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-Respondents,

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., and SHANTI EPPANAPALLY, M.D.,

Defendants-Petitioners.

PLAINTIFFS-RESPONDENTS' RESPONSE TO DEFENDANTS-PETITIONERS' SUPPLEMENTAL BRIEFS

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Plaintiffs-Respondents (Plaintiffs) respectfully submit this brief in response to Defendants-Petitioners' (Defendants) supplemental briefs.[1]

ARGUMENT

I. The Court should read section 5.1(a) in context, not in isolation.

Defendants maintain that whether they fraudulently obtained PIP benefits from Plaintiffs is a dispute "regarding the recovery of [PIP] benefits," N.J.S.A. 39:6A-5.1(a), by interpreting that phrase without regard to the surrounding provisions that give it context. See Ssb5-8. As explained in Plaintiffs' supplemental brief, however, a textual interpretation must be a contextual one. See Psb5. "'Words in a statute should not be read in isolation,' and [the Court] 'must consider the context' of the language used." In re Proposed Constr. of Compressor Station (CS327), 258 N.J. 312, 325 (2024) (emphasis added) (quoting Shelton v. Restaurant.com, Inc., 214 N.J. 419, 440 (2013)).

Take an example of why context is required for an accurate interpretation. If one were to say, "I am going to the store; any store will do," a listener hearing only that statement might believe that the speaker intends to go to any store

[1] Plaintiffs' supplemental brief is referred to as "Psb." The Sood Defendants' supplemental brief is referred to as "Ssb." The Carteret Defendants' supplemental brief is referred to as "Csb." DOBI and the OIFP's amicus brief to this Court is referred to as "Dab." Plaintiffs' supplemental response appendix is referred to as "Psra." The other abbreviations have the same meaning as in Plaintiffs' supplemental brief.

regardless of what it sells. But if the listener were aware that, before making the statement, the speaker also said, "I have no food in the house," the listener would understand that the speaker intends to go to any grocery store, not any type of store generally. A listener seeking to understand the speaker's intent would, of course, pay attention to both statements.

The correct approach to statutory interpretation here is no different. The Court's task is to "effectuate the Legislature's intent," In re Proposed Constr., 258 N.J. at 324 (internal quotation marks omitted), and it cannot do so by reading section 5.1(a) without regard to the other statements that the Legislature made in the surrounding statutory provisions. The no-fault laws function as a whole, not disassociated parts. See Psb7-15. And section 5.1(a) cannot be read as if it were a contractual arbitration clause. Although contractual "arbitration agreements are severable from the rest of the contract," Goffe v. Foulke Mgmt. Corp., 238 N.J. 191, 209 (2019), statutory dispute-resolution provisions must be interpreted as part of a unified statutory scheme.

Read in context, section 5.1(a) can only be interpreted to provide a means to resolve disputes about whether PIP benefits are due to the insured or assignee. That interpretation is also consistent with the meaning of "recovery of benefits" in the insurance field, preserving the statute's constitutionality, and application of other canons of statutory interpretation. See Psb6-7, 15-24.

The Mount Prospect court did not apply those principles because it was not asked to do so. Like the listener who did not know about the speaker's clarifying statement in the example above, the Third Circuit was not informed of the technical meaning of section 5.1(a)'s terms, the statutory context, or application of the canons of interpretation. See Pra044-049, 104-110, 168-172 (Mount Prospect briefing). Nor did it have the benefit of this Court's decision in Rodriguez v. Shelbourne Spring, LLC, 259 N.J. 385 (2024),[2] the views of the state agencies charged with implementing and enforcing the no-fault laws, or the Appellate Division's reasoning. That lack of information led the Third Circuit astray, so much so that it incorrectly believed that PIP Arbitration is like contractual arbitration and that the AAA Commercial Arbitration Rules apply. See Gov't Emps. Ins. Co. v. Mount Prospect Chiropractic Ctr., P.A., 98 F.4th 463, 469 (3d Cir. 2024).

As the Third Circuit acknowledged, it was merely predicting how this Court would interpret the statute. Id. at 467. This Court has the final say on matters of state law, without deference to the Third Circuit, which based its ruling on limited arguments and a clear misunderstanding.

[2] The Sood Defendants are wrong that Rodriquez is irrelevant because it interpreted a workers' compensation policy. See Ssb14. The Court held that a claim for tort damages is not a claim for the recovery of benefits under an insurance policy. 259 N.J. at 400. Because "recovery of benefits" as used in section 5.1(a) should be interpreted as used in the insurance field, see Psb6-7, Rodriquez is directly on point.

II. Defendants' policy arguments against the Appellate Division's interpretation fail.

The Sood Defendants incorrectly argue that continuing to allow insurers to sue medical providers and their co-conspirators for fraud would undermine AICRA's goals. See Ssb8-15.

The Sood Defendants misconstrue the Legislature's purpose in AICRA. PIP Arbitration is intended to remove benefit payment disputes from the courts, not affirmative fraud claims. The cases that the Sood Defendants cite are pre-AICRA and merely state that the no-fault laws were intended to reduce auto-accident negligence suits and to facilitate prompt benefit payments. See Roig v. Kelsey, 135 N.J. 500, 510 (1994) (stating that "the Legislature intended to eliminate minor personal-injury-automobile-negligence cases from the court system"); Gambino v. Royal Globe Ins. Cos., 86 N.J. 100, 107 (1981) (stating that the no-fault laws should be interpreted to "minimize resort to the judicial process" to avoid "[t]he problem of long delays in obtaining compensation").

No case suggests that the Legislature intended AICRA to prevent insurers from suing for fraud.[3] It would be antithetical to the Legislature's long

[3] The Appellate Division decisions that the Sood Defendants cite, see Ssb6-7, 11-13, concerned whether benefit payments were due, not affirmative fraud claims. See Endo Surgi Ctr., P.C. v. Liberty Mut. Ins. Co., 391 N.J. Super. 588, 592-94 (App. Div. 2007) (holding that no-fault laws provided exclusive remedies for improperly denied PIP benefits); State Farm Ins. Co. v. Sabato, 337 N.J. Super. 393, 396-97 (App. Div. 2001) (holding that whether allegedly false statements during

commitment to combatting insurance fraud to conclude that AICRA eliminated causes of action for PIP-related fraud under the IFPA and RICO, particularly when PIP Arbitration does not allow insurers to obtain any remedies or discovery to prove fraud claims.

The Sood Defendants also argue that the Appellate Division's decision "allows insurance companies to sit back, pay PIP benefits, and eventually aggregate claims to disgorge PIP benefits long after they have been paid." Ssb10. That argument is meritless. First, insurers are unlikely to pay out claims deliberately to medical providers just to be able to later sue for fraud. Private healthcare practices are not Fortune 500 companies with guaranteed assets to collect against, and funds paid by insurers may be quickly dissipated.

Second, trial courts have tools to address such alleged "repackaging" of PIP disputes even if it were likely to occur. The IFPA and RICO contain statutes of limitations, N.J.S.A. 17:33A-7(e); N.J.S.A. 2C:1-6(g), and preclusion doctrines, when applicable, could prevent relitigating issues resolved in PIP Arbitration. Third, aggregating fraudulent benefit claims in one action is consistent with the entire-controversy doctrine and far more efficient than

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examination under oath were a basis to deny benefits was for PIP Arbitration); State Farm Mut. Auto. Ins. Co. v. Molino, 289 N.J. Super. 406, 410 (App. Div. 1996) (holding that whether claimant's estate was entitled to PIP benefits after death of claimant was for PIP Arbitration).

hundreds of separate PIP Arbitrations. Finally, the Sood Defendants' policy arguments are for the Legislature and cannot overcome the overwhelming evidence that PIP Arbitration is intended to resolve benefit payment disputes, not fraud claims.

III. PIP Arbitration does not permit insurers to vindicate fraud claims.

Defendants' arguments that the PIP Arbitration system allows insurers to bring affirmative fraud claims are unsupported and contradicted by DOBI's clear statements.

DOBI has explained three times in this case that PIP arbitrators cannot award remedies to insurers other than denying claims for benefits. See Dab18; DOBI Cert. Opp. Br. 12; DOBI App. Div. Br. 25. Because PIP Arbitration is a product of DOBI's regulatory authority, the Court should defer to DOBI's interpretation of how PIP Arbitration works. See G.C. v. Div. of Med. Assistance & Health Servs., 249 N.J. 20, 40 (2021). There is no basis to conclude that DOBI does not understand the system that it designed and oversees. Moreover, the system established under AICRA has been used since 1998, and the Legislature has not sought to change that use since then.

Defendants do not cite a single case demonstrating that an insurer was able to bring an affirmative fraud claim in PIP Arbitration. The Sood Defendants cite Rueda v. GEICO, No. 23-cv-10174 (D.N.J. May 31, 2024), Ssb22-23, but that

case was brought by a claimant challenging GEICO's underpayment or nonpayment of PIP benefits. See GEICO Mtn. Dism. at 2-4, ECF No. 13-1 (Psra006-008). GEICO specifically noted that affirmative fraud claims are not subject to PIP Arbitration. Id. at 8 n.6; 10-11 n.8 (Psra012; Psra014-015).

The Carteret Defendants claim that they found references to the "Fraud Prevention Act" and "fraud" in Forthright's database of PIP awards. Csb8. But those terms were used when dispute resolution professionals addressed an insurer's reasons for denying payment to the claimant, see Psra019-020; noted that an insurer's IFPA claims were pending in court, see Psra024; recognized that they lacked jurisdiction to resolve IFPA claims, see Psra029-30; or mentioned a provider's obligation to sign a form containing a "Fraud Prevention Warning," see Psra038. The Carteret Defendants' reliance on the New Jersey Arbitration Act is also misplaced. See Csb14-15. That statute states that it does not apply to PIP Arbitration. N.J.S.A. 2A:23B-32.

Implicitly conceding that PIP Arbitration cannot resolve affirmative fraud claims, the Sood Defendants maintain that DOBI can establish a new system. See Ssb17. But a system that can provide the kind of full discovery, claim and party joinder, and capacity to handle large, complex fraud conspiracies, bears no resemblance to the streamlined process that AICRA established. And DOBI could not design a system that would avoid the constitutional problem that

mandatory PIP Arbitration creates. See Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 599-600 (2013) (rejecting argument that state agency could "fix" lack of trial de novo in statute).

Finally, the Carteret Defendants contend that AICRA created the OIFP to assume responsibility for civil fraud claims. Csb10-12. But if that were so, the Legislature in AICRA would have limited insurers' right to sue under the IFPA and RICO when it established the OIFP. That argument also ignores insurers' obligation to establish special investigation units to investigate insurance fraud, N.J.A.C. 11:16-6.4, and OIFP's confirmation that insurers are "the primary enforcers of the IFPA," Dab19.

IV. Insurers do not waive the right to a jury trial on fraud claims by selling no-fault insurance in New Jersey, and Plaintiffs did not waive the right to a jury trial in this case.

Defendants cannot avoid the clear constitutional problem with their interpretation of AICRA by arguing that (1) auto insurers relinquish their right to a jury trial on PIP-related fraud claims by selling policies in New Jersey, and (2) Plaintiffs waived a jury trial in this case. See Ssb17-19; Csb16-20.

First, insurers do not give up their constitutional right to a jury trial on IFPA or RICO claims by selling insurance. Defendants do not cite any authority that tells insurers they trade their right to sue in court for the privilege of selling auto policies. In contrast, when the Legislature creates an alternative to tort

suits, it does so expressly and through participant consent. For example, under the workers' compensation system, "employees relinquish[] their right to pursue common-law remedies in exchange for automatic entitlement to certain, but reduced, benefits." Rodriguez, 259 N.J. at 395 (internal quotation marks omitted). Employees and employers have clear statutory notice that they consent to that arrangement unless they opt out. See N.J.S.A. 34:15-9. The no-fault laws similarly give insureds the choice of a limited right to sue in tort in exchange for PIP benefits at reduced premiums or a full right to sue with higher premiums. See N.J.S.A. 39:6A-8, 8.1. Auto insurers have no such statutory notice or choice regarding affirmative fraud claims.

Moreover, there would be a serious constitutional question if the State sought to condition an insurance license on the waiver of the right to a jury trial, particularly when every auto insurer must offer PIP protection as part of their policies under N.J.S.A 39:6A-4. See Kutcher v. Hous. Auth. of City of Newark, 20 N.J. 181, 188-89 (1955) ("The State may not condition a privilege which it may deny altogether on a surrender of constitutional right.").

Second, Plaintiffs did not waive a jury trial in this case. See Prb3-4. A jury demand is due ten days after the "last pleading" directed to an issue triable by jury. R. 4:35-1(a). Because some of the defendants moved to compel arbitration rather than answering, Plaintiffs' jury demand has not yet come due.

In any event, the answering defendants demanded a jury trial, preserving that right for all parties. See 500 Columbia Tpk. Assocs. v. Haselmann, 275 N.J. Super. 166, 170 (App. Div. 1994) (holding that once requested by any party, all parties must consent to waive a jury trial).

V. This Court need only interpret Plaintiffs' DPR Plan, not other Plans.

The Sood Defendants argue that the Appellate Division incorrectly addressed GEICO's DPR Plan at issue in Mount Prospect. See Ssb19-23. As an initial matter, the Sood Defendants' concession that GEICO's DPR Plan is "extraordinarily different than . . . Allstate's DPR Plan," Ssb21, puts to rest any argument that Mount Prospect's interpretation of GEICO's DPR Plan is relevant here. See 98 F.4th at 471. This Court need not make any generalized pronouncements about DPR Plans to resolve this case. It suffices to hold that Plaintiffs' DPR Plan does not require Plaintiffs to file their fraud claims in PIP Arbitration. For the reasons explained, it does not. See Psb24-25.

CONCLUSION

The Court should affirm the Appellate Division's judgment.

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