

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal From the Macomb County Circuit Court

DOREEN JOSEPH,

Docket No. 142615

Plaintiff-Appellee,

v.

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellant.

**AMICUS CURIAE BRIEF OF THE MICHIGAN CATASTROPHIC CLAIMS
ASSOCIATION IN SUPPORT OF DEFENDANT-APPELLANT**

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TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES.....	ii
STATEMENT OF BASIS OF JURISDICTION.....	1
COUNTER-STATEMENT OF QUESTION INVOLVED.....	1
THE INTEREST OF <i>AMICUS CURIAE</i> THE MCCA.....	2
COUNTER-STATEMENT OF FACTS AND PROCEEDINGS.....	3
ARGUMENT.....	5
I. THE STANDARD OF REVIEW.....	5
II. <i>CAMERON</i> IS CONSISTENT WITH THE LANGUAGE OF THE STATUTES AT ISSUE.	6
III. <i>CAMERON</i> IS CONSISTENT WITH THE GOALS OF THE NO-FAULT ACT.....	11
RELIEF REQUESTED.....	16

INDEX OF AUTHORITIES

	<u>Page</u>
CASES	
<i>Cameron v Auto Club Ins Ass'n</i> , 476 Mich 55; 718 NW2d 784 (2006)	passim
<i>Davey v DAIIE</i> , 414 Mich 1; 322 NW2d 541 (1982)	11
<i>Dean v Auto Club Ins Ass'n</i> , 139 Mich App 266; 362 NW2d 247 (1984)	12
<i>Devillers v Auto Club Ins Ass'n</i> , 473 Mich 562; 702 NW2d 539 (2005)	8, 10, 14
<i>Dolson v Secretary of State</i> , 83 Mich App 596; 269 NW2d 239 (1978)	12
<i>English v Home Ins Co</i> , 112 Mich App 468; 316 NW2d 463 (1982)	12
<i>Gooden v Transamerica Ins Corp</i> , 166 Mich App 793; 420 NW2d 877 (1988)	12
<i>Griffith v State Farm Mutual Auto Ins Co</i> , 472 Mich 521; 697 NW2d 895 (2005)	8
<i>In re Certified Question: Preferred Risk Mutual Ins Co v Michigan Catastrophic Claims Ass'n</i> , 433 Mich 710; 449 NW2d 660 (1990)	4
<i>League General Ins Co v Michigan Catastrophic Claims Ass'n</i> , 435 Mich 338; 458 NW2d 632 (1990)	4
<i>Lewis v DAIEE</i> , 426 Mich 93; 393 NW2d 167 (1986)	8
<i>Moore v Travelers Ins Co</i> , 475 F Supp 891 (ED Mich, 1979)	11
<i>Pendergast v American Fidelity Fire Ins Co</i> , 118 Mich App 838; 325 NW2d 602 (1982)	12
<i>Regents Of The University Of Michigan v Titan Ins Co</i> , 487 Mich 289; 791 NW2d 897 (2010)	passim
<i>Robertson v DaimlerChrysler Corp</i> , 465 Mich 732; 641 NW2d 567 (2002)	5
<i>Shavers v Attorney General</i> , 402 Mich 554; 267 NW2d 72 (1978)	11
<i>Spencer v Citizens Ins Co</i> , 239 Mich App 291; 608 NW2d 113 (2000)	12
<i>Stevenson v Reese</i> , 239 Mich App 513; 609 NW2d 195 (2000)	11
<i>Tebo v Havlik</i> , 418 Mich 350; 343 NW2d 181 (1984)	11
<i>United States Fidelity and Guaranty v MCCA</i> , 484 Mich 1; 795 NW2d 101 (2009)	15

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<i>Welton v Carriers Ins Co</i> , 421 Mich 571; 365 NW2d 170 (1985)	5
STATUTES	
MCL 500.2100.....	11
MCL 500.3104.....	3
MCL 500.3104(1)	3
MCL 500.3104(2)	3
MCL 500.3104(7)(d).....	4, 5, 14
MCL 500.3104(22)	5, 15
MCL 500.3104(25)(c).....	3
MCL 500.3145(1)	passim
MCL 600.5851(1)	passim
OTHER	
SB 306, March 13, 1978	4

STATEMENT OF BASIS OF JURISDICTION

The jurisdictional summary set forth in Defendant-Appellant Auto Club Insurance Association's ("ACIA" or "Defendant") Brief on Appeal is complete and correct.

COUNTER-STATEMENT OF QUESTION INVOLVED

- I. DID THE COURT IN *REGENTS OF THE UNIVERSITY OF MICHIGAN v TITAN INS CO*, 487 Mich 289; 791 NW2d 897 (2010) IMPROPERLY REVERSE *CAMERON v AUTO CLUB INS ASS'N*, 476 Mich 55; 718 NW2d 784 (2006), WHERE THE HOLDING IN *CAMERON* THAT THE MINORITY SAVINGS PROVISION OF THE REVISED JUDICATURE ACT DOES NOT APPLY TO TOLL THE "ONE-YEAR-BACK" RULE OF THE NO-FAULT ACT:
- A. IS CONSISTENT WITH THE PLAIN LANGUAGE OF THE STATUTE, AND;
 - B. IS CONSISTENT WITH THE GOALS OF NO FAULT LEGISLATION AND SHOULD BE REINSTATED?

The Circuit Court did not answer this question but merely held it was bound by *Regents*.

The Court of Appeals was not given the opportunity to answer this question as the Court granted leave to appeal prior to a Court of Appeals' decision.

Defendant-Appellant would answer: Yes

Amicus Curiae the MCCA would answer: Yes

Plaintiff-Appellee would answer: No

This Court should answer: Yes

THE INTEREST OF *AMICUS CURIAE* THE MCCA

The MCCA is a statutorily created organization of all insurers engaged in writing No-Fault insurance in Michigan. The MCCA is required to reimburse member companies for the amount of personal protection (“PIP”) losses they incur in excess of \$500,000 per claim (i.e., “catastrophic claims”) under No-Fault policies issued in the State. To fund its statutory indemnification obligations, the MCCA assesses premiums on member companies in relation to the number of No-Fault policies each member writes in Michigan. In most cases, the insurers then pass these assessments along to their Michigan policyholders.

As a result, this Court’s rulings regarding whether the minority tolling provision of the Revised Judicature Act (MCL 600.5851(1)) applies to toll the “one year back rule” of the No-Fault Act (MCL 500.3145(1)) have a substantial impact on the MCCA and, through the MCCA’s funding mechanism, on the insurance industry and, ultimately, every person who buys No-Fault coverage in this State. If an insurer is required to pay, in certain types of cases, for such things as attendant care provided for up to decades earlier, and these costs push the total amount of the PIP benefits paid on the claim above \$500,000, the MCCA must reimburse the insurer for the remainder of the claim above \$500,000 that the insurer is required to pay under No-Fault, without limitation. Because the MCCA is currently obligated to reimburse the insurer for all of the statutory benefits it must pay in excess of \$500,000 for a particular claim, and Michigan requires the payment by the insurer of medical and care benefits for life, the increase in costs of attendant care translates directly into increased payments that must be reimbursed by the MCCA. Thus, the MCCA has a direct interest in this matter.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

The MCCA agrees with the Statement of Facts and Proceedings set forth in Defendant's-Appellant's Brief on Appeal. The MCCA also provides the following facts regarding the creation and operation of the MCCA.

The MCCA was created by the Michigan Legislature in 1978 when it added Section 3104 to the automobile No-Fault statute.¹ MCL 500.3104. The MCCA is a private, unincorporated, non-profit association. Every insurer engaged in writing No-Fault insurance for vehicles registered in Michigan must be a member of the MCCA as a condition of its authority to write No-Fault insurance in the State. MCL 500.3104(1). The MCCA indemnifies insurers for their ultimate losses in excess of a set amount which the members sustain in PIP benefits. That amount, originally set at \$250,000, increases yearly. The current level, which applies to policies issued or renewed during the period July 1, 2011 to June 30, 2013, is \$500,000. MCL 500.3104(2). "Ultimate loss" is defined as "the actual loss amounts which a member is obligated to pay and that are paid or payable by the member". MCL 500.3104(25)(c). This includes medical bills, attendant care costs, and other benefits provided for under the No-Fault Act. In other words, once the insurer has paid \$500,000 in benefits on a particular claim, the MCCA must reimburse the insurer for 100% of the benefits it is statutorily required to pay over and above the \$500,000, including all benefits payable in the future. The MCCA is legally required to provide to its members, and the members are required to accept from the MCCA, this reimbursement.

The MCCA was created by the Legislature in response to concerns that Michigan's No-Fault provision for unlimited, lifetime PIP benefits "placed too great a burden on insurers,

¹ The Michigan Automobile No-Fault Insurance Act is found at MCL 500.3101 *et seq.*, and is referred to herein as the "No-Fault Act".

particularly small insurers, in the event of ‘catastrophic’ injury claims” and caused a risk of insolvency, particularly of smaller insurers. *In re Certified Question: Preferred Risk Mutual Ins Co v Michigan Catastrophic Claims Ass’n*, 433 Mich 710, 714; 449 NW2d 660 (1989); *see also League General Ins Co v Michigan Catastrophic Claims Ass’n*, 435 Mich 338, 340; 458 NW2d 632 (1990) (“the cost of covering an insured’s catastrophic losses...could be overwhelming to an individual insurance carrier”). In addition, the MCCA was created to spread the costs of catastrophic claims throughout the automobile insurance industry and increase the statistical basis for predicting the overall costs of such claims. *In re Certified Question*, 433 Mich at 714, citing House Legislative Analysis, SB 306, March 13, 1978.

The MCCA is required to assess premiums on its members to fund its reimbursement obligations and operating expenses. MCL 500.3104(7)(d). The premium consists of two components. The first is an amount, known as the pure premium, reflecting the charge to cover the MCCA’s expected losses and expenses during the assessment period. The second component is an adjustment to account for excess or deficient assessments from prior periods. *Id.* This second number is made necessary by the fact that calculating the pure premium requires the MCCA to estimate, in advance, the costs of indemnifying its members for claims it projects will be reported and incurred during the assessment period. It is therefore expected that the MCCA will adjust its actuarial assessments as claims develop over time, resulting in the modification of future cost projections for prior periods. Such adjustments lead to a recalculation, annually, of the estimated surplus or deficiency in the MCCA reserves. The statute provides for the MCCA to make adjustments in the assessments for excess or deficient premiums from previous periods. *Id.*

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The statute goes on to state that, “[p]remiums charged members by the association shall be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized.” MCL 500.3104(22). Thus, like other expenses, MCCA assessments are reflected, in whole or in part, in the rates and premiums charged by insurers to Michigan No-Fault policyholders. As a result, any increase in the MCCA’s claim costs increases the assessments charged by the MCCA to its members, which then increases the premiums charged to policyholders.

The MCCA assessment per insured automobile for the period July 1, 2006 to June 30, 2007 was \$ 137.33. The assessment for July 1, 2007 to June 30, 2008 was \$ 123.15. The assessment for July 1, 2008 to June 30, 2009 was \$ 104.58. The assessment for July 1, 2009 to June 30, 2010 was \$ 124.89. The assessment for July 1, 2010 to June 30, 2011 was \$143.09. And the current assessment, for July 1, 2011 to June 30, 2012, is \$145.00. (See Assessment Rate History, attached as Ex. A.)

In the little over one year since *Cameron* was reversed by *Regents*, the MCCA has determined that claims have been made to it by member insurers in eighteen cases seeking the reimbursement of benefits paid that would have otherwise been barred by the one year back rule, but which were allowed under *Regents*. The amount sought was just shy of \$ 49 million dollars. (See table attached as Ex. B.)

ARGUMENT

I. THE STANDARD OF REVIEW

The MCCA agrees with the standard of review set forth by Defendant-Appellant. This appeal involves a matter of statutory interpretation and the review of a denial of a motion for summary disposition, both of which are reviewed by this Court *de novo*. See, e.g., *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 739; 641 NW2d 567 (2002).

II. CAMERONIS CONSISTENT WITH THE LANGUAGE OF THE STATUTES AT ISSUE.

This case once again presents the issue of the interpretation of the savings provision of the Revised Judicature Act (“RJA”), and whether it applies to the one-year-back rule of the No-Fault Act.² The savings provision states in pertinent part:

[I]f the person first entitled to make an entry or bring an action under this act is under 18 years of age or insane at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. . . .

MCL 600.5851(1) (emphasis added). The one-year-back rule states in pertinent part:

An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, 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) (emphasis added).

Plaintiff was injured in a motor vehicle accident in 1977. On February 27, 2009 she brought suit against ACIA seeking payment for “case management” (but also apparently attendant care) provided to her by friends and family members, since the date of her injury in

² The MCCA also agrees with the argument made by ACIA that the real parties in interest in this case are the caregivers who provided the services for which payment is sought and who will receive the payments at issue, as opposed to Doreen Joseph, for whom the care was provided. As a result, the tolling provision (MCL 600.5851(1)) is not applicable to this matter or to similar cases and to apply “tolling” in such a case due solely to the minor or mental status of the patient is to employ a legal fiction. The MCCA will not repeat the ACIA’s arguments in this regard.

1977, thirty two years earlier. At that time, ACIA had already paid out more than \$4.2 million in claims in connection with this accident. In addition, by that time numerous lawsuits had been brought by Plaintiff against ACIA regarding the payment of attendant care benefits, and hundreds of thousands of dollars were paid for attendant care in the form of settlement payments. (ACIA’s Brief in Support of Motion for Partial Summary Disposition, Appx. 15a-18a.) The current complaint apparently sought payments for services provided by additional individuals.

ACIA moved for summary disposition on the grounds that, among other things, the claim for payment for any attendant care or case management services provided before February 27, 2008 was barred by the one-year-back rule, as the losses were incurred more than one year before the date on which suit was commenced against ACIA. Plaintiff responded that the minority and insanity savings clause of the RJA applied because she was “insane” for purposes of that statute due to the traumatic brain injury she suffered in the accident, and that under *Regents*, the one year back rule was tolled. The Circuit Court held simply that it was bound by *Regents* and under *Regents*, “MCL 600.5851(1) preserves a claim by a minor or incompetent person for PIP benefits that would otherwise be barred by the one year back rule.” (January 25, 2011 Opinion at Order, Apx 94a.) Because the court found there was a genuine issue of material fact as to whether Plaintiff was “insane” for purposes of the statute, ACIA’s motion for summary disposition on that claim was denied.

ACIA filed an application for leave to appeal directly to this Court, which was granted. This Court directed the parties to address the following issues: (1) whether the minority/insanity tolling provision of the RJA, MCL 600.5851(1), applies to toll the one year back rule, 500.3145(1) of the No Fault Act; and whether *Regents* was correctly decided. (May 20, 2011 Order.) The MCCA agrees with ACIA that the answer to both of these questions is “no”.

It is a fundamental rule that where the language of a statute is unambiguous, “judicial construction is neither necessary nor permitted.” *Griffith v State Farm Mutual Auto Ins Co*, 472 Mich 521, 526; 697 NW2d 895 (2005). Both the savings provision and the one-year-back-rule are plain on their face. The savings provision states nothing whatsoever about tolling or negating damages limitations in suits brought by persons for whom the statute of limitations had been tolled pursuant to the RJA provision. And the one-year-back rule clearly states that claimants “may not” recover PIP benefits “incurred more than 1 year before the date on which the action was commenced”, with no stated exception.

The Court’s ruling in *Cameron* put it best:

By its unambiguous terms, MCL 600.5851(1) concerns when a minor or person suffering from insanity may “make the entry or bring the action.” It does not pertain to the damages recoverable once an action has been brought. MCL 600.5851(1) then is irrelevant to the damages-limiting one-year-back provision of MCL 500.3145(1). Thus, to be clear, the minority/insanity tolling provision in MCL 600.5851(1) does not operate to toll the one year back rule of MCL 500.3145(1).

476 Mich at 62. In other words, the one year back rule is a damages limiting provision, not a statute of limitations; therefore, it is not affected by the RJA tolling provision. The two provisions can, and do, co-exist. The RJA tolling provision preserves the right of a minor or insane individual to bring a No Fault cause of action. But the one year back rule restricts their recovery in such a case to the damages incurred in the one year before they filed suit.

In *Devillers v Auto Club Ins Ass’n*, 473 Mich 562; 702 NW2d 539 (2005), the Court overruled *Lewis v DAIEE*, 426 Mich 93; 393 NW2d 167 (1986), which had applied the doctrine of judicial tolling to the one-year-back damages limitation.³ The Court first noted that Section

³ Specifically, *Lewis* had adopted a rule that the one-year back damages limitation was tolled from the time the insured made a specific claim for benefits until the date that liability was formally denied. 426 Mich at 101.

3145(1) contains both time limitations for filing suit and a limitation “on the period for which benefits may be recovered.” *Id.* at 574, citing *Welton v Carriers Ins Co*, 421 Mich 571; 365 NW2d 170 (1985). The Court then held that MCL 500.3145(1) “clearly and unambiguously states that a 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’” and overruled *Lewis* because it “contravenes this plain statutory directive” of Section 3145(1). *Devillers*, 473 Mich at 564.

This Court could not have been more clear in its holding in *Devillers* that the one-year back damages limitation is clear and without exception. Specifically, the Court stated that *Lewis* impermissibly superseded “the plainly expressed legislative intent that recovery of PIP benefits be limited to losses incurred within the year prior to the filing of the lawsuit.” *Id.* at 582-83. The Court continued, “we are unable to perceive any sound policy basis for the adoption of a tolling mechanism with respect to the one-year-back rule.” *Id.* at 583. Surely if there is no “sound basis” for the adoption of a *judicial tolling mechanism* to the one-year-back rule, which allowed for the recovery of losses incurred during the time period in which the insurer was determining a claim for benefits, there is no sound basis for the adoption of *the tolling mechanism set forth in the RJA, which mentions neither the No-Fault Act nor damages limitations*, to the one-year-back rule. The No-Fault Act plainly limits all plaintiffs, to the recovery of benefits for losses incurred within the one year prior to suit being filed regardless of their status, and regardless of if or why the statute of limitations was tolled.

The Court concluded, “the one-year-back rule of MCL 500.3145(1) must be enforced by the courts of this state as our Legislature has written it, not as the judiciary would have had it written.” *Id.* at 586. This Court said virtually the same thing in *Cameron* when it once again applied the one-year back rule as written:

[W]e must assume the thing the Legislature wants is best understood by reading what it said. Because what it said in MCL 500.3145(1) and MCL 600.5851(1) is clear, no less clear is the policy. Damages are only allowed for one year back from the date the lawsuit is filed. We are enforcing the statutes as written. While some may question the wisdom of the Legislature's capping damages in this fashion, it is unquestionably a power that the Legislature has under our Constitution.

476 Mich at 62.

Yet in *Regents*, the Court took a different approach and went beyond the plain language of the statutes. It faulted the *Cameron* Court for not reading the two statutes together and summarily concluded, "on the basis of its language, MCL 600.5851(1) supersedes all limitations in MCL 500.3145(1), including the one year back rule's limitation on the period of recovery." 487 Mich at 298. The Court then stated, "we hold that the 'action' and 'claim' preserved by MCL 600.5851(1) include the right to collect damages." *Id.* at 299. To reach this conclusion, the Court had to make improper inferences and assumptions in an effort to avoid the outcome dictated by the plain language. And in so doing, the Court improperly rendered the one-year-back rule completely meaningless in certain types of cases, despite the fact that there is no language in the No Fault Act that indicates that the Legislature so intended.

As it did in *Devillers* and *Cameron*, this Court should apply the plain language of the statutes as written; hold that the minority/insanity tolling provision of MCL 600.5851(1) does not apply to toll the one year back rule in MCL 500.3145(1), and overrule *Regents*.

III. CAMERONIS CONSISTENT WITH THE GOALS OF THE NO-FAULT ACT

Most significant to the MCCA, *Regents* is inconsistent with the theory behind the No-Fault legislation and if not reversed, will result in *increased* costs to insurers and consumers -- precisely the opposite of that which the Act seeks to achieve.

It is undisputed that one primary goal of the Michigan No-Fault system is cost containment. This Court noted in *Shavers v Attorney General*, 402 Mich 554, 581; 267 NW2d 72 (1978) that the No-Fault Act was constitutional “in its general thrust”, but at the time, required mechanisms “for assuring that compulsory no-fault insurance is available to Michigan motorists at fair and equitable rates”. The Court directed the Legislature to take necessary action to ensure such availability, to which the Legislature responded with the passage of MCL 500.2100, *et seq.* This Court and the Legislature clearly were, and are, concerned with keeping the costs of the mandatory No-Fault insurance down. *See also, e.g., Davey v DAHE*, 414 Mich 1, 17; 322 NW2d 541 (1982) (while one objective of no-fault was providing an “assured, adequate and prompt recovery for certain economic losses arising from motor vehicle accidents. . . we have also recognized a complementary legislative objective which is the containment of the premium costs of no-fault insurance”); *Tebo v Havlik*, 418 Mich 350, 367; 343 NW2d 181 (1984) (“the Legislature made a trade-off. Those who were required to participate in the no-fault scheme gave up the possibility of redundant recoveries, but they were intended to receive the benefit of lower insurance rates”); *Moore v Travelers Ins Co*, 475 F Supp 891, 895 (ED Mich, 1979) (“the aim of no-fault was to lower insurance premiums”); *Stevenson v Reese*, 239 Mich App 513, 519; 609 NW2d 195 (2000) (“a primary goal of the no-fault act is to provide an efficient, affordable system of automobile insurance”).

As noted, a concomitant goal of the No-Fault structure is to keep healthcare costs down. “The no-fault act was as concerned with the rising cost of healthcare as it was with providing an

efficient system of automobile insurance.” *Dean v Auto Club Ins Ass’n*, 139 Mich App 266, 274; 362 NW2d 247 (1984). *See also, e.g., Gooden v Transamerica Ins Corp*, 166 Mich App 793, 800; 420 NW2d 877 (1988) (“the basic goal of the no-fault insurance system is to provide individuals injured in motor vehicle accidents assured, adequate and prompt reparation for certain economic losses *at the lowest cost to the individual and the system*”) (emphasis added); *Dolson v Secretary of State*, 83 Mich App 596, 599; 269 NW2d 239 (1978) (same); *Spencer v Citizens Ins Co*, 239 Mich App 291, 300; 608 NW2d 113 (2000) (same).

The Act had a “compromise” rationale – a driver gives up the right to a tort claim in exchange for guaranteed payment of benefits, including medical bills, regardless of his or her fault in the accident. Likewise, accident victims compromise in that in exchange for guaranteed payments of medical bills and attendant care costs for life, they must submit their claims in a timely manner or forfeit the right to reimbursement for past amounts incurred. Indeed, the purpose of the one year back rule is “to encourage claimants to bring their claims to court while those claims are still fresh”. *English v Home Ins Co*, 112 Mich App 468, 474; 316 NW2d 463 (1982). *See also, Pendergast v American Fidelity Fire Ins Co*, 118 Mich App 838, 841-42; 325 NW2d 602 (1982) (“while it is true that the one-year period of limitation is relatively short, it seems consonant with the legislative purpose in the no-fault act in encouraging claimants to bring their claims to court within a reasonable time and the reciprocal obligations of insurers to adjust and pay claims seasonably. The statute attempts to protect against stale claims and protracted litigations.”).

All of these goals will be thwarted if *Regents* is not reversed. As indicated by the MCCA reserves (see pie chart attached as Ex. C), attendant costs by family members are an ever-increasing portion of PIP benefits paid by insurers in catastrophic cases. Based on past claims

paid, the MCCA anticipates that attendant care by family members or friends (i.e., non professionals) will constitute 27.67% of its future costs. This 27.67% is the largest of any category of reimbursement payments made by the MCCA, larger than the charges for hospital care, doctor visits, prescriptions, and equipment combined. Moreover, this number has increased over time and continues to increase with each year.⁴

It is a virtual certainty that should *Regents* not be reversed, there will be continued increases in MCCA assessments, and thus, continued increases in the costs of auto insurance for the Michigan public. As set forth above, whenever the PIP benefits payable in a case exceed \$500,000, the MCCA is obligated to reimburse the insurer for all statutorily provided payments made in excess of that amount. When the amounts paid out on a claim increase, more cases meet the PIP threshold – not just new cases involving significant injuries, but also cases where the injuries occurred years ago. Under *Regents*, parents are allowed to go back at any point in time until their injured child is 19 and seek payment for years and years worth of attendant care benefits provided earlier. And an “insane” person (which may include a person with a closed head injury, and many, many No-Fault claims involve closed head injuries) or his or her representative can seek benefits incurred any time since the accident, including literally decades worth of care, as is the case here. And under *Regents* the insurer is required to pay these claims regardless of their stale nature. Under these circumstances it is a virtual certainty that these claims will exceed the catastrophic level, thus taxing the MCCA with a raft of catastrophic claims for which it must provide reimbursement. This is not just speculation, this is precisely

⁴ In addition, because Michigan provides for benefits for life, the MCCA expects these numbers to continue to increase, because charges for attendant care will continue to extend over the lifetime of the patient (as opposed to hospital costs and other forms of medical bills, which are usually front-loaded, incurred in the early phases of treatment following an accident, but drop off substantially as the patient stabilizes). Attendant care costs, on the other hand, continue for the life of the patient, and may actually increase over time.

what happened when *Regents* overruled *Cameron*. Since late July 2010, when *Regents* was decided, eighteen claims for reimbursement have been submitted to the MCCA for payment of benefits going back beyond one year prior to the filing of suit due to *Regents* tolling. These claims were for the payment of \$ 48.9 million in PIP benefits – an average of over \$ 2.5 million per claim -- for which reimbursement has been, or will ultimately be, sought from the MCCA. (Ex. B.) This trend will continue unless and until *Regents* is reversed and the one year back rule is enforced as written.

It isn't the MCCA that suffers from such an outcome, it is the Michigan rate-payer. In order to fund its reimbursement obligations, the MCCA, a nonprofit association, imposes charges on its members. As discussed above, these charges consist of two elements -- the pure premium, reflecting the charge to cover the MCCA's expected losses and expenses during the assessment period, and an adjustment to account for excess or deficient assessments from prior periods. MCL 500.3104(7)(d). To the extent attendant care costs and other bills paid on a claim increase significantly, both components of the assessment charge increase. The expected losses for the assessment period will be higher, resulting in increased pure premiums, and adjustments are necessary due to deficient reserves, because the MCCA's actuarial assessments were, until *Regents*, based on a system in which payment need not be made by member insurers for losses incurred more than one year earlier. The Court honed in on this very issue in *Devillers*, noting that application of the judicial tolling doctrine to the one-year-back rule would "increase overall insurance costs because insurers would no longer be able to estimate accurately actuarial risk." *Devillers* at 589, n. 62. Thus, it is not surprising that after *Cameron* was decided, the MCCA assessment went down for a few years (in the July 1, 2007 to June 30, 2008 and July 1, 2008 to June 30, 2009 periods). Until it went up again because of the Court's decision on

reconsideration in the *United States Fidelity Insurance & Guaranty Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1; 795 NW2d 101 (2009) (on rehearing), and then went up some more due, in part, to *Regents*. The point being, when this Court interprets the No Fault Act in such a manner that will increase the amount of PIP benefits payable, not surprisingly, the MCCA assessments increase as well.

The statute creating and governing the MCCA also provides that the premiums charged by the MCCA to member associations “shall be recognized in the rate-making procedures for insurance rates in the same manner that expenses and premium taxes are recognized.” MCL 500.3104(22). Thus, the MCCA assessments, in whole or in part, are passed along in the rates charged by insurers to their policyholders. Indeed, insurers cannot survive without being able to pass along their increased costs of doing business. Thus, *Regents*, unless reversed, will have a domino effect – causing increased attendant care costs, which results in more claims (and much more costly claims) being submitted to the MCCA, which increases the assessments the MCCA is required to impose on its members, which increases the cost of No-Fault insurance premiums for the consumer.

In sum, the judicially created *Regents* exception to the one year back rule for a large class of claimants has had, and if not reversed will continue to have, far reaching implications, forcing Michigan drivers to pay even more for automobile insurance, in order to pay a provider or claimant who sat on his or her rights for reimbursement for years, simply because they could because they or the person for whom they provided care was a minor or “insane.” Such a result is inconsistent with both the statutory language and the public policy behind the No-Fault Act and should not be countenanced by this Court.

RELIEF REQUESTED

The Michigan Catastrophic Claims Association joins the request of the Defendant-Appellant that *Regent* and the decisions of the Circuit Court be reversed

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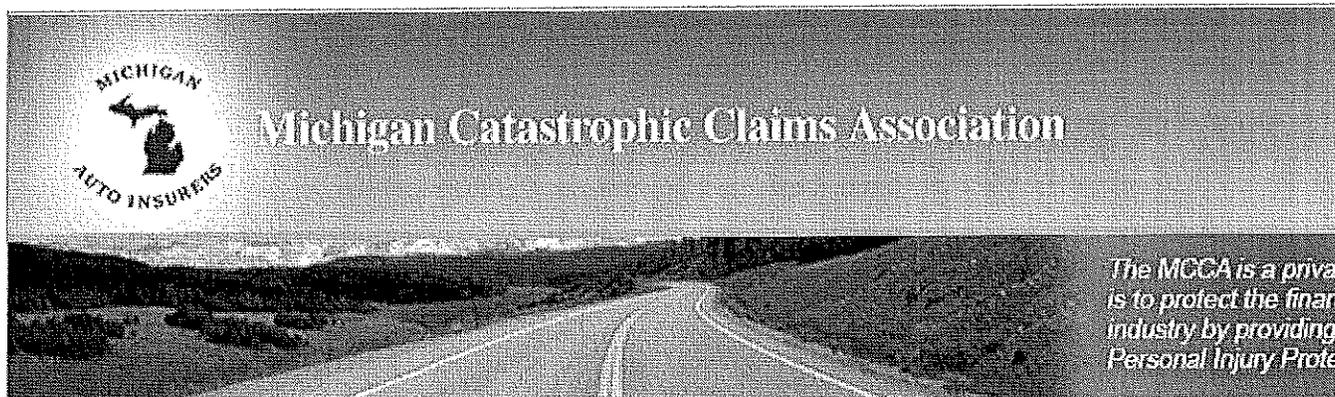
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Dated: November 1, 2011

A



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The law requires the MCCA to assess an amount that is sufficient to cover the lifetime claims of all persons expected to be catastrophically injured in that year. The MCCA also adjusts its annual assessments to compensate for excesses or deficiencies in earlier assessments.

Assessment Rate History



ASSESSMENT PERIOD	ASSESSMENT	HISTORICAL VEHICLE
7-1-11 TO 6-30-12	145.00	29.00
7-1-10 TO 6-30-11	143.09	28.62
7-1-09 TO 6-30-10	124.89	24.98
7-1-08 TO 6-30-09	104.58	20.92
7-1-07 TO 6-30-08	123.15	24.63
7-1-06 TO 6-30-07	137.33	27.47
7-1-05 TO 6-30-06	141.70	28.34
7-1-04 TO 6-30-05	127.24	25.45
7-1-03 TO 6-30-04	100.20	20.04
7-1-02 TO 6-30-03	69.00	
1-1-02 TO 6-30-02	71.15	
1-1-01 TO 12-31-01	14.41	
1-1-00 TO 12-31-00	5.60	
1-1-99 TO 12-31-99	5.60	
1-1-98 TO 12-31-98	5.60	
1-1-97 TO 12-31-97	14.94	
1-1-96 TO 12-31-96	72.57	
1-1-95 TO 12-31-95	96.95	
1-1-94 TO 12-31-94	115.72	

1-1-93 TO 12-31-93	118.69
1-1-92 TO 12-31-92	110.58
1-1-91 TO 12-31-91	101.00
1-1-90 TO 12-31-90	66.64
1-1-89 TO 12-31-89	43.65
1-1-88 TO 12-31-88	32.60
1-1-87 TO 12-31-87	22.67
1-1-86 TO 12-31-86	14.40
1-1-85 TO 12-31-85	12.05
1-1-84 TO 12-31-84	5.91
1-1-83 TO 12-31-83	5.53
1-1-82 TO 12-31-82	5.93
1-1-81 TO 12-31-81	6.76
1-1-80 TO 12-31-80	6.00
7-1-79 TO 12-31-79	11.68
7-1-78 TO 6-30-79	3.00



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B

Michigan Catastrophic Claims Association
vs. State of Michigan v Titan Cases Identified

<u>MCCA Claim #</u>	<u>Demand</u>
80114	\$10,042,251
91305	8,549,075
86017	7,378,650
980409	4,655,326
2000225	4,000,000
88284	3,372,600
86319	1,790,987
2030543	1,582,977
2051051	1,500,000
20080108	1,500,000
2070265	1,051,200
89460	1,051,200
20100739	784,300
87051	620,000
20101500	313,300
970364	300,000
2041116	231,176
20091177	220,000
	<u>\$48,943,042</u>

C

MCCA Expected Future Costs by Reserve Component

Discounted Reserves

As of 06/30/2010

