RECEIVED by MSC 12/21/2022 1:54:43 PM

STATE OF MICHIGAN
IN THE SUPREME COURT

PORTIA WILLIAMSON, and LATESHA WILLIAMSON, as Personal Representatives for the Estate of CHARLES WILLIAMSON (deceased),

Plaintiffs-Appellees,

vs.

AAA-MICHIGAN,

Defendant-Appellant.
_____/

Supreme Court No. _____

Court of Appeals No: 357070

Wayne County Circuit No. 19-014047-NF

Carl L. Collins III (P55982)
LAW OFFICE OF CARL COLLINS III
20755 Greenfield Rd., Suite 1100
Southfield, MI 48075
(855) CAR-HIT-U

Attorneys for Plaintiff-Appellee

Lori McAllister (P39501)
Erin A. Sedmak (P78282)
DYKEMA GOSSETT PLLC
201 Townsend St., Ste. 900
Lansing, MI 48933
(517) 374-9150
lmcallister@dykema.com
esedmak@dykema.com

Attorneys for Defendant-Appellant

DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

TABLE OF CONTENTS

STATEMENT IDENTIFYING ORDER APPEALED FROM AND RELIEF SOUGHT x

SUFFICIENT GROUNDS EXIST TO WARRANT GRANTING THE APPLICATION FOR LEAVE TO APPEAL xii

STATEMENT OF QUESTION PRESENTED FOR REVIEW xiii

SUMMARY OF ARGUMENT 1

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS 1

I. THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY. 1

II. FACTUAL BACKGROUND 4

III. PROCEDURAL BACKGROUND 5

A. Circuit Court Proceedings 5

B. The Court of Appeals 8

ARGUMENT 10

I. STANDARD OF REVIEW 10

II. THE COURT OF APPEALS' DECISION MISAPPLIES THE PRINCIPLES OF STATUTORY INTERPRETATION. 11

A. The Court of Appeals Erred In Failing To Apply The Statute As Written. 11

1. The Word Claim is Unambiguous 11

2. Section 3173a(4) Expressly Includes Statements Made "In Support Of" Claims, Which Includes Statements In Litigation 14

3. The Act's Use Of The Word "Action" Does Render Section 3173a(4) Ambiguous 15

4. The Court of Appeals' Interpretation Requires Inserting Words Absent From The Statute 18

B. Applying Section 3173a(4) As Written Results In Plaintiff's Claim Being Ineligible For Payment Under The MACP. 20

C. Invalidating MCL 500.3173a(4) As It Applies To Statements Made In Litigation Is Inconsistent With The Purposes Of The No-Fault Act. 24

III. THE COURT WAS NOT AT LIBERTY TO SUBSTITUTE DISCOVERY SANCTIONS IN PLACE OF THE LEGISLATURE'S CLEAR DIRECTIVE SET FORTH UNDER MCL 500.3173A(4). 27

A. Haydaw And the Caselaw On Which It Is Based Is Inapposite To This Case 28

B. The Fact That A Court May Impose Sanctions For Discovery Violations Is Not Grounds To Nullify The Operation Of A Statute 33

C. Applying the Rule In Haydaw Amounts To A Substitution Of The Court's Policy Choices Over The Legislature's Clear Directive 35

IV. THE COURT OF APPEALS' DECISION CONFLICTS WITH PUBLISHED CASE LAW. 38

CONCLUSION AND REQUEST FOR RELIEF 39

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

TABLE OF AUTHORITIES

Cases

American Paint Serv v Home Ins Co,
246 F2d 91 (CA 3, 1957) ..... passim

Ameritech Mich v PSC (In re MCI),
460 Mich 396; 596 NW2d 164 (1999) 12

Andary v USAA Cas Ins Co,
___ Mich App ___; ___NW2d___(2022) 7, 25

Auto-Owners Ins Co v Budkis,
227 Mich App 45; 575 NW2d 79 (1997) 14

Bakeman v Citizens Ins Co, unpublished opinion of the Court of Appeals,
issued Nov. 10, 2022, at 4 (Docket No. 357195) 22, 23, 24, 29

Bank of Am, NA v First Am Title Ins Co,
499 Mich 74; 878 NW2d 816 (2016) 13

Batista v Office of Retirement Servs,
338 Mich App 340; 980 NW2d 107 (2021) 35

Bazzi v Sentinel Ins Co,
502 Mich 390; 919 NW2d 20 (2018) 4

Bezeau v Palace Sports & Entertainment, Inc,
487 Mich 455; 795 NW2d 797 (2010) 19

Book-Gilbert v Greenleaf,
302 Mich App 538; 840 NW2d 743 (2013) 19, 36, 37

Bronson Health Care Group, Inc v State Auto Prop & Cas Ins Co,
330 Mich App 338; 948 NW2d 115 (2019) 35

Butross Dawood Fashho v Liberty Mut Ins Co,
333 Mich App 612; 963 NW2d 695 (2020) 31

Candler v Farm Bureau Mut Ins Co of Michigan,
321 Mich App 772; 910 NW2d 666 (2017) ..... passim

Croff v Lake Foundry & Machine Co,
320 Mich 581; 31 NW2d 728 (1948) 20

Dean v Auto Club Ins Ass'n,
139 Mich App 266; 362 NW2d 247 (1984), *appeal denied*, 422 Mich 921 (1985) 24

Demery v Auto Club Ins Ass'n,
No. 11-117189-NF, 2015 Mich Cir LEXIS 803 (Oakland Cty Cir Ct, Sept 21, 2015) 25

Devillers v Auto Club Ins Ass'n,
473 Mich 562; 702 NW2d 539 (2005) 26, 37

Dodson Aviation, Inc v Rollins, Burdick, Hunter, Inc,
15 Kan App 2d 314; 807 P2d 1319 (Kan Ct App, 1991) 31, 36

Duggan v Patrick McPharlin,
Docket No. 2:18-cv-12639 (ED Mich, 2018) 25

Frankenmuth Mut Ins Co v Marlette Homes,
456 Mich 511; 573 NW2d 611 (1998) 11, 24

Griffin v Trumbull Ins Co,
___ Mich ___, ___; ___ NW2d ___ (2022) 9, 17, 18

Hamed v Wayne Co,
271 Mich App 106; 719 NW2d 612 (2006) 34

Hardrick v Auto Club Ins Ass'n,
294 Mich App 651; 819 NW2d 28 (2011) 27

Hartman v Ins Co of North America,
106 Mich App 731; 308 NW 2d 625 (1981) 33

Haydaw v Farm Bureau Ins Co,
332 Mich App 719; 957 NW2d 858 (2020) ..... passim

Haynes v Village of Beulah,
308 Mich App 465; 865 NW2d 923 (2014) 12

In re AGD,
327 Mich App 332; 933 NW2d 751 (2019) 14

In re Certified Question (*Preferred Risk Mut Ins Co v Michigan Catastrophic Claims Ass'n*),
433 Mich 710; 449 NW2d 660 (1989) 11

In re School Dist No 6, Paris & Wyoming Twps,
284 Mich 132; 278 NW 792 (1938) 26

Ionia Pub Sch v Ionia Ed Ass'n,
311 Mich App 479; 875 NW2d 756 (2015) 19

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

Johnson v Recca,
492 Mich 169; 821 NW2d 520 (2012)..... 22, 36, 37

Karaczewski v Farbman Stein & Co,
478 Mich 28; 732 NW2d 56 (2007)..... 19, 37

Kewin v Mass Mut Life Ins Co,
409 Mich 401; 295 NW2d 50 (1980)..... 13

Lantz v Banks,
245 Mich App 621; 628 NW2d 583 (2001)..... 13

Lease Acceptance Corp v Adams,
272 Mich App 209; 724 NW2d 724 (2006)..... 23

Maiden v Rozwood,
461 Mich 109; 597 NW2d 817 (1999)..... 10

Maier v Gen Tel Co of Mich,
247 Mich App 655; 637 NW2d 263 (2001)..... 36

Mason v City of Menominee,
282 Mich App 525; 766 NW2d 888 (2009)..... 15

Mercantile Trust Co v NY Underwriters Ins Co,
376 F2d 502, 504 n 2 (CA 7, 1967)..... 31

Mich Basic Prop Ins Ass'n v Office of Fin & Ins Regulation,
288 Mich App 552; 808 NW2d 456 (2010)..... 37

Mich Ed Ass'n v Secretary of State,
489 Mich 194; 801 NW2d 35 (2011)..... 11

Mich Head & Spine Institute, PC v Mich Assigned Claims Plan,
331 Mich App 262; 951 NW2d 731 (2019)..... 14

Ocean-Clear, Inc v Continental Cas Co,
94 AD2d 717; 462 NYS2d 251 (NY App Div, 1983)..... 31

People v Gardner,
482 Mich 41; 753 NW2d 78 (2008)..... 36

People v Jackson,
487 Mich 783; 790 NW2d 340 (2010)..... 11

People v Kloosterman,
295 Mich App 68; 810 NW2d 917 (2011)..... 15

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

Proudfoot v State Farm Mutual Auto Ins Co,
469 Mich 476; 673 NW2d 739 (2003) 14, 32, 38

Republic Fire Ins Co of North America v Weides,
81 US 375; 14 Wall 375 (1871) 29, 30

Robertson v DaimlerChrysler Corp,
465 Mich 732; 641 NW2d 567 (2002) 15

Robinson v City of Lansing,
486 Mich 1; 782 NW2d 171 (2010) 19

Rookledge v Garwood,
340 Mich 444; 65 NW2d 785 (1954) 26, 35

Rory v Continental Ins Co,
473 Mich 457; 703 NW2d 23 (2005) 36

Shavers v Attorney General,
402 Mich 554; 267 NW2d 72 (1978) 20

Shavers v Attorney General,
402 Mich 554; 267 NW2d 72 (1978) 24

South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality,
502 Mich 349; 917 NW2d 603 (2018) 12

Stanton v City of Battle Creek,
466 Mich 611; 647 NW2d 508 (2002) 10

Stokes v Millen Roofing Co,
466 Mich 660; 649 NW2d 371 (2002) 37

Sullivan v State,
328 Mich App 74; 935 NW2d 413 (2019) 15

Sun Valley Foods Co v Ward,
460 Mich 230; 596 NW2d 119 (1999) 20

Tebo v Havlik,
418 Mich 350; 408 NW2d 181 (1984) 24

Third Nat'l Bank v Yorkshire Ins Co,
218 Mo App 660; 267 SW 445 (Mo Ct App, 1924) 31, 36

Trentadue v Buckler Lawn Sprinkler,
479 Mich 378; 738 NW2d 664 (2007) 37

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

Tryc v Mich Veterans' Facility,
451 Mich 129; 545 NW2d 642 (1996) 29

Woodman v Kera LLC,
486 Mich 228; 785 NW2d 1 (2010) 36

Woods v SLB Prop Mgt, LLC,
277 Mich App 622; 750 NW2d 228 (2008) 10

Statutes

2012 PA 204 2

MCL 500.3101 2

MCL 500.3107 3

MCL 500.3107(1)(a) 6, 21

MCL 500.3114 ..... 9, 17, 18

MCL 500.3135(2) 16

MCL 500.3142 ..... 27, 32, 33

MCL 500.3145 ..... 5, 16, 21, 33

MCL 500.3171 ..... 1, 2, 4

MCL 500.3171(1) 3, 26

MCL 500.3171(2) 3, 26

MCL 500.3172(1) 2

MCL 500.3172(3) 2

MCL 500.3173 2

MCL 500.3173a ..... passim

MCL 500.3173a(1) 2

MCL 500.3173a(2) 2, 7

MCL 500.3173a(4) ..... passim

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

MCL 500.3173a(4) 14

MCL 500.3174 ..... 2, 3, 16, 17

MCL 500.3175 3

MCL 500.3176 4

MCL 500.3178 2

MCL 500.3301 1

Other Authorities

2019 Senate Journal 588 (No. 52, May 24, 2019) 26

Senate Journal 441 (No. 43, May 7, 2019) 25

Rules

MCR 2.310(C)(2) 34

MCR 2.312(B)(1) 34

MCR 2.309(B)(4) 34

MCR 2.313 10

MCR 7.215(J)(1) ..... ix, 38

MCR 7.305(B)(3) ..... ix, 1, 27, 38

MCR 7.305(B)(5) ..... ix, x, 27, 38

MCR 7.305(B)(5)(b) 39

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

STATEMENT IDENTIFYING ORDER APPEALED FROM AND RELIEF SOUGHT

Defendant seeks leave to appeal a published decision issued on September 22, 2022 by the Michigan Court of Appeals interpreting a key provision of the No-Fault Act, MCL 500.3173a(4), governing claims made under the Michigan Assigned Claims Plan ("MACP"). By its unambiguous terms, the statute provides that a claim "supported by a fraudulent insurance act is ineligible for payment of personal protection insurance benefits under the assigned claims plan." Notwithstanding this language, the Court of Appeals held that the statute does not apply to fraudulent statements if those statements were made in litigation. *Williamson v AAA of Mich*, ___Mich App___; ___NW2d___ (2022) (Exhibit A, Opinion, p. 9). The court reversed the trial court's order granting Defendant-Appellant AAA of Michigan ("AAA"), an assigned insurer for the MACP, summary disposition where replacement-service and attendant-care calendars were presented to AAA in support of claims for benefits for over two months of daily services that were never actually provided because the dates followed Plaintiff's death. (*Id.* at pp. 7, 9).

For the reasons stated herein, Defendant-Appellant requests that this Court grant this application for leave to appeal and reverse the Court of Appeals' decision.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

SUFFICIENT GROUNDS EXIST TO WARRANT GRANTING THE APPLICATION FOR LEAVE TO APPEAL

Leave to appeal is warranted under MCR 7.305(B)(3), (5)(a), and (5)(b). This case is about the proper interpretation and application of an essential provision of the No-Fault Act ("Act") governing claims under the MACP, which provides no-fault personal protection insurance ("PIP") benefits where there is no insurance policy coverage applicable or identifiable. Importantly, the right to claim benefits under the MACP is solely statutory in nature – it exists only at the will of the Legislature and is wholly governed by statute. See MCL 500.3171—3178. Section 3173a(4) dictates that claims for no-fault benefits under the MACP are ineligible for payment if a false statement is knowingly made "in support of" the claim. The statute states such statements are a fraudulent insurance act. MCL 500.3173a(4). This is the Legislature's chosen result for submitting false information in support of a claim for benefits under the MACP. Deterring abuse of the no-fault system is conducive to accomplishing the Act's stated purpose of providing affordable automobile insurance to the drivers of Michigan, who ultimately bear the burden of funding the MACP through their automobile insurance premiums. It is no secret that fraud and abuse of the system is rampant and a primary driver of high insurance rates.

Nonetheless, the Court of Appeals engaged in the improper interpretation of an unambiguous statute as a means to invalidate Section 3173a(4) as it pertains to statements made while the case is in litigation. Instead, the Court grafted an exception onto the statute and held that a fraudulent insurance act did not void a statutory claim for benefits against the MACP if the claim was made during the course of litigation.

The decision below involves a legal principle of major significance to the state's jurisprudence, as it blunts the statutory deterrent for a claimant with ongoing medical needs from committing fraud. MCR 7.305(3). By grafting such an exception into Section 3173a(4), without

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

regard to longstanding principles underlying this state's separation of powers doctrine, the lower court created a troubling loophole in the law. The Court of Appeals was not at liberty to substitute its policy choices for those of the Legislature and judicially amend the No-Fault Act to make it "better." The holding incentivizes the filing of lawsuits to avoid statutory penalties for presenting false information in support of a claim for benefits and encourages further abuse of the no-fault system, which is in direct contravention to the goals of the Act – providing affordable coverage and reducing lawsuits. In addition, the majority's decision is clearly erroneous, will cause material injustice, and conflicts with a prior published decision of the Court of Appeals directly on point with virtually identical facts. MCR 7.302(B)(5). Importantly, the holding in this case adversely affects the driving public and if not corrected, Michigan drivers will likely be even further burdened by unduly expensive auto-insurance in Michigan.

Defendant-Appellant respectfully requests that this Court grant leave to appeal and, on appeal, reverse the Court of Appeals.

RECEIVED by MSC 12/21/2022 1:54:43 PM

STATEMENT OF QUESTION PRESENTED FOR REVIEW

SHOULD THIS COURT GRANT LEAVE TO APPEAL AND REVERSE WHERE THIS CASE INVOLVES AN ISSUE OF SIGNIFICANCE TO THE STATE'S JURISPRUDENCE; CONFLICTS WITH PUBLISHED CASE LAW; AND THE COURT OF APPEALS CLEARLY ERRED, WHICH WILL CAUSE MATERIAL INJUSTICE BECAUSE IT FAILED TO APPLY AN UNAMBIGUOUS STATUTE AS WRITTEN AND THE COURT SUBSTITUTED ITS OWN POLICY; WHICH YIELDS RESULTS ADVERSE TO MICHIGAN'S DRIVERS AND CONTRAVENES THE LEGISLATURE'S POLICY AND CLEAR STATUTORY DIRECTIVE?

Plaintiffs-Appellees would answer:	No.
Defendant-Appellant answers:	Yes.
The Circuit Court would answer:	Yes.
The Court of Appeals would answer:	No.
This Court should answer:	Yes.

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

SUMMARY OF ARGUMENT

The Court of Appeals' opinion improperly undermines the application of MCL 500.3173a(4), which renders a claim for benefits under the MACP ineligible for payment where a false statement is made "as part of or in support of" the claim. The court's decision removes statements made in litigation from the purview of the statute and reaches the opposite result of a prior published decision involving virtually identical facts. The holding encourages the filing of lawsuits, paves the way for further abuse of the no-fault system, and may result in even higher auto insurance premiums in Michigan. In short, the grounds under MCR 7.305(B)(3) and (5)(a) and (b) are met here.

The Court of Appeals erred in several ways and its decision warrants reversal. ***First***, the Court of Appeals misapplied the principles of statutory interpretation to reach a result that conflicts with the plain language of the statute itself and frustrates the Legislature's intent and the Act's purpose. ***Second***, the Court of Appeals improperly applied reasoning that supports a judicially-crafted rule, based on policy choices to limit the scope of contract provisions, as a means to create a judicially-crafted exception to statute. This is not permitted under separation of powers principles. The Court of Appeals is not authorized to substitute its policy decisions in place of the Legislature's choices. ***Third***, the court's result conflicts with prior published case law on point. For these reasons, this Court should grant leave to appeal and reverse.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

I. THE MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY.

The Michigan Automobile Insurance Placement Facility ("MAIPF") is a statutorily-created association in which every insurer authorized to write automobile insurance in Michigan must participate. MCL 500.3301. The MAIPF administers the MACP pursuant to MCL 500.3171

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

through MCL 500.3178, which is part of the Michigan No-Fault Act, MCL 500.3101 *et seq.*

The MACP is a statutorily-created plan, MCL 500.3171, that is designed to provide Michigan no-fault personal protection insurance ("PIP") benefits to persons otherwise entitled for coverage under the Act, MCL 500.3173, where:

> (a) No personal protection insurance is applicable to the injury.
>
> (b) No personal protection insurance applicable to the injury can be identified.
>
> (c) No personal protection insurance applicable to the injury can be ascertained because of a dispute between 2 or more automobile insurers concerning their obligation to provide coverage or the equitable distribution of the loss.
>
> (d) The only identifiable personal protection insurance applicable to the injury is, because of financial inability of 1 or more insurers to fulfill their obligations, inadequate to provide benefits up to the maximum prescribed.

MCL 500.3172(1). *Inter alia,* Section 3172 sets forth requirements for making a claim for benefits through the MACP, including requiring a completed application, MCL 500.3172(3).

Originally, the Michigan Secretary of State was charged with the organizing and maintaining an "assigned claims facility and plan." MCL 500.3171(1). However, 2012 PA 204 transferred administration of the assigned claims system from the Department of State to the MAIPF. See MCL 500.3171. Specific obligations are imposed on the MAIPF by the Legislature via statute. First, once a notice of a claim is received, the MAIPF makes an initial determination whether the claimant is eligible for benefits through the MACP. MCL 500.3174. See also MCL 500.3173a(1)-(2). The MAIPF "shall review a claim for personal protection insurance benefits under the assigned claims plan, shall make an initial determination of the eligibility for benefits under this chapter and the assigned claims plan, and shall deny a claim that the Michigan automobile insurance placement facility determines is ineligible under this chapter or the assigned

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

claims plan." MCL 500.3173a.

If the person's claim is eligible, the MAIPF "shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to which the claim is assigned." MCL 500.3174. Once the claim is assigned, the Act provides that "[a]n insurer to whom claims have been assigned shall make prompt payment of loss in accordance with this act." MCL 500.3175. In other words, the assigned insurer adjusts the claim and pays all no-fault benefits available under the Act, including medical bills, attendant care, replacement services, and wage loss. See MCL 500.3107. However, the assigned insurer is reimbursed for that cost entirely from the MAIPF.

The cost to fund the MAIPF and MACP is substantial. The MAIPF is directed to use the funds paid by all insurers and self-insurers in Michigan to reimburse servicing insurers as described in the statute. See *id.*[1] The funds are collected through assessments to each Michigan automobile insurer and self-insurer and include an amount necessary to fund the operation of the MACP, including amounts to pay claims and administer claims. See MCL 500.3171(1) ("Costs incurred in the operation of the facility and the plan shall be allocated fairly among insurers and self-insurers.");MCL 500.3171(2) ("Costs incurred in the administration of the assigned claims plan shall be allocated fairly among insurers and self-insurers."). In 2022, the annual assessment nearly reached $500 million dollars.[2]

The costs necessary to operate the MAIPF and MACP are ultimately borne from the driving

[1] "All insurers who write no-fault policies in Michigan receive a portion of MACP cases, allocated by market share." *Bazzi v Sentinel Ins Co*, 502 Mich 390, 419; 919 NW2d 20 (2018) (McCormack, J. dissenting).

[2] The 2022 assessment was $499,873,833.81. Available at https://www.michacp.org/assessment.aspx (last accessed December 16, 2022).

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

public. See MCL 500.3176 ("Reasonable costs incurred in the handling and disposition of assigned claims, including amounts paid pursuant to assessments under section 3171, *shall be taken into account in making and regulating rates for automobile liability and personal protection insurance*.") (emphasis added). Thus, the price of PIP benefits in every Michigan automobile insurance policy is based in part on the amount of funds required to operate the MACP. Put simply, every person who purchases a Michigan automobile-insurance policy pays the assessment fund the MACP. For that reason, "the Michigan Assigned Claims Plan (MACP) is the insurer of last resort." *Bazzi*, 502 Mich at 419 (McCormack, J. dissenting) (citing MCL 500.3171).

II. FACTUAL BACKGROUND

On October 30, 2018, Charles Williamson ("Plaintiff") walked into oncoming traffic and was struck by an unidentified vehicle. (Exhibit B, Police Report and Investigation). Plaintiff sustained multiple injuries and was immediately transported to Providence Hospital, where he was reported to be in stable condition. (*Id.*) Plaintiff subsequently underwent surgery at St. Johns Hospital followed by rehabilitation at Lakeland Center for Rehabilitation. Plaintiff was discharged to home on December 26, 2018.

On December 14, 2018, Lakeland Center for Rehabilitation completed an Application for Benefits Through The Michigan Assigned Claims Plan on behalf of Plaintiff. (Exhibit C, Application for Benefits). The application indicated Plaintiff was struck by an unidentified vehicle and, thus, no insurer in the order of priority could be identified, and Plaintiff did not maintain Michigan No-Fault automobile insurance of his own and was not otherwise entitled to claim benefits under the policy of a spouse or resident relative. (*Id.*) On January 8, 2019, the MAIPF assigned his claim to AAA Michigan, which promptly paid Plaintiff's benefits, consisting of medical bills for treatment.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

III. PROCEDURAL BACKGROUND

A. Circuit Court Proceedings

Despite Plaintiff's claim not being disputed by AAA and all benefits submitted having been paid, on October 22, 2019, Plaintiff filed this action for first-party no-fault benefits against Defendant-Appellant Auto Club Insurance Association. (Exhibit D, Complaint). It appears suit was filed to protect Plaintiff's rights under the "one-year-back rule" in MCL 500.3145. (See *id.*, ¶¶ 4-6). Unfortunately, on October 23, 2019, Plaintiff passed away, following a subsequent pedestrian-motor vehicle accident. (Exhibit E, Obituary). Plaintiff's daughters, Porsha and Latesha Williamson, acquired Letters of Authority to proceed with this suit on January 8, 2020 on behalf of Mr. William's estate (the "Estate"). (Exhibit F, Letters of Authority).

During discovery, AAA served discovery on Plaintiff's Personal Representatives, inquiring into which specific no-fault benefits were being claimed by the Estate. The answers to AAA's interrogatories, dated February 10, 2020, indicated that the Estate was claiming replacement services and attendant care and specifically cited to attached documentation, consisting of replacement-service and attendant-care calendars detailing the dates on which services were provided and specified which services were performed on those days. (Exhibit G, Answers to Interrogatories). Specifically, the following answers to interrogatories were provided:

> 30. Do you claim any loss of services no-fault benefits in this lawsuit?
>
> **ANSWER:**
>
> 31. If your answer to Interrogatory 30 is yes, please provide the following information as to each person who has provided to you such services:
>
> a. The name, address and phone number of each person who has provided such services;
> b. The date or dates upon which said services were provided;
> c. Specify the services performed on each date;

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

d. The amount of loss of services benefit you claim in regard to each person;
e. The amount of money which you have paid to each person in regard to said services;
f. The form of payment to each person, i.e., cash or check or by some other means;
g. Do any documents exist in support of this claim? If yes, please describe and attach a copy of all such documents.

ANSWER:

a-g Lirrice Brown. See attached services forms

* * *

57. Do you claim benefits for attendant care or nursing services in this lawsuit pursuant to MCL §500.3107(1)(a)? If so, please confirm what is the total amount of unpaid attendant care services claimed through the date you answer these Interrogatories.

ANSWER:

Yes. See attached

58. If you claim attendant care services pursuant to MCL §500.3107(1)(a), how many hours per day does Plaintiff claim to need attendant care services and for which inclusive dates? Where different numbers of hours were needed during different time frames, please break down your answer in that regard.

ANSWER:

See attached

(*Id.*)

The calendars attached to the interrogatories, presented to AAA to identify the benefits being claimed, indicated that Plaintiff received 16 hours per day of attendant care October 24 through 31, 2019 and every day of November and December of 2019, consisting of following services: general supervision, administering medications, and "night assistance/bathroom." (*Id.*) Moreover, the calendars indicated that Plaintiff received replacement services October 24 through 31, 2019 and every day of November and December of 2019, consisting of the following services:

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

preparing meals, doing laundry, lifting and carrying groceries, and taking out garbage. (*Id.*) Lateshea Williamson signed the answers to interrogatories, indicating that she read the Answers and believed them to be true to the best of her knowledge. (*Id.*)

As a result, AAA filed a Motion for Summary Disposition, arguing that Plaintiffs' claim for benefits was precluded pursuant to MCL 500.3173a(4)[3], which states as follows:

> A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility, or to an insurer to which the claim is assigned under the assigned claims plan, for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment of personal protection insurance benefits under the assigned claims plan.

MCL 500.3173a(4). (Exhibit H, Defendant's Motion for Summary Disposition).

AAA argued that because Plaintiff was dead in November and December of 2019, he could not have received replacement services and attendant care on those dates. As a result, under Section 3173a(4), the interrogatory answers were a fraudulent insurance act and Plaintiff's claim was rendered ineligible for payment of benefits under the MACP. (*Id.*)

---

[3] While Plaintiff's accident occurred prior to the 2019 Amendments to the No-Fault Act, the misrepresentation at issue in this case occurred after the Amendments were passed; thus, the amended version of MCL 500.3173a was applied, under which the material misrepresentation provision, at issue in this case, is found under MCL 500.3173a(4). Prior to the 2019 amendments, the material misrepresentation subsection of the statute was found under MCL 500.3173a(2). Despite the fact that one of the panel members in this case, Judge Douglas Shapiro, authored the majority opinion in *Andary v USAA Cas Ins Co*, ___ Mich App ___; ___NW2d___(2022) (holding that two amended provisions of the Act could not apply to claimants involved in accidents prior to their passage because it amounted to retroactive application of a statute because the subject accident occurred prior to the passage of the 2019 amendments), none of the panel members in this case questioned whether it was appropriate to apply MCL 500.3173a(4) as opposed to the pre-amendment MCL 500.3173a(2).

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Plaintiff[4] responded, arguing that the forms were not submitted in support of a claim for benefits and, instead, were merely documents in Plaintiff's possession and responsive to a discovery request. (Exhibit I, Plaintiffs' Response to MSD). Plaintiff argued that the forms were pre-dated and filled out prior to Plaintiff's death and any misrepresentation was unintentional. (*Id.*) Plaintiff further argued that the rule from *Haydaw v Farm Bureau Ins Co*, 332 Mich App 719; 957 NW2d 858 (2020) should be applied – "false statements made during discovery in the midst of litigation do not provide grounds to void an insurance policy" – and, inexplicably, argued that there was no fraud in the formation of the insurance contract. (Exhibit I, Plaintiffs' Response to MSD).

The Motion was granted on April 27, 2021. (Exhibit J, Order Granting Defendant's Motion). The Order specifically noted that Plaintiff committed a fraudulent insurance act by knowingly presenting material misrepresentations in support of its claims for no-fault benefits, and, as a result, concluded that the claims is ineligible for payment or benefits pursuant to MCL 500.3173a. (*Id.*)

B. <u>The Court of Appeals</u>

Plaintiff appealed, making the same arguments made in the trial court. AAA responded, arguing that the facts of this case were virtually identical to *Candler v Farm Bureau Mut Ins Co of Michigan*, 321 Mich App 772; 910 NW2d 666 (2017), which militated the same result – that the misrepresentation rendered the claim ineligible for benefits under the MACP. (Exhibit K, Defendant-Appellee's Brief on Appeal). The misrepresentation was material and was knowingly submitted to AAA in support of a claim for benefits. (*Id.*) Defendant further argued that the

[4] While in reality it was counsel representing Plaintiff's Estate and Plaintiff's Personal Representatives who responded to the motion, for the sake of clarity, the term "Plaintiff" is used because ultimately Plaintiff's interest is the one being advanced.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

correct analysis under the statute has no "intent" element; thus, required a different analysis than common-law fraud used to void the formation of a contract. (See *id.*) Plaintiffs submitted a reply brief, arguing the misrepresentation was unintentional and the fraud defense was not plead with particularity.

On September 22, 2022, the Court of Appeals issued its opinion reversing the trial court, holding that "MCL 500.3173a(4), the statutory provision governing fraudulent insurance acts in this context, only applies to statements offered during the prelitigation insurance claims process and not to those offered during litigation." (Exhibit A, Opinion, p. 1). The court set forth the elements to establish ineligibility due to a material misrepresentation under MCL 500.3173a(4), as set forth in *Candler*, and noted that Plaintiff disputed the second element that requires the fraudulent statement "is part of or in support of a claim for no-fault benefits[.]" (*Id.* at pp. 5, 6). The court stated "[t]his argument turns on the proper interpretation of the word 'claim' in MCL 500.3173a(4)." (*Id.* at p. 6). The court concluded that the word "claim" refers only to the "prelitigation insurance claims process[.]" (*Id.* at p. 7).

The court supported its conclusion by stating that the No-Fault Act must be "liberally construed in favor of the persons who are intended to benefit from it." (*Id.* at p. 6). The court relied on *Griffin v Trumbull Ins Co*,___ Mich ___, ___; ___ NW2d ___ (2022) (Docket No. 162419), a recent opinion of this Court, which analyzed a priority statute, MCL 500.3114, which sets forth an order of priority of insurers (and the MACP in certain circumstances) from whom accident victims may "claim" no-fault benefits. "In this context, a claim for benefits is simply a demand to an insurer by its insured or a third party for payments that are believed to be due after a motor vehicle accident." (Exhibit A, Opinion, p. 6) (quoting *Griffin, supra*, slip op at 9). The court also noted that portions of the No-Fault Act specifies where it refers only to a lawsuit and

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

uses the terms "cause of action", "action for recovery", and "action by claimant[.]" (*Id.*) Because Section 3173a(4) did not specifically refer to an "action" and only used the term "claim", the court concluded that "[f]alse statements submitted during discovery, after an action for recovery has been filed, are not statements offered in support of a claim to the MAIPF or the assigned insurer." (*Id.* at p. 7).

The court also relied on *Haydaw, supra*, in which the Court of Appeals "addressed 'whether statements made during litigation after the insured's claim is denied constitute grounds to void the policy under a fraud provision'" for its holding that "the fraudulent insurance act provision in MCL 500.3173a does not apply to statements made after litigation has ensued." (*Id.* at p. 8). The court stated,

> [A] false statement made in a filing submitted during discovery is not a statement made to the MAIPF or to an assigned insurer. Rather, a false statement made during discovery is made to the court. See *Haydaw*, 332 Mich App at 728 ("[A]n insured's statements during discovery are made with the intention that the trier of fact, not the insurer, will act on them."). That is why the court rules authorize courts to sanction discovery violations under specific circumstances. See MCR 2.313. Thus, an insurer may have recourse for a false statement made during discovery, but it is not dismissal of the claim under MCL 500.3173a.

(*Id.* at p. 9). For those reasons, the court concluded that "[s]tatements made for the first time during discovery cannot form the basis of a fraudulent insurance act under MCL 500.3173a(4)." (*Id.*)

ARGUMENT

I. STANDARD OF REVIEW

Whether to grant leave to appeal is within this Court's discretion. Should the Court grant leave, this Court reviews *de novo* underlying issues of statutory interpretation. *Stanton v City of Battle Creek,* 466 Mich 611, 614; 647 NW2d 508 (2002). The granting of Defendants' motion to dismiss is reviewed *de novo. Maiden v Rozwood,* 461 Mich 109; 597 NW2d 817 (1999).

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

II. THE COURT OF APPEALS' DECISION MISAPPLIES THE PRINCIPLES OF STATUTORY INTERPRETATION.

The Court of Appeals' decision unnecessarily interprets a statute that requires no interpretation because it is clear and unambiguous. There is simply no reason to find the word "claim" ambiguous and, assigned its ordinary meaning, it encompasses all claims for benefits without any distinction whether a claim for benefits is made in the initial claims process or asserted in litigation. The Court of Appeals misapplied the principles of statutory interpretation at every turn as a means to substitute its policy choices over those of the Legislature.

A. The Court of Appeals Erred In Failing To Apply The Statute As Written.

The overarching rule of statutory construction is that "Court[s] must enforce clear and unambiguous statutory provisions as written." *In re Certified Question* (*Preferred Risk Mut Ins Co v Michigan Catastrophic Claims Ass'n*), 433 Mich 710, 721; 449 NW2d 660 (1989). "Where a statute is clear and unambiguous, judicial construction is precluded." *Frankenmuth Mut Ins Co v Marlette Homes*, 456 Mich 511, 515; 573 NW2d 611 (1998). Where interpretation is necessary, courts "follow established rules of statutory construction." *People v Jackson*, 487 Mich 783, 790; 790 NW2d 340 (2010). "Assuming that the Legislature has acted within its constitutional authority, the purpose of statutory construction is to discern and give effect to the intent of the Legislature." *Id.* "Courts may not speculate regarding legislative intent beyond the words expressed in a statute. Hence, nothing may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself." *Mich Ed Ass'n v Secretary of State*, 489 Mich 194, 217-18; 801 NW2d 35 (2011).

1. The Word Claim Is Unambiguous.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

As with all questions of statutory interpretation, a court must begin its analysis with the plain language of the statute. *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396, 411; 596 NW2d 164 (1999). Section 3173a(4) provides:

> A person who presents or causes to be presented an oral or written statement, including computer-generated information, as part of or in support of a claim to the Michigan automobile insurance placement facility, or to an insurer to which the claim is assigned under the assigned claims plan, for payment or another benefit knowing that the statement contains false information concerning a fact or thing material to the claim commits a fraudulent insurance act under section 4503 that is subject to the penalties imposed under section 4511. A claim that contains or is supported by a fraudulent insurance act as described in this subsection is ineligible for payment of personal protection insurance benefits under the assigned claims plan.

MCL 500.3173a(4).[5]

The Court of Appeals' analysis hinged on its unnecessary interpretation of the word "claim." "If a word is not defined in a statute, that word should be interpreted according to its plain and ordinary meaning, and in those situations, [a] Court may consult dictionary definitions." *Haynes v Village of Beulah*, 308 Mich App 465, 468; 865 NW2d 923 (2014). A "claim" is "a demand for something due or believed to be due." Merriam-Webster Collegiate Dictionary (11th ed). See also Black's Law Dictionary (11th ed) (defining a "claim" to mean "[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional").

"A court does not construe the meaning of statutory terms in a vacuum. Rather, [courts] interpret the words in their context and with a view to their place in the overall statutory scheme." *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 376; 917 NW2d 603 (2018). The statute does not use the word "claim" in a vacuum.

[5] Section 4503 defines fraudulent insurance acts. Section 4511 sets forth penalties for committing a fraudulent insurance act, which are not at issue in this case.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Instead, it indicates that it is a claim made to the MAIPF or an assigned insurer. MCL 500.3173a(4). The statute indicates that it is a claim "for payment or another benefit[.]" *Id.* Thus, in the context of Section 3173a(4), "claim" means "*a demand for, or an assertion of rights to*" payment or another benefit that is made to the MAIPF or an assigned insurer, without any further qualifications.

Nothing in the ordinary definition of "claim" indicates that Legislature intended to exclude claims for benefits pursued through litigation. The statute does not differentiate between a claim for payment of benefits made outside of litigation and one asserted through litigation. Courts may not create an ambiguity where none exists in a statute. *Lantz v Banks*, 245 Mich App 621, 626; 628 NW2d 583 (2001). As a practical matter, claimants often submit claims for reimbursement during the course of no-fault litigation. It would be detrimental to an injured party if an insurer followed the Court of Appeals' reasoning, failing to recognize these as claims, and failing to process such claims merely because they were submitted during litigation.

Contrary to the Court of Appeals' contention, there is no "distinction between a 'claim' for benefits submitted to the MAIPF or the MACP-assigned insurer and a *lawsuit* filed for a wrongful denial of that claim." (Exhibit A, Opinion, p. 6). The right to receive PIP benefits through the MACP is solely statutory in nature and there is no insurance policy applicable to claims for benefits through the MACP. Thus, there is no breach-of-contract cause of action[6] for damages arising from

[6] Breach of contract is a common-law cause of action for damages. See *Kewin v Mass Mut Life Ins Co*, 409 Mich 401, 415; 295 NW2d 50 (1980). To prevail on a claim for breach of contract against a plaintiff "must establish by a preponderance of the evidence that (1) there was a contract, (2) the other party breached the contract, and (3) the breach resulted in damages to the party claiming breach." *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 100; 878 NW2d 816 (2016). Since there is no contract at issue here, there is no breach of contract theory of recovery available.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

a "wrongful denial of [a] claim" like there would be against an insurer who provides benefits under an insurance policy. *Id.*

Instead, the only "cause of action" available to a person seeking payment of benefits under the MACP is a claim for payment of benefits pursuant to the statute. Whether the claim is made to the MACP (or an assigned insurer) or asserted in litigation, the claimant must prove that his or her "claim" is eligible for payment of benefits under the MACP and the Act generally. See MCL 500.3172—MCL 500.3174;see e.g., *Proudfoot v State Farm Mutual Auto Ins Co*, 469 Mich 476, 484; 673 NW2d 739 (2003) (no obligation "to pay for an expense until it is actually incurred.") Thus, there is absolutely no substantive difference between a "claim" for benefits made to the MACP through its servicing insurer and a "claim" for benefits under the MACP asserted in litigation. See *Mich Head & Spine Institute, PC v Mich Assigned Claims Plan*, 331 Mich App 262, 274; 951 NW2d 731 (2019). A claim is a claim regardless whether it is pursued through litigation.

2. Section 3173a(4) Expressly Includes Statements Made "In Support Of" Claims, Which Includes Statements In Litigation.

To foreclose any doubt regarding the Legislature's intent, Section 3173a(4) expressly encompasses statements made "as part of *or* in support of a claim…" MCL 500.3173a(4) (emphasis added). The use of the word "or" is important here because "[t]he word 'or' generally refers to a choice or alternative between two or more things." *Auto-Owners Ins Co v Budkis*, 227 Mich App 45, 50; 575 NW2d 79 (1997). Thus, a statement made "as part of" a claim is not the same as a statement made "in support of" a claim. "[T]he words 'and' and 'or' are not interchangeable and their strict meaning should be followed when their accurate reading does not render the sense dubious and there is no clear legislative intent to have the words or clauses read in the conjunctive." *In re AGD*, 327 Mich App 332, 348; 933 NW2d 751 (2019). The Legislature

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

is presumed to have acted intentionally and the difference in words selected must be given effect. *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 759; 641 NW2d 567 (2002). "[C]ourts must give effect to every word, phrase, and clause in the statute and avoid an interpretation that renders any part of the statute nugatory or surplusage." *Mason v City of Menominee*, 282 Mich App 525, 536; 766 NW2d 888 (2009). "'Part' is defined as 'a portion or division of a whole that is separate or distinct; piece, fraction, or section.'" *People v Kloosterman*, 295 Mich App 68, 70; 810 NW2d 917 (2011). Thus, a statement that is "part of" a claim is a statement that forms a portion of the claim itself – in other words – statements made in the insurance claims process. "Dictionary definitions of 'support' include 'to provide with substantiation,' 'corroborate,' 'assist,' or 'help.'" *Sullivan v State*, 328 Mich App 74, 83; 935 NW2d 413 (2019). Thus, a statement made "in support of a claim" is any statement that substantiates, corroborates, assists, or helps validate that the claim is entitled to be paid.

The statute recognizes that it applies to statements both be made as part of the actual claim for benefits and also made outside of that context to support or validate payment of the claim. There is simply nothing about the phrase "in support of" that would exclude statements in litigation that aid in proving the claim for benefits is entitled to be paid. It is axiomatic that where a claimant files a lawsuit to compel payment of benefits under the MACP, statements made in litigation are "in support of" the claim for benefits, as that is precisely what is being sought by a plaintiff in litigation. As discussed in more detail below, a claimant may also assert a claim for benefits for the first time in litigation; thus, some statements in litigation are also "part of" a claim.

3. The Act's Use Of The Word "Action" Does Render Section 3173a(4) Ambiguous.

The Court of Appeals invented a dichotomy between claims made in the prelitigation insurance claims process versus pursuing a claim for benefits through litigation that simply does

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

not exist in the No-Fault Act. The court bases, in part, this conclusion on its argument that the Act uses both the word "action" and the word "claim", thus, they must have different meanings. (See Exhibit A, Opinion, pp. 6-7). They *do* have different meanings because they are two different words but, the fact that two different words are used in the Act does not mean that one word, "claim", is somehow ambiguous or that a "claim" for benefits cannot be pursued through litigation.

The lower court first relies on the Act's use of the phrase "cause of action for damages" in MCL 500.3135(2), which sets forth rules for a lawsuit over an automobile-negligence claim, such as making the issue of threshold injury a question of law for a court to decide in certain circumstances and rules for assessing damages in such a lawsuit. Thus, the use of the phrase "cause of action for damages" is logical here because the statute sets forth rules for auto-negligence *lawsuits*, which are not first-party insurance claims. It would not make sense to use the word "claim" here. The language doesn't govern insurance claims. It governs issues relevant to litigation—whether a court could decide an issue as a question of law or how a jury may assess damages. Likewise, MCL 500.3145, on which the court relied, repeatedly uses the word "action" to describe when a *lawsuit* to recover PIP benefits or property-protection benefits must or may be filed. Again, the use of the word "claim" here would not make sense, as those specific sentences set forth deadlines relevant specifically only to *lawsuits*, as it is a statute of limitation. Finally, the lower court relied on the use of the terms "claim" and "action" in MCL 500.3174, which states as follows:

> A person claiming through the assigned claims plan shall notify the Michigan automobile insurance placement facility of his or her claim within 1 year after the date of the accident. On an initial determination of a claimant's eligibility for benefits through the assigned claims plan, the Michigan automobile insurance placement facility shall promptly assign the claim in accordance with the plan and notify the claimant of the identity and address of the insurer to

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

> which the claim is assigned. An action by a claimant must be commenced as provided in section 3145.

MCL 500.3174.

Again, the use of the terms "claim" and "action" are perfectly consistent with their meanings and the use is logical. The word "claim" refers to the claimant's demand for, or assertion of right to, benefits under the MACP and sets forth rules for notifying the MAIPF of the claim, for the MAIPF to make an initial determination of eligibility of the claim, and for the assignment of the claim to a servicing insurer. See *id.* However, where the statute addresses when a *lawsuit* may be filed, it logically uses the word "action." *Id.*

In sum, where the Act prescribes requirements only specifically applicable to *lawsuits*, it uses the term "action." Where the Act addresses a demand for, or an assertion of right to, benefits, it uses the word "claim[.]" Recognizing that the words "action" and "claim" have different meanings does not render the word "claim" ambiguous. Nor does it require that Section 3173a(4) be interpreted as being inapplicable to statements made in support of claims for benefits made during litigation.

The Court of Appeals' reliance on *Griffin*, *supra* to support this false dichotomy is misplaced. In *Griffin*, this Court analyzed the language of MCL 500.3114, which directs persons injured in motor vehicle accidents to claim no-fault benefits "from insurers according to the listed order of priority." *Griffin*, slip op. at 9. Nothing in *Griffin* changes the definition of the word "claim[.]" To the contrary, this Court cites additional definitions derived from insurance-industry sources that are entirely consistent with the definitions of "claim" stated above as follows: "defining 'claim' as 'a request made by the insured for insurer remittance of payment due to loss incurred and covered under the policy agreement'… defining 'claim' as '[a]ny request or demand for payment under the terms of the insurance policy'…'Claim — used in reference to insurance, a

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

claim may be a demand by an individual or corporation to recover, under a policy of insurance, for loss that may come within that policy.'" *Id.* at n.5. Thus, within the insurance industry, a "claim" is a request or demand for payment or benefits due under an insurance policy. Again, nothing in these definitions indicates that filing suit as a means to pursue a claim for benefits fundamentally transforms the nature of a "claim" so that it is no longer a demand for payment or benefits due.

While this Court in *Griffin* correctly noted that making a claim is not the same thing as filing a lawsuit, nothing in *Griffin* suggests that a lawsuit cannot be a means to pursue a claim. In *Griffin*, this Court found, *inter alia*, that a claimant complied with MCL 500.3114 because he filed a claim against all "insurers in the order of priority who were identifiable prior to the expiration of the limitations period" and he was not required to file a lawsuit to obtain subpoena power to identify a higher-priority insurer under the circumstances. See *Griffin*, slip op. at 2. Thus, *Griffin* simply stands for the proposition that MCL 500.3114 merely requires a claimant to make a "good-faith" effort to claim benefits from the highest-priority insurer and that does not necessarily require filing suit to obtain subpoena power. *Id*. at 11. *Griffin* does not stand for the proposition that filing suit makes a claim something other than a claim.

4. The Court of Appeals' Interpretation Requires Inserting Words Absent From The Statute.

The Legislature did not give a free pass for a claimant to make a fraudulent statement during litigation and have that conduct be exempt from the scope of the disqualification set forth in Section 3173(4). There is no language in Section 3173a(4) indicating that it only applies to statements made pre-litigation. To reach the result that the Court of Appeals reached requires inserting additional words into the statute as follows: "[A] person who presents...a statement…as part of or in support of a claim [except if that statement is made in an action]…." This is not what

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

the statute says. Courts may not read into a statute a requirement that the Legislature has seen fit to omit. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 542; 840 NW2d 743 (2013). See also *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010) (courts "may not read into the statute what is not within the Legislature's intent as derived from the language of the statute.") (cleaned up).

To support its interpretation, the Court of Appeals erroneously reasoned that "[h]ad the Legislature intended for MCL 500.3173a(4) to apply to statements made during litigation, the Legislature would have drafted the statute differently to apply, for example, to statements offered 'in support of an action for recovery.'" (Exhibit A, Opinion, p. 7). Not so. Had the Legislature drafted the statute in that manner, it would not encompass statements made in the pre-litigation initial claims process because it would specifically only apply to statements made in a lawsuit. The Legislature intended the statute to apply to all statements "as part of or in support of a claim" for payment of benefits, regardless whether made before or during litigation. This is evident because the Legislature did not include any narrowing language. Where a statute is broad in its scope as written, it must, likewise, be applied broad in scope. *Ionia Pub Sch v Ionia Ed Ass'n*, 311 Mich App 479, 493; 875 NW2d 756 (2015).

Courts are not permitted to rewrite statutes. Such decisions belong to the branch of our government that the people empowered to make the desired change: the Legislature. See *Karaczewski v Farbman Stein & Co*, 478 Mich 28, 42-43; 732 NW2d 56 (2007), overruled in part on other grounds by *Bezeau v Palace Sports & Entertainment, Inc*, 487 Mich 455; 795 NW2d 797 (2010). "It is not within the province of th[e] Court[s] to usurp the functions of the legislature and amend the act or its title by judicial interpretation in the absence of clear and express language which dictates such an interpretation." *Croff v Lake Foundry & Machine Co*, 320 Mich 581, 595;

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

31 NW2d 728 (1948). It is the Legislature's role to make the laws, not the courts. See, e.g., *Shavers v Attorney General*, 402 Mich 554, 638; 267 NW2d 72 (1978) (delaying the entry of an order for eighteen months so that the Legislature could correct constitutional defects in the no-fault act). "If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

Because the Court of Appeals failed to apply Section 3173a(4) as written, it erred.

B. Applying Section 3173a(4) As Written Results In Plaintiff's Claim Being Ineligible For Payment Under The MACP.

Applying the plain and unambiguous language of Section 3173a(4) in this case compels one result: a finding that Plaintiff's claim is ineligible for benefits through the MACP. When the definition of "claim" is used in MCL 500.3173a(4), the statute reads as follows: "[A] person who presents…[a] statement…as part of or in support of [a demand for, or an assertion of right to, payment of benefits] to the [MAIPF] or to an insurer to which the claim is assigned under the [MACP] knowing the statement contains false information concerning a fact or thing material to [the demand for, or assertion of right to, payment of benefits] commits a fraudulent insurance act…" See MCL 500.3173a(4).

Here, Plaintiff filed a lawsuit in an attempt to compel AAA to pay benefits under the MACP. Lateshea Williamson, on behalf of Plaintiff, presented AAA, an assigned insurer, with answers to interrogatories, which inquired into the type and amount of benefits being demanded in the lawsuit. Interrogatory 30 asked "Do you ***claim*** any loss of services no-fault benefits ***in this lawsuit***?"[7] (Exhibit G, Pl. Interrogatory Answer, no. 30) (emphasis added). As the Court of

[7] The use of the words "claim" and "lawsuit" in the interrogatories further demonstrates that while the words have different meanings, the "claim" is a demand for, or assertion of right to, benefits

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Appeals recognized, while this question was not answered, the answer to interrogatory no. 31 indicated that replacement services were being claimed in the lawsuit. (See Exhibit A, Opinion, p. 3, n.3).[8] Interrogatory no. 31 asked for details regarding the claim for replacement services, such as, *inter alia*, the dates such services were provided and the services performed. (Exhibit G, Pl. Interrogatory Answers, no. 31). The answer to this interrogatory stated "See attached services forms[.]" (*Id.*) Likewise, interrogatory no. 57 asked "Do you ***claim*** benefits for attendant care or nursing services ***in this lawsuit*** pursuant to MCL §500.3107(1)(a)? If so, please confirm what is the total amount of unpaid attendant care services ***claimed*** through the date you answer these Interrogatories." (*Id.*, no. 57) (emphasis added). This was answered in the affirmative and again directed AAA to the attached documentation (attendant care calendars). Stated simply, Plaintiff was "claiming" entitlement to payment of replacement services and attendant care benefits in the "lawsuit." The answers to interrogatories were written statements "made in support of" a claim for benefits under the MACP. The replacement-service and attendant-care calendars attached to the interrogatory answers undisputedly contained false information because they indicated services were provided for over two months after Plaintiff's death. No reasonable jury could conclude that

---

and the "lawsuit" is a means of compelling payment of the claim.

[8] It is interesting that the Court of Appeals seemingly accepted that a "claim" for insurance benefits can be advanced in a "lawsuit" as stated in the interrogatories. Yet the remainder of the panel's opinion reads as if insurance claims are not asserted in litigation. As discussed below, the panel's opinion applying the rule in *Haydaw* rests on the assumption that litigation follows a denial of a claim and the claims process has concluded by the time litigation is filed. But the reality of Michigan No-Fault litigation is that the claims process is ongoing and plaintiffs continue to submit claims, for the first time, in addition to an assertion of any claims specifically identified, in litigation. Complaints for no-fault benefits rarely identify any specific claims. The suits generally include claims for all allegedly incurred expenses prior to the litigation, subject to MCL 500.3145, and all claims allegedly incurred during the course of litigation. Judgments (and settlements) in such suits are generally for benefits through the date of the judgment (or settlement). Thus, in the no-fault context, the litigation process is a means of making claims for benefits.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Ms. Williamson was not aware that services were not provided to her father after his death. See *Candler*, 321 Mich App at 781-782.

Accordingly, Lateshea Williamson, on behalf of Plaintiff, (a person) presented interrogatory answers (written statements) in support of a demand for benefits to AAA (an insurer assigned under the MACP) knowing the answers contained false statements concerning facts material to the demand for benefits. See MCL 500.3173a(4). Under the plan and unambiguous language of the statute, that was a fraudulent insurance act and Plaintiff's claim "is ineligible for payment of personal protection insurance benefits under the assigned claims plan." *Id.* "[T]he words mean what they say[.]" *Johnson v Recca*, 492 Mich 169, 193; 821 NW2d 520 (2012) (rejecting the argument that the No-Fault Act should not be interpreted as written because an absurd result would occur). The Court of Appeals erred by failing to apply the statute as written.

Just last month, in a case with virtually similar facts, in which the Court of Appeals correctly applied MCL 500.3173a(4) as written, the claim was found ineligible for payment because the plaintiff submitted attendant-care calendars containing false statements. The court stated,

> Every daily claim form contained false information from March 29, 2019, through May 15, 2019. The forms from May 16, 2019 through May 31, 2019 accurately claim Watson provided eight hours a day of care, but they also spanned two weekends in which no care was provided. The MAIPF was effectively billed for more than twice as many hours of services than were actually provided, which cannot be considered an immaterial discrepancy.

Bakeman v Citizens Ins Co, unpublished opinion of the Court of Appeals, issued Nov. 10, 2022, at 4 (Docket No. 357195) (attached as Exhibit L).[9] Because the calendars were submitted "in

[9] Unpublished opinions are cited for their persuasive value. MCR 7.215(C). *Bakeman* is specifically cited because it is a recent opinion of the Court of Appeals correctly analyzing Section 3173a, as it applies the statutory language as written, and is on point.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

support of" a claim for attendant-care benefits, they are statements that unequivocally fall under the purview of Section 3173a(4).

The court also found the plaintiff knew the statements were false based on the fact that he signed the forms. "[T]he law is clear that one who signs an agreement, in the absence of coercion, mistake, or fraud, is presumed to know the nature of the document and to understand its contents, even if he or she has not read the agreement." *Id.* at 4-5 (quoting *Lease Acceptance Corp v Adams*, 272 Mich App 209, 221; 724 NW2d 724 (2006)). "[I]f plaintiff signed the forms, he cannot rely upon a lack of knowledge of the forms' contents. In other words, if plaintiff signed the attendant care forms, then he committed a fraudulent insurance act." *Id.* at 5.

Likewise here, the calendars submitted by Lateshea Williamson contained false information because the services being claimed were never provided. Thus, the MAIPF was effectively billed for services that were never provided. This is plainly information that is material to Plaintiff's claim for benefits and was plainly submitted "in support" of Plaintiff's claim. Also consistent with *Bakeman*, because Lateshea Williamson signed the interrogatory answers, she is presumed to have knowledge of their contents which included the patently false statements in the calendars.

The plaintiff in *Bakeman* also argued that summary disposition was improper because any alleged fraud should be determined by the jury as a factual question, relying on *Haydaw*, which states "[o]nce suit is brought, what is truth and what is false are matters for a jury or a judge acting as fact-finder." *Id.* at 5, n.3 (quoting *Haydaw*, 332 Mich App at 727). However, the court in *Bakeman* rejected that argument, explaining "[n]othing in *Haydaw* purported to overturn longstanding principles regarding summary disposition where reasonable minds could not differ

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

as to what the evidence reveals." *Id.* The same reasoning applies equally here. The court in *Bakeman* applied the statute correctly. The court in this case did not.

C. Invalidating MCL 500.3173a(4) As It Applies To Statements Made In Litigation Is Inconsistent With The Purposes Of The No-Fault Act.

The Court of Appeals grasped at straws to reach a decision that benefits only untruthful plaintiffs in lawsuits and ignored the interests of the millions of Michigan citizens who bear the burden of funding the operation of MACP, which includes the cost to pay claims and litigation costs. The Court of Appeals' holding is inconsistent with the purposes of the Act and effectively endorses gaming the no-fault system in pursuit of publicly-funded benefits.

Where a court interprets a statute, it must "determine and effectuate the intent of the Legislature through reasonable construction in consideration of the purpose of the statute and the object sought to be accomplished." *Marlette Homes*, 456 Mich at 515. "In determining legislative intent, statutory language is given the reasonable construction that best accomplishes the purpose of the statute." *Id.*

The No-Fault system was established to address problems inherent in the auto accident liability system, including payment delays, high legal costs, and overburdened courts. *See, e.g., Shavers*, 402 Mich at 578-579. The Legislature believed these goals could be most effectively achieved through a system of compulsory insurance. MCL 500.3101. The goal of the Act is provision of an equitable and prompt method of redressing injuries in a way which makes mandatory insurance coverage affordable to all motorists. *Tebo v Havlik*, 418 Mich 350, 360; 408 NW2d 181 (1984). However, "[t]he no-fault act was as concerned with the rising cost of health care as it was with providing an efficient system of automobile insurance." *Dean v Auto Club Ins Ass'n*, 139 Mich App 266, 273; 362 NW2d 247 (1984), *appeal denied*, 422 Mich 921 (1985). For that reason, "the proper interpretation" of a statute within the Act "comports both with the plain

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

language of the statute and the legislative purpose of keeping insurance premiums at affordable rates while providing victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 217-18; 815 NW2d 412 (2012).

Unfortunately, keeping the cost of Michigan's auto insurance has not always been effectively accomplished. Indeed, City of Detroit Mayor Duggan filed a federal lawsuit arguing that the cost of insurance had escalated so high that it was no longer affordable to Detroiters. *Duggan v Patrick McPharlin*, Docket No. 2:18-cv-12639 (ED Mich, 2018). It is no secret that that the primary driver of costs is the high cost of medical care provided under PIP coverage.[10] It is also no secret that abuse of the no-fault system is an epidemic further driving the high cost of premiums.[11]

Accordingly, the Legislature has taken a hard line with respect to false statements made in support of claims for benefits through the MACP. See MCL 500.3173a. While the MACP

[10] See 2019 Senate Journal 441 (No. 43, May 7, 2019), quoting Senator Nesbitt ("This legislation will put an end to the bloated costs of health care within the system. The cost of the exact same medical procedures should not cost any more simply because [it] happens in a car accident. By leveling the playing field and bringing down the cost of auto insurance, we will have lower rates, provide choice, ***crack down on fraud and end lawsuit abuse***…. The current system in unaffordable it's failing the people, the families of Michigan, so we have an obligation to fix this system. The bill will provide consumers with significant savings, while still offering the highest minimum coverage of any state. Passage of this bill will result in lower rates, provide unlimited options, and offer the highest minimum coverage.") (emphasis added).

[11] For example, Ira Demery billed Auto Club Insurance Company (ACIA) for attendant care she allegedly provided to her husband, Michael, who had sustained a below the elbow amputation and, allegedly, a traumatic brain injury, in a motor vehicle accident. After paying for such care, ACIA learned that Michael had actually spent time in jail and fathered a child with another woman, all while supposedly receiving 24/7 care from his wife. See *Demery v Auto Club Ins Ass'n*, No. 11-117189-NF, 2015 Mich Cir LEXIS 803, at *1 (Oakland Cty Cir Ct, Sept 21, 2015) (cited in the MCCA's Amicus brief to the Court of Appeals in *Andary, supra*, p. 7, attached as Exhibit M for the purpose of illustrating abuse on the no-fault system).

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

provides a limited safety net for accident victims with no other means for coverage, it does not come without a cost. The money used to fund the MACP comes from assessments made on every insurer authorized to write automobile insurance in Michigan and self-insurers. See MCL 500.3171(1); MCL 500.3171(2) ("Costs incurred in the administration of the assigned claims plan shall be allocated fairly among insurers and self-insurers."). The insurers, in turn, are required to take these costs into account when setting their automobile rates. MCL 500.3176. As a result, the funds to operate the MACP are ultimately are borne from Michigan's driving public, who already bears the burden for paying for the most expensive auto insurance in the nation.[12]

The Court of Appeals erred when it apparently found its duty was to interpret Section 3173a(4) in a manner that best serves the interests of plaintiffs suing for payment of no-fault benefits under the MACP because the No-Fault Act is remedial. (See Exhibit A, Opinion, p. 6). Remedial legislation is that which is "designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good." *Rookledge v Garwood*, 340 Mich 444, 453; 65 NW2d 785 (1954), quoting *In re School Dist No 6, Paris & Wyoming Twps*, 284 Mich 132; 278 NW 792 (1938). The Act was not designed only to benefit claimants but to benefit Michigan drivers. Here, Section 3173a(4) penalizes and deters behavior that is detrimental to the Act's goal of providing affordable automobile insurance to Michigan drivers. A statute that disincentivizes gaming the no-fault system and aids in containing the cost of the MACP – which is ultimately funded by Michigan's drivers – is clearly conducive to the public good.

Moreover, the Court of Appeals' holding frustrates the "no-fault act's purpose of reducing litigation." *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 565; 702 NW2d 539 (2005). All a

[12] See 2019 Senate Journal 588 (No. 52, May 24, 2019) (Senator Theis, the Chair of the Senate Insurance and Banking Committee stating that no-fault reform would relieve "Michiganders" from bearing the cost of "the most expensive car insurance in the country.").

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

claimant has to do to avoid Section 3173a(4) is file a lawsuit. The Court of Appeals' holding shields untruthful plaintiffs from the statute's penalty and, in effect, rewards the filing of lawsuits.

Finally, the Court of Appeals' holding is also in contravention of the Act's goal of providing prompt reparation for injuries. See *Hardrick v Auto Club Ins Ass'n*, 294 Mich App 651, 694; 819 NW2d 28 (2011) ("The basic goal 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."). If the Court of Appeals' holding that claims for benefits asserted in litigation are not "claims" stands, then claims submitted for payment in the course of litigation need not be paid within 30 days. See MCL 500.3142 (payment of benefits are due within 30 days of a claimant presenting reasonable proof of the "claim"). Simply put, claims incurred by a plaintiff during the course of litigation could not be included as part of the plaintiff's claim in the litigation because it would not trigger an insurer's duty to pay the claim within 30 days. This would certainly be a surprise to the hundreds of no-fault plaintiffs with cases pending throughout the state. Moreover, this would further frustrate the goal of reducing lawsuits because a plaintiff would have to file additional lawsuits to pursue benefits accrued during the pendency of litigation. Accordingly, this Court should grant leave and reverse because the grounds under MCR 7.305(B)(3) and (5)(a) are met.

III. THE COURT WAS NOT AT LIBERTY TO SUBSTITUTE DISCOVERY SANCTIONS IN PLACE OF THE LEGISLATURE'S CLEAR DIRECTIVE SET FORTH UNDER MCL 500.3173A(4).

Beyond its interpretation of Section 3173a(4), the Court of Appeals further rationalized its holding by relying on *Haydaw* to reach its holding that "the fraudulent insurance act provision in MCL 500.3173a does not apply to statements made after litigation has ensued." But *Haydaw* is wholly inapplicable to this case for two reasons: (1) it is only applicable to a contract defense and (2) it analyzed a rule developed through caselaw that used reasoning only relevant to circumstances

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

that are fundamentally dissimilar to this case and all litigation involving Michigan PIP benefits. From there, the Court of Appeals reasoned that the appropriate penalties for false statements made in support of claims in litigation are discovery sanctions instead of the result dictated under Section 3173a(4). The Court of Appeals is not cloaked with the authority to eliminate a legislatively-dictated result based on the Court of Appeals' own policy choices.

A. *Haydaw* And the Caselaw On Which It Is Based Is Inapposite To This Case.

The issue in *Haydaw* was "whether statements made during litigation *after the insured's claim is denied* constitute grounds to void the policy *under a fraud provision*." (Exhibit A, Opinion, p. 8) (quoting *Haydaw*, 332 Mich App at 723) (emphasis added). This was an issue of first impression in Michigan and the Court of Appeals held that statements made during litigation do not implicate a fraud or false-swearing clause in an insurance policy. *Haydaw*, 332 Mich App at 726. The Court adopted this holding based on the reasoning of extra jurisdictional cases that addressed fraud or false-swearing clauses in property insurance contracts. *Id.* at 724-726.

As an initial matter, unlike *Haydaw*, this case does not involve a fraud or false swearing clause in an insurance policy. Section 3173a(4) is statutory; thus, caselaw regarding a contractual fraud provision is irrelevant.[13] This case does not involve a contract. There is no insurance policy

[13] "Fraud" is both a common-law cause of action and a defense. The cause of action requires pleading and proving of the following elements: (1) the defendant made a material representation; (2) the representation was false; (3) the defendant knew, or should have known, that the representation was false when making it; (4) the defendant made the representation with the intent that the plaintiff act upon it; (5) the plaintiff acted on the representation and reasonably relied on defendant's false representations; and (6) the plaintiff incurred damages as a result. *Roberts v Saffell*, 280 Mich App 397, 403; 760 NW2d 715 (2008); *Foreman v Foreman*, 266 Mich App 132, 141-142; 701 NW2d 167 (2005). At common-law, "this avoidance defense is typically used when a contract is obtained as a result of fraud or misrepresentation[.]" *Stein v Home-Owners Ins Co*, 303 Mich App 382, 388; 843 NW2d 780 (2013) (quotation marks omitted). However, the contract defense of fraud can also be an affirmative defense available to an insurer where an insurance policy (a contract) contains a provision that voids the policy if the insured engages in fraudulent conduct. *Id.* at 384, 387.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

applicable to Plaintiff's claim for benefits here. AAA did not defend on the basis of fraud. "Although the word 'fraudulent' might have other connotations in other contexts, where a statute provides its own definition of a word, the statute's definition alone must be applied." *Bakeman, supra* at 4 (citing *Tryc v Mich Veterans' Facility*, 451 Mich 129, 135-136; 545 NW2d 642 (1996); *Candler*, 321 Mich App at 780 n 6). The elements of fraud and a "fraudulent insurance act" differ substantively. Fraud requires proof of falsity, intent, reasonable reliance, and damages. Proof of a "fraudulent insurance act" requires none of those elements. *Candler*, 321 Mich App at 779-780. While the Court of Appeals recognized this point, it stated "much of the rationale from *Haydaw* is persuasive to the circumstances before us, and most importantly, applying *Haydaw's* holding in this context is consistent with the plain language of MCL 500.3173a(4)." A closer examination of *Haydaw* demonstrates this is false.

The rationale from *Haydaw* is derived from cases that are entirely inapplicable to Michigan no-fault litigation. *Haydaw* indicates that the issue of whether statements in litigation can form the basis of a defense under a fraud or false swearing clause was first addressed in *Republic Fire Ins Co of North America v Weides*, 81 US 375; 14 Wall 375 (1871). In that case, the plaintiffs' statements made in proofs of claim and during an examination under oath during the initial claims process materially differed from their statements made while testifying in court. *Id.* at 382-83. The insurer defendant argued a fraud or false swearing provision in the policy voided the claim. The argument was rejected because the clause expressly applied only to information the insureds agreed to submit in the claims process. See *id.* at 382. This point is crucial to the court's holding in *Weides* that the existence of the clause alone did not require judgment in favor of the insurer. *Id.* at 383. The Court reasoned that there was still a question of fact as to which statements were

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

false – the statements made during the claims process– to which the fraud or false swearing clause applied – or the testimony – to which the clause did not apply. That was a question of fact for the jury. *Id.* at 383.

Weides is readily distinguishable from the facts here because, unlike the fraud or false swearing provision in the insurance policy at issue in *Weides*, Section 3173a does not expressly apply only to statements made in certain documents or during certain claims processes. As explained above, the statute unambiguously applies to all statements "made as part of *or* in support of" a claim for benefits without any express exceptions. MCL 500.3173a(4) (emphasis added). Nothing in *Ins Cos v Weides* compels a different reading of the statute.

Next, *Haydaw* relies on *American Paint Serv v Home Ins Co*, 246 F2d 91 (CA 3, 1957), a case arising out of a claim for business-interruption losses caused by a fire, in which an insurer asserted a defense under the fraud or false swearing clause of its insurance policy. The Third Circuit held that in-court testimony could not be the basis of the insurer's contract defense. *Id.* at 94. The court reasoned that a fraud or false swearing clause is meant to incentivize cooperation with the insurer for the adjustment and settlement of a claim but, by the time suit is filed, the claim has already been denied. Thus, if the insurer's pre-suit denial of the claim was based on some fraud or false swearing, it must have occurred prior to the filing of suit. "It is at the trial that the insurer must display, not manufacture, its case." *Id.* The purpose of a trial is for the jury to determine whether the claim should have been paid or whether the defense was properly asserted. See *id.* Thus, evidence relevant to an insurer's defense under such a contract clause would logically pertain to proofs and statements submitted to the insurer pre-litigation. Once litigation ensues, the parties are adversaries and the terms of the policy no longer govern the parties' conduct. See *id.*; *Ocean-Clear, Inc v Continental Cas Co*, 94 AD2d 717, 718; 462 NYS2d 251 (NY App

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Div, 1983) (discussing *American Paint*, stating "once an insurer repudiates liability, however, the assured is excused from any of its obligations under the policy").

The remainder of the cases cited in *Haydaw* as support for its holding rely on *American Paint* or its same reasoning. See *Dodson Aviation, Inc v Rollins, Burdick, Hunter, Inc*, 15 Kan App 2d 314, 325; 807 P2d 1319 (Kan Ct App, 1991) (case arising from property damage caused by a hail storm); *Ocean-Clear, Inc*, 94 AD2d 717 (case arising from property damage caused by a fire); *Mercantile Trust Co v NY Underwriters Ins Co*, 376 F2d 502, 504 n 2 (CA 7, 1967) (case arising from property damage caused by a fire); *Third Nat'l Bank v Yorkshire Ins Co*, 218 Mo App 660, 673; 267 SW 445 (Mo Ct App, 1924) (case arising from a loss that occurred when property was stolen and burned).[14]

Neither *American Paint* nor any of the cases based on its same reasoning provide justification for the Court of Appeals holding in *Haydaw* because Michigan no-fault cases are

[14] In the Court of Appeals' decision in this case, it acknowledged that its holding in *Haydaw* that "fraud provisions in no-fault insurance policies do not provide grounds for rescission based upon false statements made by the insured during first-party litigation", *Haydaw*, 332 Mich App at 721, was clarified by the Court of Appeals in a subsequent opinion, which limited its scope. (Exhibit A, Opinion, p. 8).

> Having reviewed the parties' supplemental briefs, we conclude that *Haydaw* has no impact on the outcome of this case. We read *Haydaw* as standing for the unremarkable proposition that an insurer cannot assert that it denied a claim because of fraud that occurred after litigation began; the fraud must have occurred before the commencement of legal proceedings. This recognizes the reality that a plaintiff-insured only commences suit after the defendant-insurer denies the plaintiff's claim and that the denial cannot possibly be based on an event that has not yet taken place. This does not mean that a defendant cannot rely on evidence of fraud obtained after litigation commences. It simply means that the evidence must relate to fraud that took place before the proceedings began.

Butross Dawood Fashho v Liberty Mut Ins Co, 333 Mich App 612, 619; 963 NW2d 695 (2020).

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

fundamentally different than cases for breach of contract arising from a property-damage claim.[15] While the reasoning in *American Paint* appears to be logical in the context of a claim for damages caused by a fire, it is inapplicable to a suit for Michigan no-fault PIP benefits. In no-fault cases, the claims process is not concluded when litigation ensues. Litigation is merely a vehicle for asserting claims. While an accident may trigger a claimant's right to coverage under MCL 500.3105, a claimant's actual "claim" is comprised of allowable expenses as they are incurred over time. MCL 500.3107 (benefits payable only for "reasonable charges incurred"); *Proudfoot*, 469 Mich at 484 (finding no obligation "to pay for an expense until it is actually incurred"). The Act requires expenses be paid within 30 days of "reasonable proof" of the incurred allowable expense being submitted. MCL 500.3142. Thus, the Act's system creates a continual claims process where claims for allowable expenses are submitted piecemeal over time and comprise the claimant's overall claim for benefits.

As a result, plaintiffs in no-fault cases continue to assert claims for PIP benefits incurred during the pendency of litigation in the litigation itself, commonly by sending the insurer's counsel reasonable proof of such expenses (before there has even been an opportunity for an alleged breach of contract or wrongful denial). Adjusters continue to adjust PIP claims in litigation. It is axiomatic that, in many cases, claims are submitted ***for the first time*** in litigation in initial disclosures or answers to discovery. Indeed, that was the case here.

[15] A property-damage claim arises out of an occurrence resulting in damage of property and, relevant to *American Paint*, sometimes resulting losses, such as lost business the insured would have conducted but for the loss of use of the property damaged or destroyed. The property-damage claims process largely involves the valuation of such damages, resulting in a final determination of the extent of its liability by the insurer. If the claim is denied and suit is filed, the claims process has concluded and the trial is focused on pre-litigation events.

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

In the lower court, Plaintiff argued that the calendars were not meant to be in support of a claim but were merely documents in Plaintiff's possession that were responsive to document requests, indicating they were never previously sent to AAA. (Exhibit I, Pl. Resp. to MSD). In this case, AAA was paying Plaintiff's claim and it appears suit was filed to protect Plaintiff's rights under MCL 500.3145. (See Exhibit D, Complaint). AAA's discovery requests, as is common in PIP litigation, were served for the purpose of learning what benefits were being *claimed*. This is remarkably different from a property-damage case where all claims and proofs have already been submitted to an insurer. Even where a specific allowable expense was previously submitted and denied, nothing prevents a plaintiff in no-fault litigation from submitting documents or other statements "in support of" that claim in litigation, triggering the 30-day deadline to pay under MCL 500.3.142. See e.g., *Hartman v Ins Co of North America*, 106 Mich App 731, 747; 308 NW 2d 625 (1981) (penalty interest allowed to begin 30 days after reasonable proof of the fact and amount of loss was introduced at trial). Thus, the reasoning in *American Paint* is inapplicable because "[s]tatements made for the first time during discovery" are "part of or in support of" the claim for PIP benefits. (Exhibit A, Opinion, p. 9); MCL 500.3173a(4). Stated another way, when it comes to Michigan PIP, litigation often <u>*is*</u> the claims process.

B. <u>The Fact That A Court May Impose Sanctions For Discovery Violations Is Not Grounds To Nullify The Operation Of A Statute.</u>

The fact that the court rules allow courts to sanction discovery violations that frustrate the discovery process does not authorize the Court of Appeals to decide that should be the remedy for false statements made in support of a claim under the MACP instead of what was legislatively dictated: ineligibility of the claim for payment. MCL 500.3173a(4). Unlike in *Haydaw*, there was no issue of first impression that allowed the lower court to forge new law. While the panel may have felt that it made more sense to apply discovery sanctions as a penalty for false statements

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

made during litigation in support of a claim for benefits under the MACP, that was not the lower court's decision to make because the decision has already been made by the Legislature.

The Court of Appeals' erroneously reasoned that "a false statement made in a filing submitted during discovery is not a statement made to the MAIPF or to an assigned insurer. Rather, a false statement made during discovery is made to the court." (Exhibit A, Opinion, p. 9) (citing *Haydaw*, 332 Mich App at 728 ("[A]n insured's statements during discovery are made with the intention that the trier of fact, not the insurer, will act on them.")). As an initial matter, discovery answers are not "made to the court" simply because court rules govern discovery and evidence exchanged in discovery may be used at trial. Discovery answers are served on the party who served the interrogatories or discovery requests. See MCR 2.309(B)(4), 2.310(C)(2), 2.312(B)(1). They are not filed with the court and the judge does not review them unless they are attached to another filing as documentary support or presented as evidence at trial. Discovery is exchanged to allow the parties to understand the claims and defenses asserted and obtain all relevant evidence regarding the same. "The purpose of discovery is to simplify and clarify the contested issues, which is necessarily accomplished by the open discovery of all relevant facts and circumstances related to the controversy." *Hamed v Wayne Co*, 271 Mich App 106, 109; 719 NW2d 612 (2006). It defies logic to maintain that Plaintiff's interrogatory answers here were not statements made to AAA.

Regardless, to whom a false statement is made is immaterial in the context of Section 3173a(4). Section 3173a(4) does not specify to whom the false statement must be made in order for the statute to render the claim ineligible. It is enough that it is a statement made "as part of or in support of" a claim for benefits to the MAIPF or an assigned insurer. *Candler*, 321 Mich App at 780; *Bakeman, supra* at 4 ("The statute does not require the false statement to be submitted to

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

any particular person or entity so long as it supports a claim to the MAIPF). Thus, whether made to the MAIPF, an assigned insurer, or a court during the discovery process is inconsequential.

Plaintiff's right to benefits is solely statutory –"[h]is right then…. sprang from the kindness and grace of the legislature." *Rookledge*, 340 Mich at 457. Thus, the statute dictates the parameters of those rights, including what actions constitute a "fraudulent insurance act" and render a claim for benefits ineligible for payment under the MACP. See e.g., MCL 500.3173a(4). "Because [PIP] benefits are mandated by the no-fault statute, the statute is the 'rule-book' for deciding the issues involved in questions regarding awarding those benefits." *Bronson Health Care Group, Inc v State Auto Prop & Cas Ins Co*, 330 Mich App 338, 343; 948 NW2d 115 (2019). Because the right to benefits under the MACP exists only by statute, the statute is the rule book. It is not for the Court of Appeals to replace the Legislature's rules. As explained above, "Court[s] may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature." *Batista v Office of Retirement Servs*, 338 Mich App 340, 357; 980 NW2d 107 (2021).

C. Applying the Rule In *Haydaw* Amounts To A Substitution Of The Court's Policy Choices Over The Legislature's Clear Directive.

While the Court of Appeals did not find it significant that *Haydaw* and the cases on which it relied all apply to a contractual fraud provision in an insurance policy, the distinction is crucial. The Third Circuit's decision in *American Paint* was a policy decision by the court, based on its contention that if insurers could rely on statements made in litigation, it would incentivize denying claims, forcing litigation, and then allowing an insurer to later manufacture a defense through litigation. See *American Paint*, 246 F2d at 94. It is important that the rule set forth in *American Paint* applies regardless of the language of the contract clause at issue, some of which are broad and not expressly limited to statements made in the pre-litigation claims process. See e.g. *Dodson*

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Aviation, Inc, 15 Kan App 2d at 322; *Third Nat'l Bank*, 218 Mo App at 669. Thus, contract clauses are not applied as written under the rule, which is supported by policy considerations. By applying the reasoning in *Haydaw*, derived from these extra-jurisdictional cases, to justify excluding statements made in litigation from the operation of Section 3173a(4) and allowing only discovery sanctions instead, the Court of Appeals made a policy decision.

There is no rule of law in Michigan that allows a court to invalidate a statute on the basis of public policy as it could a contractual provision. Contracts that violate public policy may not be enforced. *Rory v Continental Ins Co*, 473 Mich 457, 491; 703 NW2d 23 (2005). However, "[a]ny issues relating to the soundness of the policy underlying the statute or its practical ramifications are properly directed to the Legislature." *Maier v Gen Tel Co of Mich*, 247 Mich App 655, 664; 637 NW2d 263 (2001). The courts' judicial role "precludes [them from] imposing different policy choices than those selected by the Legislature." *Johnson*, 492 Mich at 187. The Legislature, not the courts, decide issues of public policy. *Woodman v Kera LLC*, 486 Mich 228, 245; 785 NW2d 1 (2010). "The Legislature has no duty to satisfy us that its legislative enactment is a 'good' one. Legislation must be constitutional; this alone is enough." *People v Gardner*, 482 Mich 41, 65; 753 NW2d 78 (2008).

While the panel may have found it unfair or an overly harsh result to deem Plaintiff's claim ineligible as a result of the false statements asserted in interrogatory answers, the panel was not at liberty to rewrite the statute to make it better in their eyes.[16] "[T]he judicial branch cannot amend

[16] During oral argument in the Court of Appeals, Judge Rick indicated that mistakes happen and she felt as if barring the claim as a result of an error in paperwork wasn't just. The error was characterized as a typo. Judge Garret questioned whether the statute should carry an intent requirement closer to that of common-law fraud. Courts are not at liberty to refuse to apply statutes as written or rewrite statutes. *Sun Valley Foods Co*, 460 Mich at 236; *Book-Gilbert*, 302 Mich App at 542.

the no-fault act to make it 'better.' That is an authority reserved solely to the Legislature." *Johnson*, 492 Mich at 187. "Whether or not a statute is productive of injustice, inconvenience, is unnecessary, or otherwise, are questions with which courts . . . have no concern." *Id.* "When the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose." *Book-Gilbert*, 302 Mich App at 542 quoting *Mich Basic Prop Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552, 560; 808 NW2d 456 (2010).

Whether Section 3173a(4) is fair is irrelevant. A court is not free to "cast aside" a plain and unambiguous statute "under the guise of equity . . . simply because the court views the statute as 'unfair.'" *Devillers*, 473 Mich at 591. "Regardless of how unjust [a] statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree." *Stokes v Millen Roofing Co*, 466 Mich 660, 672; 649 NW2d 371 (2002) (quotation marks and citation omitted). "Statutes lose their meaning if an aggrieved party need only convince a willing judge to rewrite the statute under the name of equity." *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 407; 738 NW2d 664 (2007) (quotation marks and citation omitted).

Put simply, legislating from the bench and failing to apply statutes as written undermines the legitimacy of our laws. This should not be tolerated by this Court. Here, the Court of Appeals effectively substituted discovery sanctions in place of Section 3173a(4) where a false statement is presented in litigation under the guise of statutory interpretation and justified it by applying a policy decision set forth in inapplicable caselaw. This was error. "The people have not forfeited lawmaking authority to a judicial aristocracy that may simply rewrite laws with which they disagree." *Karaczewski*, 478 Mich at 43.

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

RECEIVED by MSC 12/21/2022 1:54:43 PM

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

This Court should grant leave and reverse because the grounds under MCR 7.305(B)(3) and (5)(a) are met.

IV. THE COURT OF APPEALS' DECISION CONFLICTS WITH PUBLISHED CASE LAW.

The Court of Appeals' holding conflicts with *Candler*. A panel of the Court of Appeals is required to "follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990[.]" MCR 7.215(J)(1). The court failed to do so here.

In *Candler*, the Court of Appeals held a plaintiff's claim was ineligible for benefits under Section 3173a(4) because he knowingly made false statements in his replacement service calendars in support of his claim for benefits under the MACP. *Candler*, 321 Mich App at 782. Like in this case, the plaintiff in *Candler* submitted forms supporting claims for services that were never actually rendered. *Id.* at 781. In this case, the panel found its holding "consistent with the circumstances in *Candler*" because, in *Candler*, "although the fraudulent act was discovered after litigation had commenced, it related to statements made in support of the plaintiff's claim to the assigned insurer." (Exhibit A, Opinion, p. 7, n.7). Not so.

The calendars supporting the plaintiff's claim for replacement services in *Candler* were submitted, for the first time, in litigation. The plaintiff in *Candler* submitted replacement services calendars indicating his brother provided such services in August, September, and October, 2015. *Candler*, 321 Mich App at 776. However, his brother had stopped providing such services in July, 2015. *Id.* Plaintiff filed suit in August, 2015. (Exhibit N, *Candler* Register of Actions). Thus, at a minimum, the September and October calendars must have been submitted during litigation. It is axiomatic that there is no obligation to pay benefits until allowable expenses are actually incurred. *Proudfoot*, 469 Mich at 484.

Because the facts of *Candler* are virtually identical to the facts in this case and *Candler* is

a published opinion, the Court of Appeals erred by not reaching the same result. This Court should grant leave because the grounds under MCR 7.305(B)(5)(b) are met.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Defendant-Appellant respectfully request that this Honorable Court grant its Application for Leave to Appeal and reverse the Court of Appeals' decision.

Respectfully submitted,

Dated: December 21, 2022

By: */s/ Erin A. Sedmak*

Lori McAllister (P39501)
Erin A. Sedmak (P78282)
Attorneys for Defendant-Appellant
201 Townsend Street, Suite 900
Lansing, MI 48933
Telephone: (517) 374-9152
lmcallister@dykema.com
esedmak@dykema.com

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

RECEIVED by MSC 12/21/2022 1:54:43 PM

RECEIVED by MSC 12/21/2022 1:54:43 PM

CERTIFICATE OF COMPLIANCE

I certify that the Defendant-Appellant's Application for Leave to Appeal complies with the type-volume limitation set forth in MCR 7.212(B). This brief uses a 12-point proportional font (Times New Roman), and the word count, based on the word count of the word-processing system used to produce this document, for this brief is 13,106.

Dated: December 21, 2022

By: */s/ Erin A. Sedmak*

Lori McAllister (P39501)
Erin A. Sedmak (P78282)
Attorneys for Defendants-Appellants
201 Townsend Street, Suite 900
Lansing, MI 48933
Telephone: (517) 374-9152

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933