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STATE OF MICHIGAN

IN THE SUPREME COURT

SPINE SPECIALISTS OF MICHIGAN, P.C.,
As assignee of Jeremy Woods,

Plaintiff-Appellant,

v

MEMBERSELECT INSURANCE COMPANY,

Defendant-Appellee.
_____/

Supreme Court No. 165445

Court of Appeals No. 358296

Macomb County Circuit Court
No. 2020-003355-NF

DEFENDANT-APPELLEE, MEMBERSELECT INSURANCE COMPANY'S, ANSWER TO THE APPLICATION FOR LEAVE TO APPEAL OF PLAINTIFF-APPELLANT, SPINE SPECIALISTS OF MICHIGAN, P.C.

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Where Plaintiff filed this case on September 18, 2020, seeking PIP reimbursement of expenses incurred in April and May 2019 – i.e., more than a year prior to the commencement of the action, should the application for leave to appeal be denied, since, as the Court of Appeals properly held, the pre-amendment, no-tolling version of the no-fault act's one-year back rule applied to bar Plaintiff's claim because it was the version of the statute in place when the claim accrued?

Defendant-Appellee MemberSelect answers, "Yes."

Plaintiff-Appellant Spine Specialists would answer, "No."

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COUNTER-STATEMENT OF FACTS

As both the Court of Appeals and Plaintiff-Appellant have noted, the material facts in this matter are not in dispute.[1] On January 21, 2017, Jeremy Woods was covered under a policy of no-fault automobile insurance issued by Defendant-Appellee, MemberSelect Insurance Company. On that day Woods sustained injuries in a motor vehicle accident and thus became entitled to PIP benefits for his accident-related medical care and other incurred expenses. Among Woods' providers of healthcare services was Plaintiff-Appellant, Spine Specialists of Michigan, P.C. In filing this lawsuit on September 18, 2020, Spine Specialists sought to recover payment for some of the services it provided to Woods.

Spine Specialists had sued MemberSelect once previously for payment of its treatment expenses spanning a period following Woods' accident until August 6, 2018. That case was resolved by compromise settlement. Thus when this lawsuit began (filed September 18, 2020), Spine Specialists initially was seeking payment for services rendered on several dates from August 14, 2018, through August 12, 2020. The dates at issue were then significantly whittled down to just three: **April 15, 2019** (office visit, with a charge of $350.00), **April 20, 2019** (spinal fusion procedure with laminectomy and discectomy, with a charge of $118,800.00), and **May 6, 2019** (office visit, with a charge of $350.00).[2] The only charges at issue in these

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[1] Plaintiff-Appellant's Application for Leave to Appeal, p 2; *Spine Specialists of Michigan, PC v MemberSelect Ins Co*, __ Mich App __,__; __ NW2d __ (2023), slip op at 1 (*Appx 1*).

[2] Spine Specialists acknowledged in its summary disposition response brief that dismissal of eleven service dates from August 14, 2018, to March 13, 2019, was appropriate. It thus conceded that "the oldest claim [it] is seeking in this litigation [is] date of service, April 15, 2019." (Plaintiff's Response to Defendant's Motion for Summary Disposition, July 20, 2021, pp. 6-7, 13; Stipulated Order for Partial Summary Disposition, August 5, 2021). And there were sixteen service dates in dispute occurring *after* June 11, 2019 (from July 11, 2019, to August 12, 2020), but all of those charges were settled via facilitation.

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appellate proceedings, therefore, were for service dates April 15, 2019, April 20, 2019, and May 6, 2019. All of these dates, of course, precede June 11, 2019, the date on which the no-fault act amendments of 2019 PA 21, including those that amended MCL 500.3145, went into effect.

On September 18, 2020, Spine Specialists filed this action against MemberSelect. On June 9, 2021, MemberSelect moved for summary disposition maintaining, in relevant part that Spine Specialists was precluded from recovering benefits for the charges arising from its services rendered more then one year prior to the filing date of September 18, 2020. With respect to the only three treatment dates remaining at issue (April 15, 2019, April 20, 2019, and May 6, 2019), MemberSelect maintained that application of the one-year back rule was governed by the pre-amended version of MCL 500.3145, which had no "tolling" provision. The trial court agreed with MemberSelect's argument, and granted summary disposition in its favor on this basis (Tr 7/26/21, pp. 14-16, *Appx 33-35*).

Following the court's summary disposition rulings and the parties' settlement of all treatment dates occurring post-June 11, 2019, the court entered a final order formalizing the grant of summary disposition in favor of MemberSelect based on the one-year back rule. (Order Granting in Part and Denying in Part Defendant's Motion for Summary Disposition, and Closing Case, 8/05/21, *Appx 37-38*). MemberSelect filed its claim of appeal on August 26, 2021.

In an opinion issued November 17, 2022, the Court of Appeals affirmed the trial court's grant of summary disposition in favor of MemberSelect. Noting that a party's substantive rights are determinable according to the law in place when the cause of action accrues, the

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Court held that the claims at issue are governed by the pre-amendment version of the no-fault act's one-year back rule since PIP benefits accrue as each expense is incurred; and here, MemberSelect's assignor, Jeremy Woods, incurred his expenses when he received treatment from Spine Specialists in April and May, 2019. (Slip op at 4-5, *Appx 4-5*).

Spine Specialists timely filed a motion for reconsideration. It pointed to a published opinion, *Encompass Healthcare, PLLC v Citizens Ins Co*, __ Mich App __; __ NW2d __ (2022) (Docket No. 357225) (*Appx 7*), coincidentally issued the same day as the Court of Appeals' opinion in the case at bar, contending that it addressed the same one-year back issue as in this case but came to the opposite conclusion – i.e., that the *amended* version of MCL 500.3145, including its new tolling provision, applies to such cases. MemberSelect opposed the motion by showing that, while the Court in *Encompass Healthcare* did apply the amended version of the statute, it did so not by resolving that issue as a question presented but by virtue of the fact the defendant insurer willingly proceeded on the premise that the amended statute applied. The issue of which version of the statute applies when services are rendered prior to the effective date of the amendment, June 11, 2019, but the lawsuit is filed after that date, was not an issue raised in the appeal. The Court denied Spine Specialists' motion for reconsideration by order of December 28, 2022 (*Appx 6*).

Meanwhile, a request for publication of the instant *Spine Specialists* opinion was submitted under MCR 7.215(B) and MCR 7.215(D) and granted on February 2, 2023. Plaintiff-Appellant, Spine Specialists, thereafter timely filed its application for leave to appeal to this Court on March 16, 2023. For all the reasons set forth herein, the application for leave to appeal should be denied.

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ARGUMENT

Standard of Review

The issue decided by the Court of Appeals was whether Plaintiff-Appellant's claim for recovery of no-fault insurance benefits was precluded by the act's one-year back rule, an issue decided by the trial court's motion for summary disposition brought under MCR 2.116(C)(7) and MCR 2.116(C)(10). A lower court's ruling on such a motion is reviewed on appeal under the de novo standard of review. *Maiden v Rozwood*, 461 Mich 109; 597 NW2d 817 (1999).

I. Where Plaintiff filed this case on September 18, 2020, seeking PIP reimbursement of expenses incurred in April and May 2019 – i.e., more than a year prior to the commencement of the action, the application for leave to appeal should be denied since, as the Court of Appeals properly held, the pre-amendment, no-tolling version of the no-fault act's one-year back rule applied to bar Plaintiff's claim because it was the version of the statute in place when the claim accrued.

The issue raised, argued and decided by the Court of Appeals in this case is whether the new tolling provisions of the amended version of MCL 500.3145 apply to an action filed *after* the amendments of June 11, 2019, but in which the subject expenses were incurred *prior* to the effective date of the amendment, so as to render collectible those expenses that otherwise would have been barred by the pre-amended one-year back rule. MemberSelect has maintained, and the Court of Appeals held, that the new tolling provisions do *not* apply to claims for pre-amendment incurred expenses.

Until June 11, 2019, the no-fault act's one-year back rule stated, in pertinent part, as follows:

> An action for recovery of personal protection insurance benefits payable under this chapter for an accidental bodily injury may not be commenced later than 1 year after the date of the accident

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> causing the injury unless written notice of injury ... has been given to the insurer within 1 year after the accident[.] ... If the notice has been given ..., the action may be commenced at any time within 1 year after the most recent allowable expense, work loss, or survivor's loss has been incurred. However, ***the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced***. ...

MCL 500.3145(1) (prior to June 11, 2019) (emphasis added).

The one-year back rule within this statute, this Court has explained, applies "to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Assoc*, 491 Mich 200, 202; 815 NW2d 412 (2012). It is thus a benefits-limiting provision. Yet a core, underlying premise of Plaintiff-Appellant's application for leave to appeal is that the one-year back rule is procedural in nature, and not substantive. The premise is false.

"In Michigan, statutes of limitations are generally regarded as procedural and not substantive in nature." *People v Russo*, 439 Mich 584, 595; 487 NW2d 698 (1992); *People v Sinclair*, 247 Mich App 695, 698; 638 NW2d 120 (2001). However, "the one-year back rule is not a statute of limitations in that it does not limit the period of time within which a claimant may file an action," rather, the rule represents a statutory cap on damages a claimant is entitled to recover. *Joseph*, 491 Mich at 216. *Accord*, *id*., at 210, *quoting*, *Cameron v Auto Club Ins Assoc*, 476 Mich 55, 72; 718 NW2d 784 (2006) ("[The one-year back rule] does not concern when an action may be brought but, instead, limits the amount of PIP benefits a person injured in an automobile accident may recover").

The one-year back rule is manifestly substantive in nature, rather than procedural, because it reflects legislative policy considerations other than court practice and procedure.

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See, *Zdrojewski v Murphy*, 254 Mich App 50, 82; 657 NW2d 721 (2002) (explaining that statutes capping damages in medical practice actions represent substantive law because "[t]he purpose of the statutes is to control health care costs by reducing medical malpractice liability"). And likewise, as this Court has explained:

> The one-year back rule codifies an integral part of the legislative compromise that is the no-fault act[.] ... Given that Michigan is the only state with a no-fault automobile-injury reparations scheme with mandatory, unlimited, lifetime medical benefits, the Legislature adopted a unique approach to defining the temporal limitations for filing suit without allowing open-ended liability or time-barring claims before they accrue. The Legislature addressed this problem by enacting the one-year-back rule, which limits recovery to losses incurred within one year before suit was filed. Thus, the creation of [the one-year back rule] was the Legislature's reasonable and simple approach to resolving the problem of allowing a reasonable amount of time for pursuing a claim while protecting the fiscal integrity of the no-fault system.

Joseph, 491 Mich at 220-221. Thus, contrary to a structural tenet of Spine Specialists' leave application, the one-year back rule concerns a matter of substantive law, rather than procedure. Plaintiff's arguments concerning application of statutory amendments that are *procedural* should therefore be rejected.

As part of the sweeping amendments of the no-fault act passed as 2019 PA 21, §3145's 1-year-back rule was modified to include a tolling provision based on when a specific claim for payment of the disputed benefit was submitted to the insurer and when the insurer formally denies the claim:

> (2) Subject to subsection (3), if the notice has been given ..., the action may be commenced at any time within 1 year after the most recent allowable expense, work loss, or survivor's loss has been incurred. *However, the claimant may not recover benefits*

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> *for any portion of the loss incurred more than 1 year before the date on which the action was commenced*.
>
> (3) A period of limitations applicable under subsection (2) to ... the recovery of benefits *is tolled from the date of a specific claim for payment of the benefits until the date the insurer formally denies the claim*. This subsection does not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence.

MCL 500.3145 (as amended by 2019 PA 21) (emphasis added). This amendatory act, filed June 11, 2019, was "ordered to take immediate effect."

The dispositive question decided below, therefore, was whether the straight, no-tolling version of the statute applies to Spine Specialists' claim, in which case recovery was barred by the 1-year-back rule; or the amended version of §3145 applies, in which case the date on which "a specific claim for payment" was made, and the date on which "the insurer formally denie[d] the claim," would become relevant. §3145(3) (as amended).

The correct answer is that the straight, pre-amended no-tolling version of the statute applies. This is because the version of the statute that applies is the one in place when the claim for payment accrued; here, that means the version of the statute that applies is the one that was in place in April and May, 2019, because these are the dates on which the subject allowable expenses were *incurred*. Under the straight, pre-amended version of the statute, MemberSelect's grant of summary disposition was properly upheld.

"Statutes are presumed to apply prospectively unless the Legislature clearly manifests the intent for retroactive application." *Johnson v Pastoriza*, 491 Mich 417, 429; 818 NW2d 279 (2012); *Pohutski v City of Allen Park*, 465 Mich 675, 698; 641 NW2d 219 (2002). Here, there is no indication either in the text of the newly amended §3145 itself or anywhere else in

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2019 PA 21, suggesting that the Legislature intended that it have retroactive application. Indeed, as this Court has repeatedly noted, "'the Legislature has shown ... that it knows how to make clear its intention that a statute apply retroactively.'" *Johnson*, 491 Mich at 430, quoting *Frank W Lynch & Co v Flex Technologies, Inc*, 463 Mich 578, 584; 624 NW2d 180 (2001). As examples, the Court in *Johnson* cited MCL 141.1157 ("This act shall be applied retroactively...") and MCL 324.21301a2 ("The changes in liability that are provided for in the amendatory act that added this subsection shall be given retroactive application"). There are no similar statements in or referable to the amendment to §3145.

And while it is true that the amendments of June 11, 2019, including the revision to §3145, were specifically designated to be given "immediate effect" (see 2019 PA 21), the Court made clear in *Johnson*–which addressed another statutory amendment designated to be given immediate effect–that such statutes still are presumed to apply *prospectively* only:

> While 2005 PA 270 was given immediate effect, nothing in the statutory amendment suggests that the Legislature intended *retroactive* effect. The phrase "immediate effect" simply refers to Const 1963, art 4, § 27, which provides that "[n]o act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give *immediate effect* to acts by a two-thirds vote of the members elected to and serving in each house." (Emphasis added.) **Use of the phrase "immediate effect" does not at all suggest that a public act applies retroactively**.

Johnson, 491 Mich at 430 (bold emphasis added) (footnote omitted).

There is no credible argument, therefore, to suggest that the new tolling provision added to §3145 on June 11, 2019, was intended to be given retroactive effect. And to be clear, Spine Specialists is not specifically contending that the statute applies retroactively. Rather, Spine

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Specialists accepts that the amendment became effective on June 11, 2019–but argued in both of the lower courts, and appears to argue here, that it *applies* to this case because the action was *filed* after June 11, 2019, and recovery of the claimed benefits was still potentially viable on that date. This reasoning, however, is fatally flawed.

This Court has directly held that the substantive rights and liabilities of the parties to an action are properly determined *according to the law as it stood when the claims accrued*. *Husted v Consumers Power Co*, 376 Mich 41, 47; 135 NW2d 370 (1965); see *Slater v General Motors Corp*, 73 Mich App 741, 743 n 1; 252 NW2d 544 (1977) ("the substantive rights of all parties are determined according to the law at the time the claims accrued," citing *Husted*, *supra*). And as discussed above, Spine Specialists is plainly wrong in assuming that the one-year back rule does not govern "substantive rights and liabilities" of the parties in no-fault cases, as this Court specifically held that it is a "damages-limiting" provision. *Joseph*, 491 Mich at 214.

In *Bradfield v Estate of Burgess*, 62 Mich App 345; 233 NW2d 541 (1975), the question, as here, was whether an amendment to the statute under which the action was brought applied to the action where the cause of action accrued prior to the amendment but the action was filed after the amendment had gone into effect. Specifically, in *Bradfield*, (a) the cause of action (a claim for wrongful death) accrued on November 12, 1969, (b) an amendatory act that altered the scope of damages recoverable took effect on March 30, 1972; and (c) the complaint was filed October 26, 1972. The appellate court thus reasoned that the pre-amended version of the statute controlled:

> Since statutes are to be given prospective effect exclusively unless a clear, unambiguous intent for retroactive application is

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> expressed by the legislature, the amendment herein does not govern the instant action. [] *The statute in effect at the time the action accrued did not provide for such evidence of remarriage*.

Bradfield, 62 Mich App at 351-352 (emphasis added) (citations omitted).

In the case at bar, Spine Specialists' claim for payment of PIP benefits, which it acquired by assignment from MemberSelect's insured, *accrued when each of the underlying allowable expenses were incurred* – on April 15, 2019, April 20, 2019, and May 6, 2019. This point is beyond dispute, as the act so states:

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

MCL 500.3110(4) (emphasis added). *Accord*, *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 638; 552 NW2d 671 (1996) (as plaintiff became liable for her medical expenses when she received the treatment, this was the moment she "incurred" charges for the services she received).

Accident victim Jeremy Woods received the services of Spine Specialists in April/May of 2019, and, accordingly, these were the dates on which his claims for PIP benefits for allowable expenses accrued. §3110(4). These are the claims Spine Specialists is pursuing in this Supreme Court appeal. And since the they accrued in April and May, 2019, the statutory law in effect at that time governs any right of recovery–including the straight, no-tolling version of the no-fault act's one-year back rule.

Nor could it logically be otherwise. The tolling provision added by the statutory amendment applies critical significance to the timing of two events: the date on which the plaintiff makes a "specific claim for payment," and the date on which the insurer issues a

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"formally denial" of the claim. The amended statute applies these specified dates to determine the extent of the plaintiff's substantive right to recover damages – i.e., to determine the extent of the insurer's 1-year-back defense. These are substantive rights affected by actions taken – or not taken – by the parties prior to June 11, 2019.

Yet these events under the amendatory tolling provision–the plaintiff's submission of a "specific claim" and the insurer's 'formal denial' of the claim–*were of no legal significance* at the times they were made – or not made. The insurer would have had no idea that a decision to deny a claim on one date *as opposed to several months earlier, or later*, could substantially impact the extent of its legal liability:

> "[A] law cannot be applied retroactively if it abrogates or impairs vested rights or creates new obligations, or attaches new disabilities regarding transactions or considerations that have already occurred[.]"

Grew v Knox, 265 Mich App 333, 339; 694 NW2d 772 (2005), citing *People v Jackson*, 465 Mich 390, 401; 633 NW2d 825 (2001). Manifestly, a court should refrain from applying a statutory amendment retroactively to lend prejudicial meaning to acts or omissions that at the time were of no legal significance. *Id*.

The state of the law concerning §3145's one-year back rule, in light of the Court's holding in *DeVillers v Auto Club Ins Assoc*, 473 Mich 562; 702 NW2d 539 (2005), and its overruling of *Lewis v DAIIE*, 426 Mich 93; 393 NW2d 167 (1986), was, in effect, that one-year back means one-year back. 473 Mich at 584-586. This was the law in place when the claims at issue in this case accrued. The subject amendment, therefore, was properly held by the lower courts *not* to apply to the pre-amendment charges (incurred expenses) here at issue.

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In short, since the expenses for which Spine Specialists is seeking PIP benefits were incurred in April and May of 2019, at which time the no-fault act's one-year back rule provided a strict one-year period within which to bring suit or be precluded from recovering such benefits, and Spine Specialists did not bring suit until September 18, 2020, recovery was precluded. For the benefit of bench and bar, the Court of Appeals clearly and accurately stated the applicable rule – in an opinion it subsequently agreed should be published – holding that the amendatory tolling provision of §3145, effective June 11, 2019, applies to expenses and other losses incurred on or after that date, June 11, 2019, but does *not* apply to those dwindling number of PIP cases, like the one at bar, in which the expenses at issue were incurred before June 11, 2019.

The Court of Appeals, in other words, got it right, while the instant application is fundamentally flawed in failing to recognize that the benefits-limiting, one-year back rule is a matter of substantive law and not merely a procedural rule. The Court, therefore, should deny the application for leave to appeal.

II. Spine Specialists' contention that the Court of Appeals' opinion in this case conflicts with a holding in *Encompass Healthcare, PLLC v Citizens Ins Co* is without merit.

Although not included in its statement of Questions Presented (p. x), the Spine Specialists Application for Leave to Appeal does repeatedly assert in its statement of "Opinion and Orders Appealed From" (p. vi), statement of "Grounds for Appeal" (p. vii) and Conclusion (p. 10) that the Court of Appeals' opinion in the case at bar conflicts with a holding in *Encompass Healthcare, PLLC v Citizens Ins Co*, __ Mich App __; __ NW2d __ (2022) (Docket No. 357225) (submitted with Plaintiff's application for leave to appeal as Ex. 2,

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Appx 7). But since the single issue raised and decided in the case at bar was *not* raised and decided in *Encompass Healthcare*, the assertion should be rejected. The two cases did not address the same issue at all.

Again, the opinion issued by the Court of Appeals in this case decided a single issue: Where medical services were rendered to an insured on dates *preceding* the effective date of the 2019 PA 21 amendments, but the action was filed *after* the effective date of the amendments, which version of MCL 500.3145's one-year back rule applies – the *pre-amendment* "no tolling" version of the statute or the *post-amendment* "tolling" version? This was *not* an issue raised for appellate review in *Encompass Healthcare*.

On the contrary, the *Encompass Healthcare* opinion makes manifest that the defendant insurer readily accepted the proposition that the post-amendment version of §3145 applied. Indeed, the defendant insurer *affirmatively relied* on the amended version of the statute by basing its entire argument on the contention that its "EORs constituted formal denials under MCL 500.3145(3)" – a subsection of the statute that did not exist before 2019 PA 21 went into effect. *Encompass Healthcare*, *supra*, slip op at 4 (*Appx 10*). The sole issue addressed, analyzed and decided in *Encompass Healthcare* was what constitutes a "formal denial" of an insurance claim for purposes of terminating the tolling period in §3145(3).

The panel in *Encompass Healthcare* merely observed that the plaintiff's action was filed on November 4, 2019 (*id*., slip op at 2, *Appx 8*), then commented in a footnote that the new version of the statute would apply: "Because Encompass's complaint was filed after these amendments took effect, this case is governed by the newly adopted statutory language." *Id*., slip op at 2, n 1 (*Appx 8*). As its only support for this proposition, the footnote included the

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following: "See *George v Allstate Ins Co*, 329 Mich App 448, 451 n 3; 942 NW2d 629 (2019) ('This case was commenced before the [2019] amendment[s] and, therefore, it is controlled by the former provision of the no-fault act.')" This reliance on *George*, however, was effectively reliance on nothing at all, since it is beyond dispute that where the action itself was filed prior to the subject amendments, then *everything* occurred prior to the amendments – the accident, the treatment and incurred expenses, and the filing of the action.

The passing comment in the *Encompass Healthcare* footnote, in other words, reflects no analysis of the issue in *Spine Specialists* – which is understandable since the issue was never disputed by the parties in *Encompass Healthcare*. Instead, the opinion's passing comment that the reason the amended version of the statute applies is because the action was filed after June 11, 2019, was a statement lacking the force of an *adjudication* and was thus *obiter dictum*. *Quinton v General Motors Corp*, 453 Mich 63, 74; 551 NW2d 677 (1996) ("It is well settled that issues neither briefed nor argued cannot be definitively decided, and that the Court's pronouncements, especially dicta, without briefing and argument, are not stare decisis"); *accord*, *City of Highland Park v State Land Bank Authority*, 340 Mich App 593; 986 NW2d 638 (2022).[3]

[3] In *City of Highland Park*, the court rejected the defendant's argument that a passing statement in the earlier case of *Harbor Watch Condo Assoc v Emmet Co Treasurer*, 308 Mich App 380; 863 NW2d 745 (2014), qualified as a holding under the rule of stare decisis, concluding instead that the statement lacked the force of an adjudication and was thus "obiter dictum." The court noted that the statement was "not supported by antecedent legal analysis" and in fact preceded that opinion's remaining analysis in which the opinion did reach its controlling conclusions. The defendant's reading of the *Harbor Watch* opinion, the court said, "would improperly narrow that decision to that conclusory statement." *City of Highland Park*, 340 Mich App at 611.

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The holding reached by the Court of Appeals in the case at bar, therefore, does not conflict with any holding in the case of *Encompass Healthcare, LLC v Citizens Ins Co* since, quite simply, the issue decided in the case at bar was never disputed, raised and adjudicated in *Encompass Healthcare*. There is no merit to Plaintiff's bald assertions to the contrary.

RELIEF REQUESTED

For all the reasons set forth herein, Defendant-Appellee, MemberSelect Insurance Company, respectfully requests that the Court deny the application for leave to appeal.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

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June 24, 2023

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CERTIFICATE OF COMPLIANCE

The undersigned certifies the foregoing document has been prepared in compliance with the formatting and word-count limitations as set forth below:

Court Rule	Pleading Type	Word Limitation	Word Count
MCR 7.305(A)(1) and MCR 7.212(B)(1)	Answer to Application for Leave to Appeal	16,000	4,407

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STATE OF MICHIGAN

IN THE SUPREME COURT

SPINE SPECIALISTS OF MICHIGAN, P.C.,
As assignee of Jeremy Woods,

Plaintiff-Appellant,

v

MEMBERSELECT INSURANCE COMPANY,

Defendant-Appellee.
_____/

Supreme Court No. 165445

Court of Appeals No. 358296

Macomb County Circuit Court
No. 2020-003355-NF

PROOF OF SERVICE

I certify that copies of the foregoing **Answer to Plaintiff-Appellant Spine Specialists of Michigan P.C.'s Application for Leave to Appeal**, and this **Proof of Service**, were served as indicated below:

Date of Service: June 24, 2023

VIA *Mi*File TrueFiling E-SERVICE

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