of 105 days to deny or pay a claim. Payment disputes can be submitted to dispute resolution (sometimes called PIP arbitration), which a company called Forthright administers. Forthright annually resolves tens of thousands of small-denomination disputes between assignee providers seeking payment and insurers that have denied coverage or failed to pay the requested benefits in a timely manner.

Forthright has no authority to award any affirmative relief to insurers; rather, the sole issues are whether an insurer must pay and in what amount. The only parties are the insurer, the insured, and the assignee provider (ordinarily, a business entity that employs the treating professionals). Discovery is limited to

the medical necessity of treatment, medical history, and lost wages. PIP awards are subject to limited judicial review with no right to a trial de novo.

In this case, the plaintiff insurers (Plaintiffs) sued twenty-seven defendants (Defendants) who conspired in a complex insurance-fraud scheme. Plaintiffs seek compensatory and punitive damages and other relief under the Insurance Fraud Protection Act (IFPA), the New Jersey anti-racketeering statute (RICO), and common law and equity. The scheme involved approximately 800 fraudulent claims and $1.7 million in unlawfully obtained PIP benefits. The Law Division held that Plaintiffs were required to file their claims in PIP dispute resolution, not in court.

In a thorough published opinion, the Appellate Division reversed, reaching the only conclusion that it could: PIP dispute resolution does not—and could not constitutionally—apply to insurers' claims for affirmative relief for fraud. The Appellate Division's decision was based on well-settled principles of statutory interpretation: courts must read statutory provisions in the context of the overall statutory scheme, avoid unconstitutional and absurd results, harmonize statutes concerning the same subject matter, and defer to the interpretations of agencies charged with implementing and enforcing a statute. The Appellate Division's faithful application of established New Jersey Supreme Court case law presents no reason for this Court's review.

The Appellate Division's disagreement with a decision of the U.S. Court of Appeals for the Third Circuit is also not a ground for certification. The Third Circuit's erroneous view of New Jersey law in Government Employees Insurance Co. v. Mount Prospect Chiropractic Center PA, 98 F.4th 463 (3d Cir. 2024) (Mount Prospect), was based on an incomplete record that led to that court's misunderstanding. The parties there focused on a different legal issue and only tangentially briefed whether PIP dispute resolution applies to insurers' claims for fraud. Without adequate briefing, the Third Circuit relied on the American Arbitration Association's Commercial Arbitration Rules—which have no application in PIP dispute resolution—to conclude that the insurers were required to, and could effectively, "arbitrate" their fraud claims. The precedential decision below corrects that misunderstanding and will be applied in future federal cases.

Finally, the Appellate Division's unremarkable interpretation of Plaintiffs' Decision Point Review Plan (DPR Plan)—a document required by DOBI regulations that governs insurer review of PIP benefit claims—does not warrant certification. The DPR Plan requires assignee providers to bring claims to PIP dispute resolution after exhausting internal review and incorporates DOBI's regulations. The DPR Plan applies only to the payment disputes subject to dispute resolution under AICRA and the regulations.

## COUNTERSTATEMENT OF THE MATTER INVOLVED

### Allegations in the Complaint

Plaintiffs provide no-fault automobile insurance policies in New Jersey, under which covered individuals can recover PIP benefits if they are involved in accidents. See Pa0025 (Compl. ¶ 3). When covered individuals receive medical treatment, they typically assign their 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").

Plaintiffs' 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., Pa0035-37, Pa0074 (Compl. ¶¶ 107-110, 338). Plaintiffs learned after making the benefit payments that the medical practice that received the benefits was illegally controlled by a non-physician, and that Defendants engaged in kickbacks, illegal self-referrals, and a pattern of racketeering in connection with the services for which the medical practice obtained payment. Pa0448-0449. It took an extensive investigation and the assistance of cooperating former employees of the practice to uncover the fraud. See Pa0043-0061 (Compl. ¶¶ 137-276); Pa0448-449 (Hickey Cert. ¶¶ 6-11).

Plaintiffs seek compensatory and treble damages, investigation expenses, attorneys' fees, and costs under the IFPA, RICO, and common law and equity. Pa0085-0086 (Compl. ¶¶ 382-383); Pa0109-0112 (Compl. ¶¶ 484-492); Pa0113-0117 (Compl. ¶¶ 493-516); Pa0118-0119 (Compl. ¶¶ 520-521).

**AICRA and the DOBI Regulations**

AICRA is codified in Chapter 6A of Title 39. It contains multiple provisions relating to PIP benefits that are relevant here.

Section 4 requires "every standard automobile liability insurance policy" to include "personal injury protection benefits for the payment of benefits without regard to negligence, liability or fault of any kind" covering the named insured and family members, pedestrians, and other passengers injured in an accident involving the insured's vehicle. N.J.S.A. 39:6A-4.

Section 5 governs notice of benefit claims between insurers and healthcare providers and provides that PIP benefits are "overdue" if the insurer does not pay them within 60 days of notice of a claim, with the ability to extend that period once by 45 days to conduct additional investigation. N.J.S.A. 39:6A-5(a)-(g). Thus, insurers must pay or reject each claim for PIP benefits within 105 days. Section 5(h) requires insurers to pay interest on overdue benefits. 39:6A-5(h). Section 5(i) states that insurers must "provide any claimant with the option

of submitting a dispute under this section to dispute resolution" under Section 5.1. N.J.S.A. 39:6A-5(i).

Section 5.1(a) states: "Any dispute regarding the recovery of medical expense benefits or other benefits provided under personal injury protection coverage . . . may be submitted to dispute resolution on the initiative of any party to the dispute." N.J.S.A. 39:6A-5.1(a). Section 5.1(b) delegates to the DOBI Commissioner the responsibility 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). Section 5.1(c) lists the types of disputes that can be addressed in PIP dispute resolution, while Section 5.1(d) permits the dispute-resolution professional to refer issues of medical necessity to a medical review organization. N.J.S.A. 39:6A-5.1(d).

Section 5.1(e) provides that disputes may pertain to "all or a portion of a disputed treatment or treatments," and that "[a]ny portion of a treatment or diagnostic test or service which is not under review shall be reimbursed in accordance with the provisions of section 5." N.J.S.A. 39:6A-5.1(e). Section 5.1(e) further provides the remedies available in PIP dispute resolution: "If the dispute resolution proceeding results in a determination that all or part of a treatment or treatments . . . are medically necessary and appropriate, reimbursement shall be made with interest . . . ." Ibid.

Section 13 governs the "[d]iscovery of facts" relating to PIP claims to which an insurer is entitled: a statement of lost earnings from the injured person; "a written report of the history, condition, treatment, dates and costs of such treatment of the injured person," and the records regarding those matters; and a "mental or physical examination [of the injured person] conducted by a health care provider." N.J.S.A. 39:6A-13.

As directed, 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). The insured, a provider who is an assignee of PIP benefits, or the insurer may make a request for dispute resolution. N.J.A.C. 11:3-5.6(a). A successful claimant, but not the insurer, may recover attorneys' fees in PIP dispute resolution. N.J.A.C. 11:3-5.6(e); N.J. Coal. of Health Care Pros., Inc. v. DOBI, 323 N.J. Super. 207, 262-64 (App. Div. 1999), certif. denied, 162 N.J. 485 (1999).

PIP dispute-resolution awards are "binding upon the parties" but are subject to judicial review under the Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-13. N.J.A.C. 11:3-5.6(g). An award may be vacated under the APDRA only for fraud, corruption, or misconduct; partiality of the neutral; excess of power; failure to follow the APDRA's

procedures; or prejudicial error by erroneous application of law. N.J.S.A. 2A:23A-13(c). There is no right to a trial de novo following PIP ADR. See Churm v. Prudential Prop. & Cas. Ins. Co., 276 N.J. Super. 631, 632-33 (App. Div. 1994) (holding, pre-AICRA, that there is no right to a trial de novo after PIP dispute resolution), certif. denied, 142 N.J. 447 (1995).

As DOBI and the Office of the Insurance Fraud Prosecutor (OIFP) explained in their amicus brief below, PIP dispute resolution "is a one-way process" because "[t]he 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." DOBI Br. 4-5. PIP arbitrators "cannot impose liability upon parties who never signed a bill or made a claim for services," id. at 15, and cannot grant equitable relief, id. at 17.

"[D]iscovery in the PIP arbitration process is non-existent," and the regulations and 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." Id. at 22. That is because, "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 (DOBI Nov. 23, 2012) (Pa0497). The PIP dispute-resolution rules also "do not include any method of discovering what evidence is in the other party's possession through interrogatories, document demands, or depositions." DOBI Br. 23.

Publicly available Forthright reports show that the system handles tens of thousands of cases involving small-denomination benefit claims. For example, 49,098 PIP dispute-resolution cases were filed in 2024 alone. See https://www.nj.gov/dobi/pipinfo/aicrapg.htm (follow links for quarterly PIP reports) (last visited February 24, 2025). There were between forty-one and forty-three arbitrators, depending on the quarter. See ibid. The average award to claimants in each of the last four quarters was less than $7,500. See ibid.

Thus, the PIP dispute-resolution system quickly and efficiently resolves high volumes of small payment disputes between insurers and providers, with none of the traditional tools of discovery such as depositions, document requests, nonparty subpoenas, or interrogatories, and with no right to a trial de novo.

**Plaintiffs' DPR Plan**

Under AICRA and DOBI regulations, no-fault insurers must put in place DPR Plans, 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 DPR Plans and any amendments to them. N.J.A.C. 11:3-4.7. The DPR Plans are permitted to include "[r]easonable restrictions on the assignment of benefits" from insureds to 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 AICRA's dispute-resolution provisions. N.J.A.C. 11:3-4.9(a)(3).

Defendants submitted as part of the record below a version of Plaintiffs' DPR Plan that DOBI approved sometime between AICRA's enactment and 2010. That version of the DPR Plan 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.]

**The Decisions Below**

Some of Defendants filed answers with jury demands. Pa0152-0333. Others moved to compel "arbitration" under the PIP dispute-resolution statute.

The Law Division granted the motions to compel arbitration and dismissed all of Plaintiffs' claims without prejudice, including those against Defendants who did not move to compel arbitration. Pa0001-0022, Pa0334.

Plaintiffs appealed, and the Appellate Division reversed in a published opinion. It held that Plaintiffs' claims are not disputes regarding the recovery of PIP benefits and thus not subject to PIP dispute resolution but instead should be decided in the trial court, with a right to a jury trial. 42a. The court relied on this Court's case law to hold that AICRA must be harmonized with the IFPA and RICO. 27a-28a. The court explained that AICRA's dispute-resolution provisions "focus . . . on providing swift compensation for people injured in automobile accidents," and establish a "streamlined and specialized process to resolve disputes between insureds, their medical providers, and insurance companies." 28a-29a.

The court further explained that "[t]he [IFPA], RICO, and AICRA can be harmonized when the language used in each statute is considered and construed in the context of the legislative goals." 32a. Although PIP dispute resolution is "suited for disputes of whether an insured or an assignee should receive coverage for medical expenses and, if so, in what amount," the IFPA and RICO are aimed at eliminating fraud and provide for a broad array of remedies. 29a-33a. The Appellate Division relied on this Court's case law to distinguish

between disputes about the "recovery of medical benefits"—which the Appellate Division held are subject to PIP dispute resolution—and tort claims for damages such as those under the IFPA and RICO—which it held are not. 34a.

The Appellate Division considered the view of amici DOBI and OIFP that "insurance fraud claims have not historically been, nor should they be, subject to PIP arbitration." 34a. DOBI and OIFP's amicus brief explained that under AICRA "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," not to insurers' affirmative claims for fraud. DOBI Br. 10. And the agencies explained that insurers "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 34.

The Appellate Division further relied on this Court's case law to hold that it must seek to avoid a constitutional issue in its statutory interpretation. The Appellate Division held that interpreting AICRA to require PIP dispute resolution of claims for fraud damages would render the statute unconstitutional under this Court's decisions in Allstate New Jersey Insurance Co. v. Lajara, 222 N.J. 129 (2015), and Jersey Central Power & Light Co. v. Melcar Utility Co., 212 N.J. 576 (2013). 37a-39a. The court also noted that it had reached a similar

conclusion more than 15 years ago when it held that "the Legislature did not contemplate that a claim of a violation of the [IFPA] would be heard by an arbitrator." 33a (quoting Nationwide Mut. Fire Ins. Co. v. Fiouris, 395 N.J. Super. 156, 161 (App. Div. 2007), certif. denied, 192 N.J. 598 (2007)).

In addition, the court rejected Defendants' reliance on Plaintiffs' DPR Plan, holding that the plan's requirement that assignees submit disputes to PIP dispute resolution was "no broader than the PIP arbitration under AICRA." 36a.

## REASONS WHY CERTIFICATION SHOULD BE DENIED

This case does not meet the certification standards under Rule 2:12-4 because the Appellate Division applied settled Supreme Court law to resolve a straightforward matter of statutory interpretation. Moreover, the Appellate Division's disagreement with a federal court on a matter of state law is not a reason to grant certification, and, in any event, the federal court's decision was based on a misunderstanding of PIP dispute resolution and an incomplete record, which has now been corrected.

### I. The Appellate Division's decision involves the correct application of settled law.

The Appellate Division's resolution of whether AICRA's dispute-resolution scheme applies to insurers' claims for damages and other relief under the IFPA and RICO was based on many years of practice in the courts and settled

New Jersey Supreme Court law. The decision below is also so patently correct that this Court's review is not warranted.

The Appellate Division applied more than ten of this Court's precedents to resolve the issue of statutory interpretation before it. There was nothing novel, controversial, or difficult in the Appellate Division's application of those settled principles to this case. The Appellate Division considered the language of the statutory provisions in light of their legislative purpose and context; the need to harmonize AICRA, the IFPA, and RICO; the need to avoid rendering AICRA's dispute-resolution provision unconstitutional; and the administering and enforcing agencies' interpretation. As the Appellate Division explained, its decision was consistent with its Fiouris decision more than fifteen years ago.

Defendants' interpretation is that insurers are required to bring affirmative insurance-fraud claims to PIP dispute resolution at the election of any defendant. But that would render the statute unconstitutional under this Court's precedents because AICRA contains no right to a trial de novo. See Lajara, 222 N.J. at 151 (holding that parties have a constitutional right to a jury trial on IFPA claims for damages); Jersey Cen. Power & Light, 212 N.J. at 593-94 (holding that mandatory arbitration of claims giving rise to a jury-trial right without a trial de novo is unconstitutional). The petition calls the distinction between an insurer's claims seeking damages for fraudulently obtained benefits (which give rise to a

right to a jury trial) and an insurer's defenses to payment of benefits in PIP dispute resolution (which do not) "form over substance." Pet'rs Br. 13. But that is the distinction the Constitution draws: "the right to a jury trial applies to causes of action—even statutory causes of action—that sound in law rather than equity." Lajara, 222 N.J. at 142. Defendants continue to ignore the fatal constitutional problem with their interpretation of AICRA.

Defendants' interpretation would also make it impossible for insurers to protect the public against PIP-related insurance fraud—as DOBI and OIFP confirm—because they cannot obtain any damages, costs, attorneys' fees, or equitable relief in PIP dispute resolution. Nor can insurers get discovery beyond information related to medical treatment, and they can join only the assignee medical providers, which would omit the co-conspirators and accomplices who orchestrated and carried out the scheme here. See N.J.S.A. 17:33A-4(b) (IFPA violations include a person who "knowingly assists, conspires with or urges" another to violate the statute); N.J.S.A. 2C:41-2(d) ("It shall be unlawful for any person to conspire" to violate RICO). Finally, nearly 50,000 payment disputes were filed in the PIP dispute-resolution system last year alone; it is not intended for and cannot accommodate the type of complex fraud trial required in cases like this one.

The petition does not dispute these obvious problems with Defendants' position but instead argues that the Appellate Division should have scrapped the entire PIP dispute-resolution system for commercial arbitration under different rules than those promulgated by Forthright. See Pet'rs Br.14. That radical change—which would not solve the constitutional problem—would wholly divorce the PIP dispute-resolution system from its legislative design.

This case merely required application of established Supreme Court law to affirm that IFPA and RICO claims belong in court, while disputes about whether benefits are due belong in PIP dispute resolution—the status quo for decades until the trial court's error, and the only result that makes any rational and constitutional sense in light of the relevant statutes' language and purposes.

## II. The Third Circuit's Mount Prospect decision is not a reason to grant certification.

The Third Circuit's Mount Prospect decision is not precedential in New Jersey state courts and thus does not create the sort of conflict that requires this Court's intervention. And the decision below will clear up any confusion in the federal courts. Indeed, the Chief Judge of the United States District Court for the District of New Jersey has ruled that, due to the Appellate Division's decision, the Third Circuit's decision is no longer binding on district courts: "a predictive ruling by the Third Circuit on an issue of state law is generally binding on the district court, [but] it is no longer binding if intermediate

appellate courts have ruled to the contrary and their decisions have not been overruled by the state's highest court." Text Order, Gov't Emps. Ins. Co. v. Natale, No. 1:23-cv-02338-RMB-MJS, ECF No. 111 (Jan. 14, 2025) (quoting Robinson v. Kia Motors Am., Inc., 2015 WL 5334739, at *8 (D.N.J. Sept. 11, 2015)) (Ra002-003). Thus, the federal courts will respect the Appellate Division's precedential ruling in future cases.

Moreover, there is no true conflict between Mount Prospect and the opinion below because the Third Circuit simply did not consider the same issues. The Third Circuit's decision can be explained by the limited arguments before it. GEICO devoted only about five pages of its nearly fifty-page briefs to whether AICRA requires dispute resolution of PIP-related fraud claims. See Pra044-049, Pra104-110, Pra168-172. GEICO instead focused on whether the IFPA precludes arbitration of fraud claims and thus "reverse preempts" the Federal Arbitration Act under the federal McCarran-Ferguson Act, see Pra033-044, Pra088-099, Pra155-168, an issue irrelevant here. The Third Circuit's discussion of whether AICRA requires PIP dispute resolution of affirmative fraud claims occupies only two brief paragraphs. See Mount Prospect, 98 F.4th at 469-70.

The briefing was so limited that the Third Circuit mistakenly believed that PIP dispute resolution was like commercial arbitration, which permits broad

claims and defenses and ordinary discovery. For example, the Third Circuit rejected the suggestion that insurers cannot obtain remedies under the IFPA in PIP dispute resolution because "American Arbitration Association rules give the arbitrator broad discretion to grant any remedy or relief." Id. at 469 (internal quotation marks omitted). But, of course, the AAA rules have no application in PIP dispute resolution, and the Third Circuit did not have the views of the state agencies explaining that Forthright cannot award any remedies to insurers.

In addition, because its focus was on a different issue, GEICO did not make the extensive arguments about constitutionality, statutory purpose and context, PIP dispute resolution's specialized rules and regulations, or the canon against absurdity that were raised below. Nor did the court have DOBI's views on the system that it implemented. When the Third Circuit addressed the scope of PIP dispute resolution, it merely read a single sentence in AICRA isolated from the rest of the statute and regulations. See ibid.

The Third Circuit did note GEICO's argument that the "IFPA implicitly prohibits arbitration" because parties have a right to a jury trial on IFPA claims, and the court suggested that GEICO waived the right to a jury trial in its DPR Plan. See ibid. ("GEICO does not explain why it cannot waive that right [to trial by jury] by agreeing to arbitrate."). That ruling, however, does not address whether interpreting AICRA to require mandatory arbitration of IFPA claims

would require a court to declare the statute unconstitutional under New Jersey law. That argument, like so many others, was not considered by the Third Circuit.

In sum, Mount Prospect was an unfortunate error by a federal court that was uninformed and thus confused about the scope and nature of PIP dispute resolution. The Appellate Division's decision corrects that confusion.

## III. The Appellate Division's interpretation of DPR Plans is not a reason to grant certification.

Defendants assert that certification is warranted to address the Appellate Division's interpretation of Plaintiffs' DPR Plan. Pet'rs Br. 9. But the Appellate Division merely interpreted the DPR Plan's requirement that assignees "submit disputes to alternative dispute resolution pursuant to N.J.A.C. 11:3" to incorporate the PIP regulations and thus to require PIP dispute resolution of whatever disputes the regulations require: "By referencing N.J.A.C. 11:3, [Plaintiffs] made it clear that the arbitration called for in its DPR Plans or assignment of benefits contracts was no broader than the PIP arbitration under AICRA." 36a. That indisputably correct interpretation does not warrant review.

Indeed, the petition makes clear that Defendants do not actually take issue with that aspect of the decision below. Rather, they are concerned that the Appellate Division "rendered an improper advisory opinion on a matter not presented in this case" because the court purportedly opined on the scope of

GEICO's DPR Plan at issue in Mount Prospect, which Defendants now say is "completely different" from Plaintiffs' DPR Plan. Pet'rs Br. 15-17.

First, that argument is misleading. Defendants urged the Appellate Division to apply Mount Prospect because, they said, Plaintiffs have "the same DPR Plan and AOB [Assignment of Benefits] as did GEICO." CCMC Br. 32 (emphasis added). To now seek certification because the DPR Plans were supposedly "completely different" is disingenuous. And it is unfair to accuse the Appellate Division of an improper advisory opinion when Defendants asked the court to consider that specific matter.

Second, the Appellate Division focused on Plaintiffs' plan, not GEICO's. It held: "By referencing N.J.A.C. 11:3, Allstate [i.e., Plaintiffs] made it clear that the arbitration called for in its DPR Plans or assignment of benefits contracts was no broader than the PIP arbitration under AICRA." 36a. There is therefore no purported overreaching to correct.

## CONCLUSION

For the foregoing reasons, the petition for certification should be denied.

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Dated: February 25, 2025