STATE OF MICHIGAN

IN THE SUPREME COURT

ESTATE OF DANIEL CAMERON, by DIANE CAMERON and JAMES CAMERON, Co-Guardians,	Supreme Court Docket No. 127018
Plaintiff-Appellants,	Court of Appeals Docket No. 248315
v	
AUTO CLUB INSURANCE ASSOCIATION,	Lower Court Case No. 02-549-NF
Defendant-Appellee.	

BRIEF OF
***AMICUS CURIAE* INSURANCE INSTITUTE OF MICHIGAN**

Respectfully submitted,

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STATEMENT OF QUESTIONS PRESENTED

I. Does MCL §600.5851(1), the "minor" tolling provision, apply when the minor has not "incurred" expenses and so cannot seek payment of no-fault benefits?

Trial Court did not address this issue.

Court of Appeals did not address this issue.

Appellants would say "yes."

Appellee would say "no."

Amicus Curiae says "no."

II. Is MCL §600.5851(1) unconstitutional under the Equal Protection guaranties of the Michigan and United States Constitutions when the Michigan Legislature has a rational basis for limiting its application?

Trial Court did not address this issue.

Court of Appeals did not address this issue.

Appellants would say "yes."

Appellee would say "no."

Amicus Curiae says "no."

III. Is there a basis for retroactivity to a decision where a decision reaffirms existing law which was misinterpreted in conflicting Court of Appeals decisions?

Trial Court did not address this issue.

Court of Appeals did not address this issue.

Appellants would say “yes.”

Appellee would say “no.”

Amicus Curiae says “no.”

STATEMENT OF FACTS

The Insurance Institute of Michigan relies on the Statements of Facts submitted by the parties.

STATEMENT OF JURISDICTIONAL BASIS

The Insurance Institute of Michigan relies on the Statements of Jurisdictional Basis submitted by the parties.

STANDARD OF REVIEW

The Insurance Institute of Michigan concurs with the parties that this case presents an issue of statutory interpretation that this Court reviews de novo. *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220, 224; 666 NW2d 299 (2003).

STATEMENT OF INTEREST OF *AMICUS CURIAE*

Insurance Institute of Michigan is a non-profit Michigan corporation formed to serve the Michigan insurance industry and Michigan insurance consumers as a focal point for educational, media, legislative, and public information on insurance issues. Its mission includes creating a greater public awareness of the insurance business, and the benefits to the Michigan economy of a private, entrepreneurial insurance and risk management industry through educational and public relations programs, safety and loss prevention activities, strong press and media assistance to consumer programs, legislative and lobbying efforts, judicial and legal overview, and other such activities that will promote an improved understanding of the purpose and principles of insurance and assist the public in addressing their business and personal needs. It has 45 insurer members, and most write automobile no-fault personal injury protection policies.[1]

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[1]The members are: Allied Insurance Company, Allstate Insurance Company, American Fellowship Mutual Insurance Company, Auto Club Insurance Group, Badger Mutual Insurance Company, Cincinnati Insurance Companies, DaimlerCrysler Insurance Company, Elevators Mutual Insurance Company, EMC Insurance Companies, Farm Bureau Insurance Group, Farmers Insurance Group, Farmers & Merchants Mutual Fire Insurance Company, Farmers Mutual Fire Insurance Co., First Non-Profit Insurance Company, Foremost Insurance, Frankenmuth Mutual Insurance Company, Fremont Mutual Insurance Company, GEICO Corporation Group, GMAC Insurance Holdings Group, Grange Insurance Company of Michigan, Great Lakes Casualty Insurance Company, Harleysville Lake States Insurance Company, Hastings Mutual Insurance Company, MEEMIC Insurance Company, Michigan Construction Industrial Mutual, Michigan Insurance Company, Michigan Millers Mutual Insurance Company, Mid-State Surety Corporation, Nationwide Insurance Company, North Pointe Insurance Company, Northern Mutual Insurance Company, Ohio Casualty Group, Pioneer State Mutual Insurance Company, Professionals Direct Insurance Company, Progressive Insurance Company, ProAssurance Insurance Company, Secura Insurance, Southern Michigan Insurance Company, Starr Insurance, State Auto Insurance companies, State Farm Insurance, Titan Insurance company, USAA Group, Westfield Companies and Wolverine Mutual Insurance Company.

The Insurance Institute's interest in this matter is shared by insurers and insurance consumers alike: lawsuits filed outside the prescribed time for filing such suits under the Michigan No-Fault Act, such as the appellee's suit here, have the potential to overload the system and skew insurance rates. This Court has declared that no-fault insurance must be "available at fair and equitable rates." *Shavers v Attorney General*, 402 Mich 554, 559; 267 NW2d 72 (1978). The ability to maintain such rates depends on both insurers and consumers following the rules of when and how to make and pay claims. When claims begin to arise in unanticipated and delayed contexts, insurers, consumers, and the insurance industry's ability to stabilize and maintain rates, all suffer.

The process of setting no-fault insurance rates is complex and dependent on many factors, as outlined in the Michigan Essential Insurance Act (EIA), 1979 PA 145, MCL 500.2101 *et seq.* But the ability to anticipate claims within a recognized time period is extremely important to this process. MCL 500.2110(1) requires that "due consideration . . . be given to past and prospective loss experience within and outside this state . . . [and] to past and prospective expenses . . . ." In addition, MCL 500.2109(2) provides that "the underwriting return of . . . insurance over a period of time sufficient to assure reliability in relation to the risk associated with that insurance" must be a factor in determining whether a given rate is excessive. So the ability to anticipate a certain number of claims and a certain cost in a given period is essential to the process of assessing the rates charged to consumers. Loading up the risk pool of current policyholders with tardy claims is antithetical to the duty to maintain fair and equitable rates, raised to a constitutional plane in *Shavers*, and to the concurrent mandate that insurance be available and affordable.

Of course, there will always be unanticipated claims and unforeseeable risks. No forecasting system is perfect. But suits such as the appellant's need not fall into this category. Daniel Cameron's family incurred attendant care expenses for three years but neglected to request compensation. Diane and James Cameron then brought this action six years after the accident seeking to recover for expenses incurred well beyond the one-year cut off date of MCL 500.3145(1). In short, the Camerons simply ignored the rules regarding when and how to make claims and now seek to burden Michigan's insurers, and ultimately insurance consumers, with paying their claims out of time.

In order to avoid § 3145(1), the Camerons filed this suit in the name of the injured person, Daniel Cameron, their son. In Daniel's name, the Camerons hoped to invoke MCL 600.5851(1), a tolling provision applicable to minors. But Daniel Cameron was not obligated to, and in fact did not, incur the expenses of his attendant care. Diane and James Cameron incurred those expenses, to the extent they were incurred at all. Certainly, they could have made a timely claim for reimbursement. Because they failed to do so, the Camerons now ask this Court to entertain a legal fiction and award benefits to Daniel, despite the fact that he has suffered no economic losses.

When courts allow suits like the Camerons' suit to succeed, the cost of claims that should have been shared throughout the industry over a multi-year period is amassed and dropped on insurers and consumers alike at one time. Pressure builds within the industry to meet unanticipated and escalating costs. Insurers must then pass these costs along to consumers under *Shavers* and the EIA.

The pressure of costs in the industry is already high. In the announcement of its 2003 assessment, the Michigan Catastrophic Claims Association stated that the surplus

in the catastrophic claims fund, expected to be in place through 2004, has been extinguished because of "decreasing investment returns and increasing medical costs." (Please see Exhibit A, MCCA report, 12/8/03). The MCCA assessment alone has escalated from $ 3.00 per vehicle in 1978 to $100.20 in 2003, then $127.24 in 2004, and now $141.70 in 2005. When one considers all the autos seen on the highways of Michigan, this is not an insignificant amount. Additionally, the insurer retention before MCCA reimbursement also has risen from $250,000 to now $375,000. (Please see Exhibit B, MCCA report, as of March 17, 2005). Adding the pressure of multi-year lump sum stale claims forced upon the system through tardy causes of action will only make the situation worse.

The Insurance Institute recognizes this potential problem and seeks to prevent it. Importantly, the old attendant care cases do not affect the current treatment of injured persons by physicians or hospitals. Rather, what is at issue is care already rendered for children by parents who for years chose not to present a claim and now seek to be rewarded by proffering a feckless legal fiction that children owe their parents for care.

For these reasons, the Insurance Institute of Michigan submits that it has the requisite interest in the issues presently before this Court to justify allowing it to express the views which now follow.

ARGUMENT

I. DANIEL CAMERON HAS NOT "INCURRED" EXPENSES AND SO CANNOT SEEK PAYMENT OF NO-FAULT BENEFITS, RENDERING MCL §600.5851(1), THE "MINOR" TOLLING PROVISION, INAPPLICABLE.

The Insurance Institute acknowledges and agrees with appellee Auto Club Insurance Association's position that MCL 600.5851(1), as amended by 1993 PA 78, no longer applies to the No-Fault Act, which contains its own statute of limitations. But the Insurance Institute also wishes to direct this Court's attention to past misinterpretations of the No-Fault Act that allow a claimant who has not personally "incurred" expenses to recover benefits in derogation of MCL 500.3142(1), MCL 500.3110(4) and MCL 500.3112. This additional perspective provides an alternative analysis supporting the application of the one-year back portion of MCL 500.3145(1). It is particularly apropos in light of the new constitutional challenge to 1993 PA 78 presented by Plaintiffs. This alternative analysis should be considered to adhere to rules for statutory construction in the face of constitutional challenges. "Whenever possible, [statutory] interpretations that result in constitutional invalidity will be avoided." *Washtenaw County v State Tax Commission*, 422 Mich 346, 371; 373 NW2d 697 (1985). Accord *People v Hayes*, 421 Mich 271, 284; 364 NW2d 635 (1984) ("Whenever possible, courts should construe statutes in such a manner as to render them constitutional."); *Schwartz v Secretary of State*, 393 Mich 42, 50; 222 NW2d 517 (1974) ("'Wherever possible an interpretation that does not create constitutional invalidity is preferred to one that does.'").

A. Only a person who has incurred expenses for the benefit of an injured person may receive payment of benefits.

Understanding who may or may not recover payment of no-fault benefits, and when they may do so, requires an examination of MCL 500.3142(1), MCL 500.3110(4) and MCL 500.3112 in conjunction. In *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220, 224; 666 NW2d 299 (2003), this Court prescribed the method of analysis for interpreting statutes:

> In interpreting a statute, our obligation is to discern the legislative intent that may reasonably be inferred from the words actually used in the statute. *White v Ann Arbor*, 406 Mich 554, 562; 281 NW2d 283 (1979). A bedrock principle of statutory construction is that "a clear and unambiguous statute leaves no room for judicial construction or interpretation." *Coleman v Gurwin*, 443 Mich 59, 65; 503 NW2d 435 (1993). When the statutory language is unambiguous, the proper role of the judiciary is to simply apply the terms of the statute to the facts of a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). In addition, words used by the Legislature must be given their common, ordinary meaning. MCL 8.3a.

Section 3112 of the No-Fault Act explains who may receive payment of benefits without any provision mandating that injured minors be the claimant:

> **Personal protection insurance benefits are payable to <u>or for the benefit of</u> an injured person** or, in case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. **<u>If there is doubt about the proper person to receive the benefits</u>** or the proper apportionment among the persons entitled thereto, **<u>the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order.</u>** . . . [Emphasis added.]

Section 3112 thus "specifically contemplates the payment of benefits to someone other than the injured person." *Lakeland Neurocare Centers v State Farm Mutual Automobile Ins Co*, 250 Mich App 35, 39; 645 NW2d 59, lv den 467 Mich 908; 655 NW2d

554 (2002). This "someone" could be a health care provider, a parent who pays a child's medical expenses, or a parent who provides attendant care services for an injured child. There is no further limitation in the statutory language, and "the judiciary may not engraft such a limitation under the guise of statutory construction." *Lakeland*, *supra* at 40.

Further examination of § 3112 reveals that there is a "a proper person" to whom benefits are payable. The statute even provides that "[i]f there is doubt about the proper person to receive the benefits . . . the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order." (Emphasis added). Because the No-Fault Act provides recovery only for actual expenses, MCL 500.3107, "the proper person to receive the benefits" is the person who paid the expenses or, in the case of family members, those with the real interest in receiving payment. This conclusion is inevitable, especially when § 3112 is read in conjunction with §§ 3142(1) and 3110(4). Under Section 3142(1), benefits are payable as loss accrues.

Section 3110(4) explains when PIP benefits accrue to be payable:

> Personal protection insurance benefits payable for accidental bodily injury **accrue not when the injury occurs but as the allowable expense, work loss or survivors' loss is incurred.** [Emphasis added.]

The result of §§ 3142(1), 3110(4), and 3145(1) is a "pay as you go" system. The heart of the system is in incurring expenses for which reimbursement must be promptly sought. This Court has defined "incur" as "'to become liable or subject to, [especially] because of one's own action.'" *Proudfoot v State Farm Mutual Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003). In *Proudfoot*, *supra* at 484, this Court reaffirmed that a no-fault

insurer has no duty to "pay for an expense until it is actually incurred." Do Plaintiffs claim that Daniel incurred a bill from his parents for their care? Of course not.

Besides timing, there are provisions regarding who may be entitled to payment. Read in conjunction, §§ 3110(4) and 3112 provide that PIP benefits are payable to any person who has "incurred" recoverable expenses "for the benefit of an injured person." Thus, a person who has not "incurred" any recoverable expenses is not entitled to the payment of benefits. Any other conclusion would render one of the two provisions nugatory. It would contradict § 3110(4) to conclude that an injured person could recover expenses that person had not "incurred," because no benefits would be payable under MCL 500.3142(1). And it would defy logic to conclude that an injured person could receive payment of benefits when another person "incurred" the expenses.

Section 3112 also clearly contemplates that the person who incurs the liability should receive payment of benefits because it provides a method of resolving conflict between "interested" persons. It provides that "[i]f there is doubt about the proper person to receive the benefits . . . the insurer, the claimant or any other interested person may apply to the circuit court for an appropriate order." (Emphasis added). If benefits were payable to the injured person no matter who incurred the relevant expenses, this provision would be meaningless. In most cases involving adults who incur medical bills, wage loss, etc., the injured person will be the proper person to receive benefits. But that is not correct when the injured person is a child who has received necessities from parents. Parents can never sue their children for parental care.

B. Diane and James Cameron, not Daniel Cameron, incurred the expenses of attendant care for their son.

This Court recognized that the parents of an injured child "incur" the expenses of attendant care in *Manley v DAIIE* (*Manley II)*, 425 Mich 140, 153; 388 NW2d 216 (1986). There, the defendant argued that because parents are legally obligated to take care of their child, they could not recover the costs of that care. This Court disagreed:

> A no-fault insurer is not relieved of the obligation to pay no-fault benefits for products, services, and accommodations provided a child which, if the injured person were an adult, are allowable expenses within the meaning of [MCL 500.]3107. Although the parent of the child might be obliged to pay for such products, services, or accommodations as "necessaries essential to the health and comfort of the child" if there was not a no-fault act, there is a no-fault act. Under that act, the question is whether the product, service, or accommodation is an allowable expense, not whether someone else might also be legally obligated to pay such expense under some other provision or rule of law. [*Manley II*, *supra* at 153.][2]

Importantly, this Court in *Manley II* held that parents could recover the costs of their care, but it did <u>not</u> do so on the basis of parents having a right to sue children for parental care at common law. As noted, in *Proudfoot*, *supra* at 484, this Court defined "incur" as "to become liable or subject to . . ." Parents cannot sue children for care. Children are not liable to parents for parental care. Parents are "subject to" the legal requirement to provide for their children, and they must discharge that obligation. *Manley v DAIIE* (*Manley I*), 127 Mich App 444, 453; 339 NW2d 205 (1983), citing 59 Am Jur 2d, Parent and Child, §§ 55, 59, pp 144-146, 149-150.

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[2]See also *Van Marter v American Fidelity Fire Ins Co,* 114 Mich App 171, 179-180; 318 NW2d 679 (1982) (providing compensation for attendant care services if performed in a nursing home but not if performed by the injured person's family would penalize the injured person for choosing more comfortable care).

It follows that only by virtue of the No-Fault Act do the parents of an injured child "incur" the expenses of attendant care, even when they provide the care themselves, because they are legally obligated to procure or provide that care for their child.

Conversely, a child cannot "incur" the expenses of attendant care under this Court's definition of the term "incur" in *Proudfoot*, *supra*, because the child's parents bear the obligation to care for the child. "Since child support is his legal duty, a parent cannot charge his children for providing it. The law will not ordinarily raise any implied promise on the part of the child to pay for the support furnished by the parent, the inference or presumption being that it is furnished gratuitously." 59 Am Jur 2d, Parent and Child, § 53, p 198. Absent statutory authority to the contrary, "[s]upport liability should not ordinarily be affected by the earnings or the amount of the separate estate of a minor child. . . ." 59 Am Jur 2d, Parent and Child, § 63, p 207. This principle is well-settled in American jurisprudence. Please see *Ferrell v Ferrell*, 103 W Va 704, 706; 138 SE 399 (1927), *Lyons v Jackson*, 232 Mass 275, 278; 122 NE 304 (1919), *In re Kummer*, 93 AD2d 135, 145; 461 NYS2d 845 (1983), and *Buchanan v Buchanan*, 170 Va 458, 471-472; 197 SE 426 (1938). A child therefore cannot "become liable or subject to" and hence "incur" the expenses of the child's own care by the child's parents and cannot trigger the payment of benefits for such care. The parents are the *only* true claimants.

Sections 3110(4) and 3112 thus reveal that Diane and James Cameron, and not Daniel Cameron, were the persons to whom benefits were properly payable here. Daniel's parents provided attendant care services for the benefit of their child, the injured person. Diane and James Cameron also "incurred" the expense of providing that care

because they were legally obligated to provide it or pay for it. *Manley II*, *supra* at 153. So Diane and James Cameron are the only persons who may recover benefits here because they are the only persons who satisfy both §§ 3110(4) and 3112.

As a result, the Camerons' efforts to bring this action in Daniel's name must fail because Daniel did not incur the expenses of his own care by his parents. Diane and James Cameron have a right to be the claimants under *Manley II*, but cannot avail themselves of the § 5851(1) tolling provision because they were not minors when the accident occurred. So even if this Court determines that § 5851(1) applies to the No-Fault Act, it should still reverse because these facts do not allow the Camerons to invoke the tolling provision.

C. Any cases to the contrary are non-binding, distinguishable, inconsistent with the relevant statutes, and have been superseded by the decision in *Lakeland*.

The Insurance Institute submits that the clear and unambiguous language of §§ 3110(4) and 3112 allows no other interpretation than that the proper claimant are parents who have no minority tolling standing.

The Camerons correctly assert that the injured person *may be* a proper claimant for the payment of benefits under § 3112.[3] Our no-fault system would be very strange indeed if this were not true. But that begs the question here, where parents cared for their injured child. The Camerons incorrectly assume that an injured person may recover

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[3] The Camerons do claim that the Michigan Court of Appeals held that the injured person was "the 'real party in interest to assert recovery of medical expenses under MCL[ ] 500.3107" in *Aetna Casualty & Surety Co v Starkey*, 116 Mich App 640; 323 NW2d 325 (1982), lv den 417 Mich 929 (1983). But there is no reference to any party as the "real party in interest" nor any reference to MCL 500.3107 in *Starkey*, *supra*. In fact, no published or unpublished Michigan case so holds.

benefits even though that person has incurred no expenses. Such an assumption is contrary to the No-Fault Act and to common sense.

In a line of cases decided prior to November 1990, the Michigan Court of Appeals held that "[t]he right to collect no-fault insurance benefits accrues to the injured person, even though another person may be legally responsible for the expenses incurred as a result of the injury." *Commire v Automobile Club of Michigan Ins Group*, 183 Mich App 299; 454 NW2d 248 (1990); See also *Geiger v DAIIE*, 114 Mich App 283, 287; 318 NW2d 833 (1982), lv den 417 Mich 865 (1983), *In re Hales*, 182 Mich App 55, 58-59; 451 NW2d 867 (1990). These cases are no longer binding under MCR 7.215(I)(1), and *Lakeland*, *supra*, has superseded them to the extent of any conflict. Nevertheless, the Institute will examine each decision below.

In *Geiger*, *supra* at 285, the plaintiff was a sixteen-year-old boy who suffered injuries in a car accident. He did not notify the defendant, his no-fault insurer, of the accident until he was eighteen-years-old. *Id.* In the meantime, the plaintiff's health insurer paid his medical bills. *Id.* Parent-provided attendant care was not at issue. After the defendant denied the plaintiff's claim for benefits, the plaintiff filed suit. *Id.* The defendant argued that the plaintiff had not incurred medical expenses because his mother was legally obligated to pay such expenses. *Id.* at 286.

Citing § 3112, the *Geiger* Court rejected the defendant's argument:

> This statute expressly confers a cause of action on the injured party to collect PIP benefits for expenses incurred as a result of his injury. We find no indication from the statute that the right to PIP benefits necessarily accrues to the person who is legally responsible for the expenses incurred as a result of the injury.

* * *

> In the present case, even if we view the right to recover PIP benefits for medical expenses incurred during an insured's minority as a separate cause of action belonging to the injured minor's parents, it is clear that the cause of action is derivative from the injured minor's rights under the insurance policy and the no-fault act. It is not an independent cause of action . . . . We conclude that the action was properly brought in the name of the injured party, James Geiger. [*Geiger*, *supra* at 287-288.]

Expanding on *Geiger,* the Court in *Hales*, *supra* at 58, concluded that "benefits payable under the no-fault act belong to the injured person . . . ." (Emphasis added). In that case, Hales' mother, the appellant, filed a claim for no-fault benefits after her son suffered severe injuries in a car accident. *Id.* at 57. The appellant was appointed as Hales' conservator, and she received benefits as an individual and in her capacity as conservator. *Id.* As in *Geiger*, Hales' private health insurer had already paid most of Hales' medical expenses, so the appellant kept the money. *Id.* Hales then filed a petition to remove the appellant as conservator and to receive all further benefits from the no-fault policy. *Id.* The appellant filed a separate action to establish that she was entitled to the benefits. *Id.*

The *Hales* Court concluded that Hales was entitled to the benefits, but also that his mother had a right of recovery to the extent she incurred the expense:

> Based upon the language of the no-fault act and the *Geiger* case cited above, we conclude that benefits payable under the no-fault act belong to the injured person: in this case, Brian Hales. However, **appellant is entitled to be reimbursed from the proceeds of the no-fault policy to the extent that she incurred expenses out of her own pocket** which were reasonably necessary to her son's care, recovery and rehabilitation. [*Hales*, *supra* at 58; emphasis added.]

In *Commire*, *supra* at 301, the plaintiffs were minors who were injured in a car accident with their father. The plaintiffs' father applied for and received no-fault benefits on their behalf. *Id.* The plaintiffs' parents divorced, and the plaintiffs' father kept the money. *Id.* The plaintiffs then brought suit to recover benefits from the defendant no-fault insurer. Again, parent-provided attendant care, for which the father would have had a right to payment under *Manley II*, was not at issue. The defendant argued that it had discharged its obligation by paying benefits to the plaintiffs' father under § 3112. *Id* at 301-302.

The *Commire* Court followed *Geiger* and rejected the defendant's argument:

> The right to collect no-fault insurance benefits accrues to the injured person, even though another person may be legally responsible for the expenses incurred as a result of the injury. *Geiger* [, *supra]*. Thus, the no-fault benefits were payable to plaintiffs under § 3112. Defendant Auto Club did not in good faith mistake the party to whom benefits were payable, as provided for under § 3112. Instead, Auto Club paid plaintiffs' father for the benefits owed plaintiffs. Auto Club was not under the impression that [plaintiffs' father] was entitled to benefits rather than his sons, so § 3112 does not operate to discharge Auto Club's liability to plaintiffs. [*Commire*, *supra* at 302.]

So *Geiger* and its progeny concluded that an injured person is entitled to be paid no-fault benefits even though another person may have incurred the expenses, but, this was not in the context of parent-provided attendant care. These older cases that ignore the full implication of Section 3112 do go so far as to conclude that the injured person is the *only* party who may directly receive no-fault benefits. But to this extent, the *Geiger* cases directly conflict with the Court of Appeals' recent decision in *Lakeland*, *supra*, which is now the binding precedent under MCR 7.215(I)(1). Once *Lakeland* burst the bubble by holding that a party other than an injured person could recover directly for no-fault

benefits, the farragoes of the past contrary to Section 3112 should be dispelled, and with them, the house of cards that perpetuates the erroneous legal fiction that a child owes parents for attendant care or has incurred an expense of his parents' care, and hence has a claim subject to MCL 600.5851.

In *Lakeland*, *supra* at 36, the plaintiff was a health care provider that provided rehabilitation services to a man injured in an automobile accident. The plaintiff filed an action against the man's no-fault insurer for benefits to recover its expenses. *Id.* The defendant insurer argued that the plaintiff service provider was not entitled to enforce the penalty interest provision in No-Fault Act because the plaintiff was not the injured person. *Id.* at 37. If correct that the injured person must be the claimant in every case (and therefore a minor is the requisite party), the Court should have agreed. However, the Court of Appeals rejected the defendant's argument, explaining:

> MCL 500.3105(1) imposes liability on an insurer to pay personal protection insurance benefits. These benefits are "payable to or for the benefit of an injured person. . . . . " MCL 500.3112. These "benefits are payable as loss accrues" and "within 30 days after an insurer receives reasonable proof of the fact and of the amount of loss sustained." MCL 500.3142(1) and (2). **Because plaintiff submitted a claim for personal protection insurance benefits for the benefit of Smith, the injured person and defendant's insured, plaintiff was entitled to payment** within thirty days of defendant's receipt of reasonable proof of the medical services provided and the cost of such services. Consequently, plaintiff was entitled to attempt enforcement of the penalty interest provision of the no-fault act, MCL 500.3142.
>
> Further, contrary to the trial court's conclusion, **the fact that plaintiff was not the injured person is not dispositive. MCL 500.3112 specifically contemplates the payment of benefits to someone other than the injured person** as reflected by its inclusion of the phrase "benefits are payable to or for the benefit of an injured person" and by its discharge of an insurer's liability upon payment made in good faith to a payee "who it believes is entitled to the benefits . . . ." [*Lakeland, supra* at 39; emphasis added.]

Lakeland is binding precedent for lower courts under MCR 7.215(C)(2) and MCR 7.215(I)(1), and it supersedes *Geiger* and its progeny which are in conflict but older. *Lakeland*'s interpretation of § 3112 directly contradicts the false premise that no-fault benefits "belong" to the injured person, regardless of the circumstances, and even if a minor. *Geiger* and its progeny, therefore, are in conflict with *Lakeland Neurocare,* were wrongly decided and are no longer good law.

Moreover, the *Geiger* cases are distinguishable on their facts because they do not involve family members' attendant care services recoverable under *Manley II*. In *Geiger* and *Hales*, a private health care insurer paid most of the injured children's medical bills. *Geiger*, *supra* at 285; *Hales*, *supra* at 58. In *Commire*, medical expenses were at issue, not attendant care. The facts reflect the plaintiffs' father there did nothing other than apply for benefits. *Commire*, *supra* at 301. And the *Geiger* cases also fail to present similar facts because they do not involve the provision of basic necessities, which is a parent's legal obligation. Diane and James Cameron do not and cannot claim that they had a right to collect from Daniel, or that they rightly billed him for services.

Regardless of their applicability, the *Geiger* cases are no longer binding under MCR 7.215(I)(1), and they are superseded by *Lakeland*, *supra.* Therefore, this Court should specifically overrule *Geiger*, *Hales*, and *Commire* since they conflict with *Lakeland*, particularly in the context of family-provided services.

D. Allowing an injured person who has not incurred any expenses to receive payment of benefits would be in error under the No-Fault Act.

The Camerons argue that this Court should ignore the plain language of statutes because of public policy. The Insurance Institute again agrees with appellee Auto Club Insurance Association's position that public policy cannot interfere with this Court's interpretation of unambiguous statutes (See *Nawrocki v Macomb Co Rd Comm'n*, 463 Mich 143, 150-15; 615 NW2d 702 (2000) and *Hanson v Mecosta Co Rd Comm'rs*, 465 Mich 492, 504; 638 NW2d 396 (2002)). And the Institute submits that the plain language of §§ 3110(4) and 3112 is amenable to no other interpretation than the one set forth here.

The Institute also notes, however, that even if one were to consider policy, the Camerons' position is inconsistent with the policies underlying the No-Fault Act. The Camerons urge this Court to accept a rule of law that would create an absolute right to receive the payment of benefits in a person who has failed to incur any expenses, and do so for the singular purpose of allowing untimely litigants to avoid the one-year back rule of MCL 500.3145(1). The Camerons' position would subvert the policies underlying the No-Fault Act by making it more difficult to establish a fair and equitable rate structure.

In *Gooden v Transamerica Ins Corp of America*, 166 Mich App 793, 800; 420 NW2d 877 (1988), the Michigan Court of Appeals recognized that one of "[t]he basic goal[s] of the no-fault insurance system is to provide **individuals injured in motor vehicle accidents assured, adequate <u>and prompt reparation</u> for certain economic losses** at the lowest cost to the individual and the system." (Emphasis added). If an injured person has "incurred" no expenses, the person has suffered no economic losses and is therefore in no need of reparation. If such a person were to receive benefits, it

would be a windfall that the Act should not provide. *Davis v Citizens Ins Co of America*, 195 Mich App 323, 332;489 NW2d 214 (1992) ("Reparation for actual damages is provided; windfalls are not").

Another goal of the No-Fault Act is "providing an **equitable and prompt** method of redressing injuries in a way which made the mandatory coverage affordable to all motorists". *McDonald v State Farm Mutual Ins Co*, 419 Mich 146, 154; 350 NW2d 233 (1984) (Emphasis added); see also *Tebo v Havlik*, 418 Mich 350, 366; 343 NW2d 181 (1984). It would hardly be equitable to pay benefits to an injured person when another person has sustained losses to pay for the injured person's care. Moreover, the No-Fault Act seeks to ensure that injured persons receive prompt care by reimbursing those people who initially pay for that care for the benefit of the injured person. If no-fault benefits belong to the injured party and cannot be paid to anyone else, why would a third party take the risk of paying for an injured person's care with no hope of direct reimbursement?

Conversely, however, if an injured person such as a minor incurs no expenses as the result of an automobile accident, why would that person be entitled to no-fault benefits after *Proudfoot, supra*? And why would benefits be withheld from a person who should rightfully claim them? The Camerons fail to identify how entertaining these anomalies would advance the policies underlying the No-Fault Act. The Institute submits that they cannot do so.

E. Allowing a claimant to avoid the one-year back rule undermines the public's right to consistent rates.

Both stated goals of the No-Fault Act recognize the need to provide affordable, low-cost coverage. This is consistent with this Court's declaration that that no-fault insurance

must be "available at fair and equitable rates." *Shavers, supra* at 559. As noted, the ability to anticipate claims within a recognized time period is important to the rate-setting process. The No-Fault Act created a complex system, and like any system, there are rules governing its use. If those who use the system fail to follow the rules, the system will malfunction.

MCL 500.3145(1) is a rule governing the period for which a claimant may recover losses through a lawsuit; it unambiguously provides that a "claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." Diane and James Cameron want to avoid the one-year back rule, so they filed this action in the name of their son, Daniel, the injured person. The Camerons therefore want this Court to accept that Daniel is the "proper person" to receive payment of benefits even though he has not suffered any economic losses as a result of the accident.

If Michigan courts do accept this sham and allow claimants to avoid the one-year back rule, the insurance industry's ability to fairly allocate claims to contemporaneous policyholders will be impaired. The one-year back rule allows insurers to assume that a claimant cannot file suit in 2003 for losses suffered in 1996. Each year, insurers project their costs for claims that may be made under the rules of the no-fault system. Because the rules do not allow for the Camerons' suit or others like it, for tardy lump sum claims, an insurer cannot anticipate them. This leads to unexpected costs and consequently to unexpected rate increases. Under *Shavers* and the EIA, the loss must be placed on current policyholders. There is no way to go back and surcharge former policyholders.

Allowing a claimant to avoid the one-year back rule further confounds the system because that claimant can now seek to recover several years of losses at one time. It is not as simple as making a claim in 1999 that truly should have been made in 1998. Instead, it places the burden of paying cumulative multi-year losses squarely on the shoulders of insurers and consumers in a single year. This overloads the system, which is designed to pay losses as they accrue over time. Again, unexpected rate increases and unstable rates are the result.

As the MCCA documents illustrate, the MCCA assessments are rising rapidly, and include deficit assessments (Exhibits A and B). It is an incursion on the "fair and equitable rates" and "affordable and available" requirements mandated in *Shavers*, and indeed raised to a constitutional plane of a due process right, to transmogrify the claimant and limitations statutes, Sections 3112 and 3145(1) respectively, and load up current policyholders with tardy cumulative claims that should have been spread over policyholders of the past.

To avoid the possibility of such unstable rates, Michigan courts must simply enforce the No-Fault Act as written and reject suits that proceed in derogation of the rules. The Act creates a "pay as you go system," and the system is undermined by allowing stale lump sum claims. MCL 500.3142 says benefits are "payable as loss accrues." MCL 500.3112 provides that there is a "proper person" to receive payment of benefits and provides that the person who incurs the relevant expenses is that "proper person." MCL 500.3110(4) says the benefits accrue as allowable expenses are incurred (rather than when the injury occurred). MCL 500.3145 limits recoverable damages to one-year back from the date of filing. If the courts follow these statutory requirements, the Act will self-

regulate and insurers and MCCA will be able to properly anticipate claims within a given time frame and collect appropriate premiums. If the courts ignore the statutory requirements and allow claimants such as the Camerons to resort to legal fictions to avoid the Act's limiting rules, then the state's ability to maintain fair and stable rates will suffer. And because no-fault coverage is mandatory, the rest of the state will suffer along with it.

Amicus Insurance Institute urges the Court to adopt the foregoing, which has the salutary coincidental effect of obviating the constitutional challenge to MCL 600.5851. It is clear and unambiguous, however, and Insurance Institute will not repeat the argument of Appellee Auto Club. IIM will, however, address the erroneous constitutional challenge in case the Court chooses to address MCL 600.5851 and its constitutionality in the context of MCL 500.3145(1).

II. MCL §600.5851(1) IS A CONSTITUTIONAL LIMITATION ON THE ABILITY OF MINORS TO FILE LAWSUITS.

The Appellants argue that if the Court of Appeals' decision is affirmed and applied to the facts of this case, then the tolling provision of MCL §600.5851(1)[4] is unconstitutional as it applies to this case because the statute treats the "insane" and "infants" differently

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[4] MCL §600.5851(1) provides:

> (1) Except as otherwise provided in subsections (7) and (8), if the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. This section does not lessen the time provided for in section 5852.

under the No-Fault Act than they are in other types of cases. By making the constitutional argument, Appellants are tacitly admitting the correctness of the point that the statute as worded does not permit tolling. IIM will therefore not repeat the statutory analysis of Appellee, but will address the constitutional challenge because the analysis of the rational basis of the statutory limitations strengthens the reason for the one year back limitation.

A. "Rational basis" is the applicable level of scrutiny for constitutional analysis of statutes dealing with age and disability.

The first question is what level of scrutiny applies to equal protection challenges to statutes involving "insane" and "infant" persons. The United States Supreme Court has ruled that "under our equal protection case law, discrimination on the basis of [disability] is not judged under a heightened review standard, and passes muster if there is 'a rational basis for doing so at a class-based level, even if it 'its probably not true' that those reasons are valid in the majority of the cases.'" *Nevada Department of Human Resources v. Hibbs*, 538 U.S. 721, 735; 123 S Ct 1972; 155 L Ed 2d 953 (2003) citing *Kimel v. Florida Board of Regents*, 528 U.S. 52, 86; 120 S Ct 631; 145 L Ed 2d 522 (2000), *Gregory v. Ashcroft*, 501 U.S. 452, 473; 111 S Ct 2395; 115 L Ed 2d 410 (1991), and *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 367; 121 S Ct 2395; 148 L Ed 2d 866 (2001).

The United States Supreme Court has also ruled that the rational basis test is the applicable level of review in regards to equal protection claims dealing with age. In reviewing a statute dealing with fifty year olds, the Court ruled:

> While the treatment of the aged in this Nation has not been wholly free of discrimination, such person, unlike, say those who have been discriminated against on the basis of race or national origin, have not experienced a "history of

> purposeful unequal treatment" or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities. [...] But even old age does not define a "discrete and insular" group in need of "extraordinary protection from the majoritarian political process." Instead, it marks a stage that each of us will reach if we live out our normal span. Even if the statute could be said to impose a penalty upon a class defined as the aged, it would not imposed a distinction sufficiently akin to those classifications that we have found suspect to call for strict judicial scrutiny." [*Massachusetts Board of Retirement v. Murgia*, 427 US 307, 313-314; 96 S Ct 2562; 49 L Ed 2d 520 (1976) (internal citations removed)].

The Supreme Court then applied to rational basis test to the statute. *Murgia*, 427 US at 314.

In this case, we are dealing with a class of citizens under the age of eighteen. Although not directly dealt with in *Murgia*, being a minor is just another stage of life that everyone passes through and, although on the other end of the spectrum than the age group discussed in *Murgia*, the same principles apply. Therefore, the appropriate standard of scrutiny is to determine if the legislature had a rational basis in excluding no-fault claims from the tolling provision of MCL §600.5851(1).

Under the rational basis standard of scrutiny, there is a presumption that the statute is constitutional. *People v. Martinez*, 211 Mich App 147, 150; 535 NW2d 236 (1995). "As long as the legislation is supported by 'any state of facts either known or which could reasonably be assumed,' [the statute] must be upheld." *Martinez*, 211 Mich App at 150 citing *Bissell v Kommareddi*, 202 Mich. App. 578, 580; 509 NW2d 542 (1993). Further, "rational basis review does not test the wisdom, need, or appropriateness of the legislation, or whether the classification is made with 'mathematical nicety,' or even whether it results in some inequity when put into practice." *Crego v. Coleman*, 463 Mich 248, 260; 615 NW2d 218 (2000) citing *O'Donnell v. State Farm Mutual Automobile Ins Co*,

404 Mich 524, 542; 273 NW2d 829 (1979). Finally, a party challenging a statute under the rational basis test has a heavy burden of rebutting the presumption of constitutionality. *Crego,* 463 Mich at 260 citing *Shavers v. Attorney General,* 402 Mich 554, 613-614; 267 NW2d 72 (1978).

B. Other judicially upheld constitutional limitations on ability of minors to file lawsuits demonstrate the validity of this one.

Appellants argue that treating injured minors under the No-Fault Act differently than other injured minors is unconstitutional as violating the equal protection provisions of the Michigan and United States Constitutions. However, statutes limiting the ability of minors to file certain types of injury lawsuits are not novel in Michigan and have been previously upheld in light of constitutional challenges. The Michigan Legislature has limited, in medical malpractice cases, the ability of minors to litigate claims. MCL §600.5851(7) and (8), different paragraphs under the same statute being challenged in this case, state:

> (7) Except as otherwise provided in subsection (8), if, at the time a claim alleging medical malpractice accrues to a person under section 5838a the person has not reached his or her eighth birthday, a person shall not bring an action based on the claim unless the action is commenced on or before the person's tenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her eighth birthday, he or she is subject to the period of limitations set forth in section 5838a.
>
> (8) If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has not reached his or her thirteenth birthday and if the claim involves an injury to the person's reproductive system, a person shall not bring an action based on the claim unless the action is commenced on or before the person's fifteenth birthday or within the period of limitations set forth in section 5838a, whichever is later. If, at the time a claim alleging medical malpractice accrues to a person under section 5838a, the person has reached his or her thirteenth birthday and the claim involves an injury to the person's reproductive system, he or she is subject to the period of limitations set forth in section 5838a

Both of these provisions limit a child's ability to file a suit after their eighteen birthdays and before their nineteenth birthdays, the normally tolling period. However, in *Bissell v. Kommareddi*, 202 Mich App 578; 509 NW2d 542 (1993), the Michigan Court of Appeal affirmed the constitutionality of these limits. In *Bissell*, the Michigan Court of Appeals ruled:

> Under traditional equal protection analysis, a legislative classification must be sustained if the classification is rationally related to a legitimate governmental interest. In reviewing equal protection challenges to socioeconomic legislation, the United States Supreme Court has said that the constitution "is offended only if the classification rests on grounds wholly irrelevant to the achievement of the [legislative] objective." Consequently, legislative judgment must be accepted if it is supported by "any state of facts either known or which could reasonably be assumed." The plaintiff normally bears the burden of showing that the classification is arbitrary and does not bear a rational relation to the object of the legislation.
>
> Section 5851 is part of the Tort Reform Act of 1986 and was ostensibly enacted to eliminate the "long tail" that arises when a minor is allowed to pursue a cause of action that may have accrued as much as eighteen years earlier. Clearly, the object of the challenged legislation was to limit the period of time during which health-care providers would be at risk from malpractice suits. In our opinion, the means sought by the Legislature was reasonably related to this objective because of the large number of children receiving health care and the lengthy exposure to malpractice claims that would result in the absence of the enacted limitation period. The state unquestionably has a legitimate interest in securing adequate and affordable health care for its residents. And it is reasonable to assume that a lessening of exposure to malpractice claims would encourage health-care providers to remain in this state. Plaintiff has failed to show that the classification is arbitrary and does not bear a rational relation to the object of the legislation.
>
> With respect to plaintiff's due process challenge, statutes of limitation are to be upheld unless it can be demonstrated that their consequences are so harsh and unreasonable that they effectively divest plaintiffs of the access to the courts intended by the grant of the substantive right. In this case, even though the statute of limitations does shorten the time within which minors must bring suit, we believe that it provides more than a reasonable amount of time for their claims to be pursued. [*Bissell*, 202 Mich App at 580-581 (Internal citations removed)].

The Court in *Bissell* recognized that the Michigan Legislature has a legitimate interest in ensuring adequate and affordable health insurance for Michigan residents and also recognized the legitimate interest in ensuring adequate and affordable health insurance was a rational basis for limiting the time frame for filing lawsuits, even lawsuits filed by minors. Given that the Legislature can constitutionally restrict the rights of minors to sue for medical malpractice, this Court can not find that the Legislature cannot also limit the ability of minors and insane persons to sue under the No-Fault Act by making MCL §600.5851(1) inapplicable to the No-Fault actions as the Legislature also had a rational basis in prevent minors from filing delayed No-Fault Act claims.

C. There is a rational basis for limiting the time for filing No-Fault claims and actions.

When discussing the No-Fault Act's statute of limitations found in MCL §500.3145, the Michigan Court of Appeals provided the following rationale for the one-year limitation:

> While it is true that the one-year period of limitation is relatively short, it seems consonant with the legislative purpose in the no-fault act in encouraging claimants to bring their claims to court within a reasonable time and the reciprocal obligations of insurers to adjust and pay claims seasonably. The statute attempts to protect against stale claims and protracted litigations. [*Pendergast v. American Fidelity Fire Insurance Company*, 118 Mich App 838, 841-842; 325 NW2d 602 (1982) citing *Wolar v State Farm Mutual Automobile Ins Co*, 111 Mich App 152, 156-157; 314 NW2d 460 (1981) and *Burns v Auto-Owners Ins Co*, 88 Mich App 663, 666; 279 NW2d 43 (1979).]

Given the general scheme of the No-Fault Act to expedite the filing and payment of claims resulting from automobile accidents and providing "punishments" for the failure to expedite the filing[5] and payment of claims[6], the Legislature had a rational basis in limiting the time

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[5] The No-Fault Act encourages the expedient filing of fails by barring the presentation of claims more than a year old under the statute of limitations provision in

period for persons, including minors and insane person, for filing a lawsuit. It must be kept in mind that there was a tradeoff. A minor could previously present a one-time tort claim for past and future damages that would have included medical bills, but even it eventually would be time barred after reaching the age of majority. See MCL 600.5851(1). Thus, there never was an unlimited right, time-wise, for a person injured as a minor to sue. Moreover, the degree of compensation for pre-No-Fault injuries, as detailed in *Shavers* analysis of the rationality, was incomplete:

> "The trial court summarized the exhibit provided by Professor W. James MacGinnis of the University of Michigan School of Business Administration as follows:
>
> "His testimony showed that for cases of serious injuries under the tort system, 56.7% of the persons received no compensation; 11.1% received less than 50% of the economic loss, and 10.9% received between 50% and 100% of economic loss. The balance of 20.3% received anywhere from 100% to 400% of economic loss."

Shavers, supra, 402 Mich 554, 621 n 47.

Thus, in exchange for a one time right of recovery that could be extinguished and did not compensate in a majority of serious cases anyway, No-fault claimants are permitted unlimited number of recoveries for medical care into the future and as a part of this tradeoff are quite rationally limited by not being able to claim for stale claims of the past.

MCL §500.3145.

[6] The No-Fault Act forces the expedient payment of claims by awarding 12% interest under MCL §500.3142(3) and attorneys fees under MCL §500.3148 to insureds if an insurer without justification delays payment.

The limitation on filing stale claims ensures that the goals of the No-Fault system are met. In *Gooden v Transamerica Ins Corp of America*, 166 Mich App 793, 800; 420 NW2d 877 (1988), the Michigan Court of Appeals recognized that one of "[t]he basic goal[s] of the no-fault insurance system is to provide individuals injured in motor vehicle accidents assured, adequate and prompt reparation for certain economic losses at the lowest cost to the individual and the system." Another goal of the No-Fault Act is "providing an equitable and prompt method of redressing injuries in a way which made the mandatory coverage affordable to all motorists". *McDonald v State Farm Mutual Ins Co*, 419 Mich 146, 154; 350 NW2d 233 (1984); see also *Tebo v Havlik*, 418 Mich 350, 366; 343 NW2d 181 (1984).

These goals have to also fall within the requirements of *Shavers v. Attorney General, supra*, that No-Fault insurance be "available at fair and equitable rates." 402 Mich 554, 605. Given the thousands of No-Fault claims filed each year, insureds and insurers have to have reasonable guidelines for handling those claims. The Michigan Legislature created those guidelines for which all insureds and insurers are expected to follow. If allowing stale claims, this Court would allow an insured to sit back, accumulate years of claims, and then, at an opportune time for the insured, the insured could open the floodgates and swamp the insurer with all of the accumulated claims. This flood of claims could stall or even stop the No-Fault Act's goal of expedited processing and payment of claims as insurers would have to attempt to validate these numerous and dated claims. This delay would only hurt the insureds who are following the dictates of the No-Fault Act and submitting their claims timely by slowing the processing time for their

claims. Further, by allowing stale claims, the insured motorists of this state would have to pay, through higher premiums including MCCA assessments, for the additional processing capacity need to handle the flood of accumulated claims. These additional costs and the very untimely claims themselves would directly conflict with the *Shavers'* principle of "fair and equitable rates" for No-Fault insurance, by burdening policyholders today with premiums to cover accumulated losses from many past years that should have been equitably spread over those years instead of being visited on current policyholders like a reverse lottery.

By preventing stale claims, this Court will also put all insureds on the same playing field. If certain insureds are allowed to delay submission of their claims, the insurer would have to physically process multi-year claims within the 30 day time frame provided by the No-Fault Act in MCL 500.3142(2) before penalties start. The Appellants in this case have not argued that the penalty interest and attorney fees should be waived when an insurer cannot timely process stale multi-year claims that have been dumped as a batch. The statute says insurers have 30 days to pay or have to pay interest. There is no exception for claims more than 1 year old. This Court has recently made crystal clear that courts cannot benefit <u>defendants</u> by ignoring statutory provisions for pre-judgment interest called for in statutes, even if seemingly unfair to defendants because the amounts to which the interest is applied were not actually incurred when suit was filed. *See Ayar v Foodland Distributors,* __ Mich __; __ NW2d __ (No. 126870, July 6, 2005). Likewise, there is no provision in the No-Fault Act providing for the waiver of penalties if an insurer could not physically process the accumulated stale claims. The No-Fault Act was meant to place

all claimants on the same basis with everyone presenting their claims within one year and with insureds' claims being timely paid within thirty days.

As applied to No-Fault, the Michigan Legislature has a rational basis for excluding the application of the tolling provision of MCL §600.5851(1) to causes not found within the Revised Judicature Act. Therefore, MCL §600.5851(1) is a constitutional limitation on minors ability to file certain type of cases, as applied to No-Fault cases, and does not violate Appellants' equal protection rights.

III. THERE IS NO BASIS FOR RETROACTIVITY TO A RULING, SINCE THE ENFORCEMENT OF MCL 500.3145(1) AND RELATED STATUTES AS WRITTEN MERELY AFFIRMS EXISTING LAW PREVIOUSLY MISINTERPRETED.

The Insurance Institute agrees with Appellee that this decision should be given retroactive effect. The one-year limitation of MCL 500.3145(1) has been in effect since the inception of the Act. The related provisions in MCL 500.3110(4), 500.3112, and 500.3142(1) have at most been misinterpreted by the Court of Appeals in a series of decisions that now are inconsistent when *Geiger* and its progeny are compared to *Lakeland Neuocare, supra.*

This case falls squarely within the principle that a decision that "reaffirm[s] the existing law, which was misinterpreted by the Court of Appeals," must be applied retroactively because it is not "unforeseeable." *MEEMIC v Morris*, 460 Mich 180, 189, 191; 596 NW2d 142 (1999). Any other result would compound the error of ignoring a statute that limits recovery to one year back from when suit was filed.

CONCLUSION AND RELIEF REQUESTED

The resolution of this matter does not depend on the rights of Daniel Cameron. Daniel did not and could not incur the expenses of his own care by his parents. Instead, Diane and James Cameron cared for their son, as they were legally obligated to do, and they incurred the expenses of doing so. Read in conjunction, MCL §500.3142(1), MCL §500.3110(4), and MCL §500.3112 provide that Diane and James Cameron were the only persons entitled to be paid the benefits in question, as they were the only parties who incurred expenses for the benefit of the injured person by providing necessary care for their child. As a result, MCL §600.5851(1) is inapplicable because Diane and James Cameron are not minors. They are the claimants and are fully subject to the one year back statute, MCL §500.3145(1).

Even if MCL §600.5851(1) applied in this case, MCL §600.5851(1) is a constitutional limitation of a minor's ability to file certain types of actions, namely No-Fault actions. The Michigan Legislature had a rational basis to limit the tolling provision found in MCL §600.5851(1) so that the No-Fault Act's goal of timely submission and payment of claims can be accomplished to maintain fair and equitable rates for No-Fault insurance under a system that provides certainty for present and future care needs which may be included in current rates, while disallowing stale claims that would otherwise defeat fair and affordable rates. The accumulation of claims, if allowed by MCL §600.5851(1), would defeat that goal and create additional and unnecessary costs to the No-Fault Act's insurance system and would unfairly influence the insurance rates for all Michigan motorists.

Amicus curiae Insurance Institute of Michigan therefore recommends a ruling ending the use of MCL 600.5851(1) to avoid the one-year back rule when an injured child's parents are the care providers and the only "proper" party to receive no fault benefits.

Respectfully submitted,

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