STATE OF MICHIGAN

COURT OF CLAIMS

MICHIGAN AUTOMOBILE INSURANCE PLACEMENT AGENCY, in its capacity as the administrator of the MICHIGAN ASSIGNED CLAIMS PLAN,

Plaintiff,

v

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES, and ANITA G. FOX, in her official capacity as the DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES,

Defendants.
_____/

OPINION AND ORDER

Case No. 19-000162-MM

Hon. Michael J. Kelly

Pending before the Court is plaintiff's motion for summary disposition filed pursuant to MCR 2.116(C)(9) and (C)(10). Also before the Court is the request in defendants' briefing that summary disposition should issue in their favor. For the reasons that follow, plaintiff's motion for summary disposition is DENIED, and summary disposition is GRANTED in favor of defendants as the non-moving parties. See MCR 2.116(I)(2). The matter is being decided without oral argument in accordance with LCR 2.119(A)(6).

I. BACKGROUND

Plaintiff, the Michigan Automobile Insurance Placement Facility, serves as the administrator of the Michigan Assigned Claims Plan (MACP). See MCL 500.3171(2)-(3). The

MACP acts as an insurer of last resort under this state's no-fault law. When no other insurance policy can be identified, the MACP assigns the claim to one of its member insurers. See MCL 500.3171. Department of Insurance and Financial Services (defendant DIFS) has responsibility for administering and implementing the insurance code. See MCL 500.100; MCL 500.102. The issue in this case, as it has been framed by plaintiff, is whether certain actions taken by defendant DIFS with regard to claims processed through the MACP exceed the statutory authority granted to that agency.

The dispute has its origins in June 11, 2019 amendments to this state's no-fault law effectuated by 2019 PA 21 and 2019 PA 22. The Public Acts were given immediate effect, making the effective date of the amendments June 11, 2019. See 2019 PA 21; 2019 PA 22. However, as will be discussed *infra*, certain parts of the amendments did not take effect until a later date. The dispute in this case concerns limits on PIP benefits payable under MCL 500.3172 on claims processed through the MACP and when those limits took effect.

Prior to the enactment of 2019 PA 21, PIP benefits in this state were unlimited. However, the 2019 amendments to the no-fault act gave insureds the option to continue receiving unlimited benefits, or to select a lesser amount of benefits in exchange for what was promised to be a lower premium rate. This change did not take effect immediately, though—insureds could begin to make this choice regarding PIP benefits after July 1, 2020. In addition, the recent statutory amendments significantly reduced PIP benefits for individuals who are forced to proceed to the insurer of last resort, the MACP. As outlined below, those claims have been subjected to either a $250,000 limit or, in more limited circumstances, a $2,000,000 limit. See MCL 500.3172(7)(a)-(b).

The above-noted limitations on claims processed through the MACP came about by way of 2019 PA 21, wherein the Legislature provided that plaintiff and the insurer to whom a claim is assigned by the MACP:

> are only required to provide personal protection insurance benefits under section 3107(1)(a)2 up to whichever of the following is applicable:
>
> (a) Unless subdivision (b) applies, the limit provided in section 3107c(1)(b).
>
> (b) If the person is entitled to claim benefits under the assigned claims plan under section 3107d(6)(c) or 3109a(2)(d)(*ii*), $2,000,000.00. [MCL 500.3172(7)(a)-(b).]

The limit specified in § 3172(7)(a) incorporates the $250,000 limit from MCL 500.3107c(1)(b). That limitation is one which, pursuant to the plain language of § 3107c(1), only comes into play "after July 1, 2020," after insureds begin to make a choice about the level(s) of their respective PIP coverage. Likewise, the $2,000,000 limit referenced in § 3172(7)(b) applies only to factual scenarios occurring after July 1, 2020. See MCL 500.3107d(1); MCL 500.3107d(6)(c); MCL 500.3109a(2); MCL 500.3109(2)(d)(*ii*).

The first amended complaint alleges that the MACP began receiving claims immediately after the pertinent statutory amendments became effective in June 2019. On or about September 24, 2019, defendant Anita G. Fox, the Director of defendant DIFS, posted the order (9/24/19 order) at issue in this case. The order stated that it "prohibited" plaintiff from relying on the $250,000 cap contained in § 3172(7)(a) prior to July 2, 2020. As support for this conclusion, the order noted that § 3172(7)(a)-(b) listed two limits, and that the effective date of the limit contained in § 3172(7)(b) was July 2, 2020. Hence, there was no one who could claim benefits from the MACP under § 3172(7)(b) until July 2, 2020. The order concluded that the entirety of § 3172(7) would have to be given an effective date of July 2, 2020; otherwise, the separate effective date of § 3172(7)(b) would be rendered meaningless. The order also cited examples of what it concluded

were unsound policy outcomes if § 3172(7)(a) were given the June 11, 2019 effective date to which the remainder of 2019 PA 21 was subjected. As a result, the order declared that plaintiff "shall not impose a $250,000 cap on MACP benefits under Section 3107c(1)(b) of the Code, pursuant to Section 3172(7)(a), prior to July 2, 2020."

Plaintiff's amended complaint alleges that defendants' 9/24/19 order regarding the effective date of the $250,000 cap was contrary to law and that it ignores the June 11, 2019 effective date of 2019 PA 21. Plaintiff asserts that defendants are without authority to postpone the implementation of the statutory amendment. Plaintiff alleges that it will be harmed by the delayed implementation of the $250,000 cap because the MACP will be required to pay amounts in excess of the statutory cap. Count I of the amended complaint asks the Court to issue declaratory relief—specifically, to declare that the 9/24/19 order does not have the force and effect of law because it was issued without authority. Count II asks the Court to enjoin defendants from enforcing the order.[1]

II. ANALYSIS

Plaintiff argues that it is entitled to summary disposition pursuant to MCR 2.116(C)(9) and (C)(10). The Court's review under a motion filed pursuant to subrule (C)(9) is limited to the pleadings, and summary disposition under this standard is "proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Vayda v Lake Co*, 321 Mich App 686, 693; 909 NW2d 874 (2017).

[1] On October 28, 2019, this Court denied plaintiff's motion for preliminary injunctive relief for the reason that plaintiff did not demonstrate irreparable harm at that time. The prior opinion and order did not weigh in on the merits of plaintiff's position, however.

Here, given the nature of the parties' arguments and briefing, the Court considers subrule (C)(10) as the more applicable subrule in this instance. Summary disposition is appropriate under subrule (C)(10) when "there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

A. MOOTNESS

As a threshold issue, the Court rejects defendants' contention that the issue raised in this case is moot. A court will generally "not address moot questions or declare legal principles that have no practical effect in a case." *In re Gerald L Pollack Trust*, 309 Mich App 125, 154; 867 NW2d 884 (2015). An issue is moot if an event occurs "that renders it impossible for the court to grant relief," or if any judgment entered "cannot for any reason have a practical legal effect on the existing controversy." *Id.* (citation and quotation marks omitted). According to defendants, there is no case in controversy because the $250,000 limit in § 3172(7)(a) is currently in effect. In addition, defendants argue that plaintiff has not been damaged because amounts paid on unlimited PIP claims after June 11, 2020 are ultimately passed off to the MACP's member insurers, who in turn pass costs on to the public through increased premiums.

Defendants' mootness argument is without merit and it mischaracterizes the nature of plaintiff's claim. There is no dispute about whether § 3172(7)(a) is currently in effect. Rather, the dispute is whether § 3172(7)(a) was in effect at a date earlier than when defendants claimed it came into effect, i.e., from June 11, 2019 through July 1, 2020. And this dispute does not merely involve abstract questions of law. There appears to be no meaningful dispute that the MACP processed claims between June 11, 2019, and July 1, 2020; these claims will either be subject to the $250,000 limit contained in § 3172(7)(a), or unlimited PIP benefits will apply. Whether the

statutory limit set forth in § 3172(7)(a) applies during that timeframe is thus a live controversy, and the Court's decision will have a practical effect on the outcome of this controversy. The Court's decision will also guide plaintiff's future conduct with respect to claims in that timeframe. As such, the issue is not moot, and plaintiff may seek declaratory relief. See *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 127; 715 NW2d 398 (2006).[2]

B. STATUTORY INTERPRETATION

The issues raised by the parties' briefing require an examination of § 3172. A Court's "primary goal" when interpreting a statute "is to discern the intent of the Legislature by first examining the plain language of the statute." *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). An unambiguous statute must be applied as it is written. *Id*. at 247. "Statutory provisions must be read in the context of the entire act, giving every word its plain and ordinary meaning." *Id*. Here, § 3172 is part of the no-fault act. This state's appellate courts:

> have recognized that [t]erms contained in the no-fault act are read in the light of its legislative history and in the context of the no-fault act as a whole. Moreover, [g]iven the remedial nature of the no-fault act, courts must liberally construe its provisions in favor of the persons who are its intended beneficiaries. Further, courts should not abandon common sense when construing a statute. [*Miclea v Cherokee Ins Co*, __ Mich App __, __; __ NW2d __ (2020) (Docket No. 344694), slip op at 3 (citations and quotation marks omitted).]

The issue in this case concerns an order issued by an administrative agency. Under Const 1963, art 6, § 28, this Court's review of the 9/24/19 order must include, at a minimum, whether the order was "authorized by law." Defendants' statutory interpretations underlying the order "are

[2] In passing and in conclusory fashion, defendants assert that plaintiff lacks standing and that only MACP members, who are responsible for paying claims, would have standing. This argument is meritless because "an organization has standing to advocate for the interests of its members if the members themselves have a sufficient interest." *Lansing Schs Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 373 n 21; 792 NW2d 686 (2010).

entitled to respectful consideration, but they cannot conflict with the plain meaning of" the no-fault act. *Clam Lake Twp v Dep't of Licensing & Regulatory Affairs/State Boundary Comm*, 500 Mich 362, 372; 902 NW2d 293 (2017) (citation and quotation marks omitted). If an agency's interpretation is persuasive, it "should not be overruled without cogent reasons." *Younkin v Zimmer*, 497 Mich 7, 10; 857 NW2d 244 (2014). However, "courts may not abdicate their judicial responsibility to interpret statutes by giving unfettered deference to an agency's interpretation." *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 93; 754 NW2d 259 (2008).

C. DEFENDANTS' ACTION WAS NOT CONTRARY TO LAW

As noted above, the dispositive issue in this case is when the $250,000 limit in § 3172(7)(a) became effective—if it became effective on June 11, 2019, then defendants' actions are contrary to law and they cannot be upheld. In general, a statute does not take effect "until the expiration of 90 days from the end of the session at which it was passed"; however, an exception exists for statutes, such as the one at issue in this case, where the Legislature votes to give immediate effect to the act by two-thirds vote. Const 1963, art 4, § 27. And "[i]t is axiomatic that a statute becomes operational only upon its effective date." *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 12; 740 NW2d 444 (2007). Here, and there can be no reasonable dispute regarding the same, 2019 PA 21 was effective immediately, on June 11, 2019. However, "[t]here is nothing to prevent the legislature giving immediate effect to a portion of an act, and postponing the operation of the remainder . . . ." *Osborn v Charlevoix Circuit Judge*, 114 Mich 655, 661; 72 NW 982 (1897). Again, the issue in this case is whether the limit in § 3172(7)(a) was given a later effective date.

With respect to whether there is a separate effective date that must be read into § 3172(7)(a), the Court agrees with defendants that the limit contained in § 3172(7)(a)—as well as

§ 3172(7)(b), for that matter—took effect after July 1, 2020. This result is compelled by examining the $250,000 limit and how it arises. The section at issue, § 3172(7)(a), incorporates the $250,000 limit "provided in section 3107c(1)(b)." Given the express incorporation of the limit contained in § 3107c(1)(b), that section must also be examined. And this incorporation is significant, because the limit "provided in section 3107c(1)(b)" is a limit that, pursuant to the plain language of § 3107c(1), only comes into existence and can only apply "after July 1, 2020 . . . ." Indeed, it is a limit that was not recognized under the no-fault act before July 1, 2020. Contrary to plaintiff's suggestions in the instant case, § 3172(7)(a)'s express incorporation of the limit in § 3107c(1)(b) did more than merely incorporate the $250,000 amount. Indeed, the incorporation of the limit in § 3107c(1)(b) must be read with the understanding that the limit so incorporated did not even arise under the no-fault act until after July 1, 2020. And by incorporating in § 3172(7)(a) a limit that was not operable until after July 1, 2020, it is apparent that the Legislature did not intend for the limit under that section to take effect until after July 1, 2020. To conclude otherwise would be to read into § 3172(7)(a) an artificial effective date that was contrary to the plain language of § 3107c(1)(b).

As a result, the Court concludes that the Legislature expressed an unambiguous intent in § 3172(7)(a) that claims processed through the MACP not be subjected to the $250,000 limit incorporated from § 3107c(1)(b) until the limit in § 3107c(1)(b) otherwise became effective—after July 1, 2020. Accordingly, it is apparent that the Legislature intended for § 3172(7)(a) to have a different effective date than the general effective date of 2019 PA 21. If the Legislature had intended to make the $250,000 limit effective earlier, it could have inserted into § 3172(7)(a) a limit that did not have the delayed effective date of the one contained in § 3107c(1)(b). This Court may not read into § 3172(7)(a) an effective date for the $250,000 limit that would contradict the

express provisions of § 3107c(1)(b). See *Snead v John Carlo, Inc*, 294 Mich App 343, 355; 813 NW2d 294 (2011). See also *Int'l Business Machines Corp v Dep't of Treasury*, 496 Mich 642, 651; 852 NW2d 865 (2014) (providing that a reviewing court has a duty to avoid conflicts when interpreting statutes).

In addition, not only would plaintiff's proposed interpretation of § 3172(7)(a)'s effective date conflict with § 3107c(1), but it would conflict with the unlimited PIP benefits that were previously mandated by the no-fault act before July 1, 2020. PIP coverage was unlimited in this state at the time 2019 PA 21 went into effect. See, e.g., *Douglas v Allstate Ins Co*, 492 Mich 241, 257; 821 NW2d 472 (2012). That mandatory unlimited coverage remained the requirement in this state until after July 1, 2020, at which time insureds could make a choice about whether to trade unlimited coverage for a premium reduction. It would be inconsistent with the mandatory PIP coverage required by the no-fault act to prematurely apply a limitation to only certain types of claims, like the ones at issue in this case. And again, when the effective date of the limit contained in § 3107c(1)(b) is kept in mind, it is apparent that the Legislature did not intend to create a conflict or to otherwise upset the existing statutory scheme until after July 1, 2020.

In reaching this conclusion, the Court finds useful the parties' comparison to § 3172(7)(b). Plaintiff's brief admits on page 2 n 1 that the $2 million limit contained in § 3172(7)(b)—which incorporates the limits contained in §§ 3107d(6)(c) and 3109a(2)(d)(*ii*) "apply only to policies issued or renewed after July 1, 2020." As plaintiff admits, this limit is only implicated after insureds make their choices regarding PIP benefits after July 1, 2020, and § 3172(7)(b) cannot take effect before that date. And this is for good reason, as §§ 3107d(6)(c) and 3109d(2)(*ii*) refer to policies "issued or renewed after July 1, 2020 . . . ." Likewise, the limitation contained in § 3107c(1)(b) only becomes operative "after July 1, 2020 . . . ." If this language is sufficient to delay

the effective date of the limit contained in § 3172(7)(b) until after July 1, 2020, it is sufficient to delay the effective date of the limit contained in § 3172(7)(a) as well. And in light of the statutes' reference to limits arising after July 1, 2020, it is apparent that both limits on PIP benefits under § 3172(a)-(b) only become operative after July 1, 2020. Where both §§ 3172(7)(a) and 3172(7)(b) incorporate limits that were not otherwise effective or recognized under the no-fault act until after July 1, 2020, this Court will trust that the Legislature intended what is plainly expressed in the limitations referenced by both sections. That is, that the limits took effect under § 3172 when they otherwise became effective—after July 1, 2020.

Alternatively, and accepting for purposes of argument that the above statutes do not expressly lead to the conclusion that the limit contained within § 3172(7)(a) takes effect after July 1, 2020, the statute is, at best, ambiguous. Indeed, the statute is contained within an amendment that is, in general, effective June 11, 2019. However, the limit contained in § 3172(7)(a) is only capable of applying and it is otherwise without effect until after July 1, 2020. When viewed through this lens, it could be argued that these conflicting effective dates create ambiguity as to when the limit in § 3172(7)(a) can be applied to claims. When there is an ambiguity in the no-fault act, a reviewing court may rely on the notion that a liberal construction of the act in favor of the public is warranted. See *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009) (discussing a liberal construction of the no-fault act in light of an ambiguity). Here, that approach favors the conclusion that unlimited PIP benefits remained in place until after July 1, 2020. Moreover, the Court must remain mindful of its obligation to give "respectful consideration" to defendants' interpretation of the statute. See *In re Complaint of Rovas*, 482 Mich at 103 ("when the law is doubtful or obscure, the agency's interpretation is an aid for discerning the Legislature's intent") (quotation marks omitted). Cf. *D'Agostini Land Co LLC v Dep't of*

Treasury, 322 Mich App 545, 558; 912 NW2d 593 (2018) (explaining that interpretive aids are of no use when a statute is unambiguous). Application of the above interpretive aids, should resort to them even be required, provides additional support for the conclusion that the $250,000 limit incorporated into § 3172(7)(a) was not intended to take effect until after July 1, 2020. And given the above analysis, it certainly cannot be said that there are "cogent reasons" for overruling defendants' interpretation of § 3172(7)(a) and its effective date. See *Younkin*, 497 Mich at 10.

In sum, the 9/24/19 order was not contrary to the no-fault act. As such, the order was authorized by law, and the declaratory and injunctive relief requested by plaintiff shall not issue. Defendants are entitled to judgment as a matter of law.

III. CONCLUSION

IT IS HEREBY ORDERED that plaintiff's motion for summary disposition is DENIED.

IT IS HEREBY FURTHER ORDERED that summary disposition is GRANTED in favor of defendants, the non-moving party. See MCR 2.116(I)(2).

This is a final order that resolves the last pending claim and closes the case.

October 13, 2020

Michael J. Kelly
Judge, Court of Claims