STATE OF MICHIGAN

IN THE SUPREME COURT

MICHELLE DEMSKE, Individually and as Conservator for RD, PP,

Plaintiff-Appellant,

and

SURGEONS CHOICE MEDICAL CENTER,

Intervening Plaintiff,

v.

MARTIN FICK and BEST ASPHALT, INC.,

Defendants,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Appellee.

Supreme Court No. 167153

Court of Appeals No. 362739

Wayne County Circuit Court No. 20-011650-NI

AMICUS CURIAE BRIEF OF THE MICHIGAN ASSOCIATION FOR JUSTICE (MAJ) AND IN SUPPORT OF PLAINTIFF-APPELLANT MICHELLE DEMSKE

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JURISDICTIONAL STATEMENT

Amicus Curiae, the Michigan Association for Justice ("MAJ"), relies on this Court's September 27, 2024 MOAA order. (Plaintiff's Appendix ("Pf.'s Appx."), p. 61).

QUESTION PRESENTED

SHOULD MCL 500.3157(2) APPLY ONLY TO PERSONS WHOSE RIGHTS TO PIP BENEFITS VESTED UNDER NO-FAULT AUTO POLICIES ISSUED ON OR AFTER JULY 2, 2020 BECAUSE THAT IS THE FIRST DATE ON WHICH INSURERS COULD LAWFULLY SELL POLICIES INCORPORATING 2019 PA 21 AND THEREBY PROVIDE REDUCED ALLOWABLE EXPENSE COVERAGE AT CORRESPONDING LOWER PREMIUM RATES THAT HAVE BEEN APPROVED BY DIFS?

STATEMENT OF INTEREST OF AMICUS CURIAE

The MAJ is an organization of Michigan lawyers engaged primarily in litigation and trial work. The MAJ recognizes an obligation to assist this Court on important issues that would substantially affect the orderly administration of justice in the courts of this state. This includes the proper development and maintenance of Michigan automobile no-fault law, and, as a top priority in particular, the proper interpretation and application of legislation affecting such insurance.[1]

This Court is called upon, once again, to decipher the Legislature's 2019 amendments to Michigan's no-fault act (the "Act"). This case involves application of the fee schedules/payment caps for medical treatment set forth in MCL 500.3157(2) and identification of the specific no-fault claims to which they can apply.

For nearly 50 years, Michigan motorists were required to purchase PIP coverage that uniformly provided benefits for allowable expenses that were unlimited in specific amount or duration in order to operate a vehicle in this state. The only caveats on this expansive coverage were that the charges for products, services, and accommodations had to be reasonable, and the providers of such products, services, and accommodations could not charge more for automobile accident-related matters than in matters not involving any insurance.

With the passage of 2019 PA 21 and 22, the Legislature modified the PIP coverage that Michigan motorists are required to maintain. Beginning on July 2, 2020, motorists were allowed, for the first time, to choose between varying levels of allowable expense coverage, largely ranging between $50,000.00 to "no limit," when purchasing no-fault auto insurance policies. See MCL 500.3107c(1).[2]

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[1] The MAJ verifies that no counsel for a party to this action authored this brief, in whole or in part, and no party or party's counsel has made any monetary contribution intended to fund the preparation or submission of this brief. MCR 7.312(H)(5).

[2] No-fault insurance remains compulsory in all aspects for the vast majority of Michigan drivers even after the Legislature's 2019 reforms. A person can opt-out of purchasing PIP coverage for allowable expenses **only** in the following **limited** circumstance. The applicant/named insured must receive

As stated in the legislation itself, the motivation behind this momentous change was to ensure the continued availability and affordability of non-fault insurance for Michigan residents. To achieve that goal, the Legislature even required the "no limit" policies sold by insurers beginning on July 2, 2020, to be offered at a reduced premium than that previously charged to insureds up until that date. See MCL 500.2111f(2)(d). This was not a draconian legislative mandate, however, where insurers are now required to provide the same "unlimited" allowable expense coverage that existed pre-reform, but for less money earned in premium dollars. Rather, the Legislature amended MCL 500.3157 to include the fee schedules/payment caps for allowable expenses at issue in this case. This Court has recognized that those fee schedules/payment caps "substantively reduce the monetary amount and type of benefits" that were available to injured persons pre-amendment. *Andary v USAA Casualty Ins Co,* 512 Mich 207, 255; 1 NW3d 186 (2023). It is axiomatic that this translates to lower premiums charged by insurers for allowable expense coverage.

To sell policies beginning on July 2, 2020, incorporating the Legislature's 2019 no-fault amendments, insurers were required to first have their proposed premium rates approved by the Director of the Department of Insurance and Financial Services ("DIFS") to ensure that they met the benchmark reductions set by the Legislature for the varying allowable expense coverages. See MCL 500.2111f(1), (4). Stated differently, insurers could not sell policies providing no-fault benefits subject to the MCL 500.3157 fee schedules before July 2, 2020, because that was the deadline by which insurers were required to have their reduced premiums approved by and filed with DIFS. As an expected generator of premium savings, this includes MCL 500.3157(2) implementing fee schedules/payment caps. Consequently, those fee schedules/payment caps cannot be applied to

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benefits under Medicare, Parts A and B, **and** all household family members must have either qualified health coverage or PIP coverage for allowable expenses available under their own no-fault policy(ies). See MCL 500.3107d(1) and (7)(c).

claims submitted by injured persons, like Plaintiff and RD, whose rights to PIP benefits vested under no-fault auto policies issued before July 2, 2020.[3]

The MAJ recommends that this Court conclude that the 2019 amendments to MCL 500.3157, particularly regarding limitations on payment or reimbursement of treatment and/or rehabilitative occupational training expenses, apply only to those individuals who were injured while covered by a no-fault policy issued on or after July 2, 2020 that incorporated the requirements of the 2019 amendments. As such, the MAJ respectfully requests that the Court reverse the Court of Appeals' April 18, 2024 opinion as sought by Plaintiff.

STATEMENT OF FACTS

The MAJ relies on the statement of facts in Plaintiff's application for leave and supplemental brief. The record further establishes several material facts pertinent to this appeal as discussed below.

Defendant prepared the Auto Renewal materials for Plaintiff's policy on September 19, 2019, approximately three months after the effective date of 2019 PA 21 and 2019 PA 22, and two weeks before the start of Plaintiff's renewal policy period. (Pf.'s Appendix, pp. 17-21). Those materials reflect that, for the six-month period extending from October 1, 2019 to April 1, 2019, Defendant charged Plaintiff the total premium of $2,384.86, nearly half of which ($1,177.31) was attributed to Plaintiff's "unlimited" personal injury protection ("PIP") coverage. *Id.* at 18-19. See also, *Demske v Fick,* ___ Mich App ___; ___ NW2d ___ (2024) (Docket No. 362739) (recognizing Plaintiff's "unlimited" coverage). (Pf.'s Appendix, p. 3).

[3] In its September 27, 2024 Order, the Court requested that the parties address "whether the fee schedules in MCL 500.3157(2) apply to medical treatment rendered after July 1, 2021, where the applicable renewal insurance policy took effect after the statutory amendment date of June 11, 2019, and the injured person was injured after that date, but before July 1, 2021." (Pf.'s Appx., p. 61). Conceivably, an insured could have purchased a one-year policy under the pre-amendment structure, paying the premium on July 1, 2020. In that circumstance, coverage would extend through June 30, 2021, and the fee schedules/payment caps of §3157(2) would not apply to any vested claims.

Defendant's policy, which it has been using since 2009, includes "Allowable Expense Benefits" as part of the PIP coverage Defendant extended to its insureds, such as Plaintiff and RD. (Pf.'s Appendix, pp. 32, 60). Specifically, Defendant represents in the policy that it "will pay, subject to the provisions of the No-Fault Act, for accidental bodily injury to an insured arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle" various benefits, including "Allowable Expense Benefits". *Id.* at 32 (emphasis omitted). Defendant defined the "No-Fault Act" as "Chapter 31 of the Michigan Insurance Code and any amendments" and "[a]llowable expenses" as "all reasonable charges incurred for reasonably necessary products, services and accommodations for an insured's care, recovery or rehabilitation." *Id.* (Emphasis omitted). The policy further states that any charges agreed to between Defendant and an insured's healthcare provider directly and/or a third-party biller for the provider "are considered reasonable charges." *Id.*

In addition to providing a detailed breakdown of the total premium Defendant charged to Plaintiff, Defendant's September 10, 2019 Auto Renewal materials also include a discussion of "[p]ersonal injury protection coverage changes", changes in the catastrophic claims premium, and general "[p]ersonal injury protection and additional work loss coverages information." *Id.* at 20-21 (emphasis omitted). Defendant's materials are wholly silent as to the recent no-fault amendments, including those addressing charges for treatment or rehabilitative occupational training for injured persons under MCL 500.3157. *Id.*

To begin selling no-fault auto policies offering less than unlimited PIP coverage on July 2, 2020, as contemplated under the no-fault amendments, Defendant was first required to submit its newly proposed premium rates, policy forms, and other necessary material to DIFS for approval. Defendant did so on February 7, 2020, identifying its filings as "PA 21/22 – Rates, Rules and Forms."

(Amicus Curiae Appendix ("AC Appx."), pp. 1-13). DIFS approved Defendant's proposed premium rates and forms three months later, on May 6, 2020. *Id.* at 1-2.[4]

STANDARD OF REVIEW

The *de novo* standard of review is set forth in Plaintiff's application and supplemental brief.

ARGUMENT

MCL 500.3157(2) SHOULD APPLY ONLY TO PERSONS WHOSE RIGHTS TO PIP BENEFITS VESTED UNDER NO-FAULT AUTO POLICIES ISSUED ON OR AFTER JULY 2, 2020 BECAUSE THAT IS THE FIRST DATE ON WHICH INSURERS COULD LAWFULLY SELL POLICIES INCORPORATING 2019 PA 21 AND THEREBY PROVIDE REDUCED ALLOWABLE EXPENSE COVERAGE AT CORRESPONDING LOWER PREMIUM RATES THAT HAVE BEEN APPROVED BY DIFS

A. Insurance premium affordability for Michigan drivers was a catalyst for the Legislature's 2019 overhaul of the no-fault act

This Court has consistently recognized the "utopian aims" of the Act, frequently citing the following passage from *Shavers v Attorney General,* 402 Mich 554, 578-579; 267 NW2d 72 (1978):

> The Michigan No-Fault Insurance Act, which became law on October 1, 1973, was offered as an innovative social and legal response to the long payment delays, inequitable payment structure, and high legal costs inherent in the tort (or "fault") liability system. The goal of the no-fault system was to provide victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses. The Legislature believed this goal could be most effectively achieved through a system of *compulsory* insurance, whereby every Michigan motorist would be required to purchase no-fault insurance or be unable to operate a motor vehicle legally in this state. Under this system, victims of motor vehicle accidents would receive insurance benefits for their injuries as a substitute for their common-law remedy in tort. [Emphasis in original].

[4] Judicial notice of these facts is proper under MRE 201 because they are not subject to reasonable dispute. The materials referenced and information contained therein are public filings made available through the System for Electronic Rate and Form Filing ("SERFF"), a web-based platform developed by the National Association of Insurance Commissioners ("NAIC") and can be accessed at <https://filingaccess.serff.com/sfa/home/mi>. See MRE 201(b)(2) (courts may "judicially notice a fact that is not subject to reasonable dispute because it…can be accurately and readily determined from sources whose accuracy cannot be questioned.").

See, e.g., *Andary,* 512 Mich at 217 and *Meemic Ins Co v Fortson,* 506 Mich 287, 297; 954 NW2d 115 (2020).

For nearly 50 years, until the legislature amended the Act in 2019, Michigan motorists had no option but to purchase mandatory PIP coverage that provided "**unlimited lifetime benefits** for 'allowable expenses'". *Douglas v Allstate Ins Co,* 492 Mich 241, 257; 821 NW2d 472 (2012). (Emphasis added). Allowable expenses included "**all reasonable charges** incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation…." *Advocacy Org. for Patients & Providers (AOPP) v Auto Club Ins Ass'n,* 257 Mich App 365, 373; 257 NW2d 365 (2003), quoting MCL 500.3107(1)(a) (2003) (italics omitted; bold and underline added). As to "charges," MCL 500.3157 explained what a healthcare provider could charge for the reasonably necessary products, services, and accommodations contemplated by §3107(1)(a): a "reasonable amount," which could not exceed what the provider would customarily charge "for like products, services and accommodations in cases not involving insurance." *AOPP,* 257 Mich App at 373-374, quoting MCL 500.3157 (2003).

The cost of such "uncapped lifetime" coverage ultimately became a concern for consumers and our Legislature. *Andary,* 512 Mich at 214 (recognizing that, pre-amendment, the Act "provided uncapped lifetime medical care" covered by PIP benefits under policies consistent with the Act"). As Defendant writes in its Supplemental Brief, the cost of such expansive coverage became prohibitive for "large cross-sections of the Michigan population", forcing many to drive uninsured. (Def.'s Suppl. Brf. at p. 1) (citation omitted). Indeed, this Court stated in *Andary, supra*, that "[i]t was well known and widely reported that prior to the enactment of 2019 PA 21 and 2019 PA 22, Michigan's automobile insurance premiums had risen to among the highest in the country." *Id.,* 512 Mich at 269. The Court further recognized that our Legislature considered insurance premium affordability as a principal motivator for the 2019 amendments, writing:

> In fact, the Legislature included in the title of 2019 PA 21 and 2019 PA 22 a statement that one purpose was "to provide for the continued availability and affordability of automobile insurance. . . .in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates. [*Id.*]

Implementation of fee schedules/payment caps set forth in MCL 500.3157, as amended by 2019 PA 21, was "[o]ne of the several tools selected by the Legislature to rein in escalating costs". *Id.* According to the Court, "…it appears beyond dispute that the implementation of the new fee schedules in MCL 500.3157 will, over time, affect statewide automobile insurance premiums…." *Id.* at 269-270.

Therefore, as part of the sweeping changes included in 2019 PA 21 and 2019 PA 22, which became effective on June 11, 2019, the Legislature amended MCL 500.3157 to state, in relevant part, as follows:

> (1) Subject to subsections (2) to (14), a physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by personal protection insurance, or a person that provides rehabilitative occupational training following the injury, may charge a reasonable amount for the treatment or training. The charge must not exceed the amount the person customarily charges for like treatment or training in cases that do not involve insurance.
>
> (2) Subject to subsections (3) to (14), **a physician, hospital, clinic, or other person that renders treatment or rehabilitative occupational training to an injured person for an accidental bodily injury covered by personal protection insurance is not eligible for payment or reimbursement under this chapter for more than the following:**
>
> (a) **For treatment or training rendered after July 1, 2021 and before July 2, 2022**, 200% of the amount payable to the person for the treatment or training under Medicare. [Decreasing the amount payable to 190% by July 2023. (Emphasis added).][5]

[5] Although this matter specifically involves subpart (2) of §3157, this Court's ruling will broadly apply to non-Medicare reimbursable charges by medical providers given the similar construct used by the Legislature throughout the statute. See MCL 500.3157(7).

B. MCL 500.3157, as amended by 2019 PA 21, imposes substantive coverage changes to the unlimited lifetime allowable expense benefits previously mandated by the no-fault act and is bound to the insurance premium rate reductions imposed by the 2019 amendments

The question to be resolved by the Court in this matter further refines the class of people to whom MCL 500.3157 actually applies. In *Andary, supra*, the Court observed, but did not resolve, the following:

> …At the earliest, the amendments apply to those individuals who were injured while covered by an insurance policy issued on or after June 11, 2019, which is the general effective date for 2019 PA 21. At the latest, these amendments apply to those individuals who were injured while covered by an insurance policy issued after July 1, 2020, that incorporated the requirements of the 2019 amendments. [*Id.* at 250 (footnote omitted).]

Significantly, as recognized by this Court in *Andary, supra*, the fee schedules/payment caps imposed by MCL 500.3157 are substantive coverage changes because they impair "contractual rights to PIP reimbursement for medical treatment **at a particular level**." *Id.,* 512 Mich at 252 (emphasis added). See also, *id.* at 255 (recognizing that, "despite being framed as limitations on what providers can charge and who can provide services," §3157 "substantively reduce[s] the monetary amount and type of benefits" that were available to injured persons pre-amendment, "which is a change in substance, not procedure."). For the *Andary* plaintiffs in particular, "…application of the 2019 amendment of MCL 500.3157(7)…would reduce their PIP benefits by nearly half for reasonable and necessary non-Medicare-covered treatment and services they had previously been entitled to receive." *Id.* at 252.

Consequently, the "no limit" coverage available for allowable expense benefits under MCL 500.3107c(1)(d) post-amendment, beginning on July 2, 2020, is not the same "unlimited" PIP coverage motorists purchased pre-amendment and up through July 1, 2020. This Court, in fact, recognized that limiting what a provider can charge under MCL 500.3157 has "the same effect" as limiting the medical

expenses to which a covered person is entitled. Analyzing a provision similar to MCL 500.3157(2), at issue in this matter, this Court wrote:

> …MCL 500.3157(7)(a) clearly and explicitly reduces reimbursement for certain services by limiting what a provider can charge by a percentage of what was provided before the amendments. While this does not explicitly limit the medical expenses to which a covered person is entitled, it has the same effect because in PIP cases, the insurance company is the payor for services provided to the insured. As previously noted, before enactment of a fixed price cap for medical care, PIP benefits recipients like Andary and Krueger were contractually (and statutorily) guaranteed lifetime coverage for all reasonable and necessary medical care arising from their automobile accident injuries, regardless of the monetary amount…. [*Andary,* 512 Mich at 253, n 27]

Underscoring the reality that §3157 operates as a limit on the PIP coverage Michigan motorists had prior to the Legislature's 2019 amendments, this Court further rejected claims that the statute, as amended, (1) merely provides context for what a reasonable charge is under MCL 500.3107(1)(a) and (2) does not limit the type of care that an insured can receive. The Court explained that §3157 actually "***redefine[s]*** **'reasonable' in a manner that necessarily reduces the reimbursement rate for expenses related to some services and alters who can provide certain services, which affects the scope of uncapped lifetime benefits available to a covered individual.**" *Andary,* 512 Mich at 253, n 27 (emphasis added). Moreover, "…reducing reimbursement for those providing care for an insured is likely, at least to some degree, to reduce the quality **and availability** of such care." *Id.* (Emphasis added).

While the 2019 no-fault amendments allowed Michigan motorists, for the first time in nearly 50 years, the opportunity to purchase less than unlimited PIP coverage, such insurance policies could not be sold before July 2, 2020. See, MCL 500.3107c and MCL 500.3107d; see also, *Andary,* 512 Mich at 220, 249 ("[i]nsurance polices providing for less than uncapped PIP benefits could not be issued until July 2, 2020"). This is because insurers were required to have not just their necessary forms, but also their proposed premium rates for the varying coverages approved by the Director of DIFS, no

later than July 1, 2020. MCL 500.2111f(1), (4); MCL 500.3107c and MCL 500.3107d; see also, *Andary,* 512 Mich at 249, n24 ("…a policy decision was made to align [MCL 500.3107c(1)] with the timeline for regulatory approval of new insurance premium rates under MCL 500.2111f(1).").

MCL 500.2111f states, in relevant part, as follows with regard to PIP insurance premium rates:

> (1) **Before July 1, 2020, an insurer that offers automobile insurance in this state shall file premium rates for personal protection insurance coverage for automobile insurance policies *effective after July 1, 2020*.**
>
> (2) Subject to subsections (6) and (7), **the premium rates** filed as required by subsection (1)… **must result, as nearly as practicable, in an average reduction per vehicle** from the premium rates for personal protection insurance coverage that were in effect for the insurer on May 1, 2019 **as follows**:
>
> (a) For policies subject to the coverage limits under section 3107c(1)(a) [a limit of $50,000 for PIP benefits], an average 45% or greater reduction per vehicle.
>
> (b) For policies subject to the coverage limits under section 3107c(1)(b) [a limit of $250,000 for PIP benefits], an average 35% or greater reduction per vehicle.
>
> (c) For policies subject to the coverage limits under section 3107c(1)(c) [a limit of $500,000 for PIP benefits], an average 20% or greater reduction per vehicle.
>
> (d) **For policies not subject to any coverage limit under section 3107c(1)(d) [no limit for PIP benefits], an average 10% or greater reduction per vehicle.**
>
> * * *
>
> (4) **The director shall review a filing submitted by an insurer under subsections (1) to (3) for compliance with this section.** Subject to subsection (7), **the director shall disapprove a filing if after review the director determines that the filing does not result in the premium reductions required** by subsections (2) and (3). [Emphasis added].

Evidenced by the above, the Legislature did not confine an insurer's premium rate reductions, and DIFS' approval of those reductions, solely to policies that have a total dollar cap on PIP coverage. See MCL 500.2111f(2)(a) – (c). It **also** required that policies providing PIP coverage with no total

dollar limit ***must*** have an approved rate reduction for insureds selecting such coverage of no less than an average of 10% per vehicle from what the insurer previously charged on May 1, 2019. MCL 500.2111f(2)(d). Significantly, **the sole difference between the unlimited lifetime PIP coverage insurers charged for on May 1, 2019 and the "no limit" PIP coverage first available on July 2, 2020 that could be responsible for such mandated savings *are the fee schedules/payment caps implemented by MCL 500.3157*.** The only other statutory mechanisms that allow insureds an opportunity to control the premium charged for "no limit" PIP coverage are (1) coordination of benefits with other available health and accident coverage under MCL 500.3109a, and (2) waiver of wage loss benefits by those 60 years of age or older who are not eligible to receive such benefits under MCL 500.3107(2). Both of those options, however, predated the 2019 no-fault amendments. See, e.g., MCL 500.3109a (2018) and MCL 500.3107(2) (2018).

C. The fee schedules/payment caps mandated by MCL 500.3157 should apply only to injured persons whose rights to PIP benefits vested under policies issued on or after July 2, 2020

Based on the discussion above, MCL 500.3157(2) should be applied, only, to those injured persons whose rights to PIP benefits vested under no-fault policies issued on or after July 2, 2020, which incorporated the Legislature's 2019 amendments.

Defendant's focuses on the general effective date of the 2019 no-fault amendments in relation to the issuance of Plaintiff's renewal policy and when the subject accident occurred, which vested Plaintiff and RD's entitlement to PIP benefits. According to Defendant, because the amendments were immediately effective on June 11, 2019, which preceded both renewal of Plaintiff's policy and the accident, MCL 500.3157 must be applied to Plaintiff and RD's no-fault claims. However, "[t]hat the Legislature provided for the law to take immediate effect…only confirms its textual prospectivity[,]" as opposed retroactivity. *Spine Specialists of Mich v MemberSelect Ins Co,* ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 165445) (slip op at 13). (Internal quotation marks and

citation omitted). Indeed, Defendant's singular focus on the general effective date of the 2019 no-fault amendments fails to account for the totality of the 2019 no-fault amendments affecting allowable expense coverage and related insurance policy premiums, as well as the Legislature's purpose in implementing them, thereby ignoring basic tenets of statutory construction.

A cardinal rule of statutory interpretation that "statutory provisions must be read in the context of the entire statute in order to produce a harmonious whole[.]" *People v Hershey*, 303 Mich App 330, 336; 844 NW2d 127 (2013) (quotation marks and citation omitted). See also, *Haynes v Village of Beulah,* 308 Mic App 465, 468; 865 NW2d 923 (2014) ("[j]udicial interpretation of statutes should construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature."). (Quotation marks and citation omitted). When there is "tension, or even conflict, between sections of a statute," this Court has a "duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them." *Nowell v Titan Ins Co*, 466 Mich 478, 483; 648 NW2d 157 (2002). If the provisions of a statute cannot be entirely harmonized, courts should adopt the interpretation that "does the least damage to what otherwise appears to be plain language in the statute . . . ." *Niggeling v Dep't of Transp*, 183 Mich App 770, 781; 455 NW2d 415 (1990). Moreover, "when courts interpret the no-fault act in particular, they are to remember that the act is remedial in nature and must be liberally construed in favor of the persons intended to benefit from it." *Turner v Auto Club Ins Ass'n,* 448 Mich 22, 28; 528 NW2d 681 (1995).

As established above, the reduced PIP coverages implemented by the Legislature's 2019 amendments to the Act, including those imposed by MCL 500.3157, hinged on DIFS' approval of the insurance premium rates insurers intended to charge beginning on July 2, 2020, for policies providing the varying coverages. MCL 500.2111f(2)(a) – (d); see also, *Andary,* 512 Mich at 249, n 24 ("it appears that a policy decision was made to align [MCL 500.3107c(1), "applicable immediately on the general June 11, 2019 effective date of the no-fault amendments] with the timeline for regulatory approval of

new insurance premium rates under MCL 500.2111f(1).”). Defendant attempts to avoid MCL 500.2111f by simply stating that it is “located in a different chapter of the Insurance Code and concerns premium rate reductions.” (Def.’s Supplemental Brf. at p. 2). However, premium rate reductions as applied to the newly-constructed varying levels of PIP coverage to be offered by insurers effective July 2, 2020, is the critical point that resolves the issue before this Court. Policies offering less than unlimited and uncapped PIP benefits could not be offered to the public without a corresponding premium rate reduction approved by DIFS. Further, as a tool responsible for those reduced rates, MCL 500.3157 is inextricably connected to the premium rates approved by DIFS and ultimately charged for “no limit” polices, in particular, under MCL 500.3107c(1)(d).

Here, consistent with MCL 500.2111f, Defendant submitted its proposed premium rates to DIFS for approval on February 7, 2020. (AC Appx., pp. 1-13). The Director approved Defendant’s filings three months later, on May 6, 2020 (*id.* at 1-2), and Defendant then began selling its reduced PIP coverage, including “no limit” policies, on July 2, 2020. Plaintiff, however, previously purchased the renewal policy from Defendant on October 1, 2019 (Pf.’s Appendix, pp. 17-21), which provided unlimited lifetime PIP coverage at a rate unaffected by the Legislature’s 2019 no-fault amendments, including MCL 500.3157, as amended. Plaintiff and RD’s entitlement to that coverage vested on October 25, 2019, when they were injured in the underlying accident. *Andary,* 512 Mich at 238 (“the scope of available PIP benefits under an insurance policy vests at the time of injury”).

Defendant’s argument for applying the fee schedules/payment caps of §3157 apply to injured individuals whose rights vested under no-fault policies issued before July 2, 2020, wrongly permits insurers to provide ***less than*** **unlimited** PIP coverage, which motorists, like Plaintiff, actually purchased given the pre-amendment premium rate in effect. *Andary,* 512 Mich at 252 (MCL 500.3157 constitutes a substantive coverage change because it impairs “contractual rights to PIP reimbursement for medical treatment at a particular level.”). This renders the PIP coverage under policies issued

before July 2, 2020 impermissibly illusory for persons whose entitlement to PIP benefits has vested. "[T]he doctrine of illusory coverage is applicable 'where part of the [insurance] premium is specifically allocated to a particular type or period of coverage and that coverage turns out to be functionally nonexistent.'" *Ile v Foremost Ins Co*, 293 Mich App 309, 320-321; 809 NW2d 617 (2011), rev'd on other grounds *Ile ex rel Estate of Ile v Foremost Ins Co*, 493 Mich 915; 823 NW2d 426 (2012). (Citation omitted). See also, *Employers Mut Cas Co v Helicon Associates, Inc,* 313 Mich App 401, 407-408; 880 NW2d 839 (2015). Injured insureds, like Plaintiff and RD, seeking PIP benefits under policies issued before July 2, 2020, can never collect the unlimited benefits purchased with the fee schedules/payment caps in place. See, *Andary,* 512 Mich at 253, n 27 (rejecting the argument that MCL 500.3157, as amended, merely provides context for what constitutes a reasonable charge).

Review of Defendant's policy supports a consistent result. Defendant states that Plaintiff's policy "expressly provides that the scope of available PIP benefits is 'subject to the provisions of the No-Fault Act,' and defines 'No-Fault Act' as 'Chapter 31 of the Michigan Insurance Code and any amendments.'" (Def.'s Suppl. Brf. at p. 13) (emphasis and citation omitted). Because Plaintiff did not select insurance, choosing among varying allowable expense coverages with corresponding rates impacted by MCL 500.3157, the fee schedules/payment caps are inapplicable. Defendant's attempt to now apply them to Plaintiff's claim for benefits reveals that it is Defendant—not Plaintiff—that seeks to skirt around its own policy language.

The Court of Appeals' decision essentially adopts Defendant's argument, considering only the general effective date of the 2019 no-fault amendments in relation to when the subject accident occurred. In doing so, it failed to assess that MCL 500.3157(2) constitutes a reduction in allowable expense coverage that, statutorily, could not be implemented until July 2, 2020. The Court of Appeals' decision, therefore, should be reversed.

RELIEF REQUESTED

Therefore, for the reasons presented, the Michigan Association for Justice respectfully requests that this Honorable Court determine that the legislature's 2019 amendments to MCL 500.3157, particularly regarding limitations on payment or reimbursement of treatment and/or rehabilitative occupational training expenses, apply only to those individuals who were injured while covered by a no-fault policy issued after July 1, 2020 that incorporated the requirements of the 2019 amendments; and reverse the Court of Appeals' April 18, 2024 opinion issued in this case.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT PURSUANT TO MCR 7.212(B)(3)

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/s/ Meagan L. O'Donnell
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