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

Plaintiffs,

v.

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

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.

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.

SUPPLEMENTAL BRIEF OF SOOD DEFENDANTS

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Dated: October 2, 2025

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PRELIMINARY STATEMENT

When the Legislature enacted the Automobile Insurance Cost Reduction Act ("AICRA") in 1998, it specifically included an arbitration provision to keep disputes between insurers, medical providers, and insureds involving personal injury protection ("PIP") benefits out of the courts. So it is no surprise, then, that the Legislature wrote a broad statutory arbitration provision, N.J.S.A. 39:6A-5.1(a) (the "Arbitration Statute"), that allows any party to the dispute to initiate arbitration to resolve "[a]ny dispute regarding the recovery of medical expense benefits or other benefits."

The Appellate Division's artificially cramped interpretation of the statute accomplished the exact opposite of what the Legislature intended. The decision allows insurance companies to lump together hundreds or thousands of PIP claims, label that mass of claims an Insurance Fraud Prevention Act ("IFPA") or Racketeer Influenced and Corrupt Organizations Act ("RICO") claim and catapult those claims into court. The Court should correct that interpretation of the Arbitration Statute, which blows open the courtroom doors to insurers, while simultaneously confining medical providers to arbitration.

The Third Circuit got it right. It read the Arbitration Statute's plain language and held that it means what it says. Allstate's arguments about regulations and arbitration rules not only are wrong but also bypass the plain language that controls.

Deviating from the Third Circuit, the Appellate Division missed the forest for the trees and further stacked the deck in favor of insurers and against medical providers. The Court should reverse and reinstate the trial court decision.

FACTUAL AND PROCEDURAL HISTORY

Defendants respectfully direct the Court to their respective prior briefing, which contains a full recitation of the basic facts and procedural history of this case. (Pb2-9).[1] The following legal argument is supplemental to the arguments advanced in Appellate Division filings and in the Petition for Certification.

LEGAL ARGUMENT

I. The Arbitration Statute's plain language compels Allstate to arbitrate its claims consistent with the Legislature's overwhelming intent.

a. IFPA claims are arbitrable as a matter of law.

The Sood Defendants maintain that IFPA and RICO claims related to PIP benefits, like all claims related to PIP benefits, belong in arbitration, not in court. That is the fundamental issue in this appeal. That also was the fundamental issue on appeal to the Third Circuit in Gov't Employees Ins. Co. v. Mount Prospect Chiropractic Center PA, 98 F.4th 463, 469 (3d Cir. 2024).

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[1] "Pb" and "Prb" refers to Plaintiff's Appellate Division Brief and Reply Brief, respectively. "Db" refers to the Sood Defendants' Appellate Division Brief. "DAmiciOpp" refers to the Sood Defendants' Supplemental Brief Responding to Amici in the Appellate Division. "Pet" refers to the Joint Petition for Certification. "Petr" refers to the Joint Reply In Support of the Petition. "PetOpp" refers to Allstate's Opposition to the Joint Petition. "PetAppx" refers to the Petition Appendix. "Pa" refers to Plaintiff's Appendix.

Mount Prospect arose after several federal district court cases concluded that PIP-related IFPA claims, as a matter of law, could not be arbitrated. That line of cases relied on a misconception about language in the IFPA that states "insurers may sue for IFPA violations in any court of competent jurisdiction." Id. at 468. The district courts interpreted that language to preclude arbitration even though that language is ordinary statutory language about the availability of a judicial forum and does not preclude arbitration. See ibid.; see also Db20-21.[2]

Unsurprisingly, the Third Circuit rejected those decisions because the federal district courts wrongly concluded IFPA claims are not arbitrable. 98 F.4th at 468. The Third Circuit also rejected GEICO's reliance on Nationwide Mutual Fire Insurance Co v. Fiouris, 395 N.J. Super. 156 (App. Div. 2007), which suggested IFPA claims were not arbitrable in a case dealing with fraud in the inception of an insurance policy. 98 F.4th at 468. Reasoning that Fiouris did not answer the question of whether IFPA claims were generally arbitrable, the Third Circuit determined that this Court would conclude IFPA claims can be resolved in arbitration. That

[2] For the purposes of clarity and completeness, it is important to note that Allstate does not challenge the general arbitrability of PIP-related IFPA claims. However, that issue was addressed by the Third Circuit, with reference to how this Court would rule on that question. In light of the inherent conflict between the Appellate Division's decision and the Third Circuit's ruling, the Sood Defendants respectfully submit that the Court should confirm that IFPA claims indeed can be resolved through arbitration. To be clear, the Sood Defendants do not posit that insurers, like Allstate, can never pursue IFPA- or RICO-like claims in an arbitral forum.

unremarkable conclusion aligns with this Court's jurisprudence on a multitude of other remedial State statutes that can be arbitrated, like the Consumer Fraud Act, the IFPA's closest analogue. See Db20.

Along the way, the Third Circuit rejected several other arguments that GEICO advanced — considerations relied on by the Appellate Division and Allstate here. PetAppx30-32. The Third Circuit rejected the position that arbitration of a PIP-related IFPA claim would undermine the IFPA's goal of rooting out fraud. 98 F.4th at 468-69. The court also rejected the notion that arbitration of PIP-related IFPA claims would impede the rights of the Office of the Insurance Fraud Prosecutor or prevent an insurance company from obtaining all of the statutory penalties and awards available under the statute. Id. at 469; see also Martindale v. Sandvik, Inc., 173 N.J. 76, 93 (2002) (stating that, in arbitrating a statutory claim, "a party does not forego the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum"). And the court noted New Jersey's strong preference for approaches that minimize the resort to courts for resolution of PIP claims. Ibid.

The Third Circuit's thoughtful decision is important not only in and of itself, but particularly because it addresses much of what is raised in this appeal. That decision also merits respect because it aligns with the plain language of the

Arbitration Statute, compelling arbitration for disputes related to the entitlement to payment of PIP benefits.

At bottom, the meaning of the Arbitration Statute is controlled by the statute's plain language. Allstate's reading of the statute, to achieve its wished-for legislative scheme, should yield to what the Legislature actually said on the topic.

With that in mind, the Court should turn to the plain language of the Arbitration Statute and determine whether the Legislature required arbitration of any claim related to the payment of PIP benefits. And the Court should reject Allstate's attempt to amend that language to achieve a different, insurance-industry-preferred outcome.

b. This case is about the plain language of the Arbitration Statute.

Whether the Arbitration Statute requires arbitration of Allstate's claims is a question of statutory interpretation involving the plain language of the statute. Nothing more. Interpreting the Arbitration Statute does not require the Court to detour through constitutional law or regulatory enactments. And the Court should not leapfrog over the plain language of the statute to the doctrine of avoidance of absurd results as Allstate suggests. (PetOpp2). The Court should read the plain language of the statute and discern the legislative intent from the unambiguous text. See DiProspero v. Penn, 183 N.J. 477, 492 (2005).

The Arbitration Statute states that "[a]ny 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). That language is clear, unambiguous, and open to only one interpretation: health care providers and insurance companies must arbitrate PIP-based claims among them, without exception, if one party invokes the arbitration provision. (See Db11-28). Indeed, subsection (c) of the statute is exceedingly broad and expressly contemplates arbitration of alleged fraud. See N.J.S.A. 39:6A-5.1(c) (identifying non-exclusive list of the types of disputes covered by the arbitration provision, including "eligibility of the provider performing the treatment or service to be compensated"); see also Mount Prospect, 98 F.4th at 470. That plain-language interpretation of the statute aligns with the early New Jersey case law addressing the Arbitration Statute. (See DAmiciOpp4-10).

In State Farm Mut. Auto Insurance Co. v. Molino, the Appellate Division held that the Arbitration Statute must not be read narrowly because the arbitration requirement was "unqualified." 289 N.J. Super. 406, 410-11 (App. Div. 1996). Rather, the statute should be read liberally to advance the goal of reducing court congestion in connection with New Jersey's no-fault scheme. Ibid. Insurance companies, therefore, cannot avoid arbitration "by characterizing PIP disputes as

questions of 'entitlement' or 'coverage' and . . . seeking judicial resolutions of those issues. Id. at 411.

State Farm Insurance Co. v. Sabato reaffirmed those principles and added that the statutorily mandated arbitration included allegations of fraud. 337 N.J. Super. 393, 394-97 (App. Div. 2001). The court noted that those arbitration proceedings "shall be administered and subject to procedures established by the American Arbitration Association. Id. at 396-97.

Following that plain-language interpretation, the Third Circuit reached the same conclusion. Concluding that GEICO's IFPA and RICO claims were an "effort to recover medical expense claims paid through auto insurance PIP benefits," the court held that the claims fell under the Arbitration Statute's "plain text." Mount Prospect, 98 F.4th at 469. Relying on Molino and Sabato, the panel concluded that a broad reading of the statute required arbitration of GEICO's claims because "fraud falls under [the Arbitration Statute's] umbrella." Id. at 470.

Here, the Court has in front of it exactly what the Arbitration Statute's plain language encompasses: (1) a dispute by Allstate (2) involving the defendants' recovery of PIP benefits (3) that the defendants seek to arbitrate. N.J.S.A. 39:6A-5.1(a). See Pa0034-35 ¶ 106 (alleging Defendants are liable to Allstate for PIP benefits paid to them). The statute does not carve out or exempt fraud disputes or already paid or arbitrated PIP benefits. See Sabato, 337 N.J. Super. at 396 (stating

"the language of [the Arbitration Statute] should be read as broadly as the words themselves indicate"); Molino, 289 N.J. Super. at 410 (observing word "dispute" in the Arbitration Statute "is unqualified"). The Third Circuit read it the same way and did not perform judicial surgery to alter the Arbitration Statute's plain language, as Allstate's interpretation of the statute requires. Mount Prospect, 98 F.4th at 469-70.

c. The Appellate Division allowed insurers to circumvent the statute and defeat the Legislature's purpose, creating a playing field tilted in favor of insurance companies.

The Third Circuit's clear-eyed review of the statutory language reflects the language adopted by the Legislature and honors the arbitral bent enshrined in the statute. The Court should follow that approach and reach the same conclusion. In doing so, the Court should resist Allstate's effort to depart from that plain language by arguing that applying the statute as the Legislature intended will lead to absurd results. The opposite is true.

Allstate's interpretation of the Arbitration Statute creates an inefficient, duplicative system that favors insurance companies and allows after-the-fact packaging of massive conglomerations of individual PIP claims. That approach runs contrary to the legislative scheme, which seeks to streamline PIP disputes and keep those disputes out of the courts. Our courts have long recognized that one of the preeminent objectives of the comprehensive AICRA amendments was to keep PIP-related disputes out of court. See Molino, 289 N.J. Super. at 410-11 (recognizing

"the reduction of court congestion is one of the overwhelming goals of our no-fault scheme"). Indeed, reducing court congestion and minimizing resort to the judiciary was the original No Fault Law's main objective too. Roig v. Kelsey, 135 N.J. 500, 516 (1994); Gambino v. Royal Globe Ins. Companies, 86 N.J. 100, 107 (1981).

Contrary to that objective, insurers amass court cases that consist of hundreds or thousands of PIP claims already decided in arbitration or paid through the statutory precertification process, which, in some cases, span decades in age. In this case, Allstate compiled 830 PIP claims, with claims dating back more than a decade to 2009. (Pa0123-49). And this case is on the low side. For example, in GEICO v. Elkholy, which was part of the consolidated appeal in Mount Prospect, the insurance company compiled 22,272 separate PIP claims. (ECF 72 to 72-3, GEICO v. Elkholy, No. 21-cv-16255 (D.N.J.)). In GEICO v. Caring Pain Management P.C., another case consolidated in the Mount Prospect appeal, the insurance company aggregated more than 90,000 individual PIP claims listed on a spreadsheet sprawling across more than 1,300 pages. (ECF 12 to 12-2, GEICO v. Caring Pain Mgmt. P.C., No. 22-cv-05017 (D.N.J.)).[3]

Bringing those gigantic claims in court is the hallmark of inefficiency because courts will get bogged down with discovery and trying cases involving thousands

[3] Pursuant to N.J.R.E. 201(b)(4), the Court can take judicial notice of the allegations asserted in the pleadings in the cases underlying the Third Circuit's decision in Mount Prospect. This is proper judicial notice of their existence, not their truth.

upon thousands of individual PIP claims. Insurance companies should not bring those PIP-based disputes to court for resolution. Indeed, it is antithetical to the arbitration scheme that the Legislature created. The Arbitration Statute makes the arbitration route mandatory for PIP-related disputes when chosen by the insured or assignee pursuant to N.J.S.A. 39:6A-5.1(a).

Allstate is attempting to manufacture an end-run around the statute, resulting in immense litigation sprawling across years without any guardrails. Consider this case. Allstate filed its complaint in 2023 and expects the defendants to litigate PIP benefits dating as far back as 2009. (Pa0123). Somehow, the defendants are expected to litigate medical services rendered up to fourteen years prior, even though their legal obligation is to maintain medical records for only seven years. N.J.A.C. 13:35-6.5(b). And, as noted above, bringing these claims years later requires health care providers to relitigate claims already paid through the precertification process or as the result of an arbitration award, irrespective of any estoppel consideration due to prior arbitral adjudications.

Put simply, this approach allows insurance companies to sit back, pay PIP benefits, and eventually aggregate claims to disgorge PIP benefits long after they have been paid. That is a quintessential "PIP dispute," which Allstate candidly admitted to this Court a decade ago, when it previously benefitted insurers to admit the fact that PIP-related IFPA claims truly are PIP disputes. (Brief of Allstate at 7-

8, Allstate v. Lajara, No. A-684-11, attached at Appendix A to Brief of Amicus Curiae Association of New Jersey Chiropractors (referring to PIP-related IFPA claim as "reverse PIP suit")).

To hold that PIP insurers do not have to arbitrate their PIP-based IFPA claims at medical providers' option would further stack the deck against medical providers. Most glaringly, insurance companies consistently invoke arbitration to cut off access to the courts when health care providers try to seek judicial resolution of disputes concerning insurers' unlawful conduct. In Endo Surgi Center, P.C. v. Liberty Mutual Insurance Co., the Appellate Division was asked to decide whether an insured who was wrongfully denied PIP benefits by an insurer can sue the insurer for bad faith. 391 N.J. Super. 588, 591 (App. Div. 2007). The court said no.

In that case, the insurer had refused to pay a facility fee for the surgical center. Ibid. The Appellate Division concluded that, because "PIP benefits are statutory in origin," an insured's assignee medical facility that "is wrongfully denied such benefits is entitled to only the statutory remedy of interest on the benefits and attorney's fees." Ibid.

The court first explained that the Arbitration Statute was designed to avoid resorting to the judicial process. Id. at 592. Relying on the plain language of the statute, along with Sabato, the court noted the Arbitration Statute "provides that either the insured or insurer may submit any dispute regarding payment of PIP

medical benefits to alternative dispute resolution, which may consist of either arbitration or review by a medical review organization." Ibid. (citing N.J.S.A. 39:6A-5.1; N.J.S.A. 39:6A-5.2); Sabato, 380 N.J. Super. at 469-70. Under that scheme, a prevailing insured is entitled to its attorney's fees and interest. Ibid. The court "recognized that because PIP benefits are statutory in nature, . . . the procedures and remedies provided by the No–Fault Act for enforcement of an insured's right to PIP benefits are exclusive." Ibid. (citations omitted). That remedy also applies to claims for compensatory damages. Ibid.

The court further explained that its conclusion was bolstered "by the statutory mandate that either the insured or the insurer may require submission of any dispute regarding payment of PIP benefits to the alternative dispute resolution procedures provided by N.J.S.A. 39:6A–5.1." Id. at 594. Moreover, even if no party invokes statutory arbitration, "there is no right to a jury trial in an action for unpaid PIP benefits." Ibid. But, "if an insured (or an insured's assignee) were allowed to pursue a common law claim for an alleged bad faith denial of PIP benefits, under which there would be an entitlement to a jury trial, **this would open the door to circumvention of the statutorily mandated alternative dispute resolution procedure provided by N.J.S.A. 39:6A-5.1**." Id. at 594-95 (emphasis added).

The court explained that, distinct from a typical bad faith claim against an insurer, "a claim for a wrongful failure to pay statutorily mandated insurance

benefits such as PIP should be treated differently than a claim that is not subject to statutory regulation." Ibid. Accordingly, the assignee facility could not bring a bad faith claim in court against the insurer and, instead, could only recover the unpaid PIP benefits, interest, and attorneys' fee. Id. at 595-96. The court therefore reversed and dismissed the assignee's bad faith claim. Ibid.

Here, Allstate seeks an interpretation at odds with the plain language of the Arbitration Statute and that is inconsistent with the insurance industry position in Endo Surgi Center. The damages sought by Allstate in this case are, without question, disgorgement of PIP benefits that Allstate paid to the defendants, which is a dispute captured by the plain language of the Arbitration Statute. Yet, Allstate has creatively constructed a series of claims — IFPA, RICO, and the like — built on a conglomeration of individual PIP claims that works to circumvent the arbitration requirement of the statute. This is precisely what our courts have warned against. See Endo Surgi Center, P.C., 391 N.J. Super. at 494-95; see also Open MRI & Imaging of Rochelle Park v. Mercury Ins. Grp., 421 N.J. Super. 160, 167-68 (App. Div. 2011) (reiterating the warning against circumvention of Arbitration Statute).

To allow insurers to continue evading the Arbitration Statute, as the Appellate Division did here, creates fundamental unfairness in the administration of PIP-related claims. On the one hand, health care providers have no recourse for unlawful insurance company conduct other than through statutory arbitration. On the other

hand, insurance companies can aggregate claims at any point in time and end-run around the statutorily required arbitration by filing claims in court labeled as violations of the IFPA or RICO statutes. That is not what the Legislature envisioned when it adopted AICRA.

d. The Appellate Division's PIP dispute versus tort damages rationale allows creative labels to defeat the Arbitration Statute.

To reach its conclusion, the court applied Rodriguez v. Shelbourne Spring, LLC, 259 N.J. 385 (2024). (PetAppx34). But that case does not apply here. Rodriguez interpreted language in a workers compensation policy — "We will pay promptly when due the benefits . . . required by a workers' compensation law" — to determine if the policy provision covered a claim for money damages for the plaintiff's tort claims. Id. at 400. The Court was not interpreting the Arbitration Statute, another provision of AICRA, or any statute at all. See ibid. The Arbitration Statute bears no resemblance to that policy language. The Arbitration Statute broadly encompasses "[a]ny dispute regarding the recovery of medical expense benefits." N.J.S.A. 39:6A-5.1(a).

A common law or statutory tort asserted by an insurer against a provider seeking to disgorge paid PIP benefits is certainly a "dispute" about recovery of PIP benefits. A "dispute" is "[a] conflict or controversy, esp. one that has given rise to a particular lawsuit." Black's Law Dictionary 593 (11th ed. 2019); see also Cornelius v. CVS Pharmacy Inc., 133 F.4th 240, 247 (3d Cir. 2025) (explaining the expansive

meaning of "dispute" and the statutory phrase "any dispute"). And there is no qualifier — "any means any." Longobardi v. Chubb Ins. Co. of New Jersey, 121 N.J. 530, 539 (1990). To that end, an insurer's artificial labeling of its dispute — as an IFPA, RICO, or like claim — cannot mutate a dispute seeking to disgorge PIP benefits into a tort claim seeking legal damages outside the purview of the Arbitration Statute. For these reasons, the Appellate Division's narrow reading of the Arbitration Statute based on the inapposite Rodriguez decision is fatally flawed and defeats the Legislature's intent when it adopted AICRA.[4]

e. Arbitration of IFPA claims is not prohibited by New Jersey's regulatory scheme.

Agency regulations are designed to implement their enabling statute and, therefore, must be consistent with the plain language and intent of the governing statute. See Med. Soc'y of N.J. v. N.J. Dep't of L. & Pub. Safety, 120 N.J. 18, 26 (1990). "An administrative regulation, however, cannot alter the terms of a statute or frustrate the legislative policy." Ibid. (citing N.J. State Chamber of Commerce v. N.J. Election Law Enforcement Comm'n, 82 N.J. 57, 82 (1980)). In other words,

[4] The Appellate Division also relied on the trial court decision, Allstate Ins. Co. v. Lopez, 311 N.J. Super. 660 (Law Div.1998). (PetAppx31). But the Appellate Division, not long after, observed that Lopez may be "inconsisten[t]" with Molino and, if so, "must, of course, give way to the appellate decision in Molino." Sabato, 337 N.J. Super. at 397.

administrative regulations cannot alter the plain language of a statute or the unambiguous meaning of that plain language.

Allstate maintains that the administrative regulations promulgated by DOBI support its interpretation of the Arbitration Statute that IFPA claims are not subject to arbitration. PetOpp at 5. That is the wrong inquiry. The correct inquiry is whether the plaint language of the **enabling statute** requires arbitration and whether the **supporting regulations** are consistent with the legislative intent. The answer on both fronts is yes.

As set forth above, the plain language of the Arbitration Statute directs arbitration of any claim related to the entitlement to PIP benefits, or, as in this case, a dispute related to the disgorgement of PIP benefits. The regulations adopted by DOBI are far more expansive in scope than Allstate admits and allow for arbitration of more complex claims like IFPA and RICO claims aimed at PIP benefits, including the consolidation of claims and discovery in an adversarial proceeding "consistent with the traditional notions of due process and fundamental fairness." N.J.A.C. 11:3-5.4(b); see also DAmiciOpp at 11-16.

Similarly, Allstate's argument that Forthright, the company tasked by DOBI with adjudicating PIP arbitrations, cannot accommodate an IFPA or RICO claim focuses on the wrong question. See PetOpp15-16. That asks whether Forthright can

do it. The correct question: Does the statute require it and do the regulations allow for it? Once again, the answer on both fronts is yes.

The solution to the Forthright "problem" is simple. DOBI must require Forthright (or another dispute resolution service) to amend its arbitration rules to be consistent with the Arbitration Statute and DOBI's regulations. Bringing Forthright's plan into line with the statutes and regulations will address Allstate's forum-related concerns. And, regardless, those concerns cannot amend the plain language of the Arbitration Statute. The statute must be interpreted as written, and the regulations are consistent with the statute. It is Forthright's plan that is inconsistent and requires correction.

For all of those reasons, and the reasons in the Sood Defendants' prior briefing, the Court should conclude that Allstate's IFPA and RICO claims must be arbitrated and should therefore reverse and reinstate the trial court's order compelling Allstate to arbitrate under the Arbitration Statute.

II. Compelling arbitration does not create a state constitutional problem.

The Appellate Division cited constitutional avoidance as a bolstering reason to interpret the Arbitration Statute to not require Allstate to arbitrate its PIP-based IFPA claim. (PetAppx37-38 (citing N.J. Const. Art. I, ¶ 9; Allstate New Jersey Ins. Co. v. Lajara, 222 N.J. 129 (2015)). The jury trial issue is a red herring. Allstate

never raised this state constitutional argument in the trial court.[5] In fact, Allstate never requested a jury, so it is a non-issue here. (Pa23-100, Pa150). That said, constitutional avoidance is not an interpretative principle of support here.

Adhering to the Arbitration Statute's plain language and requiring Allstate to arbitrate its IFPA claim would not violate the jury trial right in Article I, paragraph 9. That is because, for the privilege of writing automobile insurance in New Jersey, insurers knowingly and voluntarily agree under the Arbitration Statute, as part of AICRA, to resolve any dispute regarding PIP benefits through arbitration when it is requested. See N.J.S.A. 39:6A-5.1(a); see also Mount Prospect, 98 F.4th at 469 (explaining that the insurer can waive its jury trial right by agreeing to arbitrate). It is beyond dispute that parties can knowingly and voluntarily waive their jury trial right for statutory or common law claims. See, e.g., Arafa v. Health Express Corp., 243 N.J. 147, 155, 164-72 (2020) (waiver of jury trial to arbitrate WPL and WHL claims); Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 439-445 (2014) (same

[5] This is unsurprising because Allstate argued vehemently in Lajara against a jury trial right for an IFPA claim. Allstate did so because, among other reasons, it understood that its cause of action was, "at its core, a reverse PIP suit." (Brief of Allstate at 7-8, Allstate v. Lajara, No. A-684-11, attached at Appendix A to the Brief of Amicus Curiae Association of New Jersey Chiropractors).

for CFA and TCCWNA claims). Allstate did so under AICRA, as did every other automobile insurer who writes policies in New Jersey.[6]

Notably, insurers maintain the right to a jury trial for IFPA claims based on other types of insurance fraud, e.g., workers compensation insurance, homeowner's insurance, general liability insurance, non-PIP related automobile insurance, and the like. See, e.g., Liberty Ins. Corp. v. Techdan, LLC, 253 N.J. 87, 93-95 (2023); Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 165-66 (2006). Those insurance policy products are "not subject to statutory regulation" in the manner that PIP insurance is, including, most crucially, the Arbitration Statute. Endo Surgi Ctr., 391 N.J. Super. at 595.

For numerous reasons then, the jury trial issue is a decoy, and a constitutional problem would not arise if the Court requires Allstate to arbitrate the claims in this case, as the statute's plain language compels.

III. The Court should disavow the Appellate Division's expansive, erroneous comments opining on non-party GEICO's arbitration provision.

This case concerns whether **Allstate's** Arbitration Statute and the arbitration clause in **Allstate's** DPR Plan, compels arbitration of Allstate's claims. To this end,

[6] The Court's decision in Lajara is not to the contrary. In Lajara, neither Allstate nor the defendants invoked the Arbitration Statute or any contractual arbitration clause to compel arbitration of the IFPA claim. See generally 222 N.J. 129. The Arbitration Statute is permissive, requiring arbitration only if any party invokes it. See N.J.S.A. 39:6A-5.1(a) (stating a dispute "may" be arbitrated if any party invokes arbitration). So, the arbitration issue simply was not before the Court in Lajara. Now, it is.

the Appellate Division examined Allstate's specific DPR Plan and held that Allstate's IFPA and RICO claims were not arbitrable under the specific language Allstate used in the DPRP. PetAppx36-37. The Appellate Division reasoned that "[b]y referencing N.J.A.C. 11:3" in its DPR Plan arbitration clause, "Allstate made it clear that arbitration called for in its DPR Plans" was PIP arbitration under AICRA. PetAppx36. Because Allstate's DPR Plan "expressly stated that the arbitration is to be 'submitted to alternative dispute resolutions pursuant to N.J.A.C. 11:3,'" the court concluded that Allstate's claims were not subject to arbitration. PetAppx37. We disagree, and further, in addition to its other faults addressed above, the Appellate Division's decision went an additional step too far.

Not content to confine its disagreement with the Third Circuit to that court's interpretation of the Arbitration Statute, the Appellate Division purported to opine on the contractual arbitration rights of the parties in Mount Prospect under **GEICO's** DPR Plan, going so far as to suggest that **GEICO** was not obligated to arbitrate its IFPA claim under its arbitration clause. PetAppx40-41. This is dicta and carries no force and effect. See GEICO v. Mount Prospect Chiropractic Ctr., P.A., No. 22-cv-00737, 2025 WL 2218218, at *7 (D.N.J. Aug. 5, 2025) (recognizing on remand in Mount Prospect that the panel's comments on GEICO's DPR Plan are dicta). The Appellate Division was wrong to include such a charged comment, with its clear potential to sow confusion, and purport to reach a matter well beyond its purview.

The Court should either expressly disavow that dicta or, at minimum, make clear that the Appellate Division's comments were dicta and that it expresses no view on the merits of the contractual arbitration in Mount Prospect, a matter of ongoing litigation not within this court system.

First, the parties in Mount Prospect are not parties to this case. It is fundamental that a "court cannot adjudicate the rights of parties who are not before the court." Gotlib v. Gotlib, 399 N.J. Super. 295, 314 (App. Div. 2008); accord Provident Tradesmens Bank & Tr. Co. v. Patterson, 390 U.S. 102, 122 (1968) (explaining "no Court can adjudicate directly upon a person's right, without the party being either actually or constructively before the Court"). Thus, the Appellate Divisions's *obiter dictum* on the contractual rights of GEICO and the defendants in Mount Prospect is a nullity and, importantly, unnecessary to this case that concerns Allstate.

Second, GEICO's DPR Plan and arbitration clause are not before the Court. The sweeping arbitration clause in GEICO's DPR Plan is extraordinarily different than the one in Allstate's DPR Plan. Certainly, the full scope of that clause is not in the record here. Suffice it to say, its language is very broad from the Third Circuit's analysis of it. See Mount Prospect, 98 F.4th at 470-71. But, in this matter, a court in the Appellate Division's shoes cannot interpret a contract when it is not in a position to know its contents. See Zamboni v. Stamler, 199 N.J. Super. 378, 383 (App. Div.

1985) (explaining courts do not "decide a case based upon facts which are undeveloped or uncertain"); Second Reformed Church v. Bd. of Adjustment of Bor. of Freehold, 30 N.J. Super. 338 (App. Div. 1954) ("It is error to rest a decision on matters not appearing in the record.").

It is well recognized that parties can contract to arbitrate claims, including statutory claims, which even the court acknowledged. (PetAppx38 ("Private parties can negotiate arbitration agreements and waive their right to a jury trial, including for statutory claims.")). Indeed, the Appellate Division in Fiouris, 395 N.J. Super. at 161, explained that its conclusion about the Arbitration Statute "does not preclude the insured and insurer from voluntarily agreeing to arbitrate this issue." The Third Circuit, which had both GEICO's arbitration clause and the requisite parties before it, interpreted the specific arbitration clause, and conclusively opined on those parties' rights. Mount Prospect, 98 F.4th at 470-71. There was no reason for the Appellate Division here to take the extra, unnecessary step of opining, in dicta, on contractual arbitration rights irrelevant to this case.

Also not to be overlooked, GEICO affirmatively moved in 2023 — prior to the Mount Prospect decision — to compel arbitration of a four named-plaintiff putative class action complaint under its own DPR Plan arbitration clause and the Arbitration Statute, which a federal court granted after Mount Prospect was issued. Rueda v. GEICO, No. 23-cv-10174, at ECF 19 (D.N.J. May 31, 2024). GEICO

specifically moved to compel arbitration in Forthright. Brief of GEICO, Rueda v. GEICO, No. 23-cv-10174, ECF 14 at 4 n.3, 7, further demonstrating the general understanding that PIP-related disputes belong in arbitration.

For the benefit of the parties, other courts and counsel, the Court should eliminate confusion over the Appellate Division's dicta and either disavow the dicta or, at the very least, make clear that that the Court expresses no view on the propriety of the court's dicta vis-à-vis the contractual arbitration rights under an arbitration clause not before the Court.

CONCLUSION

The Court should reverse the Appellate Division and reinstate the trial court's order compelling arbitration. The Court should hold that the broad Arbitration Statute covers Allstate's IFPA, RICO, and other claims because they are disputes over Defendants' recovery of PIP benefits. Mount Prospect was correct. Insurers' non-statutory text-driven arguments are better addressed to the Legislature if insurers want a different scheme. In the meantime, however, Allstate has to arbitrate its claims instead of trying to circumvent the statute.

Respectfully submitted,

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