237 N.J. 271
Supreme Court of New Jersey.

Joshua HAINES, Plaintiff-Respondent,
v.
Jacob W. TAFT, Bonnie L. Taft, Jointly, Severally and/or in the Alternative, Defendants-Appellants,
and
John McHenry, Defendant.
Tuwona Little, Plaintiff-Respondent,
v.
Jayne Nishimura, Defendant-Appellant.

A-13 September Term 2017
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A-14 September Term 2017
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079600
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Argued October 22, 2018
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Decided March 26, 2019

	Insureds were prohibited from introducing evidence of medical expenses in excess of their elected personal injury protection (PIP) limits in support of their claims for economic damages against their respective tortfeasors, since allowing admission of evidence of medical expenses falling between an insured's elected lesser PIP amount and $250,000 statutory maximum would transgress overall legislative design of no-fault statute to reduce court congestion, lower cost of automobile insurance, and avoid fault-based suits in a no-fault system. N.J. Stat. Ann. §§ 39:6A-1.1(b), 39:6A-4.3(e), 39:6A-12. Cases that cite this headnote

****264** On certification to the Superior Court, Appellate Division, whose opinion is reported at 450 N.J. Super. 295, 162 A.3d 296 (App. Div. 2017).

Attorneys and Law Firms

Michael J. Marone, Morristown, argued the cause for appellants Jacob W. Taft, Bonnie L. Taft, and Jayne Nishimura (McElroy, Deutsch, Mulvaney & Carpenter, attorneys; Michael J. Marone, of counsel and on the briefs, and Eric G. Siegel, Morristown, on the briefs).

Vincent A. Campo, Woodbury, argued the cause for respondent **Joshua Haines** (Malamut & Associates, attorneys; Vincent A. Campo, on the brief).

Jeffrey M. Thiel, Pennsauken, argued the cause for respondent Tuwona Little (Petrillo & Goldberg, attorneys; Jeffrey M. Thiel, on the brief).

Susan Stryker, Florham Park, argued the cause for amici curiae Insurance Council of New Jersey and The Property Casualty Insurers Association of America (Bressler, Amery & Ross, attorneys; Susan Stryker, of counsel and on the brief).

Stephen J. Foley, Jr., Asbury Park, argued the cause for amicus curiae New Jersey Defense Association (Campbell, Foley, Delano & Adams, attorneys; Stephen J. Foley, Jr., on the brief).

Kenneth G. Andres, Jr., Haddonfield, argued the cause for amicus curiae New Jersey Association for Justice (Andres & Berger, attorneys; Kenneth...

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... medical benefits on a first party basis, without regard to fault, to persons injured in automobile accidents," but "in order to keep premium costs down, the cost of the benefit must be offset by a reduction in the cost of other coverages, most notably a restriction on the right of persons who have non-permanent or non-serious injuries to sue for pain and suffering." N.J.S.A. 39:6A-1.1(b) (1998). Upon consideration of the coordinated amendments accomplished through AICRA to tighten up medical ***275** utilization, contain insurance costs, and make first-party no-fault insurance coverage more affordable and available, we find the Appellate Division's conclusion counter-intuitive and look for greater guidance from the Legislative Branch.

I.

On October 19, 2011, plaintiff **Joshua Haines** was in an automobile accident. While driving his father's car, he was struck by a car driven by defendant Jacob W. Taft.[1] Not having any health insurance, **Haines** sought coverage for medical treatment for his injuries under the PIP plan in his father's standard automobile insurance policy. The PIP plan provided for $ 15,000 of coverage -- the minimum amount permitted under N.J.S.A. 39:6A-4.3(e). **Haines** exhausted the PIP coverage. He claims to have approximately $ 28,000 in outstanding medical claims that providers are seeking from him. The record before the motion court reveals that **Haines**' counsel represented that the majority of the $ 28,000 in costs were not subjected to applicable PIP fee schedules but rather are based on the full amount billed by the providers.

On September 13, 2016, the motor vehicle driven by plaintiff Tuwona Little was rear-ended by defendant Jayne Nishimura's vehicle. Little also was insured under a standard insurance policy that provided $ 15,000 in PIP coverage. She sought treatment for the personal injuries she sustained in the accident. Like **Haines**, Little eventually exhausted her PIP coverage. She claims that she has $ 10,488 in unpaid medical expenses. Similar to the record in **Haines**, the record considered by the motion court indicated that the individual medical expenses had not been subjected to any detailed review to determine if ****266** they were "reasonable and necessary," and the court did not deem it essential to resolve that factual matter before proceeding with the legal question before it.

***276** Each plaintiff filed a personal injury claim against the respective defendant-driver and requested a jury trial. Each defendant filed a pre-trial motion to preclude plaintiff from presenting evidence of medical expenses that exceeded the $ 15,000 PIP limits. Defendants relied on N.J.S.A. 39:6A-12 (Section 12), which addresses the inadmissibility of evidence of losses collectible under personal injury protection, and Roig v. Kelsey, 135 N.J. 500, 641 A.2d 248 (1994). In Roig, our Court reasoned that the public policies underlying the no-fault system required that we construe Section 12 to prohibit injured parties from recovering medical deductibles and copayments from a tortfeasor. 135 N.J. at 513, 515, 641 A.2d 248.

In opposition to the motion, **Haines** maintained that medical bills exceeding PIP coverage constitute "economic loss" as that term presently is defined in N.J.S.A. 39:6A-2(k) and that evidence of such medical bills should thus be admissible at trial. Similarly, Little distinguished the present case, stating that, in amending the definition of economic loss to include a reference to "medical expenses" after the Roig decision, the Legislature "clearly evinced its intention to allow recovery [in tort] for medical expenses."

The trial courts ruled against plaintiffs in each matter and prohibited plaintiffs from admitting evidence of their medical expenses that exceeded their $ 15,000 PIP limits. In Little's case, the trial court reasoned that "under the AICRA, the Legislature did not intend to have ancillary litigation or to have litigation over medical bills not covered by the PIP limits that [Little] selected." In **Haines's** case, the trial court reasoned that a person who chooses a $ 15,000 PIP plan should not be allowed to recover in excess of that amount because he or she has made an affirmative decision to buy less insurance for less money. The court concluded that the purpose of the no-fault system is to keep premiums lower by allowing insureds to buy smaller policies, and a necessary component of that goal, as discussed in Roig, is eliminating litigation over claims for

medical expenses exceeding an insured's PIP limit.

***277** The Appellate Division consolidated the cases on appeal, and, in a published opinion, reversed both trial court orders. **Haines** v. Taft, 450 N.J. Super. 295, 309-10, 162 A.3d 296 (App. Div. 2017).

The panel found persuasive plaintiffs' argument in favor of a plain-language approach to N.J.S.A. 39:6A-12 and also agreed that allowing recovery of uncompensated medical expenses is not contrary to the statute's principal goal of avoiding double recovery of medical expenses by plaintiffs. Id. at 302, 307, 162 A.3d 296.

Examining N.J.S.A. 39:6A-12 and the statutory provisions referred to therein, the Appellate Division concluded that "amounts collectible or paid under a standard automobile insurance policy" did not "refer[ ] solely to the maximum PIP coverage, or $ 250,000, that is potentially available in a standard policy." Id. at 302, 162 A.3d 296. The panel reasoned that "because the statutory language expressly allows varying levels of PIP benefits paid or collectible under a standard policy," ibid. (citing N.J.S.A. 39:6A-4.3(e)), **Haines** and Little were barred from admitting evidence of medical expenses up to their $ 15,000 PIP policy limit. The panel concluded, however, that evidence of their medical expenses between $ 15,000 and $ 250,000 was not barred by Section 12 and therefore was "admissible and recoverable ****267** against the tortfeasors." Id. at 303, 162 A.3d 296.

The panel declined to accept defendants' position that the policies underlying AICRA necessitated the exclusion of recovery for medical expenses between $ 15,000 and $ 250,000. Id. at 306-07, 162 A.3d 296. Similarly, the panel was unpersuaded that allowing admission of medical expenses above an insured's PIP policy limit, but below the $ 250,000 PIP limit, would insert a fault-based aspect into a no-fault system even though...

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... medical expenses." Id. at 306, 162 A.3d 296; see also id. at 308-09, 162 A.3d 296. And the panel highlighted that, in Roig, the Court recognized a legislative intent "to bar the recovery of minor expenses." Id. at 306-07, 162 A.3d 296. In a footnote, the panel observed that although the Roig decision never defined a "minor" medical expense, the Roig Court did highlight a quotation from Governor Cahill's First Annual Message, which noted that "minor automobile negligence case[s]" are those that "result[ ] in a judgment of settlement under $ 3000." Id. at 306, 162 A.3d 296 n.5 (quoting Roig, 135 N.J at 510, 641 A. 2d 248).

Ultimately, the panel reasoned that "copayments and deductibles are insufficiently analogous to the kind of expenses at issue here," referring to **Haines** and Little's outstanding medical expenses as "hardly minor." Id. at 307, 162 A.3d 296. Quoting an earlier published trial court decision, the panel noted that, unlike copayments and deductibles, the severity of an accident victim's injuries and the resultant medical expenses cannot be anticipated and "AICRA is devoid of any legislative intent to have insureds bargain for potentially bankrupting medical bills, in exchange for lower premiums." Ibid. (quoting Wise v. Marienski, 425 N.J. Super. 110, 124-25, 39 A.3d 947 (Law Div. 2011)).

Ultimately, the panel crafted an exception to its interpretation and application of N.J.S.A. 39:6A-12 by noting that there may be instances in which medical expenses at issue may minimally exceed a plaintiff's PIP policy limits and that arguably under those circumstances they might be considered minor and, thus, unrecoverable. Id. at 310, 162 A.3d 296. The panel ultimately left the issue of what constitutes minor expenses unanswered, but made clear its view that **Haines**' and Little's unpaid medical bills were not minor. Ibid.

We granted defendants' petitions for certification. 231 N.J. 179, 173 A.3d 598 (2017); 231 N.J. 155, 172 A.3d 1090 (2017). We also ***279** granted amicus curiae status to the New Jersey Association for Justice (NJAJ). The Insurance Council of New Jersey (ICNJ), the Property Casualty Insurers Association of America (PCI), and the New Jersey Defense Association (NJDA), who participated before the Appellate Division, also served as amici before this Court. Our analysis of this matter incorporates their arguments, along with those of the parties.

II.

Plaintiffs, as well as their supporting amici, focus on certain language in ****268** N.J.S.A. 39:6A-12. That statute provides in full:

Except as may be required in an...

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... with $ 15,000 in PIP coverage who suffers $ 249,000 in economic damages is unable to sue for $ 234,000 in unpaid medical costs. But an affluent victim who can afford $ 250,000 in PIP coverage and who suffers economic damages of $ 250,100 can sue the tortfeasors for $ 100 in unpaid medical expenses.

***297** To reach that absurd result, the majority not only misreads the plain wording of N.J.S.A. 39:6A-12 and the legislative history of the No Fault Act, N.J.S.A. 39:6A-1 to -35, but also advances an interpretation of the law at complete odds with public policy. The majority's erroneous interpretation of the statute is not without a remedy. The Legislature can make clear that today's decision is not what it meant or ever envisioned.

I therefore respectfully dissent.

I.

Joshua Haines and Tuwona Little suffered serious physical injuries caused by the alleged negligence of drivers who struck their vehicles. **Haines** and Little filed separate personal-injury lawsuits against the alleged wrongdoers to recover the unpaid medical expenses incurred for the treatment of their injuries. **Haines's** automobile insurance policy provided $ 15,000 in PIP benefits. He accumulated $ 43,000 in medical expenses, leaving him with $ 28,000 in unreimbursed expenses. Little's automobile insurance policy provided $ 15,000 in PIP benefits. She accumulated $ 25,488 in medical expenses, leaving her with $ 10,488 in unpaid expenses.

The majority has concluded that **Haines** and Little cannot sue for the recovery of the $ 28,000 and $ 10,488 in uncompensated economic losses that they suffered because of their wrongdoers' negligence. That result cannot be squared with the history of our common law and with our current statutes.

A.

Under the common law, a person injured by the negligent acts of another had an unqualified right to the recovery of medical expenses from the wrongdoer. See ****279** Sotomayor v. Vasquez, 109 N.J. 258, 261, 536 A.2d 746 (1988). At the inception of New Jersey's Automobile Reparation Reform Act (No Fault Act), an insured automobile accident victim had no need to sue for uncompensated ***298** medical expenses because the new law mandated that the victim's insurance carrier make "prompt 'payment of out-of-pocket...

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... coverage and is barred from suing the negligent driver who has $ 500,000 in liability insurance for the $ 230,000 in unpaid medical costs. Bill will have liens placed on his home, his wages will be garnished, and his life will be left in economic ruins despite the fact he was an innocent victim of a tragic accident. The wrongdoer and his insurance carrier under this regime walk free of the financial carnage left behind.

Barring an automobile accident victim bound to the $ 15,000 PIP coverage option from seeking reimbursement of medical expenses exceeding $ 15,000 from the tortfeasor is not merely at odds with N.J.S.A. 39:6A-12's clear language, but also renders the statutory scheme inequitable and irrational -- a result that the Legislature did not intend. In the **Haines** case, a son was operating his father's car when he was injured in an accident due to the negligence of others. The son was bound to his father's selection of the $ 15,000 PIP coverage and left with approximately $ 28,000 in unpaid medical expenses that he could not recoup from the alleged wrongdoers. This unjust result has further unforeseen consequences. Healthcare providers may refuse to offer medical services if the payment of their medical costs cannot be guaranteed. To the extent that some innocent victims of automobile accidents may turn to charity care, then the cost will be borne by all taxpayers.

***304** Even if N.J.S.A. 39:6A-12 were susceptible to two plausible interpretations, the "settled rule [is] that a statute in derogation of the common law...

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...n, 215 N.J. 522, 545 n.6, 74 A.3d 860 (2013) (quoting Ross v. Miller, 115 N.J.L. 61, 64, 178 A. 771 (Sup. Ct. 1935)). The right to sue a wrongdoer for the costs of injuries caused to an innocent victim is a hallmark of our common law. Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594, 59 A.3d 561 (2013) ("Negligence liability is rooted in fundamental, common-law 'social, moral and ethical policy' ...." (quoting Wytupeck v. Camden, 25 N.J. 450, 460, 136 A.2d 887 (1957))).

It bears mentioning that under N.J.S.A. 39:6A-8(b), an insured may select the "[n]o limitation on lawsuit option," which permits the filing of a lawsuit for pain and suffering of an indeterminate dollar value, regardless of whether the victim suffered permanent injuries. If **Haines's** father had selected the no limitation on lawsuit option, **Haines** theoretically could have recovered $ 28,000 in pain and suffering damages but, given the majority's interpretation of N.J.S.A. 39:6A-12, not recover $ 28,000 in unpaid medical expenses. Looking at the statutory framework as a whole underscores the weakness of the majority's position.

The majority states that it "cannot conclude that the Legislature clearly intended Section 12 to allow fault-based suits consisting solely of economic damages claims for medical expenses in excess of an elected lesser amount of available PIP coverage." Ante at ——, —— A.3d at ——. Presumably, ****283** the majority's reasoning here would also bar tort victims with basic and special policies from suing for medical expenses of less than $ 250,000 because, like **Haines** and Little, those basic and special policyholders also had the option of purchasing a standard policy with the maximum $ 250,000 in benefits, but elected not to do so.

The Legislature did not frame a statute that denied innocent automobile victims the right to sue for the recovery of their medical expenses merely because they could not afford to pay for ***305** a better insurance policy. It is not a fair trade-off, as the majority argues, to deny an insured who can afford only $ 15,000 in PIP coverage the opportunity to recoup $ 235,000 in unpaid medical costs caused by a negligent wrongdoer.

Last, the Court's 1994 decision in Roig, 135 N.J. 500, 641 A.2d 248, does not command the inequitable outcome reached by the majority. In Roig, the Court construed the...