

# Order

Michigan Supreme Court  
Lansing, Michigan

November 22, 2023

Elizabeth T. Clement,  
Chief Justice

165321

ENCOMPASS HEALTHCARE, PLLC,  
Plaintiff-Appellee,

Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Megan K. Cavanagh  
Elizabeth M. Welch  
Kyra H. Bolden,  
Justices

v

SC: 165321  
COA: 357225  
Oakland CC: 2019-177749-CZ

CITIZENS INSURANCE COMPANY,  
Defendant-Appellant.

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On order of the Court, the application for leave to appeal the November 17, 2022 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing: (1) whether the defendant waived its challenge to the retroactive application of MCL 500.3145(3); (2) whether the Court of Appeals correctly applied the tolling provision of the one-year-back rule, MCL 500.3145(3), to claims that accrued, MCL 500.3110(4), before the amendment to § 3145 took effect on June 11, 2019, cf. *Spine Specialists of Mich, PC v MemberSelect Ins Co*, \_\_\_ Mich App \_\_\_ (Docket No. 358296, rel'd November 17, 2022); and (3) if so, whether the Court of Appeals adopted the correct standard for determining whether an insurer “formally denies” a claim for purposes of tolling the one-year-back period in § 3145(3).

The Coalition Protecting Auto No-Fault, the Insurance Alliance of Michigan, Michigan Defense Trial Counsel, Inc., and Michigan Association for Justice are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

We further direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *Spine Specialists of Mich, PC v MemberSelect Ins Co* (Docket No. 165445).



s1121

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 22, 2023

Clerk