

Case Nos. A04-2088 and A04-2054

State of Minnesota
 In Supreme Court

Christopher P. Schermer, John V. Smith, Marjorie B. Smith,
 and Reverend Albert Gallmon,
 on behalf of themselves and all others similarly situated,

Petitioners,

vs.

State Farm Fire and Casualty Company,
 State Farm General Insurance Company,

Respondents.

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I. STATEMENT OF LEGAL ISSUES

A. WHETHER PLAINTIFFS CAN CIRCUMVENT THIS COURT'S ESTABLISHED PRECEDENT THAT NO PRIVATE CAUSE OF ACTION EXISTS UNDER MINN. STAT. § 72A.20 BY RE-LABELING A CLAIM PREMISED ON AN ALLEGED VIOLATION OF THAT STATUTE.

Court of Appeals Ruling:

Holding that Plaintiffs could not circumvent this Court's decision in *Morris v. Am. Family Mut. Ins. Co.*, 386 N.W.2d 233 (Minn. 1986) (Simonett, J.), the Court of Appeals affirmed the District Court's Order granting State Farm's Motion for Summary Judgment because Plaintiffs' claims are premised on an alleged violation of Minn. Stat. § 72A.20, subd. 13.

Key Legal Authority:

1. *Morris v. Am. Family Mut. Ins. Co.*, 386 N.W.2d 233 (Minn. 1986)
2. *Glass Service Co., Inc. v. State Farm Mut. Auto. Ins. Co.*, 530 N.W.2d 867 (Minn. Ct. App. 1995)
3. *Western Union Tel. Co. v. Spaeth*, 44 N.W.2d 440 (Minn. 1950)

B. WHETHER THE FILED RATE DOCTRINE BARS RETROACTIVE RATE-MAKING BY THE COURTS AS TO FILED RATES THAT HAD BEEN REVIEWED AND APPROVED BY THE DEPARTMENT OF COMMERCE.

Court of Appeals Ruling:

The Court of Appeals held that the Filed Rate Doctrine barred retroactive ratemaking as to filed rates that had been reviewed and approved by the Department of Commerce ("DOC") after State Farm made revisions required by the DOC to comply with the statute at issue. Accordingly, the Court of Appeals affirmed the District Court's

Order granting State Farm's Motion for Summary Judgment based on the Filed Rate Doctrine.

Key Legal Authority:

1. *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156 (1922)
2. *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571 (1981)
3. *Wegoland Ltd. v. NYNEX Corp.*, 806 F. Supp. 1112 (S.D.N.Y. 1992), *aff'd*, 27 F.3d 17 (2d Cir. 1994)
4. Minn. Stat. § 70A.11

II. STATEMENT OF THE CASE AND FACTS

A. STATEMENT OF THE CASE

This case was venued in Hennepin County District Court where it was assigned to The Honorable John Q. McShane. After discovery, the parties made cross-motions for summary judgment. The District Court granted summary judgment in State Farm's favor and denied Plaintiffs' motions for summary judgment. On September 6, 2005, the Court of Appeals unanimously affirmed the District Court's Order granting summary judgment in State Farm's favor. *Schermer v. State Farm Fire and Cas. Co.*, 702 N.W.2d 898 (Minn. Ct. App. 2005) (Parker, J.)

B. STATEMENT OF FACTS

1. Regulatory Overview

Under Minnesota's regulatory system, the DOC is responsible for enforcing "all the laws of this state relating to insurance." Minn. Stat. § 60A.03, subd. 2. The DOC is also responsible for enforcing Minn. Stat. § 72A.20, the Unfair Claims Practices Act ("UCPA"), under which Plaintiffs' claims were brought.

As the Court of Appeals observed, Minnesota law requires every homeowners insurer doing business in Minnesota to file its rates and rate revisions with the DOC, and no rate is effective until it has been filed. Minn. Stat. § 70A.06, subd. 1; (*see also* Petitioners' Appendix ("PA") at 33.) The DOC has the power to examine any insurer "at any time and for any reason related to the enforcement of the insurance laws." Minn. Stat. § 60A.031, subd. 1; *see also* Minn. Stat. § 70A.18. The DOC may initiate enforcement proceedings to remedy a violation of the applicable statutes. Minn. Stat. §§ 45.027, 60A.052, subd. 1. If, after a contested proceeding, the DOC determines that a rate violates Minnesota law, it shall order that the rate be discontinued and "shall order the excess premium plus interest . . . to be refunded to the policyholder" from the date the proceeding was commenced. Minn. Stat. § 70A.11, subd. 1. Moreover, if the DOC determines that an insurer has charged illegal or improper rates, engaged in any fraudulent or misleading conduct during the filing process or engaged in any other unfair trade practice, the Commissioner may seek administrative remedies, including the revocation of an insurer's license and penalties. Minn. Stat. §§ 45.027, 60A.031, 60A.052.

2. DOC Review and Approval of the URP

a. DOC's Construction of Minn. Stat. § 72A.20, Subd. 13

The Third Amended Complaint is premised on Plaintiffs' claim that State Farm violated Minn. Stat. § 72A.20, subd. 13. In pertinent part, the statute prohibits a homeowners insurer from charging differential rates "solely" because of the age of the primary structure sought to be insured. The statute also contains a clarifying proviso

stating that (a) as to statewide rating plans, subdivision 13 does not prohibit any rating standard not “specifically prohibited” by earlier-enumerated clauses, and (b) the above-referenced prohibition does not prohibit “the use of rating standards based upon the age of the insured structure’s plumbing, electrical, heating or cooling system or other part of the structure, the age of which affects the risk of loss.” *Id.*

From the moment the statute became law in 1979 through the period when State Farm’s Utilities Rating Plan (“URP”) was filed almost 20 years later and thereafter, the DOC repeatedly and consistently informed the insurance industry that it construed the statute as requiring any insurer offering new home discounts to offer similar discounts to owners of older homes with qualifying renovations. Upon passage of the Act in 1979, the DOC issued a circular letter to “All Companies Writing Homeowners Insurance” to “assist you in complying with the above Act.” The DOC instructed companies:

The new law requires all insurers who offer any kind of new home discount to provide similar discounts to insureds who have older homes which have new wiring, plumbing, heating or other structural rehabilitation affecting the risk of loss.

(Supplemental Record of Respondents (“S.R.”) at 002.)

After the passage of the statute, State Farm instituted a rating plan that offered “new home discounts” as high as 20% both to owners of new homes and to owners of older homes with completely upgraded electrical systems. (S.R. at 004.) This discount program remained in effect from the early 1990’s to 1997 and pre-dates the URP, which is at issue in this case. (*Id.*)

In 1994, while State Farm's discount program was in place in Minnesota, the DOC issued a public bulletin to all Minnesota homeowners insurance companies. The DOC reported that it had investigated the level of compliance with Minn. Stat. § 72A.20, subd. 13, and found compliance to be "excellent." (S.R. at 008.) The DOC also reiterated:

Insurers may not offer "new home discounts" if such discounts are based solely on the age of a dwelling. However, *insurers may offer discounts based on the "age" of the mechanical system(s) within a home as long as those discounts are made available to all homes regardless of their "age."* In order to prevent any misunderstanding or confusion relating to the basis for such discounts, the Department strongly recommends that future marketing materials refrain from using such terminology as "new home discount" or "new construction discount."

(*Id.* (emphasis added).)

Finally, in its third public pronouncement to the insurance industry, the DOC published a manual, dated December 2001, on its web site. Once again, the DOC stated: If a company "offers a 'new home credit,' it must also provide credits to renovated homes. Specifically, a company must give credit equal to its 'new home' credit to a policyholder who has renovated one of the following systems: electrical, heating or cooling[,] plumbing, or other structure, the age of which affects the risk of loss." (S.R. at 011).

b. The URP is Approved After State Farm Makes Revisions Required by the DOC to Comply with Minn. Stat. § 72A.20, Subd. 13

On May 8, 1997, State Farm filed with the DOC an initial version of the URP that was similar to URPs filed and utilized by State Farm in most other states. (See S.R. at

013-16.) State Farm's original filing proposed rates based on the age of the oldest of three different utility systems: electrical, plumbing and heating/cooling. (*See id.* at 015.) Under the original URP, a policyholder whose home had new systems would be eligible for up to a 25% discount off the base premium while a policyholder whose home had systems greater than sixty years old would be subject to an additional 10% charge. (*Id.*) As observed by the District Court, "the actuarial exhibits submitted by State Farm in 1997 indicated that the differentials in URP charges and discounts had been calculated using **all** non-catastrophic losses,"¹ (PA35 (emphasis added)), not just losses directly caused by older utility systems.

i. The DOC's First Required Revision

The DOC assigned the task of reviewing State Farm's URP to Sherri Mortensen Brown, a Commerce Analyst and attorney who was knowledgeable about the law applicable to the URP. (S.R. at 018.) On May 22, 1997, the DOC notified State Farm that the filing had "been reviewed" and told State Farm that the filing "must be amended to comply with M.S. 72A.20, subd. 13." (S.R. at 021, 023.)

Since you offer "Guaranteed Replacement Cost Coverage" for homes built no later than 1955, you are required by Minnesota law to also provide this coverage for older homes, specifically those that have been built earlier than 1955, but subsequently renovated. Eligible renovations, the age of which affects the risk of loss, can include one, all, or any combination (company's decision) of the following criteria:

¹ Non-catastrophic incurred losses includes all covered losses (e.g., fire damage, water damage, theft, etc.) other than losses simultaneously incurred by numerous policyholders due to a catastrophe, such as hurricanes or hailstorms. (S.R. at 004-05.)

electrical, heating or cooling, plumbing, roofing, or other part of the structure.

For example, if you provide a 16% credit when all aspects are renovated, you might consider offering the following partial credits:

New wiring	4%
New plumbing	4%
New heating	4%
New roof	<u>4%</u>
Total	16%

*(Any combination totaling 16% would be acceptable.)

(S.R. at 023.) The DOC's letter specifically stated that until State Farm responded to the required amendments, "[State Farm's] file *will be held in suspense.*" (*Id.* at 024 (emphasis added).) As a result, the May 8, 1997 version of the URP was never used.

On June 5, 1997, citing the DOC's 1979 Circular Letter, State Farm proposed amending its URP to charge homeowners different rates based on the age of only one system – the electrical system – rather than the oldest of three different systems.² (S.R. at 025.) State Farm continued to rely on the same actuarial exhibit submitted on May 8 – analyzing all non-catastrophic losses – as actuarial support for the URP as revised.

ii. The DOC's Second Required Revision

Once again, the DOC determined that further amendments were required based on "M.S. 72A.20, subd. 13." (S.R. at 027.) Specifically, the DOC wrote that, under Minn. Stat. § 72A.20, subd. 13, State Farm could not require that the renovations needed to qualify for the discount be performed by a "qualified contractor." (*Id.*) The DOC also

² As noted above, State Farm's then-existing discount program was similarly based on the age of the home's electrical system.

notified State Farm, again, that its filing would be held “*in suspense.*” (*Id.* (emphasis added).) Consequently, the URP as amended and filed by State Farm on June 5 was never used.

State Farm responded by submitting a second revised filing on June 27, 1997. (*See* S.R. at 029-30.) State Farm’s cover letter explained that the revision addressed the DOC’s concern by permitting a homeowner to qualify for the discount if the work “has been inspected by a building inspector who certifies that the work meets all state and local codes.” (*Id.* at 029.)

iii. The DOC’s Third Required Revision

The DOC again was not satisfied. In a letter from Ms. Mortensen Brown dated July 18, 1997, explicitly citing Minn. Stat. § 72A.20, subd. 13 as the legal basis, the DOC required still further changes and ordered that State Farm’s rate filing be “*held in suspense*” pending the required changes. (S.R. at 031-32 (emphasis added).)

iv. After Three Revisions, the DOC Accepted State Farm’s URP Filing

State Farm made the requested changes to its filing. Finally, more than two months after State Farm originally filed the URP and after three required revisions, the DOC, on July 23, 1997, accepted State Farm’s revised URP for use effective August 1, 1997. (S.R. at 033.)

v. State Farm Voluntarily Made It Easier for Owners of Older Homes to Avoid the Charge

Approximately one year later, in September 1998, State Farm filed a modified URP to make it easier for individuals with older homes to avoid an additional charge by

making a “partial update” to their electrical systems. (S.R. at 034-36.) Specifically, under the 1998 revision, a State Farm policyholder with an older home who self-certified that the service entrance and distribution panel (breaker box) had been replaced within the previous ten years would not be required to pay an additional charge.³ (*See id.* at 035.)

Numerous State Farm policyholders took advantage of the opportunity to reduce their rates. As of December 31, 2001, more than 17,000 State Farm policyholders – over 13% of all policyholders with homes 40 years old or older on that date – paid lower premiums based on a reported upgrade to their electrical utilities. (S.R. at 038.) These policyholders reaped the benefits of more favorable rates under the URP – which is based on the age of the electrical system – than if State Farm had imposed the same discounts and charges based on the age of their homes.⁴

³ The September 1998 filing also combined the three ratings categories associated with the oldest electrical systems (40-49, 50-59 and 60+) into a single 40+ category subject to a 6% additional charge. (S.R. at 035.)

⁴ Plaintiffs present misleading statistics that they claim show the URP has a discriminatory impact on minorities. The races of State Farm homeowner policyholders, however, is unknown. (*See* PA119.) Plaintiffs’ statistician looked at census data to determine the races of owners of older homes in Minnesota, but not necessarily State Farm policyholders, and made no differentiation for homeowners who upgraded their utilities to receive more favorable rates. (*Id.*) Even more significantly, Plaintiffs’ own statistical manipulations show the number of likely State Farm policyholders who would purportedly be subject to the additional charge in what Plaintiffs have labeled “minority communities” – i.e., communities with 50 percent or more minority populations – is miniscule compared with the number of State Farm homeowner policyholders in Minnesota. **The total number of such policyholders – 1,808 – is less than one-half of one percent of State Farm’s 402,655 Minnesota homeowner policyholders.** (Petitioners’ Confidential Appendix (“PCA”) at 6.)

c. Four Years Later, the DOC Investigated the URP Based on a New Construction of Minn. Stat. § 72A.20, Subd. 13

In 2001, in response to a consumer complaint, DOC investigator Martin Fleischhacker began to examine State Farm's URP. Mr. Fleischhacker came to the conclusion that Minn. Stat. § 72A.20, subd. 13 imposed actuarial requirements beyond those identified in the statute or in any previous DOC circular letter or bulletin. (*See* S.R. at 039-42.) According to Mr. Fleischhacker, if an insurer places homeowners into different rating categories based on the age of a utility system, such as an electrical system, then any differentials in rates must be limited to differentials in losses *caused by or directly related to* the age of *that particular system*. (*Id.*)

Mr. Fleischhacker acknowledged that he had never discussed the meaning of Minn. Stat. § 72A.20, subd. 13 with anyone at the DOC prior to 2001. (*Id.*) Similarly, Richard Amundson, Actuarial Director for the DOC since 1989, testified that he is not aware of anyone at the DOC suggesting the 2001-02 "Fleischhacker Construction" of the statute prior to 2001-02. (*See* S.R. at 043-46.) He testified the new construction, which was apparently embraced by then-Commissioner James Bernstein, who had taken office in July, 2000, approximately three years after the DOC approved State Farm's URP, represented a change in the DOC's position. (*Id.*)

State Farm disagreed with Mr. Fleischhacker's interpretation, which it regarded as both legally and actuarially unsupportable. State Farm pointed out to Mr. Fleischhacker, for example, that under well-established actuarial principles, a rating factor is not invalid merely because an insurer cannot prove a cause-and-effect relationship that accounts for

all differences in loss experience correlated with that rating factor. (*See* Exhibit 17 to the July 14, 2004 Affidavit of William L. Greene.) Moreover, unbeknownst to State Farm at the time, the DOC actuary who reviewed the URP during the DOC's 2001-2002 examination agreed with State Farm's position, disagreed with Mr. Fleischhacker's position, and thought the DOC's ultimate decision to pursue the matter was a "mistake." (*See* S.R. at 047.)

Ultimately, the DOC declined to bring an enforcement action that would have put the Fleischhacker Construction to the test in an adversarial proceeding. Instead, under then-Commissioner Bernstein, the DOC negotiated with State Farm. (*See* PA42-43.) In December 2002, after sending State Farm a draft Cease and Desist Order but before starting any proceedings, the DOC entered into a settlement with State Farm. (*See* PA70-73.) In the settlement, the DOC expressly acknowledged that "there has been no hearing, findings of fact, or conclusions of law with respect to the allegations of the Commissioner" and acknowledged that State Farm denied all the allegations. (PA70-71.) Under the terms of the Consent Order, State Farm agreed to discontinue the surcharge portion of the URP for one year. (PA71.) At the same time, the Consent Order specifically allowed State Farm to continue offering URP discounts based on the same actuarial evidence. (*Id.*) Under the Consent Order, State Farm also agreed to reimburse the DOC for investigative costs of \$75,000. (*Id.*)

d. After Thorough Internal Debate, the DOC Again Approved the Very Same URP in 2004

In 2004, State Farm submitted a rate filing to the DOC in which State Farm again sought approval of the same URP filed and approved by the DOC in 1997 and 1998 – the same URP at issue in this litigation. (*See* S.R. at 048-57; *Id.* at 005.) As it did in 1997, State Farm provided actuarial support for the rate differentials based on all non-catastrophic losses. (*See* S.R. at 052; *Id.* at 005.) Furthermore, in the 2004 filing, State Farm revised a label – regarded as immaterial by the DOC’s Actuarial Director – to reflect where age of home data had been used in the development of the age of the electrical system rating plan.⁵ On April 9, 2004, following a review that spanned more than two months, the DOC approved State Farm’s filing.⁶ (*See* S.R. at 066.)

In approving the 2004 filing, the DOC expressly considered and rejected the Fleischhacker construction of the statute that had first surfaced in 2001-02. Two DOC actuaries wrote lengthy responses to a March 31, 2004 memorandum from Mr.

⁵ Mr. Amundson testified the DOC “would have accepted State Farm’s proposed plan whether the historical data were grouped by actual age of utilities or by age of dwelling as a surrogate for age of utilities.” (S.R. at 019.) Mr. Amundson knew that insurance companies in 1997 did not keep statistics based on age of utilities. (*Id.* at 018-19.) He testified: “it was natural to assume that for its historical experience State Farm was using age of dwelling as a surrogate for age of utilities.” (*Id.*)

⁶ Plaintiffs erroneously claim on page 9 of their brief that State Farm “concealed” the URP charges. Not only is this allegation immaterial to their claim that the URP violates state law and the claims certified for class adjudication, but this claim also ignores State Farm’s repeated mailings to policyholders informing them of the URP. (*See* S.R. at 060-62.) Moreover, when considering the 2004 filing, the DOC asked State Farm how policyholders were informed of the URP, received copies of the mailings, and then approved the filing. (S.R. at 058-66.)

Fleischhacker. (See PA148-49.) One of the DOC's actuaries, Nancy Myers, observed that State Farm's URP reflected "standard" actuarial practices:

The methodology that State Farm has used to establish age-of-system credits/debits is consistent with standard actuarial practices and is sufficient to actuarially justify the credits/debits. *Virtually every credit/debit system in MN in every line of insurance for every insurance company is supported in this way.*

(PA148 (emphasis added).)

The other DOC actuary who commented on the filing, Actuarial Director Amundson, observed that nothing in Minn. Stat. § 72A.20, subd. 13 requires cause-and-effect pricing of the sort advocated by Mr. Fleischhacker:

Insurers use many kinds of characteristics to group risks into classes for pricing. They estimate a class's expected losses by looking at the experience of the class in question. They do not segregate claims by cause of loss to price the variable.

....

[Minn. Stat. § 72A.20, subd. 13] clearly permits insurers to use the age of a home's utilities as a classification variable for rating. The statute does not say how insurers should price the classes created by the variable. It seems farfetched to conclude that insurers can not use the same methods they use to price the classes created by every other rating variable.

(PA149.)

Thus, having reconsidered and rejected the Fleischhacker construction, the DOC determined that the URP complies with Minnesota law, and again approved the filing. According to Mr. Amundson, who was at the DOC throughout the relevant period, the DOC's approval of State Farm's URP in 2004 reflects a return to the position on Minn.

Stat. § 72A.20, subd. 13 that the DOC had always followed prior to 2001. (S.R. at 045-46.)

3. Procedural History

a. District Court

Plaintiffs commenced this lawsuit on December 6, 2002, two days after Commissioner Bernstein announced the settlement with State Farm that resulted in the above-referenced Consent Order. The Complaint was premised on the construction of Minn. Stat. § 72A.20, subd. 13, that had first been suggested by Fleischhacker in 2001-02 – years after the URP was approved – before the DOC reaffirmed its longstanding construction of the statute. In their Complaint, Plaintiffs sought a refund of all surcharges collected by State Farm from 1997-2002 in accordance with the terms of the URP as approved by the DOC. Within weeks of leaving office, Mr. Bernstein began accepting payments from Plaintiffs for testifying about the DOC's examination of State Farm and his support for the revised interpretation of Minn. Stat. § 72A.20, subd. 13. (PA77.)

On September 3, 2004, the District Court issued a series of orders addressing, among other things, the parties' cross-motions for summary judgment. The District Court denied Plaintiffs' motion for summary judgment on their rescission claim. The District Court did not adopt either party's position as to whether the URP assigned differential rates based solely on the age of a home, holding there was an issue of fact, while rejecting Plaintiffs' construction of the safe harbor provision in Minn. Stat. § 72A.20, subd. 13.

The District Court also held that State Farm was entitled to summary judgment on two grounds: (1) Under *Morris v. Am. Family Mut. Ins. Co.*, 386 N.W.2d 233 (Minn. 1986), there is no private cause of action for a violation of Minn. Stat. § 72A.20, subd. 13; and (2) Plaintiffs' demand for retroactive refunds of filed rates that had been approved by the DOC was barred by the Filed Rate Doctrine.

In ruling on the Filed Rate Doctrine, the District Court rejected what was then Plaintiffs' principal argument that the Filed Rate Doctrine should not apply because Plaintiffs had alleged that State Farm misrepresented its actuarial data to the DOC. The District Court noted that similar allegations of misrepresentation were made in a leading case, *Wegoland Ltd. v. NYNEX Corp.*, 806 F. Supp. 1112 (S.D.N.Y. 1992), *aff'd*, 27 F.3d 17 (2d Cir. 1994), which included a "clear and comprehensive analysis" of the Filed Rate Doctrine and confirmed that there is no "fraud exception" to the Filed Rate Doctrine. (PA46 (quoting *Wegoland*, 27 F.3d at 20 ("every court that has considered [it] has rejected the notion that there is a fraud exception to the filed rate doctrine").)

Finally, in another order issued on the same date, the District Court denied Plaintiffs' motion to amend its complaint to add a claim for racial discrimination under the Minnesota Human Rights Act, Minn. Stat. §§ 363A.17(c), 363A.09. *See* discussion, *infra* at 27-28. Plaintiffs chose not to raise this issue in their brief to the Court of Appeals.

b. Court of Appeals

In their brief to the Court of Appeals, Plaintiffs argued that the District Court erred in granting State Farm's motion for summary judgment.

i. State Farm's Arguments to Affirm

State Farm argued to affirm on the grounds relied upon by the District Court: *Morris* and the Filed Rate Doctrine. (See generally S.R. at 108-110, 113-24.) State Farm also argued, in the alternative, that it was entitled to summary judgment because the URP did not violate Minn. Stat. § 72A.20, subd. 13. (*Id.* at 111-12.) State Farm pointed out that the statute contains only one relevant prohibition: an insurer may not charge differential rates for an equivalent amount of homeowner's insurance coverage *solely* because of the age of the primary structure sought to be insured. (*Id.* at 111.) Under the URP, a policyholder's rates were not determined solely on the basis of the age of the policyholder's home. On the contrary, as State Farm illustrated, four policyholders with otherwise identical homes built at exactly the same time would pay four different rates under the URP depending on whether, how and when they upgraded their home's electrical system:

Age/Status of Electrical System	Age of Home	URP Rate
Electrical System Completely Upgraded During Current Calendar Year (certified)	40	25% Discount (same as new home)
Electrical System Completely Upgraded Five Years Before Current Calendar Year (certified)	40	13% Discount
Replacement of Fuse or Breaker Box Within Last 10 Years (self-certified)	40	No Discount/No Charge
Non Updated Electrical System	40	6% Charge

(*Id.* at 111-12.)

In fact, State Farm pointed out, thousands of State Farm policyholders received more favorable rates under the URP because of upgrades made to their electrical systems. (*Id.* at 092.) Thus, State Farm contended, “[t]here is no plausible way to characterize the URP as a rating plan that assigns differential rates based solely on the age of a home.” (*Id.* at 112.)

State Farm also argued that the final clarifying proviso of the statute, *see* discussion *supra* at 3-4, upon which Plaintiffs rely as the basis for establishing liability, is actually a safe harbor that serves only to specify rating standards *not prohibited* under the statute.⁷ (S.R. at 100-01.) Furthermore, according to State Farm, the District Court was correct when it held that the safe harbor provision does not dictate the methodology an insurer must use to calculate rate differentials:

Minn. Stat. § 72A.20, subd. 13 *does not deal with the amount of the differential, or how it is to be calculated.* The statute does not prohibit the insurer from applying underwriting or rating standards which the insurer applies generally in all other locations in the State and which are not specifically prohibited in clauses (a) to (d). *There is nothing in Minn. Stat. § 72A.20, subd. 13 clauses (a) through (d) that says in order to be a proper rate there has to be a causal relationship, as opposed to a correlative relationship, between the rating variable on the one hand and the losses you look at to justify or to support the differential rates.*

District Court Order, September 3, 2004 (PA59 (emphasis added).)

⁷ State Farm also pointed out that the Attorney General’s argument for a broad reading ignores the language in the statute expressly providing that Minn. Stat. § 72A.20, subd. 13 does not prohibit statewide rating standards “which are not *specifically prohibited*” by a specific clause in the statute (emphasis added). (S.R. at 102.)

ii. The Court of Appeals Order

In a decision by a unanimous panel, the Court of Appeals affirmed summary judgment in State Farm's favor on both grounds relied upon by the District Court. As the Court of Appeals noted, "[t]he class's claims were predicated on an alleged violation of Minn. Stat. § 72A.20, subd. 13." *Schermer*, 702 N.W.2d at 905; (PA7.) However, "the [Supreme Court] in *Morris* held that a private party does not have a cause of action against an insurer for a violation of the [Unfair Claims Practices Act], Minn. Stat. § 72A.20." *Id.* At 904; (PA7.) Thus, the Court of Appeals held, the class's claims were barred under *Morris*. The Court of Appeals also rejected Plaintiffs' attempts to avoid *Morris* by characterizing their claim as one for "rescission" based on a violation of Minn. Stat. § 72A.20, subd. 13 rather than a "private cause of action" under Minn. Stat. § 72A.20, subd. 13. Citing a uniform line of state and federal cases, the Court of Appeals held that "the law is settled that a litigant cannot sue under Minn. Stat. § 72A.20, subd. 13, or use an alleged violation of this statute to prove elements of a common law claim." *Id.* at 908; (PA8.)

The Court of Appeals also found that applying the widely-accepted Filed Rate Doctrine to preclude retroactive refunds under the facts of this case "comports with the policies" underlying the doctrine. *Schermer*, 702 N.W.2d at 906; (PA9). As the Court of Appeals observed:

Here, State Farm complied with Minnesota law by filing its rates with the DOC and thus should not now be subject to retroactive rate revisions when it satisfied the regulatory agency – the DOC. Furthermore, it was only after the DOC completed its review and required changes to comply with the

statute at issue that the DOC accepted the URP for use in Minnesota. Allowing the class to challenge retroactively the reasonableness of the DOC-approved URP would undermine Minnesota's statutory process.

Id. At 907; (PA9.)

Having affirmed on other grounds, the Court of Appeals did not address State Farm's alternative argument that the URP did not violate Minn. Stat. § 72A.20, subd. 13.

Plaintiffs' Petition for Review to this Court addresses the two grounds – no private cause of action under Minn. Stat. § 72A.20, subd. 13 and the Filed Rate Doctrine – relied upon by the Court of Appeals as the basis for its order affirming summary judgment for State Farm. (S.R. at 190.)

III. ARGUMENT

A. **THE COURT OF APPEALS CORRECTLY RULED THAT PLAINTIFFS' CLAIMS WERE BARRED UNDER THIS COURT'S HOLDING IN *MORRIS* THAT NO PRIVATE CAUSE OF ACTION EXISTS UNDER MINN. STAT. § 72A.20**

1. **The Court of Appeals Correctly Held that Plaintiffs Could Not Circumvent this Court's Holding in *Morris* that No Private Cause of Action Exists Under Minn. Stat. § 72A.20 by Re-Labeling a Claim Premised on an Alleged Violation of that Very Statute**

During the proceedings in the District Court and the Court of Appeals, and in their Petition for Review to this Court, Plaintiffs acknowledged that their rescission claims are premised on an alleged violation of Minn. Stat. § 72A.20, subd. 13. Plaintiffs attempted to circumvent *Morris* – which held that there is no private cause of action under Minn. Stat. § 72A.20 – by arguing that even though the rescission claims seek monetary relief

based on an alleged violation of Minn. Stat. § 72A.20, subd. 13, the claims are not styled as a “private cause of action” under Minn. Stat. § 72A.20, subd. 13.

The Court of Appeals rejected Plaintiffs’ contention, citing well-reasoned precedents holding that, under *Morris*, “the UCPA does not create any ‘private cause of action,’ regardless of how the claims are styled.” *Schermer*, 702 N.W.2d at 905; (PA8); *Glass Serv. Co. v. State Farm Mut. Auto. Ins. Co.*, 530 N.W.2d 867, 872 (Minn. Ct. App. 1995) (under *Morris*, a private plaintiff cannot bring a claim premised on a violation of the UCPA even if it is purportedly brought as a common law claim), *review denied* (Minn. June 29, 1995); *Olson v. Moorhead Country Club*, 568 N.W.2d 871, 873 (Minn. Ct. App. 1997) (relying on *Morris* and *Glass Serv.* to hold that an employee did not have a private cause of action for conversion where his only alleged right arose under a statute that did not provide for a private cause of action), *review denied* (Minn. Oct. 31, 1997); *Elder v. Allstate Ins. Co.*, 341 F. Supp. 2d 1095, 1100-02 (D. Minn. 2004) (citing *Morris* and the absence of a private cause of action under the UCPA to hold that a common law claim for negligence per se cannot be based on an insurer’s alleged violation of the UCPA). “Thus,” the Court of Appeals observed, “the law is settled that a litigant cannot sue under Minn. Stat. § 72A.20, subd. 13, or use an alleged violation of this statute to prove elements of a common law claim.” *Schermer*, 702 N.W.2d at 905 (PA8.) Although Plaintiffs have now relegated this argument to secondary status, *see* discussion *infra* at 26-30, it again appears in Plaintiffs’ brief to this Court.

The Court of Appeals’ holding should be affirmed. In the 1986 *Morris* decision, this Court analyzed Minn. Stat. § 72A.20 and its legislative history, and construed the

statute to give effect to the Legislature's intent. A unanimous Court held that "a private party does not have a cause of action against an insurer for a violation of the Unfair Claims Practices Act," Minn. Stat. § 72A.20. *Morris*, 386 N.W.2d at 233. During the twenty years since *Morris* was decided, the Legislature has not seen fit to change the result announced in *Morris*. In fact, in 1989, a bill that would have overruled *Morris* and created a private cause of action for violations of Minn. Stat. § 72A.20 was introduced in the Minnesota Legislature, but was never enacted. (S.R. at 275-77.) When the Legislature does "not see fit to alter the construction" this Court places on a statute, the judicial construction becomes "as much a part [of the statute] as if it had been written into it originally." *Western Union Tel. Co. v. Spaeth*, 44 N.W.2d 440, 441 (Minn. 1950); accord *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 759-60 (Minn. 2005) ("Given that the legislature took no action to alter the standard we set forth [in previous cases], our case law provides that the legislature's silence expressed its concurrence in [our previous] holdings."); *State v. Anderson*, 666 N.W.2d 696, 700 (Minn. 2003) ("We have recognized that when the legislature does not amend our construction of a statute, the court's construction stands."). As a result, this Court's holding in *Morris* that there is no private cause of action under Minn. Stat. § 72A.20 is now deemed to be part of the statute.

As the authorities cited by the Court of Appeals have recognized, the holding in *Morris* would be rendered meaningless if any plaintiff could bring a private cause of action premised on a violation of Minn. Stat. § 72A.20 as long as the claim were labeled as one for "rescission." Although Plaintiffs offer circular declarations that their

rescission claim is based on other duties,⁸ the actual basis for Plaintiffs' rescission claim is that State Farm allegedly violated Minn. Stat. § 72A.20, subd. 13. (S.R. at 178.) Thus, Plaintiffs are bringing a private cause of action based on an allegation that State Farm has violated Minn. Stat. § 72A.20, which is precisely what *Morris* precludes.

Unable to reconcile their position with *Morris*, Plaintiffs rely on a different Minnesota Supreme Court case, *Nauman v. J's Restaurants Int'l, Inc.*, 316 N.W.2d 523 (Minn. 1982), to suggest that every plaintiff has an inherent right to bring a private cause of action for rescission based on any statutory violation, without regard to the Legislature's intent to authorize such a private cause of action. As Plaintiffs point out, in *Nauman*, the Court held that a plaintiff was entitled to rescission and a refund of franchise fees where defendants failed to register the franchises in violation of Minn. Stat. § 80C.02. However, the statute at issue in *Nauman*, Minn. Stat. § 80C.17, expressly states that "[a] person who violates any provision of this chapter or any rule or order thereunder shall be liable to the franchisee or subfranchisor who may sue for damages caused thereby, *for rescission*, or other relief as the court may deem appropriate." Minn. Stat. § 80C.17, Subd. 1 (emphasis added). Thus, *Nauman* merely confirms the principle underlying *Morris* that the availability of a private cause of action for a statutory violation – including a claim for rescission – depends on whether the Legislature intended to create such a private cause of action. Minn. Stat. § 80C.17 and similar

⁸ Plaintiffs declare that it is a violation of common law to charge a rate that violates a statute, in this case, Minn. Stat. § 72A.20, subd. 13. Of course, even under this formulation, liability depends entirely on whether or not the defendant, in fact, violated Minn. Stat. § 72A.20.

statutes confirm that when the Minnesota Legislature intends to create a private cause of action for a statutory violation, including a claim for rescission, the Legislature knows how to do so.⁹ By contrast, when the Legislature has not evidenced an intent to create a private cause of action for a violation of a statute, such as Minn. Stat. § 72A.20, there is no private cause of action – whether labeled a claim for rescission or otherwise.¹⁰

Finally, Plaintiffs erroneously suggest that decisions in other jurisdictions lend credence to the contention that a plaintiff can circumvent the Legislature’s decision not to

⁹ See, e.g., Minn. Stat. § 80A.23, subd. 1 (regulation of securities) (purchaser “may sue either in equity for *rescission* upon tender of the security or at law for damages if that person no longer owns the security”) (emphasis added); Minn. Stat. § 80B.11, subd. 1 (corporate takeovers) (offeror who purchased security in violation of statute shall be liable to seller “at law or in equity” and “[i]n an action for *rescission* the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received”) (emphasis added); Minn. Stat. § 80F.17 (motor vehicle fuel franchises) (“[a]ny person aggrieved by a violation of this chapter may obtain injunctive relief, damages, *rescission*, or other relief”) (emphasis added); Minn. Stat. § 82A.19, subd. 1 (membership camping practices) (purchaser “may sue for actual damages caused thereby, for *rescission*, or other relief as the court may deem appropriate”) (emphasis added); Minn. Stat. § 45.025, subd. 8 (advertisement of interest rates) (purchaser “may sue either in equity for *rescission* upon tender of the investment product or at law for damages if the purchaser no longer owns the investment product”) (emphasis added); Minn. Stat. § 504B.211, subd. 6 (tenant's right to privacy) (“[i]f a landlord substantially violates subdivision 2, the residential tenant is entitled to a penalty which may include a rent reduction up to full *rescission* of the lease”) (emphasis added).

¹⁰ Notwithstanding Plaintiffs’ inapposite authorities, this is not a case that addresses whether a court should enforce or void pending executory obligations. Furthermore, none of the cases cited by Plaintiffs contradict the principle, reflected in *Morris*, that the courts should look to the intent of the Minnesota Legislature to determine whether the violation of a statute gives rise to a private cause of action. Notwithstanding the construction that has been given to other statutes, the Legislature did not intend to create a private cause of action for violations of Minn. Stat. § 72A.20, subd. 13, *Morris*, 386 N.W.2d at 233, and that legislative intent precludes any such private cause of action or its functional equivalent under some other label.

create a private cause of action for the violation of a statute by re-labeling a claim as one for “rescission.” In fact, the cases addressing this issue in other jurisdictions overwhelmingly reject this evasion. As the United States Court of Appeals for the Second Circuit recently confirmed, the law is clear that “[w]hen a plaintiff ‘does not possess a private right of action under’ a particular statute, and ‘does not allege any actionable wrongs independent of the requirements of the statute,’ a ‘claim[] for . . . unjust enrichment [is] properly dismissed as an effort to circumvent the legislative preclusion of private lawsuits for violation of the statute.’” *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 203 (2d Cir. 2005) (dismissing claims for, *inter alia*, breach of contract and unjust enrichment premised on allegation that cable provider violated state and federal statutes by failing to make its best winter rates available to all subscribers) (citations omitted); *accord Goldberg v. Enterprise Rent-A-Car Co.*, 14 A.D.3d 417, 417 (N.Y. App. Div. 2005) (“Plaintiffs’ claims for restitution were properly dismissed as an effort to circumvent the legislative preclusion of private lawsuits for violation of this statute.”); *McGowan v. Progressive Preferred Ins. Co.*, 618 S.E.2d 139, 147-48 (Ga. Ct. App. 2005) (plaintiffs could not circumvent law precluding private cause of action under Georgia Insurance Code by asserting tort and contract claims that were dependent upon establishing that the defendant violated the Code).

California law, upon which Plaintiffs purport to rely, (*see* Petitioners’ Brief (“Pet. Br.”) at 25-26), is not to the contrary. Thus, in the aftermath of a California Supreme Court case holding there is no private cause of action for violations of the Unfair Insurance Practices Act (“UIPA”), *Moradi-Shalal v. Fireman’s Fund Ins. Companies*, 46

Cal. 3d 287 (1988), California has consistently prohibited plaintiffs from re-labeling their claims to circumvent the California Supreme Court's holding. See *Textron Fin. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 13 Cal. Rptr. 3d 586, 593 (Cal. Ct. App. 2004) (“[P]arties cannot plead around *Moradi-Shalal's* holding by merely relabeling their cause of action as one for unfair competition.”); *Safeco Ins. Co. of Am. v. Superior Court*, 265 Cal. Rptr. 585, 587 (Cal. Ct. App. 1990) (rejecting attempt to re-label claim under UIPA as one arising under the Business and Professions Code). To permit such a practice, the California courts have recognized, would render the prohibition against a private cause of action “meaningless.”¹¹ *Textron*, 13 Cal. Rptr. 3d at 594 (quoting *Safeco*, 265 Cal. Rptr. at 587).

¹¹ The California cases cited by Plaintiffs actually confirm that whatever consequences may attach to a violation of the UIPA under California law, they cannot be “as drastic as allowing an independent cause of action,” *Neufeld v. Balboa Ins. Co.*, 101 Cal. Rptr. 2d 151, 154 (Cal. Ct. App. 2000), and the effect cannot be to subject the defendant to any “new or expanded” liability. *Spray, Gould & Bowers v. Associated Int’l Ins. Co.*, 84 Cal. Rptr. 2d 552, 558 n. 10 (Cal. Ct. App. 1999). Although irrelevant to the case at bar, these cases also hold that, under California law, if an insurer fails to comply with its statutory obligation to provide a policyholder with notice of the statute of the limitations for commencing an action over the denial of a claim, that insurer may be estopped from asserting the statute of limitations as a defense. However, none of these cases involve the issue presented here, where Plaintiffs are suing for a refund of insurance premiums premised on an alleged violation of a statute that does not allow a private cause of action.

2. **The Court Should Reject Plaintiffs' New Theory That Now Depicts Their Rescission Claim as a Vehicle to Pursue Racial Discrimination Allegations That Are Not Premised on a Violation of Minn. Stat. § 72A.20, subd. 13**

Plaintiffs' new strategy is to declare, for the first time, that their rescission claim is not premised on a violation of Minn. Stat. § 72A.20, subd. 13. Plaintiffs now argue that the true basis for their rescission claim is that the URP allegedly "violates the public policy" against "discrimination based on race," which purportedly "establishes a basis for rescission *independent of any particular legislation.*" (Pet. Br. at 19 (emphasis added). *But see* Plaintiffs' Brief to Court of Appeals (S.R. at 178) ("the Class requested that the trial court rescind the surcharge terms of their respective contracts because these terms violated Minnesota's anti-redlining law," *i.e.*, Minn. Stat. § 72A.20, subd. 13); Petition for Review (S.R. at 190) (stating legal issue as whether policyholders are entitled to rescind where the policyholders "paid a surcharge that violated Minnesota's anti-redlining statute," *i.e.* Minn. Stat. § 72A.20, subd. 13).) This tactic violates the well-established rule that an appellant is barred from asserting new positions or theories of recovery in this Court that were not presented to the lower courts. *In the Matter of the Custody of N.A.K.*, 649 N.W.2d 166, 177 n.10 (Minn. 2002) (appellant barred from raising issue on appeal because he did not raise the issue in district court or in the Court of Appeals); *see also Northwest Racquet Swim and Health Clubs, Inc. v. Deloitte & Touche*, 535 N.W.2d 612, 613 n.1 (Minn. 1995) (declining to address issues that were not raised in Petition for Review).

Although not material to the outcome of this appeal, Plaintiffs exploit this tactic as a device to repeat highly misleading statistical information about how the URP supposedly affects minorities. Nowhere do Plaintiffs inform the Court that more than 98% of the Minnesota homeowners who live in homes 40 years old or older are Caucasian, or that 99.5% of policyholders Plaintiffs believe are likely to pay a surcharge live outside of what Plaintiffs have labeled “minority communities.” (See PA119, PCA6.) Nowhere do Plaintiffs inform the Court that the Complaint includes allegations that the URP operated to the disadvantage of Minnesota residents who live in “out-state” (i.e., rural) Minnesota, an area Plaintiffs have never contended is disproportionately non-white. (See, e.g., PA14.) Nowhere do Plaintiffs disclose that when Plaintiffs brought a motion to allow or “confirm” the use of disparate impact evidence in support of their claim for racial discrimination,¹² the Court denied that motion – a ruling Plaintiffs chose not to address in their brief to the Court of Appeals. (See S.R. at 195-99.) Not surprisingly, neither the District Court nor the Court of Appeals were distracted by Plaintiffs’ misleading statistical declarations.

More importantly, in asking this Court to create a new common law rescission cause of action for racial discrimination, Plaintiffs fail to inform the Court that their new cause of action seeks the same relief they previously pursued in a failed Minnesota Human Rights Act (“MHRA”) claim for the same alleged wrong.¹³ In one of the Orders

¹² See note 15, *infra*.

¹³ See Minn. Stat. § 363A.17, subd. c (making it an unfair discriminatory practice “to refuse to contract with, or to discriminate in the basic terms, conditions, or performance

issued by the District Court on September 3, 2004, the District Court denied Plaintiffs' motion to add a racial discrimination claim under the MHRA. (S.R. at 200-08.) The District Court ruled that the motion to add the MHRA racial discrimination claim, which was not brought until two and one-half years after the case was commenced, was untimely. (*Id.* at 205.) Moreover, the District Court denied the motion as futile because the MHRA claims Plaintiffs sought to bring were barred by the Filed Rate Doctrine and, as to the vast majority of the Class, by the applicable statute of limitations.¹⁴ (*Id.* at 205-

of the contract" because of race and other protected criteria). In both the MHRA and the new rescission claim, Plaintiffs assert that the URP discriminated on the basis of race and seek recovery of the surcharges paid by members of the class.

¹⁴ Explaining its holding that the MHRA claims would be barred under the statute of limitations, the District Court stated:

Claims brought under the MHRA must be filed within one year of the discriminatory act. Minn. Stat. § 363A.28, subd. 3. If this amended complaint were to relate back to the date of the first complaint, December 6, 2002, and if the allegedly discriminatory act was charging the illegal premium, the only proper parties to this claim would be persons who were charged the allegedly illegal six percent premium after December 6, 2001. This group is in sharp contrast to the Class which is made up of those persons who paid the allegedly illegal premium between August 1997 and February 2003. If the filing of the URP and its amendment are viewed as the discriminatory act, only those policyholders who paid a surcharge within a one-year period of that event would be appropriate plaintiffs.

....

Under either of these options, the vast majority of the class is excluded by the statute of limitations.

(S.R. at 205-08.)

08.) Plaintiffs did not raise the District Court's denial of the motion to add the MHRA claims as in issue in its brief to the Court of Appeals, thereby waiving those claims.¹⁵ See, e.g., *In re Olson*, 648 N.W.2d 226, 228 (Minn. 2002) ("It is axiomatic that issues not 'argued' in the briefs are deemed waived on appeal"); *Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (issue that appellant did not argue in its briefs "must be deemed waived").

Having been precluded from pursuing MHRA racial discrimination claims under the MHRA's one year statute of limitations, Plaintiffs now ask this Court to create a new, non-statutory racial discrimination cause of action that would enable them and any other plaintiff to avoid the MHRA's statute of limitations. Not surprisingly, Plaintiffs do not cite any legal authority for the creation of such a cause of action. This Court should not

¹⁵ Plaintiffs attempted to add a MHRA claim in an effort to replace a deficient racial discrimination claim under Minn. Stat. § 325D.53, subd. 2, a statute expressly stating that it "shall **not** apply to . . . any act which is an unfair discriminatory practice under section 363A.03, subdivision 48, and for which a remedy is provided under chapter 363A [the Minnesota Human Rights Act ("MHRA")]." Minn. Stat. § 325D.53, subd. 2 (emphasis added). Leaving aside the credibility of *any* racial discrimination claim, to the extent Plaintiffs accused State Farm of charging higher rates to certain policyholders based on their race, such a claim would have been covered under the MHRA's prohibition against discrimination in the "terms, conditions or performance of [a] contract because of a person's race." Minn. Stat. § 363A.17. Thus, under the express language cited above, Plaintiffs had no cause of action under Minnesota Statute § 325D.53, subd. 2.

When State Farm moved for summary judgment on Plaintiffs' claim under Minn. Stat. § 325D.53, subd. 2, Plaintiffs were unable to rebut the above-referenced argument demonstrating that Plaintiffs had no cause of action. (S.R. at 210-11.) Instead, Plaintiffs responded by moving to amend the complaint to add the MHRA racial discrimination claim.

take the unusual step of creating a new common law claim, the sole purpose of which is to aid plaintiffs who fail to satisfy a legislatively imposed one-year limitations period and have waived their right to assert an MHRA discrimination claim.

3. The Court Should Not Create a New Cause of Action Under Minn. Stat. § 72A.20, subd. 13

As their final argument, Plaintiffs urge this Court to reverse its decision in *Morris* that “a private person does not have a cause of action for a violation of the Unfair Claims Practices Act,” Minn. Stat. § 72A.20. According to Plaintiffs, this Court should create a new private cause of action that would apply to subdivision 13 of Minn. Stat. § 72A.20, but would not apply to any other portion of Minn. Stat. § 72A.20.

Plaintiffs’ argument should be rejected for two reasons. First, in requesting a *de novo* construction of the statute, Plaintiffs ignore the principle that when the Legislature does “not see fit to alter the construction” this Court places on a statute, the judicial construction becomes “as much a part [of the statute] as if it had been written into it originally.” *Western Union*, 44 N.W.2d at 441; see discussion, *supra* at 21 (citing additional cases). In *Morris*, decided in 1986, this Court held “a private party does not have a cause of action against an insurer for a violation of the Unfair Claims Practices Act,” Minn. Stat. § 72A.20, 386 N.W.2d at 233, and the Legislature has not seen fit to change that result. As a result, this Court’s holding in *Morris* that there is no private cause of action under Minn. Stat. § 72A.20 is now deemed to be part of the statute.

Second, leaving aside the fact that the Court’s holding in *Morris* is now deemed to be part of the statute, Plaintiffs have not provided any persuasive reasons to second guess

that longstanding and unanimous holding. In addition to the careful analysis articulated in *Morris*, which will not be restated here, a review of any number of statutes confirms that when the Legislature intends to create a private cause of action, it knows how to do so. In *Morris*, the Court correctly determined that the Legislature did not evidence an intent to create a private cause of action for Minn. Stat. § 72A.20.

Plaintiffs assert that the Court in *Morris* erred in its analysis because of a statutory provision, Minn. Stat. § 65A.29, subd. 6, indicating the inapplicability of a certain immunity to actions brought under Minn. Stat. § 72A.20. However, the Court in *Morris* did not hold that insurers are immune from liability under Minn. Stat. § 72A.20.¹⁶ On the contrary, in *Morris* the Court emphasized that insurers are subject to liability in administrative enforcement actions brought by the DOC. At issue in *Morris* was the separate question as to whether the Legislature intended to create a private cause of action in addition to the administrative enforcement mechanisms explicitly provided in the statute. Based on a careful analysis, the Court concluded that no such private cause of action was created. Even if the holding in *Morris* were not now deemed to be part of the statute, the analysis of the Court remains persuasive.

Plaintiffs' proposal for the creation of a new private cause of action that would apply to subdivision 13 of Minn. Stat. § 72A.20 is properly directed to the Legislature, not the courts. *Metro. Sports Facilities Comm'n v. County of Hennepin*, 561 N.W.2d

¹⁶ Moreover, the immunity cited by Plaintiffs is irrelevant for the additional reason that it relates only to actions, such as actions for defamation, arising from statements made in connection with the declination, nonrenewal or cancellation of policies. No such actions were at issue in *Morris* or in this case.

513, 516-17 (Minn. 1997) (this Court cannot “read into the statute” a new provision that “the legislature ‘purposely omits or inadvertently overlooks.’”); *see also In re: Welfare of J.M., J.M., and M.M.*, 574 N.W.2d 717, 723 (Minn. 1998).

B. THE COURT OF APPEALS CORRECTLY RULED THAT THE FILED RATE DOCTRINE’S PROHIBITION AGAINST RETROACTIVE RATEMAKING BARS PLAINTIFFS’ CLAIMS

1. The Filed Rate Doctrine Is Longstanding And Has Been Consistently Applied To Bar Claims Seeking To Retroactively Re-Set Rates Filed With And Approved By A Regulatory Agency

Notwithstanding the DOC’s review and ultimate approval of the URP, Plaintiffs now seek retroactive relief in the form of refunds, spanning approximately five years, measured as the difference between State Farm’s filed rates and what the rates allegedly would have been had the DOC not approved State Farm’s rates. The Filed Rate Doctrine, however, bars the Court from turning back the clock and awarding retroactive damages based on second-guessing the DOC’s decision to accept State Farm’s URP filing.

Contrary to the suggestions in Plaintiffs’ brief, the Filed Rate Doctrine is a longstanding and consistently applied bar to claims that challenge the reasonableness or legality of rates filed with and approved by a federal or state regulatory agency. The Filed Rate Doctrine results from a long line of U.S. Supreme Court cases that forbid “a regulated entity [from charging] rates for its services other than those properly filed with the appropriate federal regulatory authority.” *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 (1981). The seminal U.S. Supreme Court decision is *Keogh v. Chicago & N.W. Ry. Co.*, 260 U.S. 156, 163-64 (1922), in which Justice Brandeis, writing for a unanimous Court, denied relief because it would require the judiciary to “reconstitut[e]

the whole rate structure,” which the regulatory body had approved. *See also Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 128 (1990) (“*unless and until suspended or set aside*, this rate is made, for all purposes, the legal rate”) (emphasis in original, quoting *Keogh, supra*); *Montana-Dakota Utils. Co. v. N.W. Public Serv. Co.*, 341 U.S. 246, 251 (1951) (courts should not “determine what the reasonable rates during the past should have been”).

Acceptance of the doctrine’s basic applicability is now “near universal.” *Am. Bankers’ Ins. Co. of Fla. v. Wells*, 819 So. 2d 1196, 1205 (Miss. 2001). (For insurance cases, *see Schermer*, 702 N.W.2d at 907; (PA9); for non-insurance cases, *see, e.g., Marcus v. AT&T Corp.*, 138 F.3d 46, 56 (2d Cir. 1998); *Sun City Taxpayers’ Ass’n v. Citizens Utils. Co.*, 45 F.3d 58, 62 (2d Cir. 1995); *Enron Power Marketing, Inc. v. Nevada Power Co.*, No. 01-16034 (AJG), 2004 U.S. Dist. LEXIS 25999, at *7-8 (S.D.N.Y. Dec. 28, 2004) (S.R. at 241-50); *Miranda v. Michigan*, 168 F. Supp. 2d 685, 692 (E.D. Mich. 2001); *County of Suffolk v. Long Island Power Auth.*, 154 F. Supp. 2d 380, 386 (E.D.N.Y. 2000); *Daleure v. Kentucky*, 119 F. Supp. 2d 683, 690 (W.D. Ky. 2000); *Goldwasser v. Ameritech Corp.*, No. 97 C 6788, 1998 U.S. Dist. LEXIS 1463, at *18-19 (N.D. Ill. Feb.4, 1998) (S.R. at 251-62); *Gallivan v. AT&T Corp.*, 124 Cal. App. 4th 1377, 1386-88 (2004); *Weinberg v. Sprint Corp.*, 801 A.2d 281, 287 (N.J. 2002). The Minnesota Court of Appeals has recognized the applicability of the Filed Rate Doctrine under state law. *See, e.g., G & T Trucking Co. v. GFI Am., Inc.*, 535 N.W.2d 658 (Minn. Ct. App. 1995) (Filed Rate Doctrine requires regulated entity to prove its filed rate in dispute over charges); *see also H.J. Inc. v. N.W. Bell Tel. Co.*, 954 F.2d 485, 494 (8th Cir.

1992) (applying Filed Rate Doctrine to Minnesota phone rates); *Hilling v. N. States Power, Co.*, No. 3-90 CIV 418, 1990 WL 597044, at *1-2 (D. Minn. Dec. 12, 1990) (applying Filed Rate Doctrine to Minnesota public utility scheme) (S.R. 263-65).¹⁷

The Filed Rate Doctrine ensures rate predictability and allows all affected to rely on the filed rates. In *Arkansas Louisiana Gas Co.*, 453 U.S. at 578-79, the Supreme Court emphasized that courts lack the authority to retroactively impose a different rate than the rate filed and approved by the agency.¹⁸ The doctrine thus guards against the inherent inequity of an “Orwellian world” in which regulated entities must “go about their business in constant jeopardy of being forced to refund enormous sums of money, even though they complied scrupulously with their filed rates.” *AT&T Co. v. FCC*, 836 F.2d 1386, 1394 (D.C. Cir. 1988) (Starr, J., concurring); *see also Daleure*, 119 F. Supp. 2d at 689 (“Imposing legal liability for a rate which the regulatory authority has authorized seems inherently unfair.”).¹⁹

¹⁷ The Filed Rate Doctrine applies to both state and federal claims, *see, e.g., Wegoland*, 27 F.3d at 20, and regardless of whether the challenged rates are regulated by state or federal agencies, *see, e.g., H.J. Inc.*, 954 F.2d at 494 (“no reason to distinguish between rates promulgated by state and federal agencies”).

¹⁸ The Supreme Court in *Arkansas Louisiana Gas Co.* observed that the Federal Energy Regulatory Commission also “has no power to alter a rate retroactively.” 453 U.S. at 578. Likewise, under Minn. Stat. § 70A.11, subd. 1, the DOC can order refunds only from the date a contested case was commenced.

¹⁹ Similarly, the Filed Rate Doctrine protects against discrimination in rates, ensuring that the regulated entity does not selectively vary its charges depending on the customer. *AT&T Co. v. Cent. Office Tel., Inc.*, 524 U.S. 214, 226 (1998); *G & T Trucking Co.*, 535 N.W.2d at 658.

The Minnesota Legislature has incorporated the same bar against retroactive ratemaking into Minnesota law. Minn. Stat. § 70A.11 requires that the DOC commence a contested case proceeding before a filed rate may be subject to retroactive refunds. The statute permits refunds computed only from “the commencement date of the contested case hearing on the rate.” *Id.* Consistent with the policies underlying the Filed Rate Doctrine, this statute guarantees that an insurer will have (a) advance notice that the DOC has concerns about a previously filed rate, and (b) the option of making a filing suspending or discontinuing the rate to avoid any risk of retroactive refunds.

Another important purpose of the Filed Rate Doctrine is the preservation of the regulatory agency’s authority to determine the reasonableness of an entity’s filed rates. As the Second Circuit Court of Appeals has stated in an opinion cited by numerous courts, including the District Court:

As compared with the expertise of regulating agencies, courts do not approach the same level of institutional competence to ascertain reasonable rates Courts are simply ill-suited to systematically second guess the regulators’ decisions and overlay their own resolution.

Wegoland, 27 F.3d at 21; *see also H.J. Inc.*, 954 F.2d at 488 (Filed Rate Doctrine is “essential” to preserving “the regulating agency’s authority to determine the reasonableness of rates”); *Taffet v. S. Co.*, 967 F.2d 1483, 1491-92 (11th Cir. 1992) (en banc).

2. The Policies Underlying the Filed Rate Doctrine Are Particularly Compelling in This Case

a. Retroactive Ratemaking

As set forth above, State Farm relied upon the DOC's instructions in submitting, filing, revising and collecting its rates under the URP. Pursuant to Minn. Stat. § 70A.06, subd. 1, the filed rates as set forth in the URP were the only rates State Farm was permitted to charge. Plaintiffs' lawsuit would now subject State Farm to claims for retroactive damages for charging the rate that was filed and approved for use in Minnesota from 1997 through 2002.

As the Court of Appeals observed, applying the Filed Rate Doctrine's bar against retroactive ratemaking to the facts of this case "comports with the policies" underlying the doctrine:

Here, State Farm complied with Minnesota law by filing its rates with the DOC and thus should not now be subject to retroactive rate revisions when it satisfied the regulatory agency – the DOC. Furthermore, it was only after the DOC completed its review and required changes to comply with the statute at issue that the DOC accepted the URP for use in Minnesota. Allowing the class to challenge retroactively the reasonableness of the DOC-approved URP would undermine Minnesota's statutory process.

Schermer, 702 N.W.2d at 907; (PA9.)

The District Court similarly recognized that permitting retroactive refunds would be inconsistent with the Minnesota Legislature's bar against retroactive ratemaking as set forth in Minn. Stat. § 70A.11. (See PA47-48.) As previously noted, the statute limits refunds to those computed from "the commencement date of the contested case" hearing

on the rate. (*Id.*;) Minn. Stat. § 70A.11. As the District Court observed, this structure “gives the insurer notice that its accepted rates are being challenged and provides the opportunity to either discontinue them or proceed at its peril.” (PA47-48.) In ruling that Plaintiffs could not obtain retroactive refunds for the period from 1997-2002, the District Court properly “defer[red] to the Legislature’s determination” as set forth in Minn. Stat. § 70A.11. (PA47.)

Plaintiffs inexplicably contend that the December 2002 Consent Order, in which State Farm and Commissioner Bernstein agreed to resolve the dispute over the URP without any admissions or findings, somehow extinguished the bar against retroactive refunds as to the five year period *before* the Consent Order was entered. Plaintiffs also reveal a misunderstanding of the bar against retroactive ratemaking when they suggest that Commissioner Bernstein decided to settle – rather than commence proceedings to compel State Farm to reimburse policyholders – because he believed policyholders could seek reimbursement in court. Plaintiffs’ implication is that policyholders should have the same rights to seek reimbursement as the Commerce Commissioner, who supposedly *elected* not to seek refunds. In fact, under Minnesota Statute § 70A.11, the Commerce Commissioner cannot seek refunds for the period before the commencement of an action because of the principle that regulated entities are entitled to *prior notice* that continuation of rates may give rise to retroactive refunds. Even if policyholders could somehow step into the shoes of the Commerce Commissioner (which they cannot), Minnesota law would bar them from seeking retroactive refunds of rates previously approved by the DOC.

Finally, Plaintiffs suggest that the policy against retroactive refunds found in Minn. Stat. § 70A.11 is irrelevant because Plaintiffs are suing under Section 72A rather than Section 70A. (Pet. Br. at 39 n.20.) This argument contradicts the position Plaintiffs took before the District Court, where Plaintiffs asserted that it is Section 70A that provides the legal basis for refunds as to any rate alleged to be illegal. (See Transcript of July 1, 2004 Hearing (S.R. at 214) (“If [rates] are illegal, the statute says they have to be returned with interest. That’s in the 70A statute.”).)

In any event, Plaintiffs’ argument as to the purported irrelevance of Minn. Stat. § 70A.11 is entirely without merit. Section 70A sets forth the Commerce Commissioner’s authority to obtain refunds for any filed rates that are “unfairly discriminatory,” and it is the only section that provides for refunds of filed rates. The DOC’s enforcement authority under Section 70A clearly encompasses allegations of the sort at issue in this lawsuit. In fact, in the Consent Order that was the impetus for this lawsuit – in which Commissioner Bernstein listed the charges he claimed to be prepared to bring with respect to the URP – the DOC included the portion of Section 70A that prohibits unfairly discriminatory rates (Minn. Stat. § 70A.04) along with Minn. Stat. § 72A.20, subd. 13. (PA70.) Thus, to the extent the Minnesota Legislature would permit any claim for refunds of filed rates, Minn. Stat. § 70A.11 reflects the Legislature’s view regarding the impermissibility of retroactive refunds.

b. Second-Guessing Ratemaking Decisions

As the Court of Appeals recognized, the application of the Filed Rate Doctrine to this case also comports with another policy underlying the Filed Rate Doctrine – to

preserve the administrative agency's authority over ratemaking. Plaintiffs' litigation strategy at the District Court relied heavily on attempting to discredit the actuarial judgments of the actuaries at the DOC. For example, as noted earlier, one of the actuaries at the DOC concluded that State Farm's URP reflected "standard" actuarial practices:

The methodology that State Farm has used to establish age-of-system credits/debits is consistent with standard actuarial practices and is sufficient to actuarially justify the credits/debits. Virtually every credit/debit system in MN in every line of insurance for every insurance company is supported in this way.

(PA148 (emphasis added).)

In response, Plaintiffs hired their own actuarial expert, who presented testimony to the District Court purporting to construe State Farm's actuarial data. Contradicting the DOC's actuaries, Plaintiffs' actuarial expert opined, among other things, that State Farm's premium swings were too large to be actuarially justified. (PA116-17 (opining that State Farm's claims data did not support the premium swings in the 1997 or 1998 URPs).) State Farm then served expert discovery disclosures identifying its own actuarial expert, a former Senior Casualty Actuary for a state insurance regulator, who disagreed with Plaintiffs' actuary. State Farm's actuarial expert confirmed the conclusion reached by the actuaries at the DOC that the exhibit submitted by State Farm in 1997 in support of the URP was an appropriate analysis, consistent with standard actuarial practice, that supported the charges and discounts under the URP. (S.R. at 218-25.)

Confronted with what the District Court aptly described as “complex actuarial questions” (PA50), the Court of Appeals was correct in concluding that application of the Filed Rate Doctrine would comport with the policy against second-guessing ratemaking decisions.

3. **Contrary to Plaintiffs’ Repeated Assertions, the Court of Appeals Did Not Hold that Courts Are Without Authority to Construe Minn. Stat. § 72A.20**

Neither the Court of Appeals nor the District Court held that courts are without authority to construe Minn. Stat. § 72A.20. For example, if the DOC were to commence an action against an insurer charging that a rate was in violation of Minn. Stat. § 72A.20, subd.13, and the insurer were to dispute the DOC’s construction of the statute, then the courts would have the final word in construing the statute. *Cf. In re License of Kane*, 473 N.W.2d 869, 876-77 (Minn. Ct. App. 1991) (construing meaning of Minn. Stat. § 72A.20 in reviewing administrative enforcement decision). The Court of Appeals Order barring Plaintiffs’ claims merely applied the well-recognized principle that rates filed with and approved by the DOC cannot be subject to retroactive rate revision in the form of retroactive refunds.

4. **Plaintiffs’ Claimed Exceptions to the Filed Rate Doctrine Are Not Recognized**

Throughout the litigation, Plaintiffs have tried to circumvent the Filed Rate Doctrine by invoking a series of non-existent exceptions.

a. **The Supposed Exception for Cases that “Can Be Resolved by Interpreting and Implementing Statutes”**

Plaintiffs erroneously suggest there is an exception to the Filed Rate Doctrine if the case “can be resolved by interpreting and implementing statutes.” This contention is essentially the same as Plaintiffs’ declaration before the District Court that the Filed Rate Doctrine does not bar claims that challenge the “legality” of rates as distinguished from the “reasonableness” of rates.

In fact, it is uniform black letter law that “[t]he filed rate doctrine bars suits that challenge as unreasonable *or unlawful*” the rates charged by a regulated entity. *County of Suffolk*, 154 F. Supp. 2d at 385 (emphasis added); *accord, Stauffer v. Bell Atlantic*, No. 1:CV-96-1432, 1998 U.S. Dist. LEXIS 22654, at *12 (M.D. Penn. Dec. 16, 1998) (“The ‘filed rate’ doctrine also bars a challenge to the reasonableness *or legality* of [defendant’s] rates.”) (emphasis added) (S.R. at 266-74); *see also* Minn. Stat. § 70A.11 (Minnesota’s statutory bar against retroactive refunds without prior notice of charges applies without regard to the basis upon which the rate is challenged). Under the Filed Rate Doctrine, a filed rate is “unassailable” in *any* lawsuit brought by ratepayers for retroactive refunds. *Wegoland*, 27 F.3d at 18 (emphasis added). Moreover, the doctrine applies with full force to complaints challenging the legality of components of an insurer’s rate structure other than the base premium. *See, e.g., Allen v. State Farm Fire*

and Cas. Co., 59 F. Supp. 2d 1217, 1229 (S.D. Ala. 1999). The cases cited by Plaintiffs do not provide any support for the exception Plaintiffs seek to create.²⁰

Indeed, making the applicability of the Filed Rate Doctrine turn on the distinction between challenges to “legality” and “reasonableness” as urged by Plaintiffs (and rejected by the courts) would be illogical, arbitrary and impossible to administer. For example, throughout this case, Plaintiffs have emphasized that this is an actuarial dispute that “turns on whether State Farm had an actuarial basis for creating and implementing the URP in Minnesota.” (S.R. at 229; *see also* PA11 (describing alleged misconduct as

²⁰ The principal authority cited by Plaintiffs, *Edge v. State Farm Mut. Auto. Ins. Co.*, 623 S.E.2d 387 (S.C. 2005), did not recognize any such exception. In *Edge*, which adopted the Filed Rate Doctrine, two drivers claimed that they were charged the wrong rate under a contract and statute that established higher rates for drivers responsible for accidents. The dissenting judge believed that it was unnecessary to address the Filed Rate Doctrine because, in [his] view, the plaintiffs’ claims could have been resolved by looking at the criteria set forth in the statute to see which rate applied to the plaintiffs based on their driving record. In the footnote cited by Plaintiffs, the majority merely disagreed that the case could be resolved on that basis.

Two of the other cases cited by Plaintiffs stand for the unremarkable proposition that a rate is not considered to be an enforceable “filed rate” for purposes of the Filed Rate Doctrine if it is not filed in accordance with the applicable procedural requirements or if the filing does not adequately set forth the information necessary to discern the filing entity’s rates. *Atlantis Express, Inc. v. Associated Wholesale Grocers, Inc.*, 989 F.2d 281, 283-84 (8th Cir. 1993) (filing error rendered tariff ineffective and incomplete); *In re Mitchell Trucking Co., Inc.*, 821 F. Supp. 32, 34 (D. Me. 1993) (filing error rendered tariff ineffective).

Finally, Plaintiffs cite *Telco Comm. Group, Inc. v. Race Rock of Orlando, L.L.C.*, 57 F. Supp. 2d 340 (E.D. Va. 1999), in which the district court enforced a federal regulation that caps liability for the unauthorized use of credit cards. Unlike filed rate cases, the case did not involve any challenge to the card issuer’s rates or present any claim for damages based on the difference between rates approved by a regulatory agency and the rates that allegedly should have been approved.

charging higher premiums for older homes “without actuarial support”).) Plaintiffs now go to great lengths to convince the Court that their claims do not involve any “actuarial dispute” because of a concern that such a characterization would suggest that Plaintiffs are challenging “reasonableness.” Indeed, Plaintiffs even try to distance themselves from their oft-repeated acknowledgement that their claim attacks State Farm’s “rates” for fear that such an acknowledgement would undermine their illusory distinction.²¹ Such word games do not have any bearing on the applicability of the Filed Rate Doctrine.

b. The Supposed “Administrative Relief” Prerequisite

The law is clear that the availability of what persons other than the Legislature might deem to be “adequate” administrative relief “has never been a prerequisite to applying the filed rate doctrine.” *Wegoland*, 806 F. Supp. at 1120 (citing *Arkansas Louisiana Gas Co.*, 453 U.S. at 584, and *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 417-24 (1986)), *aff’d*, 27 F.3d 17 (2d Cir. 1994); *accord Daleure*, 119 F. Supp. 2d at 688; *N.C. Steel, Inc. v. Nat’l Counsel on Compensation Ins.*, 496 S.E.2d 369, 373 (N.C. 1998).

²¹ Compare Pet. Br. at 4 (“[t]he URP was not a rate”) with, e.g., S.R. at 234 (“State Farm revised its proposed URP plan such that the *rates* were determined exclusively by the age of an electrical system.”) (emphasis added); S.R. at 237 (“State Farm’s *rates* were based on the age of the home”) (emphasis added) and S.R. at 238-39 (17 (referring to “the legality of [State Farm’s URP] *rate*”) (emphasis added).

Moreover, if Plaintiffs were to take the position that this case does not arise from State Farm’s allegedly improper rates, then the theory of Plaintiffs’ entire case – State Farm’s alleged violation of Minn. Stat. § 72A.20, subd. 13 – would fall apart. That statute, on its face, applies only where an insurer charges “differential rates” based solely on the age of a home.

Furthermore, notwithstanding the commentary offered by amici Attorney General Hatch, who has included hypothetical illustrations that do not bear any resemblance to this case, there is nothing “perverse” about the system of administrative enforcement created by the Legislature. (See Brief of Amici Attorney General at 8 (suggesting that consequences of applying Filed Rate Doctrine to insurance could be “perverse”).) As the Court of Appeals observed, the Minnesota Legislature has given the DOC a broad range of enforcement powers and remedies to address alleged violations by insurers. *Schermer*, 702 N.W.2d at 903-04; (PA6-7) (identifying powers and remedies available to DOC.) These enforcement powers include the power to order refunds, impose penalties, and even bar an insurer from doing business in Minnesota by revoking its license. Any concerns about the Legislature’s judgment in enacting this “comprehensive scheme of administrative enforcement” should be addressed to the Legislature.

c. The Supposed Exception for Cases Where “A Regulator’s Authority Is Not Exclusive”

Plaintiffs declare, without citing any authority, that “where a regulator’s authority is not exclusive, the Filed Rate Doctrine should not apply.” (Pet. Br. at 42.) There is no legal support for such an exception to the Filed Rate Doctrine. The Filed Rate Doctrine’s bar against retroactive refunds of filed rates reflects a fundamental policy, *see* discussion *supra* at 36-38, that is unaffected by whether a regulator’s enforcement powers are exclusive.

d. The Supposed “File and Use” Exception

The Minnesota Trial Lawyers Association (“MTLA”) argue for a “file and use” exception that was proposed by Plaintiffs at the District Court, where it was properly rejected. The District Court correctly held that the creation of such a file and use exception would violate well-established law as set forth in *Square D*, 476 U.S. 409, and its progeny. (See PA46-48.) The District Court Order also noted that the premise underlying a file and use exception – that the rate at issue becomes effective without any administrative oversight – would not apply to this case because the DOC reviewed the URP for compliance with Minn. Stat. § 72A.20, subd. 13 and refused to accept the URP until State Farm made a series of revisions mandated by the DOC to comply with the statute.²²

5. Plaintiffs’ New Contention That the Filed Rate Doctrine Violates the Minnesota Constitution Is Without Merit

Plaintiffs argue, for the first time, that the Filed Rate Doctrine conflicts with the remedies clause under Article I, Section 8 of the Minnesota Constitution. This argument was never made to the District Court, and was made only by Amici MTLA at the Court of Appeals. Furthermore, Plaintiffs did not include the argument in their Petition for Review. Because Plaintiffs failed to raise this constitutional issue at the trial court, they

²² Although Plaintiffs have not renewed the argument that the Filed Rate Doctrine does not apply to discriminatory practices, which was properly rejected by the Court of Appeals, *Schermer*, 702, N.W.2d at 907, Plaintiffs have again referred to two inapposite cases they previously cited in support of such an exception: *Dehoyos v. Allstate Corp.*, 345 F.3d 290 (5th Cir. 2003); *Carnegie et. al. v. Mut. Sav. Life Ins. Co.*, 2002 U.S. Dist. LEXIS 21396 (N.D. Ala. 2002). As the Court of Appeals observed, *Dehoyos* does not address the Filed Rate Doctrine, *Schermer*, 702 N.W.2d at 907 (PA10), and neither does *Carnegie*.

are precluded from doing so in this Court. *In the Matter of the Welfare of C.L.L.*, 310 N.W.2d 555, 557 (Minn. 1981) (“The appellant cannot now for the first time raise constitutional issues that were not raised in the trial court.”).

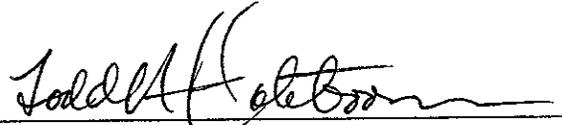
Apart from the bar resulting from Plaintiffs’ failure to raise the issue below, Plaintiffs’ constitutional argument is without merit. “The Remedies Clause does not guarantee redress for every wrong.” *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 496-97 (Minn. 1997). Instead, it merely “enjoins the legislature from eliminating those remedies that have *vested at common law* without a legitimate legislative purpose.” *Id.* (emphasis in original). Because Plaintiffs’ claims are premised on alleged violations of obligations created *by the Legislature* in a *statute*, Minn. Stat. § 72A.20, subd. 13, the Remedies Clause is inapplicable. Furthermore, although amici MTLA also invoke Article I, Section 4, regarding the right to a jury trial, that provision is inapplicable for the same reason. *Tyroll v. Private Label Chemicals, Inc.*, 505 N.W.2d 54, 57 (Minn. 1993).

IV. RELIEF SOUGHT BY STATE FARM

State Farm requests that the Court affirm summary judgment in State Farm’s favor, and deny Plaintiffs’ request for a remand of the rescission claims, on either or both of the grounds cited by the Court of Appeals.²³

²³ If, contrary to State Farm’s position, the Court were to reverse, the case should be remanded to the Court of Appeals for a ruling on State Farm’s alternative argument that summary judgment should be granted because the URP did not violate Minn. Stat. § 72A.20, subd. 13. *Mullins v. Churchill*, 616 N.W.2d 764, 770 (Minn. Ct. App. 2000) (summary judgment should be affirmed if it can be sustained on any grounds, not just grounds relied upon by the district court).

Dated: February 14, 2006



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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minnesota Rule of Civil Appellate Procedure 132.01, subs. 1 and 3, for a brief produced with a 13 point proportional font, Times New Roman. The brief is printed on 8 ½ by 11 inch paper with written matter not exceeding 6 ½ by 9 ½ inches. The length of the brief is 13,248 words, as determined by the word counter of the word processing software, Microsoft Word 2003, which was used to prepare the brief.

Dated: February 14, 2006



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