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STATE OF MICHIGAN
IN THE SUPREME COURT

C-SPINE ORTHOPEDICS, PLLC,
as Assignee of Sandra Cruz,

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court Docket No.

Court of Appeals Case No. 358171
Lower Court: Macomb County Circuit Court
Lower Court Case No. 20-000386-NF
Lower Court Judge: Jennifer Faunce

*********CONSOLIDATED WITH*********

C-SPINE ORTHOPEDICS, PLLC,
as Assignee of Jose Cruz-Muniz,

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

Court of Appeals Case No. 358170
Lower Court: Macomb County Circuit Court
Lower Court Case No. 20-001710-NF
Lower Court Judge: Jennifer Faunce

Defendant-Appellant Progressive Michigan Insurance Company's Application for Leave to Appeal

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Order Appealed from and Jurisdictional Statement

Defendant-Appellant Progressive appeals from a Court of Appeals Order denying reconsideration of its decision to reverse the trial court's order granting summary disposition to Progressive. The Court of Appeals entered the order on March 2, 2023. (**Exhibit R**, Order Denying Reconsideration). This Court has jurisdiction under MCR 7.303(B)(1).

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Statement of Questions Presented

1. Under Michigan law, a party must be the real party in interest at the time it files an action for the action to proceed. Here, C-Spine sold, transferred, assigned, and conveyed to the factoring companies its legal and equitable rights, title, and interests in the accounts receivable before it initiated the lawsuits against Progressive. The factoring companies did not execute counter-assignments with C-Spine until after the lawsuits were initiated. Was C-Spine a real party in interest at the time it filed its complaints?

   Trial Court answered, "No."

   Court of Appeals answered, "Yes."

   Plaintiff-Appellee C-Spine answers, "Yes."

   Defendant-Appellant Progressive answers, "No."

   This Court should answer, "No."

2. MCR 2.201(B)(1) permits a party authorized by statute to sue in their own name on behalf of a third-party beneficiary. Here, the Court of Appeals held that C-Spine's statutory right to sue for PIP benefits under MCL 500.3112 allowed it to sue on behalf of the alleged beneficial interest vested in the factoring companies. Does MCL 500.3112 authorize C-Spine to sue on behalf of the factoring companies, i.e., did C-Spine retain the legal cause of action after it assigned its rights to PIP benefits to the factoring companies?

   Trial Court answered, "No."

   Court of Appeals answered, "Yes."

   Plaintiff-Appellee C-Spine answers, "Yes."

   Defendant-Appellant Progressive answers, "No."

This Court should answer, “No.”

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Introduction

This case may appear to be a simple matter of contract interpretation and assignment principles, but it has far-reaching implications on well-settled precedent regarding standing and the ability to advance a lawsuit. Sandra Cruz and Jose Cruz-Muniz sought medical treatment from Plaintiff-Appellee C-Spine after they allegedly sustained injuries in a motor vehicle accident. Cruz and Cruz-Muniz assigned their rights to C-Spine, thereby giving C-Spine the right to sue on their behalf for outstanding first party PIP benefits related to the treatment provided. However, C-Spine subsequently assigned its rights and interests in a number of patients' benefits, including Cruz and Cruz-Muniz, to medical factoring companies. In exchange for the assignments, these companies purchased the accounts receivable for the benefits – essentially, they provided funding to C-Spine to continue operations while awaiting payment for benefits from insurance companies; now C-Spine had money in the door while the factoring companies retained the right to sue for the benefits and the corresponding account receivable.

Despite assigning their rights to the factoring companies, C-Spine then filed two suits against Progressive, seeking payment of PIP benefits for services provided to Cruz and Cruz-Muniz. Crucially, C-Spine executed counter-assignments and purchase agreement amendments with the factoring companies *after* filing these suits. Incredibly, as recognized by the trial court and Judge Markey of the Court of Appeals, C-Spine backdated these documents to conceal that C-Spine was not the real party in interest at the time it filed suit.

Progressive moved for summary disposition on the grounds that C-Spine was not the real party in interest when it filed its suit, and therefore, did not have standing to bring the lawsuits. The trial court granted that motion. C-Spine appealed the trial court's decision. The Court of Appeals held that the counter-assignments and purchase agreement amendments permit C-Spine to maintain its causes

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of action under MCL 500.3112, and it reversed the trial court's judgment. The Court of Appeals also concluded that necessary joinder under MCR 2.205(A) would sufficiently protect Progressive from duplicate lawsuits from the factoring companies, who possessed the actual right to sue at the time of filing.

But the Court of Appeals erred significantly in coming to this conclusion, as it completely alters established jurisprudence. First, it is well-settled that the relevant timeframe for determining whether a party is the real party in interest is at the time the lawsuit was initiated. When C-Spine filed its complaints, it had already assigned its rights and interests in PIP benefits to the factoring companies. And the counter-assignments and purchase agreement amendments were not executed until after C-Spine filed suit. Thus, C-Spine was not the real party in interest when it initiated these actions. Second, MCL 500.3112 does not confer upon C-Spine the right to sue Progressive *on behalf of* the factoring companies. And C-Spine did not pursue these actions under MCL 500.3112—it based its complaints solely on Cruz and Cruz-Muniz's assignments. Third, joining the factoring companies as necessary parties to the litigation under MCR 2.205(A) does not entitle C-Spine to remain in this case nor does it transform C-Spine into the real party in interest at the time the lawsuits were filed.

For these reasons, the Court of Appeals erred when it reversed the trial court's order granting summary disposition to Progressive. This case presents an issue of precedential significance because the Court of Appeals' opinion contradicts Michigan jurisprudence on the real-party-in-interest doctrine and misapplies Michigan Court Rules. The Court of Appeals opinion also attributes rights to sue on behalf of factoring companies under MCL 500.3112 that are contrary to the plain language of the statute. Significantly, the majority's opinion in this case directly conflicts with a near-contemporaneous opinion issued by the Court of Appeals, *Farrar v Suburban Mobility Auth for Reg'l Transp,* ___ Mich App; ___ NW2d ___ (2023) (Dockets Nos 358872 & 358884). And, subsequent

panels of the Court of Appeals have now faced the issue and appear duty-bound to follow the erroneous reasoning, thus creating issues for multiple insurers and parties. For instance, the majority's opinion in this case was only reluctantly followed out of obligation in *C-Spine Orthopedics, PLLC, v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No 360887). These opinions evidence a lack of consistency in the application of the law of assignments, the Michigan Court Rules, and the No-Fault Act that can impact numerous individuals and companies throughout Michigan. Therefore, this Court should grant leave to appeal to resolve the jurisprudential conflict within the Court of Appeals.

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Facts and Procedural History

A. The Underlying Accident and Assignments

On May 23, 2018, Jose Cruz-Muniz and Sandra Cruz were involved in a motor vehicle accident. Cruz and Cruz-Muniz both presented to plaintiff-appellee's facility, C-Spine Orthopedics, PLLC, where they received medical services. Cruz and Cruz-Muniz executed an Assignment of Benefits, assigning their rights of personal protection insurance benefits to C-Spine. (**Exhibit D,** Plaintiff's Complaint, p. 90, 95).

Subsequently, C-Spine sold all of the Jose Cruz-Muniz accounts receivable to third party factoring companies. Though C-Spine produced only a number of sample agreements, C-Spine represented that the sale agreement for Mr. Cruz-Muniz's accounts was routine and otherwise identical. (**Exhibit E**, Email Correspondence from Plaintiff; **Exhibit F**, Sales Agreements). Specifically, the sale of accounts, by their plain terms, is an absolute sale, and relinquishes any rights C-Spine held in Mr. Cruz-Muniz's accounts. (**Exhibit F,** Sales Agreement)**.** Specifically, C-Spine sold, transferred, assigned, and conveyed to the factoring companies its legal and equitable "[r]ights, [t]itle, and [i]nterests in the [a]ccounts [r]eceivable." (**Exhibit F**, Sales Agreements, p. 105).

B. Procedural History

On May 11, 2020, C-Spine filed its Complaint seeking benefits from Progressive, as reimbursement for allegedly outstanding medical expenses. (**Exhibit D**, Plaintiff's Complaint). While C-Spine specifically pled "[p]ursuant to MCL 600.2041, every cause of action shall be prosecuted in the name of the real party of interest," C-Spine had already sold all of the Jose Cruz-Muniz account receivables to third parties. (**Exhibit D,** Plaintiff's Complaint, **Exhibit F**, Sales Agreement).

Progressive brought its first Motion for Summary Disposition before the trial court, arguing that C-Spine's sale and conveyance of all rights and interests abandoned C-Spine's rights to pursue

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payment on the subject claims because it lacked standing in this matter. (**Exhibit G**, Defendant's Original Motion for Summary Disposition). In response, and in an attempt to support its claim that it was the real party in interest, C-Spine produced an assignment from purchaser MedFinance Servicing, LLC, identified as a "Counter-Assignment of Accounts Receivable for Patient Jose Cruz-Muniz." (**Exhibit H**, Plaintiff's Original Response; **Exhibit I**, Counter-Assignment). This counter-assignment re-conveyed legal and equitable rights and interests from MedFinance to C-Spine for accounts/dates of service from August 21, 2019 until October 2, 2019. (**Exhibit I**, Counter-Assignment). In an obvious attempt to ensure the counter-assignment would circumvent C-Spine's lack of standing, C-Spine conveniently backdated the counter-assignment with an execution and effective date of May 4, 2020. (**Exhibit I**, Counter-Assignment)(**Exhibit L**, Email Correspondence Disclosing Dates of Execution).

C-Spine also presented two amended sale agreements relating to accounts receivable/dates of service from August 16, 2019 and August 30, 2019. (**Exhibit J**, Amended Purchase and Sale Agreements). Each amended sale agreement gave C-Spine permission to service the account receivables on behalf of Apogee Capital Partners, LLC and Apogee Capital Fund 5, LLC, another purchasing servicing company. (**Exhibit J**, Amended Purchase and Sale Agreements). Notably, the agreements were *not executed until July 1, 2020 and July 23, 2020*—two months after C-Spine filed the subject Complaint. (**Exhibit D**, Plaintiff's Complaint; **Exhibit J**, Amended Purchase and Sale Agreements).

Despite agreeing with Progressive and finding that an absolute sale did take place, the trial court ultimately denied Progressive's Motion for Summary Disposition without prejudice. In doing so, and in pertinent part, the Circuit Court stated:

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> A plain and ordinary reading of paragraphs 2 and 4 of the Original Sale Agreement and the warranty section leads to one inescapable conclusion – Plaintiff sold or assigned its rights in the accounts to the factoring companies…. However, the Original Sale Agreement does not describe any interest Plaintiff retained in the accounts and does not support Plaintiff's argument that the transactions were mere loans or the granting of a security interest in exchange for capital. As such, upon the assignment of the accounts in the Original Sale Agreement, the factoring companies became the real parties in interest on the transferred accounts.

(**Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, pp. 272-73). More, the trial court noted that C-Spine did not dispute that the original sales agreement reflects the terms of its transaction with the factoring companies before the trial court. (**Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, p. 272). Nor did C-Spine dispute that the agreement applied. (**Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, p. 272). While the trial court determined that the counter-assignment reinstated an ownership interest in the subject accounts, and thereby real party interests, this determination was made *with the assumption that the documents produced by C-Spine were an accurate reflection of the execution date*. (**Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, pp. 273-74).

Subsequently, C-Spine refused to identify the actual date of execution, so Progressive filed several discovery motions and completed at least one deposition for C-Spine to reveal that the counter-assignment with MedFinance was not created or executed until January 11, 2021. (**Exhibit L**, Email Correspondence Disclosing Dates of Execution, p. 282). And the counter-assignment with Apogee was not created or executed until July 29, 2020. (**Exhibit L**, Email Correspondence Disclosing Dates of Execution, p. 282).

Even if the counter-assignments were enforceable, the dates that the documents were executed are vital to C-Spine's claims. Yet each of the execution dates took place *after the date C-Spine filed*

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its Complaint. (**Exhibit L**, Email Correspondence Disclosing Dates of Execution, p. 282). On this basis, Progressive filed a renewed Motion for Summary Disposition pursuant to MCR 2.116(C)(5) and (C)(10). (**Exhibit B**, Defendant's Renewed Motion for Summary Disposition). In response, C-Spine produced newly obtained affidavits, attesting to its own interpretation of the initial sale agreements, as well as representatives, from the purchasing service companies, giving C-Spine the right to sue for any unpaid balance. (**Exhibit M**, Plaintiff's Second Response). Each of the affidavits were executed in July of 2021 and effectively transfers the necessary rights to sue *after* the time C-Spine filed its Complaint. The trial court granted Progressive's second Motion for Summary Disposition on July 26, 2021, holding that C-Spine relinquished its rights as assignee and lacked standing sue for no-fault benefits at the time of filing the complaint. (**Exhibit A**, Order Granting Defendant's Motion for Summary Disposition).

C-Spine then appealed to the Michigan Court of Appeals, where the cases were consolidated. The Court of Appeals majority held: "that the counter-assignments and purchase agreement amendments permit C-Spine to maintain its cause of action under MCL 500.3112, and reverse the circuit court's contrary judgment and remand for further proceedings." (**Exhibit P**, *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___; ___ NW2d ___ (2022) (Dockets Nos. 358170 and 358171). But that decision was not unanimous. In dissent, Judge Markey concluded that "the pertinent court rules, statutes, and caselaw when viewed in conjunction with the facts and procedural history of these cases, demand summary dismissal of C-Spine's complaints." (**Exhibit Q**, C-Spine Orthopedics, PLLC v Progressive Mich Ins Co, ___ Mich App ___; ___ NW2d ___ (2022) (Dockets Nos. 358170 and 358171) (Markey, J., Dissenting)). Judge Markey stated that she would "affirm the trial court's rulings granting summary disposition in favor of Progressive." (*Id.*). And, in the order denying reconsideration, Judge Markey noted that she would grant the motion for

reconsideration for reasons stated in her dissenting opinion. (**Exhibit R**, Order Denying Reconsideration).

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Standard of Review

This Court reviews de novo orders granting or denying summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). It reviews an order denying reconsideration for an abuse of discretion. *K & W Wholesale, LLC v Dep't of Treasury*, 318 Mich App 605, 611; 899 NW2d 432 (2017). "Whether a party has standing is a question of law that is reviewed de novo." *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). "Further, the issue of whether a plaintiff is the real party in interest is a question of law we review de novo." *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 411; 875 NW2d 242 (2015).

Summary disposition is appropriate under MCR 2.116(C)(5) when "[t]he party asserting the claim lacks the legal capacity to sue." "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012). However, when a motion for summary disposition is filed under MCR 2.116(C)(5) and the parties present documentary evidence outside the pleadings, review is proper under MCR 2.116(C)(10). *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019).

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Downey v Charlevoix County Board of Road Commissioners*, 227 Mich App 621, 625; 227 NW2d 712 (1998). In ruling on the motion, the court must consider not only the pleadings but also any depositions, affidavits, admissions, or other documentary evidence submitted by the parties. MCR 2.116(G)(5). Affidavits and documentary evidence must be viewed in the light most favorable to the non-moving party. *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 397; 576 NW2d 210 (1998). However, "[w]hen a motion under subrule (C)(10) is made and supported as provided in [MCR 2.116],

an adverse party … must, by affidavits or as otherwise provided by this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4).

In so doing, the nonmoving party cannot simply rest on bare allegations, but must come forward with substantively admissible evidence in opposition to the motion that establishes a genuinely contested issue of material fact for trial. See *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163-64; 645 NW2d 643 (2002); see MCR 2.116(G)(4). In reviewing a summary disposition motion under MCR 2.116(C)(10), the trial court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue of disputed fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n2; 597 NW2d 28 (1999).

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Argument

I. The Court of Appeals created unsustainable precedent when it determined C-Spine need not be the real party in interest at the time of filing to sustain a lawsuit and have standing.

The role of assignments in first-party no-fault litigation has continued to grow since this Court endorsed the practice in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co,* 500 Mich 191, 218 n 40; 895 NW2d 490 (2017) (holding that the endorsement was limited to "past or presently due benefits" and any "assignment of a right to benefits payable in the future" continues to be "void" per MCL 500.3143). Although providers now have a direct cause of action under MCL 500.3112 for services rendered on or after June 11, 2019, the practice persists. This is, in part, because assignments protect providers from claim preclusion, if the injured person were to later bring their own suit, as this Court recently held in *Mecosta Cnty Med Ctr v Metro Group Prop & Cas Ins Co*, 509 Mich 276; 983 NW2d 401 (2022). Assignments can also, in certain situations, allow providers to avoid a "good faith" payment defense under § 3112, as described in *Physiatry & Rehab Assoc v Alhalemi,* 333 Mich App 87; 958 NW2d 626 (2020).

The rise of this practice has led to disputes about who is the "real party in interest" as to bills that have been assigned. See *Farrar v SMART,* ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 358872); *Farrar v Suburban Mobility*, ___ Mich App ___; *C-Spine Orthopedics, PLLC v Progressive Michigan Ins Co,* ___ Mich App ___; ___ NW2d ___ (2022) (Docket No. 358170); *Winfield v State Auto Prop & Cas Ins Co,* unpublished opinion per curiam of the Court of Appeals, issued November 18, 2021 (Docket No. 355681); *Greater Lakes Ambulatory Surgical Ctr, LLC v Meemic Ins Co,* unpublished opinion per curiam of the Court of Appeals, issued July 29, 2021 (Docket No. 353842).

This is one such case. Here, there can be no dispute that C-Spine is not the real party in interest. This case presents an issue of jurisprudential significance as the Court of Appeals' published opinion,

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C-Spine v Progressive, ___ Mich App at ___; slip op at 1, in this case is inconsistent with No-Fault jurisprudence in this state. This Court should grant leave to appeal and reverse the Court of Appeals decision. The Court of Appeals' error in this case extends far beyond the parties to this case—the Court of Appeals opinion interferes with clear No-Fault jurisprudence and will continue to do so until this Court reviews the opinion.

A. A party must show that it is the real party in interest at the time that the action is initiated—the assignor is not a real party in interest.

"An action must be prosecuted in the name of the real party in interest." MCR 2.201(B). A party must show that it is the real party in interest to proceed with its cause of action. MCR 2.201(B); MCL 600.2041. MCL 600.2041 specifically states that "[e]very action shall be prosecuted in the name of the real party in interest." Michigan courts have previously expounded on the requirements and purpose of the real-party-in-interest doctrine:

> [a] real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by any other party. [*Cannon* Twp, 311 Mich App at 412, citing *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013).]

More, the relevant timeframe to consider when determining whether a party has standing and whether they are the real party in interest is when the suit is commenced. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 595 n 54; 957 NW2d 731 (2020); *Girard v Wagenmaker*, 437 Mich 231, 244; 470 NW2d 372 (1991).

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B. Assignments divest the assignor of any and all interest in the subject matter of the assignments.

"[A]n assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon* Twp, 311 Mich App at 412; see also *Kearns v Michigan Iron & Coke Co*, 340 Mich 577, 582-84; 66 NW2d 230 (1954); *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). Consequently, assignments divest assignors of any interest in the subject matter of the assignments. See *Ward v DAIIE*, 115 Mich App 30, 37; 320 NW2d 280 (1982); *Moore v Baugh*, 106 Mich App 815, 819; 308 NW2d 698 (1981); 6A CJS, Assignments, § 88. Case law provides that standing is determined at the time a complaint is filed. *League of Women Voters*, 506 Mich at 595 n 54; *Girard*, 437 Mich at 244. Consequently, the timing of the assignment compared to the timing the complaint is filed is crucial to the real party in interest determination.

In an unpublished opinion, the Court of Appeals held that a factoring agreement deprived a plaintiff of standing because the plaintiff was not the real party in interest. In *Meemic*, unpub op at 8, the panel ruled: "Under the plain and unambiguous language of the sales agreement, it is clear that plaintiff assigned all of its rights in the accounts receivable to the servicing companies. The assignments divested plaintiff of any ownership interest in the accounts." The Court also determined that the "contract was not made 'for the benefit of another'" because the contract solely benefited the plaintiff and the factoring companies. *Id.* at 11.

The Court of Appeals also addressed assignments and the real-party-in-interest doctrine in *Winfield*, unpub op at 1 (**Exhibit T**, *Winfield v State Auto*). In *Winfield*, the plaintiff executed assignments of benefits to their medical providers. And "each assignment vested in the medical providers the right to collect PIP benefits from defendants for medical services rendered to plaintiff." *Id.* at 5. The Court of Appeals concluded that "after plaintiff executed the assignments, the medical

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providers became the real parties in interest, and only the medical providers had the ability to enforce the acquired rights." *Id.* at 6.

After the Court of Appeals published its decision in this case, another panel issued a conflicting opinion in *Farrar v Suburban Mobility*, ___ Mich App ___ (**Exhibit U**, *Farrar v Suburban Mobil Auth*). In *Farrar*, the plaintiff was injured in a motor vehicle accident and sought treatment from a number of medical providers. The plaintiff executed assignments of benefits with those medical providers. Regardless, the plaintiff still filed a complaint for PIP benefits. The Court of Appeals held that the plaintiff executed assignments to the medical providers, making the providers the only real parties in interest. *Id.* at 12. As a result, the plaintiff could not pursue PIP benefits. *Id.*

Another Court of Appeals panel did follow the majority's decision in *C-Spine v Allstate*, unpublished per curiam op at 1 (**Exhibit V**, *C-Spine v Allstate* Majority Opinion). But the Court only did so because it was bound by the majority's precedent. *Id.* ("We are compelled by binding precedent to reverse and remand for further proceedings."). More, Judge Markey only concurred out of a similar obligation:

> I concur in the majority opinion solely because I am bound to do so under MCR 7.215(J)(1). For the reasons stated in my dissenting opinion in *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket Nos. 358170 and 358171); slip op at 9-19, I would hold, if not otherwise obligated, that C-Spine lacks standing in this case and is not the real party in interest. [*Id.* (**Exhibit W**, *C-Spine v Allstate* Dissenting Opinion.]

The March 30, 2023 and February 9, 2023 opinions demonstrate that different panels of the Court of Appeals would reach a different result than the published majority opinion in this case. Consequently, it is imperative that this Court review and correct this issue. Ample binding case law establishes that an assignor is not the real party in interest after executing an assignment for PIP benefits. *Cannon Twp*, 311 Mich App at 412; *Ward*, 115 Mich App at 37; *Moore*, 106 Mich App at

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819; *Kearns*, 340 Mich at 584-84; *Burkhardt*, 260 Mich App at 653. The majority's decision that C-Spine was the real party in interest despite executing assignments before filing its complaints is an anomaly, which this Court should correct.

C. C-Spine unambiguously assigned its rights and interests in PIP benefits to the factoring companies before initiating these actions and it did not execute the counter-assignments until after initiating the action. Thus, C-Spine was not the party in interest at the time it filed its complaints and did not have standing to bring suit.

C-Spine argued that under MCR 2.202(B) that it was a joint party in interest along with the factoring companies after C-Spine assigned it rights to PIP benefits. But MCR 2.202(B) states:

> If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c).

C-Spine assigned its rights and interests in PIP benefits to the factoring companies before it initiated these lawsuits. (**Exhibit F**, Sales Agreements; **Exhibit E**, Email Correspondence from Plaintiff). And C-Spine did not execute the counter-assignments until after the lawsuits were initiated. (**Exhibit L**, Email Correspondence Disclosing Dates of Execution). This means that the interest in the cause of action was not transferred back to C-Spine until after the action was initiated. As noted in the Court of Appeals dissent, at most under MCR 2.202(B), the counter-assignments would allow C-Spine the right to be joined or substituted into an action seeking PIP benefits—not to originate an action. *C-Spine v Progressive*, ___ Mich App at ___; slip op at 49 (Markey, J., Dissenting).

The scope of an assignment is a matter of contract construction. *Professional Rehabilitation Associates v State Farm Mut Automobile Ins Co*, 228 Mich App 167, 172-74; 577 NW2d 909 (1998). "In ascertaining the meaning of a contract, we give the words used in the contract their plain and

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ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). The goal of contract interpretation is to give effect to the intent of the parties, as determined by the plain and unambiguous language. *Kendzierski v Macomb Co*, 503 Mich 296, 311; 931 NW2d 604 (2019). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the parties' intent as a matter of law." *Id.* (quotation marks and citation omitted). The terms of a contract are ambiguous on its face only if they are equally susceptible to more than one meaning. *Id.* This Court may not create an ambiguity when the contract is clear. *Id.* at 311-12. This respects the freedom of individuals to contract as they see fit. *Id.* at 312.

The record reflects that C-Spine assigned or sold all of its rights and interests in PIP benefits to factoring companies before the suits were filed. (**Exhibit F**, Sales Agreements; **Exhibit E**, Email Correspondence from Plaintiff). The purchase agreements, provided that C-Spine was selling, transferring, assigning, and conveying to the factoring companies its legal and equitable "[r]ights, [t]itle, and [i]nterests in the [a]ccounts [r]eceivable." (**Exhibit F**, Sales Agreement, pp. 105-106). More, the agreements state that C-Spine "shall not settle, solicit, or accept collections on any of the [a]ccounts [r]eceivable." (**Exhibit F**, Sales Agreements, p. 106). This all-encompassing language plainly and unambiguously covered and conveyed a right of action to recover payment on the accounts receivable.

More, as the trial court noted, C-Spine did not dispute that the original sales agreement reflects the terms of its transaction with the factoring companies before the trial court. (**Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, p. 272). Nor did C-Spine dispute that the agreement applied. (**Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, p. 272).

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Astonishingly, C-Spine argued before the Court of Appeals that either (1) the original assignment agreements between itself and the factoring companies did not convey interests in the cause of action for PIP benefits (contrary to the plain language of the agreements) or (2) that the agreements were invalid and unenforceable because the agreements didn't reflect the true meeting of the minds between C-Spine and the factoring companies. (**Exhibit N**, C-Spine's Brief on Appeal).

But "[a] meeting of the minds is judged by an objective standard, looking to the express words used by the parties and their visible actions, not the parties' subjective states of mind." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006) (quotation marks and citations omitted). C-Spine provided affidavits in support of its contention that the parties never intended to vest the cause of action in the factoring companies, but this extrinsic evidence can't be used to contradict the plain and unambiguous purchase agreement language. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997).

The original assignments clearly and unambiguously transferred the rights and interests in PIP benefits in the factoring companies. Objectively, the plain language reflects an intent to vest a PIP cause of action with the factoring companies—the contract itself shows a meeting of the minds between C-Spine and the factoring companies at the time the agreements were executed. C-Spine's proffered affidavits cannot and do not change the unambiguous language of the original assignments. Accordingly, C-Spine was not the real party in interest at the time it filed its complaints.

The counter-assignments also do not transform C-Spine into the real party in interest. C-Spine admitted that the counter-assignments were not executed until after it initiated these lawsuits. (**Exhibit L**, Email Correspondence Disclosing Dates of Execution, p. 282). Thus, at the time that C-Spine filed its lawsuits, the original assignments continued to vest the cause of action in the factoring companies—the factoring companies were the real parties in interest. It was not until July 29, 2020 and January 11,

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2021 that Apogee and MedFinance respectively assigned the rights and interests in a PIP lawsuit back to C-Spine. (**Exhibit L**, p. 282). Consequently, C-Spine was not the real party in interest at the relevant time—at the time it filed its complaints. *League of Women Voters*, 506 Mich at 595 n 54; *Girard v*, 437 Mich at 244. Nor was it a joint party in interest. C-Spine did not have standing to bring these causes of action against Progressive.

D. Under MCR 2.201, C-Spine was not the real party in interest at the time it filed its complaint. MCL 500.3112 does not give C-Spine the right to pursue an action on behalf of the factoring companies, and the factoring companies were not the third-party beneficiary to a relevant agreement.

C-Spine and the Court of Appeals relied on MCR 2.201(B)(1) to support the decision that C-Spine was the real party in interest. But C-Spine is not a real party in interest under MCR 2.201(B)(1). MCR 2.201(B)(1) provides:

> A person representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

The Court of Appeals has explained the underlying principle of MCR 2.201(B)(1): "[a] real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Hofmann v Auto Clubs Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995).

Here, the Court of Appeals majority determined that C-Spine was vested with the right of action based on Cruz and Cruz-Muniz's assignments. It also determined that C-Spine was authorized by statute to sue in its own name under MCL 500.3112. The Court ultimately held that even though the beneficial interest resided with the factoring companies, C-Spine remained a real party in interest.

As noted by the dissent, MCR 2.201(B)(1) addresses three circumstances: "(1) a fiduciary party sues for the benefit of a beneficiary, ward, or similarly situated person, (2) a contracting party who executed an agreement sues for the benefit of a third-party beneficiary, or (3) a party authorized by

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statute sues for the benefit of another person." *C-Spine Orthopedics*, ___ Mich App at ___; slip op at 47 (Markey, J., Dissenting). The majority was convinced that C-Spine was a party authorized by statute suing for the benefit of another.

But this is a fundamental misinterpretation and misapplication of MCR 2.201(B)(1). First, C-Spine was not vested with the right of action against Progressive based on Cruz and Cruz-Muniz's assignments. The Court of Appeals holding completely ignores that C-Spine assigned its rights and interests in PIP benefits to the factoring companies *before* it filed its complaints and did not execute the counter-assignments until *after* it filed its complaints. Thus, at the time the complaints were filed, C-Spine was not vested with the right of action against Progressive.

Second, C-Spine is not authorized by statute, specifically MCL 500.3112, to sue on behalf of the factoring companies. MCL 500.3112 authorizes a healthcare provider to sue on its own behalf—it does not permit healthcare providers to sue on behalf of another. In relevant part MCL 500.3112 states:

> [a] health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person.

MCL 500.3112 does not even imply that a provider could sue on behalf of a factoring company. More, C-Spine did not pursue this action under MCL 500.3112, C-Spine pursued this action solely on the basis of assignments. (**Exhibit D**, Plaintiff's Complaint).

"The goal of statutory interpretation is to discern and give effect to the intent of the Legislature from the statute's plain language." *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). "If the meaning of a statute is clear and unambiguous, *then judicial construction to vary the statute's plain meaning is not permitted*." *Id*. (emphasis added). "The Legislature is presumed to have

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intended the meaning it plainly expressed." *Watson v Mich Bureau of State Lottery*, 224 Mich App 639, 645; 569 NW2d 878 (1997).

The plain language of MCL 500.3112 is clear and unambiguous. The statute permits medical providers to sue for PIP benefits. The Court of Appeals was not permitted to construct a new meaning or right to sue on behalf of third-party factoring companies under MCL 500.3112. *Houdek*, 276 Mich App at 581.

Thus, C-Spine was not the real party in interest at the time it filed its complaint. It was not vested with the right of action against Progressive because it had assigned its interests and rights in PIP benefits to the factoring companies. And C-Spine's right to pursue an action under MCL 500.3112 is irrelevant to the analysis under MCR 2.201(B)(1) because it did not give C-Spine the right to initiate an action on behalf of the factoring companies. C-Spine never pled a claim under MCL 500.3112. (**Exhibit D**, Plaintiff's Complaint).

E. Joinder does not transform C-Spine into the real party in interest.

The majority was convinced that, even disregarding the counter-assignments, joinder would have resulted in a single judgment, which would have sufficiently protected Progressive from a second lawsuit. *C-Spine Orthopedics*, ___ Mich App at ___; slip op at 7-8. But joinder does not function to turn C-Spine into a real party in interest when it assigned it rights away before filing this lawsuit.

Although C-Spine never argued MCR 2.205, the majority determined that necessary joinder under MCR 2.205(A) also would sufficiently protect Progressive from a second lawsuit. MCR 2.205(A) states: "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." The majority appears to

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believe that allowing C-Spine to remain in the action and simply joining the factoring companies would have protected Progressive.

But the majority's logic is flawed. Again, at the time the actions were commenced (which is the relevant timeframe for the real-party-in-interest doctrine) C-Spine had already conveyed all of its rights and interests in PIP benefits to the factoring companies. *League of Women Voters*, 506 Mich at 595 n 54; *Girard*, 437 Mich at 244. C-Spine retained no interest or right whatsoever in an action for PIP benefits at the time it filed its complaints.

More, if the factoring parties are necessary to the action such that they *must* be joined, that necessarily reaffirms that C-Spine had no interest in the action. C-Spine never had a right and interest in this litigation at the same time as the factoring companies. The assignments and counter-assignments are clear. C-Spine assigned all rights and interests to the factoring companies. Subsequently, the factoring companies assigned those rights and interests back to C-Spine—either C-Spine had all rights and interests or the factoring companies had all rights and interests. There was never a timeframe where the rights to this action vested in both. If the factoring companies must be joined for the action to continue, C-Spine would have no entitlement to remain in the lawsuit, or initiate the lawsuit, as it has no interest whatsoever., C-Spine was not the real party in interest and did not have standing to bring the lawsuits in the first place. Joinder does not change that.

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Conclusion and Relief Requested

The Court of Appeals erred when it determined that the counter-assignments and purchase agreement amendments permitted C-Spine to maintain its causes of action under MCL 500.3112. The Court of Appeals should have affirmed the trial court's order granting summary disposition to Progressive. C-Spine was not the real party in interest at the time it filed these actions, and, as a result, it lacked standing.

By determining otherwise, the majority effectively undermined well-settled precedent regarding standing and created uncertainty for Michigan litigants in general, not just insurance carriers in the No-Fault context. This Court must address that error and provide the certain guidance parties need in determining standing.

For the foregoing reasons, this Court should grant leave to appeal to resolve the misapplication of Michigan jurisprudence and resolve the conflicting Court of Appeals decisions.

Respectfully submitted,

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Certificate of Compliance

I certify that Defendant-Appellant's Application for Leave to Appeal complies with the type-volume limitation set forth in MCR 7.212(B). I am relying on the word count of the word-processing system used to produce this document. This brief uses a 12-point proportional font (Times New Roman), and the word count for this brief is 7956.

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CERTIFICATE OF SERVICE

The undersigned states that she is an employee of Novara Tesija Catenacci McDonald & Baas, PLLC, and states that she served a copy of the foregoing document(s) with the Michigan Supreme Court using the Court's e-file and service option, which will send notification of such filing to the individuals listed on the Case Service List, on April 11, 2023.

/s/ Joanne M. Hickey
JOANNE M. HICKEY