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STATE OF MICHIGAN
IN THE SUPREME COURT

PORSHA WILLIAMSON and LATESHEA WILLIAMSON, Co-Personal Representatives of the ESTATE OF CHARLES WILLIAMSON,

Plaintiffs/Appellees,

v

AAA OF MICHIGAN,

Defendant/Appellant.

Supreme Court No. 165131

Court of Appeals No. 357070

Wayne County Circuit Court
Case No. 2019-014047-NF

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BRIEF AMICUS CURIAE FOR THE COALITION PROTECTING AUTO NO-FAULT (CPAN)

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STATUTORY ANTI-FRAUD PROVISION

MCL 500.3173a(2) (before No-Fault Act was amended in 2019)

> 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 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 or benefits under the assigned claims plan.

MCL 500.3173a(4) (after No-Fault Act was amended in 2019)

> **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**. [Emphasis added].

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STATEMENT OF INTEREST

More commonly known as CPAN, the Coalition Protecting Auto No-Fault was founded in 2003 by twenty-six (26) professional associations to: (1) advance their strongly held belief that it was in the public interest to preserve Michigan's model No-Fault insurance system; and (2) ensure that the auto insurance industry kept the promise made to Michigan citizens when the No-Fault Act was passed. Originally, CPAN membership consisted of eleven (11) consumer groups and fifteen (15) major medical groups, representing constituencies with widely divergent political views. Despite their differences, these associations united behind the common objective of protecting the rights of no-fault patients and providers. In 2009, CPAN opened membership to the general public and now includes consumers, individual professionals, private businesses, and professional organizations.

The members of CPAN number over eight hundred (800) and include the Michigan Association for Justice, Michigan State Medical Society, Michigan Osteopathic Association, Michigan Association of Chiropractors, Michigan Brain Injury Provider Council, Michigan Dental Association, Michigan Home Care and Hospice Association, Michigan Rehabilitation Association, Michigan Assisted Living Association, Michigan Orthotics and Prosthetics Association, Brain Injury Association of Michigan, American Physical Therapists Association Michigan, Disability Rights Michigan, Michigan Paralyzed Veterans of America, Michigan Disability Rights Coalition, Michigan Developmental Disability Council, Michigan Guardianship Association, and other stakeholders, individuals, accident survivors, family members, and care providers. CPAN pursues its mission on all fronts, including public education (town halls, roundtable events, seminars, and information resources), working with the Legislature, monitoring regulatory activity, and advocating the views of its members

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in the Michigan appellate courts. CPAN has appeared as amicus curiae in approximately forty (40) appellate cases addressing a wide range of No-Fault issues vital to its members.[1]

This Court's decision in this case is of great importance to CPAN because this case concerns the No-Fault Act's statutory anti-fraud provision which applies to all assigned claims for PIP benefits. Specifically, this Court will address "whether MCL 500.3173a(4), the statutory provision governing fraudulent insurance acts in the filing of a claim for no-fault benefits, applies to misrepresentations offered during discovery." How this Court answers that important question will likely determine whether a materially false statement made during litigation by just one PIP claimant will extinguish all claims for PIP benefits.

CPAN is concerned that materially false statements made by just one PIP claimant regarding a specific claim for PIP benefits will unjustly preclude all other PIP claims, even those PIP claims brought by statutory PIP claimants, such as providers, who have done nothing wrong. CPAN is also concerned that if there is no distinction between a claim for PIP benefits and an action to recover PIP benefits as damages, the assigned claims plan, insurers assigned by the plan, and the attorneys that represent them, will simply set traps for unwary litigants that will then preclude other PIP claimants from recovering PIP benefits. To avoid an unduly broad interpretation of the No-Fault Act's statutory fraud provision for assigned claims, i.e., MCL 500.3173a(4), CPAN is filing this brief amicus curiae in an effort to assist this Court in construing that provision properly so that there are no unintended consequences such as precluding other rightful PIP claimants from recovering PIP benefits.

[1]See https://protectnofault.org/legal-efforts.

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INTRODUCTION

AAA, as the insurer assigned to pay PIP benefits on behalf of Williamson, seeks an unduly broad ruling from this Court that would extinguish all claims for PIP benefits whenever a false statement is made during litigation. In granting oral argument, this Court asked the parties to address "whether MCL 500.3173a(4), the statutory provision governing fraudulent insurance acts in the filing of a claim for no-fault benefits, applies to misrepresentations offered during discovery." *Williamson v AAA Michigan*, 990 Mich 368, ___ NW2d ___ (2023). It also invited organizations including CPAN to file briefs amicus curiae addressing that question. CPAN is filing this amicus brief based on that invitation.

CPAN agrees with Williamson (and the Court of Appeals) that a materially false statement made during the course of litigation should not preclude recovery of PIP benefits. As the Court of Appeals concluded below, the statutory language that the Legislature used for the No-Fault Act's assigned claims provisions compels that result. So do the changes that the Legislature made in 2019 when it amended the No-Fault Act to clarify that health care providers may pursue a claim for PIP benefits with the assigned claims plan and may bring a direct cause of action against the plan if PIP benefits are denied. MCL 500.3112.

Alternatively, CPAN's position is that, at most, PIP claims actually supported by a materially false statement made during the course of litigation should not be paid. If, as is alleged in this case, the individual PIP claimant misrepresented the amount of attendant care provided when answering interrogatories, those statements should only affect that claim. Otherwise, defense attorneys will simply set traps in litigation so that if something false is said, it will negate all PIP claims, including PIP claims by other PIP claimants who are entitled to recover PIP benefits for products, services, and accommodations provided.

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SUPPLEMENTAL FACTS

When the Michigan Legislature amended the No-Fault Act in 2019, it modified the priority provisions so that more PIP claimants must go the assigned claims plan to recover PIP benefits. See 2019 PA 21/22, which was effective as of June 11, 2019. Specifically, it amended MCL 500.3114(4) and MCL 500.3115 so that those persons injured in motor vehicle accidents in Michigan who otherwise have no PIP coverage must claim PIP benefits from the assigned claims plan. It also capped the amount of PIP benefits that can be recovered from the assigned claims plan at $250,000 per claim. See MCL 500.3172(7)(a).

Previously, such auto accident victims claimed PIP benefits from the insurer of the owner or registrant of a motor vehicle involved in the accident, or alternatively, if there was still no PIP coverage, the insurer of an operator of the vehicle occupied under MCL 500.3114(4) or the insurer of a motor vehicle involved in the accident under MCL 500.3115. But, now, the assigned claims provisions, including MCL 500.3173a(4) and the cap on benefits at $250,000 apply to more PIP claims than before the No-Fault Act was amended.

While the total amount of PIP benefits paid through the assigned claims plan has nearly doubled since the No-Fault Act was amended in 2019, that is true only because the law was modified so that more auto accident victims were required to claim PIP benefits from the plan and because already established PIP claims were "transitioned" to the plan.[2] More PIP claims subject to the assigned claims plan means more costs are now attributed to the plan. But, that does not mean increased costs for Michigan motorists because previously assigned claims included life-time medical benefits without a cap at $250,000.

[2]See https://www.michacp.org/assessment.aspx.

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ARGUMENT

I. A false statement made by a claimant during an "action" for PIP benefits does not bar recovery of benefits under MCL 500.3173a(4) because the language of that provision only bars recovery when a false statement is made in connection with a "claim," and the No-Fault Act clearly (and repeatedly) establishes that a "claim" for PIP benefits is distinguishable from an "action" to recover PIP benefits.

A. MCL 500.3173a(4) cannot be read as precluding all claims for PIP benefits under the assigned claims plan whenever a PIP claimant makes a materially false statement during the course of PIP litigation.

As the Court of Appeals astutely observed, the plain language of the No-Fault Act consistently distinguishes between "a 'claim' for benefits submitted to [the assigned claims plan or its assigned insurer] and a *lawsuit* for a wrongful denial of that claim" by describing a lawsuit to recover PIP benefits "not as a claim but as an 'action.'" [Emphasis in Opinion]. *Williamson v AAA Michigan*, ___ Mich App ___, ___ NW2d ___ (2022), slip op at 6. One example is how the Legislature used the word "action" as compared to the word "claim" under MCL 500.3145. Under MCL 500.3145(1), an "action for recovery" of PIP benefits is permitted so long as timely notice of the injury was provided or PIP benefits were paid. But, in contrast, PIP benefits cannot be recovered under MCL 500.3145(2) for "any portion of the loss incurred more than 1 year before the date on which the action was commenced."

When the No-Fault Act was amended, the Legislature maintained that distinction between a "claim" for PIP benefits and an "action" to recover PIP benefits when it added a tolling provision based on whether a PIP "claim" was formally denied. MCL 500.3145(3) states that "[a] period of limitations applicable under subsection (2) to the commencement of an action and the recovery of benefits is tolled from the date of a specific claim for

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payment of the benefits until the date the insurer formally denies the claim." [Emphasis added]. Thus, it could not be more clear that an "action" is not the same thing as a "claim."

Even more significantly for this case, the No-Fault Act's assigned claims provisions apply the same distinction between an "action" and a "claim" when it comes to recovering PIP benefits. MCL 500.3174 provides that the same one year notice requirement that is applied to claims for PIP benefits from PIP insurers under MCL 500.3145 also applies to claims for PIP benefits from the assigned claims plan. That provision states the following:

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

The first sentence uses the word "claiming" and "claim" to state that the notice requirement is the same for the assigned claims plan as other claims for PIP benefits. The second uses the word "claim" to describe how the assigned claims plan must make an initial determination of eligibility to recover PIP benefits, assign eligible claims to a PIP insurer as required by the plan, and notify the claimant of the identity and address of the assigned PIP insurer. It is only the last sentence where the term "action" is used and that is because that sentence alone addresses how to timely commence litigation to recover PIP benefits.

MCL 500.3175 employs the same distinction between making a "claim" and bringing an "action." It first describes the mechanism for handling claims assigned under the plan. See MCL 500.3175(1). It then provides that an assigned insurer "may bring an action for "reimbursement or indemnification of the claim on behalf of the [MAIPF]" for benefits paid.

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MCL 500.3175(3). Lastly, MCL 500.3175(3) creates a different statute of limitations for bringing "[a]n action to enforce rights to indemnity or reimbursement against a third party action for reimbursement or indemnification of PIP benefits paid on behalf of the plan." Id.

MCL 500.3177(1) similarly provides that an assigned insurer "may recover all benefits paid, incurred loss adjustment costs and expenses, and incurred attorney fees from the owner or registrant of [an] uninsured motor vehicle" that was involved in the accident. The mechanism for doing so is "an action for recovery" and if the judgment in that action is not paid within 30 days after it is entered, the owner or registrant of the uninsured motor vehicle is subject to suspension or revocation of driving privileges until the judgment is satisfied. Again, the word "action" was used to describe litigation, not the word "claim."

Without question, the Court of Appeals got it right when it distinguished a "claim" for PIP benefits from an "action" to recover PIP benefits as damages for the losses incurred. AAA asks this Court to read the word "claim" so broadly as to include materially false statement made during litigation even though the term "action" was not employed. This Court should not read words into the No-Fault Act. It should harmonize the No-Fault Act's assigned claims provisions by adhering to the distinction between a "claim" and an "action".

B. That the Legislature did not intend to preclude providers from recovering PIP benefits whenever a materially false statement is made during the course of PIP litigation is further confirmed by the 2019 amendments allowing providers to "claim" PIP benefits from the assigned claims plan and bring a direct cause of "action" against the plan.

"Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his or her death, to or for the benefit of his or her dependents." MCL 500.3112. "A person entitled to claim because of accidental bodily injury arising out of the

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ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle in this state may claim personal protection insurance benefits through the assigned claims plan" where "[n]o personal protection insurance is applicable to the injury" or "no personal protection insurance applicable to the injury can be identified." MCL 500.3172(1)(a), (b).

Under the No-Fault Act, as amended in 2019, health care providers also "may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan" in order "to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." See MCL 500.3112. Consistent with the statutory provisions applicable to assigned claims, MCL 500.3112 likewise differentiates between making "a claim" for PIP benefits and filing a lawsuit to recover PIP benefits owed.

Therein lies the fundamental flaw in AAA's position (and the trial court's holding) that the Estate of Williamson is not eligible to recover PIP benefits because of alleged misrepresentations by co-personal representative, Lateshea Williamson, in answering interrogatories as part of discovery in this case regarding the damages sought from AAA. Simply put, the wording of the No-Fault Act does not support such an unduly broad holding. In fact, even the MAIPF's own plan of operations does not support that holding. Here, the Court of Appeals correctly held that the words "claim" and"action" are distinct under the No-Fault Act and therefore, eligibility to recover PIP benefits is not extinguished where, as in this case, there was an alleged misrepresentation during litigation about damages claimed.

While the Legislature made numerous clarifications regarding the operation of the assigned claims plan when it amended the No-Fault Act in 2019, none of those changes altered the statutory language to eliminate the distinction between a "claim" and an "action". In fact, all of the changes made to the assigned claims provisions were consistent with that

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dichotomy between a "claim" for PIP benefits via the assigned claims plan and an "action" against the MAIPF or the insurer assigned by the plan for failing to pay PIP benefits owed.

If the Legislature wanted to clarify that materially false statements made during litigation also bar recovery of PIP benefits from the assigned claims plan, it could have easily done so by amending the wording of MCL 500.3173a(4), formerly MCL 500.3173a(2) at the same time that it made other changes to the assigned claims provisions in 2019. The Legislature presumably did not do so because equating a "claim" with an "action" would have been inconsistent with a distinction that is repeatedly made under the No-Fault Act.

In fact, the Legislature arguably did the opposite when it clarified the right of providers to make a claim for PIP benefits with the assigned claims plan and bring a direct cause of action against a PIP insurer or the assigned claims plan to recover PIP benefits. This Court should not ignore the effect of those changes by adopting an unduly broad view of the statutory anti-fraud provision that will only negate the right of providers to both make a claim with the assigned claims plan and bring a direct cause of action against the plan.

C. The Court of Appeals' published decision in *Candler v Farm Bureau* does not support AAA's unduly broad position in this case that a materially false statement made by one PIP claimant during litigation precludes all PIP claims.

The underlying motor vehicle accident in this case occurred in 2018. In 2019, the Legislature passed a comprehensive reform package that substantially modified the No-Fault Act. The recent changes to MCL 500.3173a(2), which is now MCL 500.3173a(4), however, were limited to making that provision's wording consistent with the majority's holding in *Candler v Farm Bureau Mut Ins Co*, 321 Mich App 772, 910 NW2d 666 (2017).

In *Candler*, the majority held that MCL 500.3173a(2) applied not only to statements made in support of a claim "to the MAIPF" but also statements made "to an insurer to which

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the claim was assigned under the plan." See *Williamson*, slip op at 5. Judge Cameron disagreed. In the dissenting opinion, he concluded that MCL 500.3173a(2) applied only to statements made in support of a claim "to the MAIPF". Id at 784. But, the Legislature addressed his concerns in 2019 by amending MCL 500.3173(2). See MCL 500.3173(4).

Moreover, in *Candler*, the plaintiff clearly made a fraudulent misrepresentation in support of his PIP claim by submitting claims forms to the assigned insurer, Farm Bureau, which he signed in his brother's name attesting that his brother provided services for him. When deposed, his brother clarified not only that it was not his signature on the claims forms, but also that he had not provided services for him during that time period as claimed. While the truth ultimately came out during discovery in the *Candler* case, the fraud occurred because the plaintiff forged his brother's signature on claims forms and submitted them to Farm Bureau. Unlike this case, a materially false statement was made to support the claim. It was not made in response to discovery regarding the damages sought in the PIP case.[3] Thus, *Candler* does not support AAA's broad reading of the statutory anti-fraud provision.

Similarly, AAA's efforts to discredit the Court of Appeals' earlier published decision in *Haydaw v Farm Bureau Ins Co*, 322 Mich App 719, 957 NW2d 858 (2020), should be ignored. This Court denied leave to appeal when Farm Bureau challenged that decision. See 507 Mich 959, 959 NW2d 528 (2021). This Court did not ask the parties to address

[3]While Farm Bureau suggests that Candler similarly made a materially false statement during litigation because he filed his PIP lawsuit in August, 2015 and his PIP claims for attendant care and replacement services included the months after his lawsuit was filed, there is no evidence that he made a false statement during discovery in his pending PIP action as opposed to merely continuing to submit claims forms directly to Farm Bureau. Even more importantly, the issue addressed in this case was never raised in *Candler* so the majority's holding cannot be read as controlling on that issue as it was not disputed.

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whether *Haydaw* was correctly decided when it agreed to review this case. Instead, it asked whether Haydaw's reasoning should be applied to assigned claims given the wording of the statutory anti-fraud provision, MCL 500.3173a(4). For the reasons previously stated, this Court should reach the same holding as in *Haydaw* when interpreting MCL 500.3173a(4).

II. Even if, arguendo, "claim" disqualification under MCL 500.3173a(4) applies when false statements are made during an "action," any such disqualification only applies to those specific claims about which the false statements were made (such an attendant care claim for example), not the unrelated claims of others who made no such false statements (such as medical providers).

Even assuming that MCL 500.3173a(4) applies to materially false statements made during litigation, the remedy that AAA is seeking from this Court is unduly broad given the wording of the statutory anti-fraud provision. MCL 500.3173a(4) is singularly focused on claims for PIP benefits. It uses the word "claim" repeatedly. It also expressly limits its application to "a claim that contains or is supported by a fraudulent insurance act." Thus, it is only the specific claim for PIP benefits, i.e., the one supported by a materially false statement, that is "ineligible" for payment of PIP benefits under the assigned claims plan. If the Legislature truly intended to preclude all claims for PIP benefits whenever one specific claim is supported by fraud, it would have said so clearly. Instead, it merely said that claims supported by fraud are "ineligible" for payment under the assigned claims plan.

Under the No-Fault Act, there are numerous grounds that disqualify PIP claimants from recovering PIP benefits. See generally, MCL 500.3113. But, making a claim for PIP benefits that is supported by a materially false statement does not result in disqualification. It merely renders that specific claim "ineligible" for payment from the assigned claims plan. Thus, even if this Court concludes that materially false statements made during litigation can preclude claims for PIP benefits, that sanction should apply only to that specific claim.

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To the extent that other sanctions may be needed to punish fraud, the No-Fault Act's attorney fee provision, MCL 500.3148(2), allows for recovery of attorney fees incurred in defending against a claim for PIP benefits that is "in some respect fraudulent". But, fraud by one PIP claimant clearly should not affect the statutory right of providers to recover PIP benefits from the assigned claims plan under MCL 500.3112 when they did nothing wrong.

Lacking a strong text-based argument to support its position, AAA places unjustified emphasis on the Legislature's interest in addressing fraud in the no-fault system when it amended the No-Fault Act in 2019. It contends that a broad reading of MCL 500.3173a(4) is warranted because fraud drives up the cost of insurance for all motorists in Michigan. But, again, the broad remedy that AAA is seeking is not justified. It is "over-kill" as it clearly is not what the Legislature intended in adopting and then later modifying the statutory anti-fraud provision. AAA's policy claims in this case are unavailing because the Legislature did not intend for MCL 500.3173a(4) to preclude recovery on legitimate claims for PIP benefits from the assigned claims plan whenever a material fact is allegedly misrepresented by a claimant (or that claimant's attorney) during the course of litigating a PIP benefits action.

In the case at bar, AAA evidently paid the providers who treated Williamson for his accident-related injuries. He later died due to injuries suffered in a subsequent motor vehicle accident. Consequently, the damages sought by the Estate of Williamson in this case appear to be limited to unpaid attendant care and replacement services claims. But, that will not be the case in most PIP lawsuits. And, if this Court agrees with AAA, providers will be significantly impacted by a broad ruling that no PIP benefits are owed when an individual PIP claimant makes a materially false statement during litigation even though the providers have not committed a fraudulent insurance act as defined by MCL 500.3173a(4).

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In sum, it is imperative that this Court consider the broader implications of adopting AAA's position that all claims for PIP benefits will be precluded if a materially false statement is made during litigation by one PIP claimant. That is true regardless of whether the materially false statement was made during litigation by the injured person, his or her caregivers, or medical providers who treated the injured person after the accident occurred.

CONCLUSION AND RELIEF REQUESTED

Amicus Curiae CPAN asks that this Honorable Court affirm the Court of Appeals' holding that a materially false statement made by a PIP claimant during litigation does not preclude recovery of PIP benefits because a claim for PIP benefits is distinct from an action to recover PIP benefits. Alternatively, CPAN requests that this Court limit its holding to the specific PIP claim that was supported by a materially false statement made during litigation.

Respectfully submitted:

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