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STATE OF MICHIGAN
IN THE SUPREME COURT

On Appeal From the Michigan Court of Appeals
(Riordan, PJ, and Boonstra and Gadola, JJ)

SPINE SPECIALISTS OF MICHIGAN, PC,

Plaintiff-Appellant,

v

MEMBERSELECT INSURANCE COMPANY,

Defendant/Appellee.

Supreme Court Case No. _____

Court of Appeals Case No. 358296

Macomb County Circuit Court
Case No. 2020-003355-NF
Hon. Edward Servitto, Jr. (P27600)

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PLAINTIFF/APPELLANT SPINE SPECIALIST OF MICHIGAN, PC's APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED

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OPINION AND ORDERS APPEALED FROM

Plaintiff/Appellant, Spine Specialists of Michigan, PC ("Spine Specialists"), seeks leave to appeal from an opinion of the Michigan Court of Appeals that was first issued as an unpublished opinion on November 17, 2022, and then subsequently published on February 2, 2023.[1] In that opinion, the Court of Appeals affirmed the trial court's decision to summarily dismiss Spine Specialists' claims for PIP benefits from Defendant/Appellee, MemberSelect Insurance Company ("MemberSelect"), under MCR 2.116(C)(7) and(C)(10).

In short, the Court of Appeals agreed with the trial court that the statutory one year back rule under MCL 500.3145 precluded Spine Specialists' claims for PIP benefits from MemberSelect for services provided to Jeremy Woods because this PIP lawsuit was not filed until September 21, 2020. Specifically, it held that MCL 500.3145, as amended in 2019 to provide for statutory tolling until a formal denial of the claim was issued, did not apply to PIP claims incurred before the No-Fault Act was amended, i.e., June 11, 2019.

Spine Specialists filed a timely motion for reconsideration from that holding after the unpublished opinion was issued in this case. In seeking reconsideration, Spine Specialists argued that the Court of Appeals violated MCR 7.215(C)(2) because its unpublished opinion conflicted with a published opinion issued that very same day. See *Encompass Healthcare, PLLC v Citizens Ins Co,* Court of Appeals Docket No. 357225, issued November 17, 2022. Notwithstanding that the holdings conflicted, the Court of Appeals denied reconsideration of its unpublished decision on December 28, 2022. See Appx 6.

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[1]Appx 1, Ex. 1, *Spine Specialists of Michigan, PC v MemberSelect Insurance Company*, unpublished per curiam opinion of the Michigan Court of Appeals, Docket No. 358296, first issued on November 17, 2022, but published on February 2, 2023.

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JURISDICTION

This Court is entitled to exercise its jurisdiction to review a case after a decision in the Court of Appeals. MCR 7.303(B)(1). In a civil case, an application for leave to appeal must be filed with this Court within 42 days of the Court of Appeals' decision. MCR 7.305(C)(2). The Court of Appeals first issued its unpublished opinion on November 17, 2022, but it subsequently published its opinion on February 2, 2023. This application for leave to appeal was filed with 42 days of when that published opinion was issued. Accordingly, this Court has discretion to exercise its jurisdiction under MCR 7.303(B)(1).

GROUNDS FOR APPEAL

Leave should be granted because the Court of Appeals' published decision in this case "conflicts with . . . . another [published] decision of the Court of Appeals". See MCR 7.305(B)(5)(b). Specifically, its holding conflicts with *Encompass Healthcare, PLLC v Citizens Ins Co,* COA Docket No. 357225, which is a published decision that was issued on the same day that the Court of Appeals issued its unpublished decision in this case.[2]

Under MCR 7.215(C)(2), the Court of Appeals was required in this case to follow the published holding in *Encompass*. Yet, it did not do so, even when reconsideration was sought based on that published holding. Instead, it denied reconsideration on December 28, 2022 and then published its opinion on February 2, 2023, notwithstanding the contrary holding in *Encompass*! Simply put, the holding in this case cannot be reconciled with *Encompass*. Accordingly, this Court should review this case in order to address whether the statutory tolling provision under MCL 500.3145, as amended in 2019, applied to

[2]Appx 7, Ex. 2, *Encompass* published COA opinion dated November 17, 2022.

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lawsuits filed after June 11, 2019. As that question was addressed more squarely in this case than on appeal in *Encompass*, it makes more sense for this Court to review this case.

The issue on appeal in this case "involves a legal principle of major significance to this state's jurisprudence" under MCR 7.305(B)(3). Application of the new statutory tolling provision under MCL 500.3145, as amended in 2019, affects persons injured in motor vehicle accidents, medical providers who care for them, and PIP insurers that reimburse medical providers for services rendered after a motor vehicle accident has occurred. It is a recurring issue that will affect many pending PIP cases. In fact, it has already done so!

The Court of Appeals recently applied its published holding in this case to deny PIP benefits that would have been reimbursed if the earlier published holding in *Encompass* was applied. See *Health Partners, Inc v Progressive Mich Ins Co*, unpublished per curiam opinion of the Court of Appeals, Docket No. 359096, issued on March 9, 2023[3] (applying *Spine Specialists* as binding precedent under MCR 7.215(C)(2), while also noting the "tension between the holding" in *Spine Specialists* and *Encompass* and further observing that "[t]his is, however, an issue for the Supreme Court to clarify"). Slip op at 5. Without question, the *Spine Specialists* case will be similarly applied to preclude other similar claims for PIP benefits by the time this Court decides whether or not to review this case.

Leave should be granted under MCL 7.305(B)(5)(a) because the Court of Appeals' opinion "is clearly erroneous and will cause material injustice" if it is not corrected so that it is consistent with the holding in *Encompass*, i.e., that the tolling provision under MCL 500.3145, as amended in 2019, applies to lawsuits filed after June 11, 2019. In

[3]Appx 15, Ex. 3, Health Partners unpublished COA opinion dated March 9, 2023.

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Encompass, the Court of Appeals unequivocally stated (albeit in a footnote) that "[b]ecause Encompass's complaint was filed after these amendments took effect, this case is governed by the newly adopted statutory language." Slip op at 2, fn 1. That legal holding was essential to the result in *Encompass* as there would be no reason to address whether PIP claims were formally denied unless the statutory tolling provision applied to the claims.

This Court should grant leave to appeal or otherwise review this case (as opposed to *Encompass*) as it more squarely addresses the legal question of how the statutory tolling provision should be applied. This Court should review the *Encompass* case only if there is a question regarding its central holding that a formal denial of PIP benefits is required.

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QUESTIONS PRESENTED

I. Whether leave should be granted to address whether the Court of Appeals erred by holding that the statutory one year back rule precluded Spine Specialists' claims for PIP benefits because it mistakenly concluded that the tolling provision did not apply to PIP claims for services provided by Spine Specialists before the No-Fault Act was amended?

Plaintiff/Appellant Spine Specialists says "Yes".

Defendant/Appellee MemberSelect says "No".

The trial court would say "No".

The Court of Appeals would say "No".

This Court should say "Yes".

II. Whether leave should be granted to address whether the Court of Appeals erred by holding that the statutory tolling provision under MCL 500.3145, as amended in 2019, did not apply to PIP claims for services provided before the No-Fault Act was amended, because it mistakenly concluded that its previous published holding in the *Andary* case mandated that *procedural* provisions like tolling be applied "retroactively" in the same way that *substantive* provisions governing the amount of PIP benefits owed must be applied?

Plaintiff/Appellant Spine Specialists says "Yes".

Defendant/Appellee MemberSelect says "No".

The trial court would say "No".

The Court of Appeals would say "No".

This Court should say "Yes".

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STANDARD OF REVIEW

A trial court's decision to grant of summary disposition under MCR 2.116(C)(7) is reviewed de novo. *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554, 550 NW2d 262 (1996). When reviewing a motion for summary disposition under MCR 2.116(C)(7), all documentary evidence submitted by the parties is considered, and, where appropriate, the pleadings are construed in favor of the plaintiff's position. Id. A trial court's decision to grant summary disposition under MCR 2.116(C)(10) is also reviewed de novo. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280, 807 NW2d 407 (2011). A motion for summary disposition under MCR 2.116(C)(10) "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Bahri v IDS Prop Cas Ins Co*, 308 Mich App 420, 423, 864 NW2d 609 (2014). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183, 665 NW2d 468 (2003). In reviewing a summary disposition motion under MCR 2.116(C)(10), a court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507, 717 NW2d 855 (2006).

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INTRODUCTION

The issue in this PIP case is whether statutory tolling provision under MCL 500.3145(3) of the No-Fault Act, as amended in 2019, applies to PIP lawsuits filed after June 11, 2019, which was the effective date of the amended No-Fault Act, so that one year back rule may be tolled for PIP claims based on services provided before the No-Fault Act was amended where no formal denial was issued and the claim for PIP benefits was pursued with reasonable diligence. The trial court said no. The Court of Appeals said no. But, both courts simplistically concluded that the amended No-Fault Act does not apply "retroactively" because the Legislature did not say so expressly. In support of that holding, the Court of Appeals relied on its prior published holding in *Andary v USAA Cas Ins Co*, published opinion of the Court of Appeals, Docket No. 356487, issued August 25, 2022.

Unlike this PIP case, *Andary* involved *substantive* provisions of the amended No-Fault Act that affected *vested rights* of persons injured in motor vehicle accidents before June 11, 2019 to recover PIP benefits. The *Andary* Court held that substantive changes to the PIP benefits owed to so-called "legacy" patients could not be applied retroactively to alter an auto accident victim's entitlement to recover PIP benefits for injuries sustained in accidents before June 11, 2019. This PIP case, in contrast, involves no substantive provisions and no vested rights! It merely addresses whether a *procedural* rule that tolls the one year back rule may be applied in PIP lawsuits filed after June 11, 2019, so that tolling is possible on claims for services provided before the No-Fault Act was amended.

The lower courts clearly erred by relying on the Court of Appeals' published holding in *Andary* to broadly hold that even procedural, non-substantive, provisions like tolling

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under the amended No-Fault Act did not apply to claims for services provided before June 11, 2019, there was no lawsuit to recover the PIP benefits owed until after June 11, 2019. This Court should grant leave to appeal or otherwise review this case to clarify how the holding in the *Andary* case applies to procedural, non-substantive, provisions like tolling.

STATEMENT OF FACTS

As the Court of Appeals correctly noted in its published opinion in this case, "t]he facts of this case essentially are undisputed." Slip op at 1. Jeremy Woods was injured in a motor vehicle accident that occurred on January 21, 2017. When the accident occurred, he was insured by MemberSelect under a personal auto policy that included PIP benefits. Spine Specialist provided medical care for Woods after he was injured in the accident. Woods assigned his right to recover PIP benefits from MemberSelect to Spine Specialists.

Spine Specialists provided services on behalf of Woods both before and after the No-Fault Act was amended. The effective date of the amended No-Fault Act was June 11, 2019. The only remaining disputed PIP claims in this case concern services provided by Spine Specialists in April and May, 2019, before the amended No-Fault Act was effective. Those claims were not formally denied until August 13, 2020 and September 17, 2020. Spine Specialists sued MemberSelect for its unpaid PIP benefits on September 20, 2020.

MemberSelect moved for summary disposition under MCR 2.116(C)(7) and (C)(10). It argued that Spine Specialists claims' for unpaid PIP benefits from April and May, 2019

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were precluded by the statutory one year back rule under MCL 500.3145(1) and that the statutory tolling provision under the amended No-Fault Act did not apply to those claims.[4]

The trial court agreed with MemberSelect and granted summary disposition on all PIP claims for services that Spine Specialists provided Woods before June 11, 2019. It also denied summary disposition as to PIP claims for services provided after June 11, 2019.[5] But, a final order was soon entered because the parties resolved those PIP claims.[6]

Spine Specialists appealed the trial court's summary disposition ruling as to its claims for PIP benefits from MemberSelect for services provided before June 11, 2019. On appeal, Spine Specialists contended that the trial court erred by not applying the statutory tolling provision in this case to its claims for services provided before the No-Fault Act was amended. It also argued that the one year back rule had not run by the time that the lawsuit was filed as no formal denial was issued until shortly before litigation started.

The Court of Appeals rejected Spine Specialists' argument that the statutory tolling provision applicable to the one year back rule under the amended No-Fault Act applied. In sum, the Court of Appeals affirmed the trial court's ruling that "the pre-amendment version of the statute applied because the amended statute does not apply for retroactive

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[4]MemberSelect also argued below that it was released from any obligation to reimburse Spine Specialists for unpaid medical bills when it settled with Woods as it was not notified in writing by Spine Specialists that he had assigned his right to recover PIP benefits to Spine Specialists as required under MCL 500.3112. However, no cross-appeal was filed by MemberSelect so that issue was not properly raised on appeal and accordingly, the Court of Appeals correctly held that it cannot now be resurrected as an alternative grounds to support the trial court's summary disposition ruling. Slip op at 5.

[5]Appx 20, Ex. 4, Transcript, Summary Disposition Hearing, dated July 26, 2021.

[6]Appx 37, Ex. 5, Final Order re Summary Disposition dated August 5, 2021.

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application." Slip op at 3. Citing *Buhl v City of Oak Park*, 507 Mich App 236, 244, 968 NW2d 348 (2021), the Court stated that "[t]his presumption is overcome only when the Legislature manifests an intent for retroactive application." Id, citing *Buhl*, supra at 244. Relying on the recent published holding in the *Andary* case, while also noting that it did not address the new statutory tolling provision under MCL 500.3145 specifically, the Court nonetheless held based on its reading of the *Andary* case that "the legislative amendments to the no-fault act in 2019 PA 21 and 2019 PA 22 do not apply retroactively because 'the Legislature did not clearly demonstrate an intent for the amendments to apply retroactively to persons injured in pre-amendment accidents." Id, citing *Andary*, supra, slip op at 1. There was no discussion of the fact that *Andary* was addressing whether the amended No-Fault Act could be applied substantively to alter vested rights under the No-Fault Act. Instead, it was read broadly as holding that the amended law did not apply "retroactively".

Spine Specialists moved for reconsideration, arguing that the Court of Appeals' holding in this case, which was initially unpublished, conflicted with the published holding that was issued on the same day in Encompass, supra. Notwithstanding that conflict, the Court of Appeals not only denied reconsideration, it disregarded MCR 7.215(C)(2) by then published its contrary holding in this case. Spine Specialists now seeks leave to appeal and asks this Court to review this case in order the reconcile these conflicting decisions.

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ARGUMENT

I. THIS COURT SHOULD GRANT LEAVE OR OTHERWISE REVIEW THIS CASE BECAUSE THE COURT OF APPEALS ERRED BY HOLDING THAT THE STATUTORY ONE YEAR BACK RULE PRECLUDED SPINE SPECIALISTS' CLAIMS FOR PIP BENEFITS WHEN IT MISTAKENLY CONCLUDED THAT THE STATUTORY TOLLING PROVISION DID NOT APPLY TO PIP CLAIMS FOR SERVICES PROVIDED BEFORE THE NO-FAULT ACT WAS AMENDED IN 2019.

A. The one year back rule under MCL 500.3145(1) is a procedural rule that limits the damages that can be recovered if a lawsuit is filed seeking PIP benefits for expenses incurred because of a motor vehicle accident.

Before the No-Fault Act was amended in 2019, this Court had clearly established that the one year back rule under MCL 500.3145(1) is not a statute of limitations. *Linden v Citizens Ins Co of America*, 308 Mich App 89, 97-98, 862 NW2d 438 (2014), citing *Cameron v Auto Club Ins Ass'n*, 476 Mich 61, 97-98, 718 NW2d 784 (2010) and *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 207-208, 214, 815 NW2d 412 (2012). It is instead a procedural limitation on the amount of damages that can be recovered in a PIP action.

No changes were made to MCL 500.3145 in 2019 that transformed the one year back rule into a substantive provision like the one year notice provision which is a condition precedent to filing a PIP action. The only changes to the one year back rule in 2019 were the following: 1) moving it to a separate subsection from the one year notice provision; and 2) clarifying that it was subject to the new statutory tolling provision. Otherwise, the statutory one year back rule is the same as it was before the No-Fault Act was amended.

B. The new statutory tolling provision applies prospectively to all lawsuits filed after the No-Fault Act was amended because the one year back rule is merely a procedural provision that limits the damages claimed and does not affect the underlying entitlement to recover PIP benefits.

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In 2019, the Legislature amended the No-Fault Act to include a statutory tolling provision that applied to the one year back rule on recovering damages in a PIP action. In so doing, the Legislature modified a procedural provision, i.e., the one year back rule, so that its application would be tolled until a claim for PIP benefits was formally denied. The Legislature did so in 2019 by adding MCL 500.3145(3), which provides the following:

> 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 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.

Unlike other new provisions added when No-Fault Act was amended, the Legislature did not provide that implementation of the one year back tolling provisions would be delayed. Accordingly, the new statutory tolling provision must be applied prospectively to all lawsuits filed after the No-Fault Act was amended, starting when it was effective on June 11, 2019.

As Justice Viviano observed in his concurring opinion in *Buhl,* supra, "a statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment". In other words, a statute can be applied to claims that accrued before it was enacted where, as in this case, it is merely a procedural provision that does not impair a vested right. As this Court stated in *Rookledge v Garwood*, 340 Mich 444, 457, 65 NW2d 785 (1954) ("[a] statutory defense, though a valuable right, is not a vested right and the holder thereof may be deprived of it after the cause of action to which it may be interposed has arisen"); see also *Lahti v Fosterling*, 357 Mich 578, 589, 99 NW2d 490 (1959); and *Paul v US Mut Fin Corp*, 150 Mich App 773, 784, 389 NW2d 487 (1986).

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Here, Spine Specialists claimed PIP benefits for services provided on behalf of Woods before June 11, 2019. Progressive paid some, but not all, of Spine Specialists' claims for services provided for Woods before June 11, 2019. But, Progressive did not deny the balance of those PIP claims until the fall of 2020. Spine Specialists promptly sued Progressive in September, 2020. Consequently, the one year back rule does not preclude Spine Specialists' claims for PIP benefits in this case because its application was tolled.

II. THIS COURT SHOULD GRANT LEAVE OR OTHERWISE REVIEW THIS CASE BECAUSE THE COURT OF APPEALS ERRED BY HOLDING THAT THE NEW STATUTORY TOLLING PROVISION DID NOT APPLY TO SPINE SPECIALISTS' CLAIMS FOR PIP BENEFITS ON SERVICES PROVIDED BEFORE JUNE 11, 2019 WHEN IT ANALYZED THAT ISSUE AS A QUESTION OF RETROACTIVE APPLICATION BASED ON ITS PREVIOUS HOLDING IN THE *ANDARY* CASE.

Procedural provisions like tolling under the statutory one year back rule apply prospectively to all lawsuits filed after the No-Fault Act was amended whereas substantive provisions governing entitlement to recover PIP benefits cannot be applied retroactively. In this case, the Court of Appeals evidently lost sight of why it previously reached the published holding that it did in the *Andary* case. Unlike this case, *Andary* involved substantive changes to the PIP benefits owed under the No-Fault Act. The question was whether those substantive changes could be applied to persons injured in motor vehicle accidents before the No-Fault Act was amended. There is no similar question in this PIP case because no substantive provisions are involved and no vested rights will be affected. Tolling is a procedural rule, not a substantive provision, and it does not affect vested rights.

Citizens will likely contend (mistakenly) that it has a vested right to apply the one year back rule in its pre-amendment version free of any statutory tolling added in 2019. But, Citizens would be clearly wrong in making such a claim. A procedural defense is not

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a vested right. That point has been amply demonstrated by application of amended statutes of limitations in civil cases to defendants in lawsuits brought after the law was amended. See, generally, *Doe v Hartford Roman Cath Diocesan Corp*, 317 Conn 357, 428, 119 A3d 462 (2015), citing *Pryber v Marriott Corp*, 98 Mich Ap 50, 57, 296 NW2d 697 (1980), aff'd by 411 Mich 887, 307 NW2d 333 (1981), as support for its holding and noting that "fourteen states, namely, Arizona, California, Delaware, Hawaii, Idaho, Kansas, Massachusetts, Michigan, Minnesota, Montana, New Jersey, North Dakota, Washington and Wyoming, hold that retroactive expansion of the statute of limitations to revive time barred claims is not a violation of a defendant's substantive due process rights because there is not vested right to a statue of limitations defense as a matter of constitutional law."

Unlike a criminal case, where there is a vested right in not being charged after a limitations period has run because a liberty interest is involved – see *People v Russo*, 439 Mich 584, 594, 487 NW2d 698 (1992) – amending statutes of limitations in a civil case does not raise the same concerns as there is no vested right in a statute of limitations defense. If there is no vested right in a statute of limitations defense in a civil case, there is no vested right in the one year back rule since it is merely a damages-limiting provision. See *infra* at pp 4-5; *Linden,* 308 Mich App at 97-98, citing *Cameron* and *Joseph*, supra.

The same result has been reached in other Michigan cases where a civil statute of limitations was amended. In *Bessmertnaja v Schwager*, 191 Mich App 151, 154, 477 NW2d 126 (1991), the defendant in a paternity action argued that the claim against him was barred by the prior 6 year statute of limitations even though the Legislature amended that statutory provision so that a paternity action could be brought any time before a child turns 18. This Court rejected that argument, noting that "[t]he new statute of limitations,

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enacted in 1986, has been applied retroactively in cases in which the prior six-year period of limitation had already lapsed." Id at 154. In so holding, this Court observed that the defendant did not have a vested property right in avoiding a paternity action because "the statute of limitations does not destroy or pay a debt; rather it affects the rights of the plaintiff to recover on the debt" and thus, "[t]his right may be removed" legislatively. Id at 155. Simply put, the new statutory period of limitation did not deprive him of vested right.

Similarly, in *Pryber*, supra, the plaintiff brought a personal injury action after she was injured at an amusement park in Chicago that was owned by Marriott. At issue was whether Michigan's original "borrowing" statute applied as it would have adopted the Illinois two-year statute of limitations, or whether the subsequently amended "borrowing" statute in Michigan applied so that the plaintiff as a Michigan resident had 3 years to bring her personal injury claim. The trial court held that the plaintiff's claim was barred by the prior borrowing statute as her cause of action could not be revived by legislative action. But, this Court reversed, concluding that "the right to interpose a statute of limitation to defeat a claim is not a vested right" and therefore, there was no "constitutional" violation in doing so. Id at 55-57. The Supreme Court reviewed that holding and it was affirmed. Id at 887.

To the extent that Citizens may claim that it has a vested right in a procedural one year back rule defense without any statutory tolling, it is clearly wrong. The Legislature is free to change such procedural rules limiting damages, much like a statute of limitations, in a civil case, because no vested right is affected as such defenses are not vested rights. At first blush, it may seem an incongruous result but the underlying legal analysis is sound. The problem in these one year back rule cases is that the Court of Appeals has not bothered to do the legal analysis required. It has simply applied the *Andary* case in a rote

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fashion to reach a holding that it mistakenly believes is consistent with the *Andary* holding. In actuality, nothing could be farther from the truth because the question here is not about retroactive application. It is about applying a procedural rule prospectively to new litigation.

CONCLUSION

Applying the law would be a simple task if a legal holding reached in one context could simply be read broadly so as to resolve seemingly similar issues in another context. That is what the Court of Appeals did in this PIP case when it applied *Andary* to support its broad holding that the statutory tolling provision under the amended No-Fault Act could not be applied to PIP claims for services provided before the law was changed, regardless of when the lawsuit was filed. The law is not simple. It requires that the underlying legal analysis used to support a holding be examined. Here, the Court of Appeals did not take the time to fully understand the basis for its previous published holding in the *Andary* case. It simply defined the issue in this case as one of retroactive application, when, in actuality, it has always been a question of how procedural, non-substantive, provisions should be applied. This Court should review this case because it warrants a more sophisticated legal analysis than the lower courts performed. *Andary* should not be controlling in this case. Yet, that is how it will be applied to future cases if this Court does not review this case, or alternatively, the conflicting holding that the Court of Appeals issued in *Encompass*, supra.

RELIEF REQUESTED

Plaintiff/Appellant, Spine Specialists of Michigan, PLLC, respectfully requests that this Court grant leave to appeal or otherwise review the Court of Appeals' decision to affirm the trial court's holding that summarily dismissed its claims for PIP benefits under MCR

2.116(C)(7) and(C)(10). Here, the lower courts erred by concluding that the statutory tolling provision under MCL 500.3145(3) applied "retroactively" to PIP claims for services provided before the No-Fault was amended, even though it is a mere procedural provision that should be applied in PIP lawsuits filed after the effective date of the amended No-Fault Act.

Respectfully submitted:

Dated: March 16, 2023

/s/ Steven A. Hicks

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