Dispel the Mystery

To the Editor:

Shari Oberg and Daniel Brubaker in "Supreme Review: Insights on the Michigan Supreme Court's Consideration of Applications for Leave to Appeal" (February 2008 *Michigan Bar Journal*) make a valuable contribution to dispelling the mystery that has surrounded the work of Supreme Court commissioners. Of particular interest is the statistical data in footnote 2 of their article, which breaks down the data relating to the various ways applications for leave to appeal are disposed of. It would have been better if that data had been displayed in tabular form, and even better if that sort of data were included each year in the published statistics relating to case dispositions by the high court. Certainly if that sort of data is available inside the high court it should be made available outside the high court.

Hon. Avern Cohn, Detroit

No-Fault Insurers Continue Assault Against Medical Service Provider Claims

To the Editor:

Medical service providers are, once again, under attack by the Michigan no-fault automobile insurance industry. That headline is not necessarily new; rather, the carriers' current theory of attack is. With *Kreiner v Fischer,* 471 Mich 109 (2005), on the books and third-party liability auto claims held in check, coupled with the current balance of power on the Michigan Supreme Court, the no-fault insurance industry has now focused its war chest on defeating direct actions by certain medical service providers who otherwise provide reasonably necessary medical care to motor vehicle accident victims. The developing seminal case, which will be heard by the Michigan Supreme Court this summer, is *Miller v Allstate,* 490 Mich 938 (2007) (order granting leave to appeal).

The "*Reader's Digest* version" of the assault is this: under section 3157 of the no-fault act (MCL 500.3101, *et seq.*), a medical service provider *"lawfully rendering treatment"* may be paid PIP benefits for services rendered to auto accident victims covered by no-fault insurance. Mr. Miller sought physical therapy treatment from PT Works, Inc., which was organized under the Business Corporations Act (BCA), MCL 450.1011, *et seq.* All the therapists employed by PT Works, however, were properly licensed by the State of Michigan. Citing an old opinion, *Cherry v State Farm Mut Auto Ins Co,* 195 Mich App 316 (1992) (where PIP benefits were denied as *"unlawfully rendered"* under section 3157 because the acupuncturist rendering care to Ms. Cherry was not properly licensed), Allstate denied PT Works charges under the theory that it unlawfully rendered care to Mr. Miller for the reason that the business should have been organized under the Professional Services Corporation Act (PSCA), MCL 450.221 *et seq.* Holding that Allstate's theory was a distinction without a difference, given that the individual therapists rendering care to Mr. Miller were properly licensed and, therefore, lawfully rendered care under section 3157, the Court of Appeals affirmed the trial court's ruling denying summary disposition in favor of Allstate. *Miller v Allstate,* 272 Mich App 284 (2006). The Court of Appeals did not analyze whether PT Works should have been incorporated under the PSCA.

Dissatisfied with the decision, Allstate appealed. In lieu of granting the appeal, the Michigan Supreme Court *vacated* the Court of Appeals' decision and remanded the case back for a determination as to whether PT Works was properly organized under the BCA and whether services were, therefore, lawfully rendered under section 3157 of the no-fault act. 477 Mich 1062 (2007). On remand, the Court of Appeals held that, indeed, PT Works was not properly organized under the BCA but, rather, should have been organized under the PSCA. Notwithstanding the foregoing, the court affirmed its prior decision and reasoning because of the fact that each therapist was lawfully rendering care to Mr. Miller. *(On Remand) Miller v Allstate,* 275 Mich 649 (2007). Once again dissatisfied with this result, Allstate appealed and the Michigan Supreme Court has agreed to review Allstate's plea, i.e., the no-fault industry's latest assault, of many recently. See, e.g., *Devillers v ACIA,* 473 Mich 562 (2005) (overturning 35-year common law tolling doctrine between providers and insurers) and *Cameron v ACIA,* 476 Mich 55 (2006) (overturning 35-year application of RJA tolling to protect minors and incompetent persons), to name but two examples.

It is readily apparent what is going to happen, to wit: the Supreme Court will uphold Allstate's theory. Further, it is also readily predictable that this decision will be held to apply retroactively for reason that the densely populated practicing bench and bar (both plaintiff and defendant) have simply gotten it wrong for the past 35 years. See, e.g., *Cameron, supra.* The consequence of this predictable result will be significant to hundreds, if not thousands, of medical service providers all across the state who otherwise have been rendering necessary medical care to auto accident victims, because their respective patients' incurred charges will be effectively denied as unlawful under the no-fault act. The decision will effectively shut these providers down until they reorganize their respective businesses under the PSCA. Providers who, thereafter, attempt to pursue collection efforts directly against their patients for these *"denied charges"* will then be thwarted by the no-fault insurers' indemnity arguments under *McGill v ACIA,* 207 Mich App 402 (1994); *LaMothe v ACIA,* 214 Mich App 577 (1995); *Michigan Dept of Ins Comm'r, Insurance Bureau Bulletin 92-03.*

Therefore, a call to action is necessary. Specifically, state legislators must pass an immediate, legislative fix. The legislative fix must expressly state that it applies to all no-fault claims—past, present, and future—and that any current services being rendered by a medical provider that is in the process of being reorganized under the PSCA be grandfathered under a grace period in which to do so, thereby preserving any charges incurred during that timeframe. Nothing short of the foregoing is reasonable.

Page Graves, Traverse City

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