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STATE OF MICHIGAN

IN THE SUPREME COURT

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellee,

v.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant

_____/

Supreme Court No. 165537

Court of Appeals No. 358170

McComb County Circuit Court No. 20-001710-NF

C-SPINE ORTHOPEDICS, PLLC,,

Plaintiff-Appellee,

v.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant

Supreme Court No. 165538

Court of Appeals No. 358171

McComb County Circuit Court No. 20-000386-NF

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BRIEF AMICUS CURIAE OF THE COALITION PROTECTING AUTO NO-FAULT ADOPTING THE POSITION OF APPELLEE C-SPINE

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

More commonly known as CPAN, the Coalition Protecting Auto No-Fault was founded in 2003 by 26 professional associations to: (1) advance their strongly held belief that it was in the public interest to preserve Michigan's model No-Fault insurance system; and (2) ensure that the auto insurance industry kept the promise made to Michigan citizens when the No-Fault Act was passed.

Originally, CPAN membership consisted of 11 consumer groups and 15 major medical groups, representing constituencies with widely divergent political views. Despite their differences, these associations united behind the common objective of protecting the rights of no-fault patients and providers. In 2009, CPAN opened membership to the general public and now includes consumers, individual professionals, and private businesses, as well as professional organizations.

The members of CPAN now number over 1,000 and include the Michigan Association for Justice, Michigan State Medical Society, Michigan Osteopathic Association, Michigan Association of Chiropractors, Eisenhower Center, Michigan Brain Injury Provider Council, Michigan Dental Association, Michigan Home Care and Hospice Association, Michigan Rehabilitation Association, Spectrum Health System, Michigan Assisted Living Association, Michigan Orthotics, and Prosthetics Association, Brain Injury Association of Michigan, Mary Free Bed Rehabilitation Hospital, ATPA

[1] Pursuant to MCR 7.212(H)(4), no counsel for any party in this case authored this brief in whole or in part or contributed money to fund the preparation or submission of this brief.

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Michigan, Michigan Protection and Advocacy, Michigan Paralyzed Veterans of America, Michigan Disability Rights Coalition, Peckham, NeuroRestorative of Michigan, Special Tree, Origami Rehabilitation, PharmaScript, Hope Network Neuro Rehabilitation, Lighthouse Neuro Rehabilitation, Rehab Without Walls, Siporin & Associates, The Recovery Project, and other stakeholders, individuals, accident survivors, family members, and care providers. CPAN pursues its mission on all fronts, including public education (town halls, roundtable events, seminars, and information resources), working with the Legislature, monitoring regulatory activity, and advocating the views of its members in our appellate courts. CPAN has appeared as amicus curiae in approximately 40 appellate cases addressing a variety of No-Fault issues vital to its members. See https://protectnofault.org/legal-efforts.

This Court's decision in this case is of great importance to CPAN because in deciding this case, it will define the nature and scope of a claimant's right to legally pursue a claim for no-fault benefits when that claimant has also assigned its right to payment of those benefits to another entity. Oftentimes, an entity that obtains such an assignment only has a limited partial interest in the claimant's overall claim. Consequently, that entity has no incentive to pursue any portions of the overall claim that the entity does not have a financial interest in. It is therefore important that in rendering a decision in this case, this Court recognizes that: (1) a claimant who assigns his or her right to PIP benefits to another entity retains a continued right to bring his or her own action to compel payment of benefits; and/or (2) such a claimant further has the right to

intervene in a pending action brought by an assignee to protect and pursue any remaining interests of the assignor claimant.

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INTRODUCTION

This Brief is being filed on behalf of the **Coalition Protecting Auto No-Fault (CPAN)** pursuant to this Court's September 13, 2023 Order in which the Court invited CPAN and other interested organizations to file briefs amicus curiae on the issue of *"whether a plaintiff has standing and is a real party in interest if, before filing a cause of action, it had assigned its rights to that cause of action to third parties but, after filing the cause of action, the third parties assigned those rights back to it."*

With regard to this issue, CPAN concurs with the position taken by Appellee C-Spine that an assignor of PIP benefit rights remains a real party in interest and therefore has standing to maintain an action for PIP benefits despite also assigning his or her right to those benefits to another entity. A statement of CPAN's concurrence with this position is set forth in Argument I below.

Additionally, it is CPAN's belief that while the issues in this case are being decided in the context of a counter-assignment by a provider to a factoring company, the holdings and rulings rendered by this Court in this case will likely have a direct effect on the rights of patients who assign the right to receive PIP-benefits to providers in exchange for post-accident medical treatment. As will be discussed in Argument II below, a recognition by this Court that such patients retain standing to pursue their own action for PIP benefits (and/or have the right to intervene in a current action) is critical to ensuring that their right to PIP benefits is adequately protected.

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LAW AND ARGUMENT

I. CPAN concurs in the position of Appellee C-Spine that an assignor of PIP benefit rights remains a real party in interest and therefore has the concurrent right to maintain an action for those PIP benefits.

In its November 14, 2023 Supplemental brief, Appellee C-spine has taken the position that assigning of the right to no-fault PIP benefits that are owed for medical treatment does not divest the assignor of the right to those benefits, and it does not divest the assignor of its status as a real-party-in-interest in a legal action that has been brought to compel payment of those PIP benefits. This position is set forth in Argument II of C-Spine's Supplemental. See 111/14/2023 Supplemental Brief of C=Spine, at pp, 14-16), relying on MCL 600.2041; MCR 2.202(B); *George Poy v. Allan*, 247 Mich. 385, 388; 225 N.W. 532 (1929); and *Rite-Way Refuse Disposal, Inc v. Vanderploeg*, 161 Mich App 274, 278; 409 N.W.2d 804 (1987). CPAN concurs in that position for the reasons stated therein with the exception of C-Spine's conclusions regarding the one-year-back rule. Specifically, on page 16 of its supplemental Brief, C-Spine states:

> *In this case, joinder is unnecessary and ultimately inappropriate for any factoring company, given the instruction above that joinder is only necessary where a judgment would not serve as a complete adjudication of the issues asserted or possibly asserted against a defendant. Here, all purported transfers of PIP benefits were executed more than a year ago. To the extent that the factoring companies ever had any interest, it has since extinguished pursuant to MCL 500.3145.*[2]

CPAN takes no position for purposes of this appeal on whether the one-year-back rule will operate in the manner that C-Spine concludes above. CPAN otherwise concurs with

[2] See C-Spine's Supplemental Brief, at 16.

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the arguments and conclusions contained in Argument II of C-Spine's supplemental brief in all other respects.

II. A recognition by this Court that assignors of PIP benefit claims retain standing to pursue their own actions to compel payment of PIP benefits is critical to adequately protecting the rights of injured patients.

As Appellee C-Spine has pointed out in its 11/14/2023 Supplemental Brief, *"[w]hile this action involves unchallenged assignments by medical providers to "medical factoring companies . . . the outcome will necessarily impact the dynamic of injured person assignments to provider claimants as well."* (Appellee C-Spine's Supplemental Brief, p 4). This being the case, a recognition by this Court that an assignor of PIP benefit rights retains standing to pursue his or her own cause of action for assigned PIP benefits is critical to protecting the legal rights of injured auto accident victims.

Generally, no-fault PIP benefit actions brought by medical provider assignees involve disputes over whether that provider is entitled to PIP benefits for medical services rendered to the assignor. The PIP benefits at stake are generally limited to only those benefits that are payable for the underlying medical services at issue. The provider's right to payment often depends on whether the medical treatment was reasonably necessary for accident-related injuries, or on whether the amount charged is reasonable.

As C-Spine has pointed out in its 11/14/2023 supplemental brief, however, it is common that patients remain legally obligated to pay for the subject medical services in the event that the provider is not successful in obtaining no-fault PIP benefits for those

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services. This often occurs when the provider does not have a sufficient enough of an interest to vigorously pursue the patient's entire claim. In such situations, the only way for the patient to enforce his or her right to PIP benefits is to take legal action against the non-paying no-fault insurer on his or her own. If an assignor patient lacks standing to do so, such patients will have no choice but to pay for the medical services themselves.

In many cases, injured accident victims are unable to work and have a limited ability to pay, if any. This puts medical providers in the unfortunate position of deciding whether to pursue collections efforts against the patient and/or cut off the patient from continuing to receive the subject medical treatment. Needless to say, the foregoing situation is severely detrimental to the provider-patient relationship and threatens the patient's ability to receive treatment.

Placing patients and providers in such a perilous position is especially troubling when it is considered that, in many cases, the patient is in a better position to legally enforce the no-fault insurer's obligation to pay the PIP benefits for the medical treatment at issue. For example, this often occurs in cases where a no-fault insurer refuses to pay benefits altogether after concluding that the patient is ineligible to receive benefits.[3] In those types of cases, an assignee provider must litigate the entire issue of entitlement in order to obtain PIP benefits for the medical treatment at issue—which can often require

[3] This often occurs in cases involving questions of benefit disqualification under the provisions of MCL 500.3113(b), or in cases where an insurer concludes that the patient is barred from receiving benefits under the intentional injury exclusion of MCL 500.3105(4).

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years of litigation and extensive, costly discovery. All too often, an individual provider does not have a sufficient enough of a financial interest to adequately litigate the claim.

In many such cases, however, the patient has already been forced into taking formal legal action against the insurer to establish his or her right of entitlement for purposes of obtaining any other PIP benefits that the patient may be entitled to (i.e., such as work loss benefits, home modification benefits, or long term attendant care benefits). Such patients have much more at stake and have a substantial incentive to vigorously litigate the issue of entitlement. A recognition that assignor patients have continued standing to pursue any claims for benefits that have also been assigned to others will ensure that the patient is able to fully protect his or her right to PIP benefits that can also be claimed by a medical provider pursuant to a valid assignment.

Conversely, should this Court not recognize a patient's continued right of standing, it will permit the absurd situation where an injured accident victim is successful in establishing his or her entitlement to PIP benefits but still has no legal right to force an insurer to pay PIP benefits for allowable medical expenses incurred for treatment rendered by medical provider assignees.

Moreover, because the patient remains liable for charges incurred for those services, the patient gets stuck paying the provider's charges—***even though there is no longer a question that they should have been paid by the no-fault insurer.*** Such a situation results in what is clearly an unconscionable windfall for the no-fault insurer that is obtained at the unintended expense of the injured claimant.

CONCLUSION AND REQUEST FOR RELIEF

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WHEREFORE, for the foregoing reasons, CPAN hereby requests that in rendering its decision on the accrual issue raised in this appeal, this Court issues a decision recognizing that patients retain the right to legally enforce their right to payment of no-fault benefits for medical services that have been rendered by a provider who has obtained an assignment of the right to also do so.

Respectfully submitted,

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