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.

PETITIONER CARTERET COMPREHENSIVE'S SUPPLEMENTAL BRIEF TO THE NEW JERSEY SUPREME COURT

Jeffrey Randolph, Esq. (038221996)
Anna Skowronska, Esq. (018142010)
LAW OFFICE OF JEFFREY RANDOLPH, LLC
139 Harristown Road, Suite 205
Glen Rock, New Jersey 07452
(201) 444-1645 / jrandolph@jrlaw.net
Counsel for the Carteret Defendants

Dated: October 2, 2025

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PRELIMINARY STATEMENT

This matter concerns a question of high public importance and a divergence of decisions by a number of different courts, both state and federal. The Third Circuit Court of Appeals in a unanimous decision reviewed the legislative history of the New Jersey No-Fault statutory scheme, interpreted case law at length, and determined that the No-Fault arbitration statute was broad enough to encompass New Jersey Insurance Fraud Prevention Act and New Jersey Civil RICO claims. The trial judge in this matter, as well as multiple trial judges in related matters, all concurred with the Third Circuit Court of Appeals. The New Jersey Appellate Division is the sole outlier, adopting a position that contradicts the Third Circuit of Appeals, consistent trial-level rulings, and the Legislature's clear intent in 1998 to require all No-Fault disputes to proceed to arbitration.

Multiple considerations led the Legislature in 1998 to restructure the No-Fault system and require arbitration as the exclusive forum for resolving disputes. First, it would promote New Jersey's strong public policy favoring arbitration and lessen the burden on our courts from these disputes. The Legislature also envisioned creating a team of expert arbitrators in the field of No-Fault laws, fraud, billing and coding issues. During its 1998 hearings, the Legislature unequivocally affirmed that the responsibility for identifying

and prosecuting insurance fraud lies not with private insurers, but with public authorities—specifically, county prosecutors working in tandem with a newly established enforcement arm within the Department of Banking and Insurance: the Office of the Insurance Fraud Prosecutor ("OIFP"). To further this mandate, the OIFP created a dedicated subdivision, the Bureau of Fraud Deterrence ("BFD"), tasked with advancing the State's fraud prevention and enforcement efforts.

Administrative inconvenience cannot justify judicial revision of a statute whose meaning is clear. Yet that is precisely what the Appellate Division did here, warranting reversal.

LEGAL ARGUMENT

I. The IFPA and Civil RICO Claims In This Matter Belong in No-Fault Arbitration Pursuant to AICRA and Allstate's Opting In to the Arbitration System.

This case is about the novel question of whether an insurer's IFPA, RICO, and related claims are subject to arbitration under the 1998 AICRA arbitration statute. The Third Circuit unanimously and unequivocally 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"). Judge Rafano and trial judges in other similar matters concurred. The Appellate Division here said "No." (C.C.Da10-42).

While the Appellate Division's reasoning might have held up under the pre-AICRA framework, it fails under the controlling statutory regime. The present matter arose well after the Legislature's 1998 enactment of AICRA, which fundamentally restructured the No-Fault system and instituted mandatory arbitration for all disputes. The Appellate Division's interpretation was erroneous, failing to adhere to the plain language of the post-1998 AICRA amendments and disregarding the Legislature's clearly articulated intent underlying its statutory scheme.

A. The Legislative Intent of AICRA Was to Arbitrate No-Fault Disputes and Delegate Prosecution of Fraud and RICO Claims to the Prosecutors and Office of the Insurance Fraud Prosecutor.

Although No-Fault arbitrations have been statutorily mandated since 1983, in 1998 the Legislature undertook a sweeping review of the entire statutory scheme, which to date, had failed to reign in increasing premiums, increased cost of medical services, and insurance fraud. The original framework, "No-Fault 1.0"[1] was plagued by deficiencies: arbitrations were conducted by part-time panelists, many of whom had recurring conflicts of interest, and who routinely issued perfunctory, check-the-box decisions devoid

[1] The pre-1998 AICRA arbitration system is referred to as "No-Fault 1.0" and the post-1998 amendment system as "No-Fault 2.0." These monikers are for illustrative purposes only.

of reasoning or precedential value.[2] *Committee Meeting of Joint Committee on Automobile Insurance Reform,* Office of Legislative Services, Public Information Office, p.38, 42 (1/5/1998). This framework allowed for troubling role reversals, with the same individuals serving as advocates for insurers or medical providers in one proceeding, only to preside as a purportedly neutral arbitrator on similar matters in another proceeding. *Committee Meeting of Joint Committee on Automobile Insurance Reform,* Office of Legislative Services, Public Information Office, p.26-27 (1/22/28).

In 1998, the Legislature conducted extensive hearings over multiple days, engaging a broad range of stakeholders, including representatives from the insurance industry, to examine the systemic shortcomings in No-Fault dispute resolution. The prior arbitration framework, along with civil enforcement under the NJIFPA, had proven inadequate in curbing rising costs and addressing pervasive fraud. In response, the Legislature enacted the AICRA amendments, incorporating targeted reforms designed to remedy these deficiencies and establish a more effective, streamlined

[2] Petitioners submit the Court may take judicial notice of Legislative Hearings pursuant to *N.J.R.E.* 201 and 202. R.202 permits appellate courts in their discretion to take judicial notice of any matter specified in R.201 whether or not judicially noticed by the trial judge. R.201 permits judicial notice of " . . . private legislative acts and resolutions of . . this state as well as ordinances, regulations, determinations of all governmental subdivisions and agencies thereof."

arbitration system.

In keeping with New Jersey's strong public policy favoring arbitration, the Legislature enacted a modernized framework—"No-Fault 2.0"—through the 1998 AICRA amendments. These reforms replaced the prior system of part-time arbitrators, often burdened by conflicts of interest, with a dedicated panel of full-time, neutral dispute resolution professionals entrusted to serve as the State's leading authorities on No-Fault disputes. To ensure transparency and accountability, the Legislature also required that arbitration awards be fully reasoned, reflecting substantive analysis rather than perfunctory conclusions. See, N.J.A.C.11:3-5.6(d)("Determination by the dispute resolution professional shall be in writing and shall state the issues in dispute, the DRP's findings and legal conclusions based on the record of the proceedings and the determination of the medical review organization, if any. . . .").

The Legislature's 1998 enactment of "No-Fault 2.0" established a comprehensive and robust alternative dispute system designed to adjudicate all aspects of first-party claims - including those involving fraud. To safeguard against abuse and ensure procedural integrity, the statutory scheme incorporated multiple anti-fraud mechanisms: i) Care Path Protocols to govern permissible treatment; ii) mandatory pre-certification

of treatment; iii) multi-tiered internal appeals preceding arbitration; iv) peer reviews by independent Medical Review Organizations; v) designation of diagnostic testing networks; vi) prohibitions against billing for scientifically unsupported procedures; and v) a statutory right of appeal to the Superior Court within forty-five days of an arbitration award, pursuant to N.J.S.A.§2A:23A-13. The arbitration forum was accessible to patients, providers acting under valid assignments of benefits, and insurance carriers alike. See, N.J.A.C.11:3-5.6(a) ("A request for dispute resolution of a PIP dispute may be made by the injured party, the insured, a provider who is an assignee of PIP benefits pursuant to N.J.A.C.11:3-4.9 or the insurer, in accordance with the terms of the policy as approved by the Commissioner.")

The newly appointed full-time arbitrators were intended to serve as experts in No-Fault law – professionals deeply versed in the governing statutes and case law. They were strictly prohibited from maintaining *any* conflicts of interest and the Legislature established rigorous standards for their qualifications:

> (a) A dispute resolution professional employed by the dispute resolution organization shall be either: 1. An attorney licensed to practice in New Jersey with at least 10 years of experience in cases involving personal injury or workers' compensation; 2. A former judge of the Superior Court or the Workers' Compensation

> Court, or a former Administrative Law Judge; or 3. Any other person, qualified by education and at least 10 years' experience, with sufficient understanding of automobile insurance claims and practices, contract law, and judicial or alternate dispute resolution practices and procedures.

N.J.A.C.11:3-5.5 (1998).

Unlike trial judges, who must navigate a broad spectrum of cases daily, from routine contract disputes to complex commercial litigation, No-Fault arbitrators focus exclusively on No-Fault matters. This singular specialization enables them to develop deep expertise in the statutory framework, case law, and regulatory nuances governing these disputes. While the Appellate Division may have correctly recognized that the original No-Fault system, with its part-time arbitrators and perfunctory, non-precedential decisions, was ill-equipped to address fraud claims, that assessment does not hold under the current framework. The enhanced "No-Fault 2.0" system, established through the 1998 AICRA amendments, features a full-time panel of neutral arbitrators and robust procedural safeguards, rendering it fully capable of adjudicating even complex fraud allegations.

The full-time arbitrators envisioned by the Legislature have, in practice, become the subject-matter experts they were intended to be—consistently adjudicating all facets of No-Fault disputes, including complex

allegations of fraud. This role was expressly contemplated during the 1998 legislative hearings. For example, in a hearing on auto insurance reform, Assemblyman Charles questioned an Allstate representative about a fraud scenario involving a physician billing for services rendered in New Jersey while the doctor was out of state. The representative confirmed that such matters were addressed within the arbitration forum, and that Allstate had the opportunity to present supporting evidence in that venue. *Committee Meeting of Joint Committee on Automobile Insurance Reform,* Office of Legislative Services, Public Information Office, p.46-47 (1/5/1998). Further supporting the Legislature's clear expectation that fraud claims would be resolved through the enhanced arbitration process, the Forthright publicly available database of arbitration decisions indicates that there are 1,310 arbitration decisions that cite the "Fraud Prevention Act" and 22,388 decisions that reference "Fraud." (www.nj-no-fault.com/decisions).

Recognizing, however, that certain cases of egregious fraud might exceed the practical bounds of arbitration, the Legislature proactively addressed this concern by establishing a statutory mechanism to ensure such matters could be escalated and appropriately resolved. The 1998 AICRA amendments established, for the first time, the Office of Insurance Fraud Prosecutor ("OIFP") within the NJDOBI, an enforcement entity that

did not previously exist. *New Jersey Office of the Insurance Fraud Prosecutor*, 2018 Annual Report, p.4. ("In 1998, the New Jersey State Legislature passed the New Jersey Automobile Insurance Cost Reduction Act, thereby creating OIFP and promulgating its enabling legislation. OIFP's mission is to conduct full and fair investigations to ensure successful criminal prosecutions, *civil adjudications*, licensing sanctions, or other appropriate dispositions involving all insurance fraud.")(emphasis added). As of 2018, the OIFP reported a decade of enforcement achievements, including 5,411 referrals; 300 criminal cases investigated; $9.7 million in court-ordered restitution; and $4.4 million in forfeitable assets seized. Id. The OIFP also administered targeted grants—each totaling $250,000—to county prosecutors' offices to support coordinated anti-fraud initiatives. Id.

The OIFP also emphasized in its 2018 report the civil enforcement actions it pursued under the NJIFPA. In coordination with county prosecutors' offices, the OIFP opened a "substantial number" of civil insurance fraud investigations under the NJIFPA which were investigated by BFD investigators. Id. These actions reflect the Legislature's intent to empower the OIFP as a central mechanism for combating insurance fraud across multiple forums. The 1998 AICRA amendments also legislatively

authorized the OIFP to reimburse county prosecutors for their efforts in investigating and prosecuting insurance fraud. As of December 31, 2018, the OIFP had disbursed a cumulative total of $64,580,844 to county prosecutors for their efforts. Id. In its reporting, the OIFP highlighted that it was the Legislature's clear intent to centralize and coordinate anti-fraud enforcement – vesting that responsibility in the OIFP rather than private insurers:

> "In crafting the Insurance Fraud Prevention Act ("IFPA"), the New Jersey Legislature recognized the critical importance of coordinating the diverse activities of the many public and private entities in New Jersey that are involved in combating all aspects of insurance fraud. The IFPA effectively *mandates* the consolidation and coordination of a variety of fraud fighting functions under the umbrella of the OIFP. . . . In New Jersey, the work of investigating and prosecuting violators of New Jersey insurance fraud laws falls on two agencies: The Office of the Insurance Fraud Prosecutor (OIFP) in the Division of Criminal Justice in the Department of Law and Public Safety and the Bureau of Fraud Deterrence (BFD) in the Department of Banking and Insurance. OIFP handles the criminal complaints, while the BFD handles *civil* complaints. . . OIFP was created by the Automobile Insurance Cost Reduction Act of 1998 and originally tasked with investigating and prosecuting both *civil* and criminal insurance fraud complaints. OIFPs mission changed in 2010 when civil investigative responsibilities were transferred to the newly formed BFD in DOBI.

New Jersey Office of the Insurance Fraud Prosecutor, 2018 Annual Report. (emphasis added).

Pursuant to the 1998 AICRA amendments, the BFD within NJDOBI

was expressly tasked with addressing major insurance fraud—both civil and criminal—under the NJIFPA. This responsibility was not delegated to private insurance carriers. Indeed, the OIFP's ten-year annual report contains no reference to insurers as critical participants in civil fraud investigations. To the contrary, the report affirms the Legislature's intent to centralize and coordinate all civil anti-fraud enforcement within the BFD, reinforcing a public, rather than private, enforcement model. The quasi-criminal remedies enacted through the 1998 AICRA amendments further underscore the Legislature's intent to centralize and strengthen civil fraud enforcement under the NJIFPA.

Notably, N.J.S.A.§39:6A-15 authorizes the New Jersey Motor Vehicle Commission to suspend the driving privileges of any individual found civilly liable for insurance fraud for a period of up to one year. See, N.J.S.A.§39:6A-15 (1998). This amendment, added to Title 39 as part of the AICRA reforms, reflects the Legislature's recognition that insurance fraud poses a serious public threat warranting meaning deterrence. It also reinforces the delegation of civil fraud enforcement to the OIFP and BFD, not to private insurers. The 1998 AICRA amendment added the following provision to Title 39:

> In addition to any penalties imposed by law, any person who is either found by a court of competent jurisdiction to have violated any provision of P.L.1983 c.320 (C.17:33A-1 et seq.) pertaining to automobile insurance or been convicted of any violation of Title 2C of the New Jersey Statutes arising out of automobile insurance fraud based on a claim for damages arising out of a motor vehicle accident shall not operate a motor vehicle over the highways of this State for a period of one year from the date of judgment or conviction.

N.J.S.A.§39:6A-15 (L.1972, c.70, s.15; amended 1973, c.298; 1997, c.151, s.9; 1998, c.21, s.19; 2003, c.89, s.58; 2019, c.276, s.16).

The Legislature clearly did *not* intend to delegate to private insurance companies the governmental power to restrict an individual's driving privileges, an essential privilege, through civil litigation. Prosecution of penalties under Title 39, including suspension of driving privileges, falls squarely within the exclusive domain of governmental agencies and subdivisions. This statutory framework reinforces the conclusion that insurers who opted into the post-AICRA arbitration system cannot simultaneously pursue Superior Court civil remedies seeking such sanctions. The power to impose quasi-criminal penalties remains the prerogative of governmental entities, not private companies.

Respondents have correctly alleged that NJDOBI and its subdivisions cannot be mandated to arbitrate fraud claims. That exemption, however, does not extend to private insurance companies such as Allstate. Under the

NJIPFA, the OIFP has a distinct private cause of action pursuant to Section 7, codified at N.J.S.A.§17:33A-7(1998). This is contrasted with Section 5 of the NJIFPA, which provides a separate private cause of action for insurers (N.J.S.A.§17:33A-5(1998)).

The 1998 AICRA amendments established mandatory arbitration for No-Fault disputes and provided insurance carriers with a clear choice – opt in to the arbitration system and thereby waive their Section 5 private cause of action in court or opt out and preserve that right. Allstate elected to opt in by obtaining NJDOBI approval of its Decision Point Review Plan, which expressly required arbitration. As a result, Allstate relinquished its ability to pursue a private cause of action under Section 5 for No-Fault claims. This waiver, however, is limited in scope. It does *not* preclude Allstate, or any other insurer, from pursuing Section 5 civil litigation for insurance fraud arising outside the No-Fault context. Thus, carriers retain full access to the Superior Court for claims involving workers' compensation fraud, property damage fraud, homeowners' insurance fraud, and other non–No-Fault matters. By opting into the No Fault arbitration system, insurers agreed to adjudicate only No-fault claims, including those involving fraud, within an alternate venue and did not surrender the entirety of their Section 5 rights.

Critically, the establishment of the mandatory No-Fault arbitration system did *not* impact the OIFP's authority to pursue a separate private cause of action under Section 7 of the NJIFPA. That statutory authority is preserved to this day confirming that NJDOBI, OIFP and the BFD are not subject to mandatory arbitration and have independent authority to file civil lawsuits under Section 7. By contrast, private insurers such as Allstate, having opted into the post-AICRA system, are now required to adjudicate their Section 5 claims arising from No-Fault disputes in the No-Fault arbitration venue.

Allstate further argues that remanding these matters to arbitration will preclude it from obtaining an appropriate remedy. That assertion is incorrect on multiple grounds. First, neither the governing statutes nor applicable regulations impose any limitation on arbitrators' authority to find patterns of fraudulent conduct and awarding corresponding damages. The New Jersey Arbitration Act ("NJAA") specifically grants broad powers to arbitrators to award damages:

> a. An arbitrator may award punitive damages or *other exemplary relief if such an award is authorized by law in a civil action involving the same claim* and the evidence produced at the hearing justifies the award in accordance with the legal standards otherwise applicable to the claim. . . .

> c. As to all remedies other than those authorized by subsections a. and b. of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding…..

N.J.S.A. §2A:23B-21(emphasis added). Accordingly, the NJAA expressly authorizes No-Fault arbitrators to render awards consistent with the remedies authorized under the NJIFPA including treble damages, attorneys' fees and costs. This statutory authority reinforces the sufficiency of the arbitration forum to adjudicate fraud claims and provide meaningful relief.

As with other arbitration awards, if Allstate prevails on a fraud claim in the No-Fault arbitration forum, it may reduce the award to judgment by filing a summary action pursuant to N.J.S.A. §2A:23B-22 and proceed with collection efforts. Additionally, arbitrators are empowered to order credits toward future claims, enabling insurers like Allstate to offset future claims and recover awarded damages. Second, the NJIFPA authorizes the Commissioner of NJDOBI to order the payment of restitution to any insurance company or individual who has suffered a loss as a result of an NJIFPA violation. See, N.J.S.A.§17:33A-5c. These provisions confirm that multiple remedies are available even in the arbitration forum to penalize fraudulent conduct.

In conclusion, when Allstate opted into the mandatory arbitration system following the 1998 AICRA amendments, as a consequence, they no longer maintain the right to a private cause of action under Section 5 of the NJIFPA. This has no bearing on the independent right to file civil fraud suits by NJDOBI and its subdivisions under Section 7 of the NJIFPA.

II. The Right to A Jury Trial under the NJIFPA Does Not Preclude Remanding to Arbitration as Allstate Has Not Requested a Jury Trial and Allstate Waived Their Section Five NJIFPA Right to Litigate in Superior Court When It Opted-In to the Mandatory Arbitration System.

Parties who enter into binding arbitration agreements knowingly and voluntarily waive their right to adjudicate disputes in the court system, including any right to a jury trial that may otherwise attach. In this case, Allstate's decision to opt into the mandatory No-Fault arbitration system established by the 1998 AICRA amendments constituted Allstate's knowing and voluntary waiver of its right to pursue Superior Court actions under Section 5 of the NJIFPA. That waiver necessarily included the relinquishment of any jury trial rights that may attach thereto.

Allstate's reliance on the New Jersey Supreme Court decision in Allstate v Lajara, 222 *N.J.* 129 (2015), to argue against remand to arbitration is misplaced. While Lajara recognized a constitutional right to a jury trial under the NJIFPA, that right is not absolute and may be

knowingly and voluntarily waived. Here, two critical facts undermine Allstate's position. First, neither Allstate nor petitioners have requested a jury trial in this case. Second, Allstate knowingly, intelligently and voluntarily waived its right to a jury trial by opting into the mandatory No-Fault arbitration system established by the 1998 AICRA amendments.

A. There is No Jury Demand in the Present Matter.

Allstate did not request a jury trial in its complaint. (C.C.Da.100). The Petitioners in this matter did not file responsive pleadings and instead moved to dismiss in lieu of an answer, a motion that was granted by the trial judge. As a result, no jury demand exists of record from either party. Accordingly, any argument concerning Allstate's constitutional right to a jury trial is moot in this matter making Allstate's argument that the Allstate v. Lajara decision precludes arbitration of this matter is without merit.

B. Allstate Waived Their Right to Proceed in Superior Court Under Section 5 of the NJIFPA.

There is a strong judicial preference to enforce arbitration agreements, both at the state and federal level. Hirsch v. Amper Fin. Servs., LLC, 215 *N.J.* 174, 186 (2013) (*citing* Hojnowski v. Vans Skate Park, 187 *N.J.* 323, 341-42 (2006)). Indeed, "the affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving

disputes." Flanzman v. Jenny Craig, Inc., 244 *N.J.* 119, 133 (2020) (quoting Martindale v. Sandvik, Inc., 173 *N.J.* 76, 92 (2002)).

While it is acknowledged that New Jersey has a long-standing policy of protecting the right to access its courts, the Supreme Court has held that this right can be waived, provided that the waiver is knowing, intelligent and voluntary. Mazdabrook Commons Homeowners' Ass'n v. Khan, 210 *N.J.* 482, 505 (2012). "Waiver is the voluntary and intentional relinquishment of a known right." Knorr v. Smeal, 178 *N.J.* 169, 177 (2003). Waiver can be explicitly asserted, or it may be inferred from a party's conduct. Ibid.

In the present matter, Allstate's amendment of its Decision Point Review Plan and assignment of benefits form to mandate arbitration of all No-Fault Disputes was a clear knowing, intelligent and voluntary waiver of Allstate's right to pursue civil litigation under Section 5 of the NJIFPA:

> **ASSIGNMENT OF BENEFITS**
> 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:
>
> a. Fully comply with ANJ/ANJP&C Decision Point Review Plan, including pre- certification requirements, …
>
> c. Utilize the "internal appeals process" which shall be a condition precedent to the filing of a demand for alternative dispute resolution for any issue related to bill payment, bill processing, Decision Point Review Request or Precertification

> request, . ..
> *d. Submit disputes to alternative dispute resolution pursuant to N.J.A.C. 11:3 ...*

(C.C.Da.138)(emphasis added). Based upon this valid binding arbitration agreement, health care providers receive an Assignment of Benefits of the Automobile Insurance policy from their patients/Allstate insureds and are mandated to arbitrate all of their claim disputes with the New Jersey arbitration forum, Forthright Solutions. See, N.J. Coalition of Healthcare Providers v. NJDOBI, 348 *N.J. Super.* 242 (App. Div. 2002) ("Because a provider, with a valid assignment, is bound by the same rights and remedies as an insured, the provider can be similarly bound to submit a PIP dispute to dispute resolution."). Likewise, by choosing mandatory arbitration, Allstate is bound by their own contractual agreements to resolve all disputes with the New Jersey arbitration forum, Forthright Solutions.

Allstate's conduct reflects a conscious choice by a sophisticated, multi-billion-dollar insurance company to relinquish its right to litigate No-Fault disputes in court and instead resolve such matters through binding arbitration. This decision was not incidental or obscured, it was strategic. By opting into the arbitration system, Allstate stood to benefit from avoiding long and costly Superior Court litigation, reducing expenses including fees and costs, and streamlining its No-Fault claim business.

This is not a situation where an arbitration clause is buried in fine print on page twenty of a lengthy contract. Rather, Allstate's election was knowingly and voluntarily memorialized in its DPR Plan, a contractual agreement with its insureds, and further reinforced through the Assignment of Benefits forms executed by healthcare providers who step into the shoes of the insured under the DPR Plan. Allstate's voluntary participation in the arbitration system carries legal consequences – including waiver of its right to pursue No-Fault claims in court and request a trial by jury.

As discussed supra, the waiver is discrete and limited to a private insurance company which in no way undermines or restricts the rights of NJDOBI and its subdivisions to bring civil actions under Section 7 of the NJIFPA, nor does it affect the ability of county prosectors to bring criminal actions. Likewise, private insurers retain the right to bring civil actions under the NJIFPA for fraud arising outside the No-Fault context, including homeowners' insurance fraud, workers' compensation fraud, property damage fraud, and other categories of insurance fraud.

In conclusion, Allstate knowingly, intelligently, and voluntarily waived their right to pursue Superior Court claims under Section 5 of the NJIFPA when they opted into the arbitration system and amended their DPR Plan and AOB to mandate arbitration of all disputes.

III. The Appellate Division Rationale for Rewriting AICRA Is Not Supported by Law

The Appellate Division's primary rationale in its decision to reverse the trial court's determination of arbitrability rested upon the testimony from the NJDOBI and the Attorney General suggesting that the No-Fault system was not designed to handle fraud cases. However, administrative limitations in implementation cannot justify judicial revision of a clear statutory scheme. The Legislature expressly established a mandatory arbitration system for No-Fault disputes—including those involving fraud—and equipped it with the procedural and institutional capacity to handle such claims. The court's reliance on administrative testimony to override legislative intent is therefore misplaced and legally unsound.

The arbitration venue in general has handled the most comprehensive and complex types of litigation for years – class actions. The American Arbitration Association promulgated specific Class Action Arbitration Rules and has been adjudicating such claims for years. See, AM. ARBITRATION ASS'N, SUPPLEMENTARY RULES FOR CLASS ARBITRATION (2003), www.adr.org (amended & effective April 1, 2024)[3].

[3] The Rules were promulgated following the U.S. Supreme Court decision in Green Tree Financial Corp. v. Bazzle, 539 *U.S.* 444 (2003), and were modeled after Rule 23 of the Federal Rules of Civil Procedure.

In Mitsubishi Motor Corp. v. Soler Chrysler-Plymouth, Inc., 473 *U.S.* 614 (1985), the United States Supreme Court affirmed the strong presumption in favor of arbitration and enforced an agreement requiring arbitration of antitrust claims arising from an international transaction. The Court found that arbitrators are well positioned to resolve matters requiring special expertise and that arbitration is appropriate in asserting the statutory claims under the Sherman Antitrust Act. The Court found that "(h)aving made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." Id. at 628. If a complex class action matter raising antitrust issues under the Sherman Antitrust Act can be adjudicated in arbitration with sufficient due process, so can a complex fraud matter. If necessary, Forthright may utilize these already existing AAA Class Action arbitration procedures and rules as a guideline for its No-fault arbitration system.

The position set forth by the NJDOBI and the Attorney General that the Forthright arbitration system cannot handle an influx of fraud cases is a red herring and lacks merit. As stated above, arbitrators already adjudicate thousands of arbitrations where fraud is an issue. Further, the New Jersey No-Fault arbitration system is self-funded by the users of the

system. Claimants pay filing fees to Forthright ranging from $200.00 to $270.00 per case and Respondents also pay fees in the same dollar range, for a total of $400.00 to $500 per arbitration. Even assuming, hypothetically, that adjudicating fraud claims in arbitration would generate an additional 10,000 filings annually, in the resulting $4,000,000.00 - $5,000,000.00 in *additional* filing fees would create a revenue-neutral opportunity for the State of New Jersey. These user-funded resources could be directed to hire more arbitrators, hire additional case administrators, and invest in capital upgrades including advanced technologies such as artificial intelligence to support efficient adjudication.

Moreover, Forthright could implement a separate "Fraud Track" modeled after the American Arbitration Association's class action procedures. This track could feature enhanced filing fees, tailored procedural rules and a designated panel of highly experienced arbitrators to ensure consistent and expert resolution of complex fraud matters. The system is not only capable of absorbing increased volume – it is structurally positioned to evolve and meet the demands of fraud adjudication.

In conclusion, the claim by NJDOBI and the Attorney General that the arbitration system cannot handle fraud claims fails to withstand scrutiny and therefore is without merit.

CONCLUSION

In 1998, the Legislature gave every No-Fault carrier a clear choice: opt in to the enhanced No-Fault arbitration system created by AICRA or remain in the court system. Virtually all carriers, including Allstate, knowingly and voluntarily opted in, drawn by the promise of prompt adjudication, reduced costs, and efficiency. That election came with consequence. Allstate embraced the arbitration framework in full, without reservation or carve-out for a private cause of action under Section 5 of the NJIFPA. It cannot now seek judicial relief for No-Fault fraud claims while continuing to benefit from the arbitration system it chose.

There are two simple remedies available to Allstate, neither of which involves the judicial branch rewriting a clear and unambiguous statute. First, Allstate may opt out of the arbitration system and thereby reclaim its Section 5 right to litigate No-Fault fraud claims in court. Second, the Legislature, not the Court, may amend AICRA and/or the NJIFPA to create an express carve-out for carriers who wish to pursue fraud claims in Superior Court while remaining in arbitration for other disputes. But it is not the role of the judiciary to rewrite the statute to accommodate Allstate's preferences.

Judge Rafano correctly applied the law and declined to legislate from the bench. The Third Circuit Court of Appeals concurred in its precedential decision in *Mt. Prospect*, recognizing that someone must adjudicate No-Fault disputes, including those involving fraud. The only question is whether that burden should fall on the already strained judicial system or on the Legislature's designated experts in arbitration. Given New Jersey's strong public policy favoring arbitration, the express statutory terms, and the legislative intent of ACIRA, the answer is clear, it must be the latter.

Respectfully submitted,

/s/ Jeffrey Randolph, Esq.
Jeffrey Randolph (038221996)
/s/ Anna Skowronska, Esq.
Anna Skowronska (018142010)
LAW OFFICE OF JEFFREY RANDOLPH, LLC
139 Harristown Road, Suite 205
Glen Rock, New Jersey 07452
(201) 444-1645
jrandolph@jrlaw.net / annas@jrlaw.net
Counsel for the Carteret Defendants