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STATE OF MICHIGAN

IN THE SUPREME COURT

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

Plaintiff-Appellee,

v.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant,

Supreme Court Case No. 165537

Court of Appeals No. 358171

Macomb County Circuit Case No. 20-000386-NF

CONSOLIDATED WITH

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

Plaintiff-Appellee,

v.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant,

Supreme Court Case No. 165538

Court of Appeals No. 358170

Macomb County Circuit Case No. 20-001710-NF

_____/

BRIEF *AMICUS CURIAE* ON BEHALF OF THE MICHIGAN ASSOCIATION FOR JUSTICE

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

I. SHOULD THIS COURT AFFIRM THE COURT OF APPEALS DECEMBER 8, 2022 DECISION BECAUSE THE COURT PROPERLY CONCLUDED THAT C-SPINE HAS STANDING AND IS A REAL PARTY IN INTEREST IN THIS ACTION?

Amicus Curiae, the Michigan Association for Justice, says "Yes."

Plaintiff-Appellee says "Yes."

Defendant-Appellant says "No."

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STATEMENT OF MATERIAL PROCEEDINGS AND FACTS[1]

Amicus curiae, The Michigan Association For Justice, hereby adopts the Statement of Facts contained in the Supplemental Brief filed on behalf of plaintiff-appellee C-Spine Orthopedics, PLLC (hereinafter: "C-Spine") filed on November 14, 2023.

On September 13, 2023, this Court issued an order granting oral argument on the application filed by defendant Progressive Michigan Insurance Company (hereinafter: "Progressive"), seeking leave from the Court of Appeals December 8, 2022 decision. *C-Spine Orthopedics, PLLC v Progressive Michigan Insurance Co*, 512 Mich 928; 994 NW2d 516 (2023). In its September 13, 2023 order, this Court identified the issue that the parties were to address:

> The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing 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 assign those rights back to it. See MCR 2.201(B)(1); MCL 600.2041.

[1]Pursuant to MCR 7.312(H)(4), the undersigned represents that no counsel for any of the parties was involved in the preparation of this brief. The undersigned further represents that neither party made a financial contribution toward the preparation of this brief.

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ARGUMENT

THIS COURT SHOULD AFFIRM THE COURT OF APPEALS DECEMBER 8, 2022 DECISION BECAUSE THE COURT PROPERLY CONCLUDED THAT C-SPINE HAS STANDING AND IS A REAL PARTY IN INTEREST IN THIS ACTION.

The Court of Appeals properly concluded that C-Spine has standing and is a real party in interest in this action.

A. Neither Standing Nor The Real-Party-In-Interest Rule Precludes C-Spine's Suit Against Progressive.

The two questions asked by this Court are 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 assign those rights back to it. The Court of Appeals concluded that the "real-party-in-interest" rule does not preclude suit by a party that had assigned its rights prior to commencing an action for recovery of no-fault personal protection insurance (PIP) benefits because the counter-assignments and purchase agreement amendments signed after initiation of a lawsuit conferred a right to maintain a cause of action. The Court of Appeals holding is correct and consistent with MCR 2.201(B)(1) and MCL 600.2041.

MCR 2.201(B) requires an action to be prosecuted in the name of the real party in interest and specifically provides that a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought:

> Real Party in Interest. *An action must be prosecuted in the name of the real party in interest, subject to the following provisions*:
>
> (1) A personal 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*.

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> (2) An action on the bond of a public officer required to give bond to the people of the state may be brought in the name of the person to whom the right on the bond accrues.
>
> (3) An action on a bond, contract, or undertaking made with an officer of the state or of a governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, an unincorporated board, a public body, or a political subdivision, may be brought in the name of the state or the governmental unit for whose benefit the contract was made.
>
> (4) An action to prevent illegal expenditure of state funds or to test the constitutionality of a statute relating to such an expenditure may be brought:
>
> (a) in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes; or
>
> (b) in the names of at least 5 residents of Michigan who own property assessed for direct taxation by the county where they reside.

MCR 2.201(B) (emphasis added).

The language of the court rule generally tracks the language of MCL 600.2041, which similarly requires every action to be prosecuted in the name of the real party in interest. Like MCR 2.201(B)(1), MCL 600.2041 allows a party authorized by statute to sue in his or her own name "without joining with him the party for whose benefits the action was brought," as follows:

> *Every action shall be prosecuted in the name of the real party in interest; but* an executor, administrator, guardian, 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 party authorized by statute may sue in his own name without joining with him the party for whose benefit the action was brought*, and further
>
> (1) an action upon the bond of any public officer required to give bond to the people of this state may be brought in the name of the person to whom the right thereon accrues; and
>
> (2) an action upon any bond, contract, or undertaking lawfully made with an officer of this state or any governmental unit, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, may be brought in the name of the state or any

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such unit for whose benefit the contract was made; and

> (3) an action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute relating thereto may be brought in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes, or in the names of at least 5 residents of this state who own property assessed for direct taxation by the county wherein they reside.

MCL 600.2041 (emphasis added).

The first question asked by this Court is whether C-Spine has standing in this action. It is well established that a litigant has standing whenever there is a cause of action provided at law. *Lansing Schools Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372; 792 NW2d 686 (2010). The Court of Appeals correctly concluded that standing was not a barrier to C-Spine's cause of action because MCL 500.3112 grants C-Spine the right to bring a direct cause of action against an insurer for reimbursement of services provided to an injured person. *C-Spine* (AT-Apx 348). The Court held that standing "asks whether a litigant has a right to have a court consider a claim," and found that, as a provider, C-Spine has statutory standing under MCL 500.3112 to bring a claim on its own behalf. *Id.*

With respect to the second question asked by this Court, whether C-Spine is a real party in interest, the Court of Appeals also correctly concluded that the real-party-in-interest rule does not preclude C-Spine's suit. *C-Spine* (AT-Apx 348). The plain language of MCR 2.201(B)(1) and §2041 permits a person "authorized by statute" to sue in his or her own name without joining the party "for whose benefit the action [is] brought." Consistent with MCR 2.201(B)(1) and §2041, the Court held that C-Spine is authorized by statute to bring a first-party no-fault claim "and the plain language of the court rule permits it to do so despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies." *Id.*

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It is well established that the primary goal of statutory interpretation is to give effect to the Legislature's intent, "and the most reliable evidence of that intent is the plain language of the statute." *South Dearborn Environmental Improvement Ass'n Inc v Dep't of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). "Where the statutory language is unambiguous, the plain meaning reflects the Legislature's intent and the statute must be applied as written." *Honigman Miller Schwartz and Cohn LLP v Detroit*, 505 Mich 284, 294; 952 NW2d 358 (2020). The same legal principles that govern the construction and application fo statutes apply to court rules. *People v Williams*, 483 Mich 226, 232; 769 NW2d 605 (2009). When construing a court rule, courts begin with its plain language, and when that language is unambiguous, courts must enforce the meaning expressed without future judicial construction or interpretation. *Id.* The Court of Appeals holding that C-Spine is a real party in interest is consistent with the plain language of both MCR 2.201(B)(1) and §2041.

The Court of Appeals further recognized that the principle underlying MCR 2.201(B)(1) is that a real party in interest "is vested with the right of action on a given claim, although the beneficial interest may be in another." *C-Spine* (AT-Apx 349-350), citing *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995); *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 413; 875 NW2d 242 (2015). The *C-Spine* Court found that C-Spine was "vested with the right of action" against Progressive based on the assignments from the Cruzes, and is "authorized by statute" to sue in its own name under MCL 500.3112. *C-Spine* (AT-Apx 349-350). The Court properly recognized that the mere fact that the "beneficial interest" may have resided with the factoring companies at the time suit was filed "did not eliminate C-Spine as a real party in interest" in this action under MCR 2.201(B)(1) and §2041. *Id.* The Court also properly recognized that once C-Spine

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and the factoring companies voluntarily entered into counter-assignments and purchase agreement amendments, this reinvested the "beneficial interest" in C-Spine's no-fault claim back to C-Spine, which also established C-Spine as a real party in interest in this action. *Id*. Under the plain language of MCR 2.201(B)(1) and §2041, the Court properly concluded that, either with or without the counter-assignments and purchase agreement amendments, C-Spine is a real party in interest in this action and may pursue its claim against Progressive.

This is particularly true where the real party in interest doctrine recognizes that litigation should be commenced only by a party having an interest that will assure sincere and vigorous advocacy. *Stillman v Goldfarb*, 172 Mich App 231, 237; 431 NW2d 247 (1988); *Saginaw Public Libraries Bd of Library Comm'rs v Judges of the 70th District Court*, 118 Mich App 379, 385; 325 NW2d 777 (1982). C-Spine undoubtedly has an interest that will assure sincere and vigorous advocacy in this litigation, given that it seeks payment for its unpaid medical services from Progressive. Given that C-Spine commenced this action for recovery of outstanding PIP benefits for which it was owed, it certainly has an interest in this litigation that assures "sincere and vigorous advocacy" in obtaining payment for these benefits.

B. Joinder and Substitution of Parties and The Effect of These Court Rules on the Real-Party-In-Interest Rule.

Although the Court of Appeals noted in its opinion in this case that courts risk multiple lawsuits if an assignor is allowed to file suit after having assigned the right to bring a first-party lawsuit seeking payment of outstanding PIP benefits to the medical providers, *C-Spine* (AT-Apx 349), the Court properly addressed this concern in its opinion. The Court acknowledged that without the counter-assignments, Progressive may have had a legitimate concern that it could face a second

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lawsuit brought by the factoring companies. The Court of Appeals noted, however, that in such a situation the necessary joinder rule, MCR 2.205(A), would come into play, permitting the case to go forward with the factoring companies joined as necessary party-plaintiffs. *C-Spine* (AT-Apx 349). The Court found that the necessary joinder rule and the real-party-in-interest rule "go hand-in-hand to prevent double recoveries and to obviate the risk of subsequent suits." *Id.* The Court held that joinder of the factoring companies in the action would have resulted in a single judgment, thus eliminating any risk to Progressive of a second lawsuit. *Id.*

Had C-Spine and the factoring companies not entered into the counter-assignments and amended purchase agreements, it was within the power of the trial court to join the factoring companies in this action pursuant to MCR 2.205(A). See *DeLong v Marston*, 308 Mich 63, 68-69; 13 NW2d 209 (1944) (holding that, if suit is brought in the name of a party who is only "nominally" interested rather than the real party in interest, "it was in the power of the trial court to add or substitute as a party or parties plaintiff the actual parties, rather than to dismiss the bill."); *Swickard v Wayne County Medical Examiner*, 196 Mich App 98, 102; 492 NW2d 497 (1992) (rejecting defendant's argument that non-party the Detroit Free Press, who funded the FOIA litigation, was the real party at interest such that the individual plaintiff, Swickard, could not be awarded statutory attorney fees, holding that "the circuit court's determination regarding the party to whom the award was payable was not an abuse of discretion because all parties were clearly aware of the purpose and the instrumentality of this litigation and any procedural barrier could have been cured by simple amendment, joinder, or other appropriate action at any stage in the proceedings."). Joinder would alleviate any risk of multiple suits and would result in a single judgment. Because, however, C-Spine and the respective factoring companies entered into counter-assignments and amended purchase

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agreements – which transferred the "beneficial interest" in the no-fault claims back to C-Spine and transferred to C-Spine the right to pursue and maintain litigation against Progressive for the recovery of unpaid bills arising out of the Cruzes' May 23, 2018 motor vehicle accident – those counter-assignments and amended purchase agreements eliminated any risk that Progressive would pay twice for the same benefit claims. *C-Spine* (AT-Apx 350); Counter-Assignment (AT-Apx 255-260); Purchase Agreement Amendments (AT-Apx 262-267).

The Court of Appeals found "controlling" its prior decision in *Cannon Twp*, which similarly involved a mid-litigation assignment. In *Cannon Twp*, the township brought an action against Rockford Public Schools (RPS) on its behalf and as assignee and subrogee of the Macks, homeowners who had experienced sewage backup caused by a value in the water filtration system of one of the RPS schools. Approximately one year after the complaint was filed, the township and its insurer, the MMLLPP, entered into an assignment agreement where the MMLLPP assigned its subrogation rights and obligations to the township. RPS argued that the township was not the "real party in interest" as it pertained to the claims assigned. The *Cannon Twp* Court held that an 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, and concluded that "by virtue of the assignments, the township became the real party in interest." *Cannon Twp*, 311 Mich App at 412. Although the Court recognized that the MMLLPP did not assign its rights to the township until after the lawsuit was filed, the Court concluded that the mid-litigation assignment changed the real party in interest and thereby preserved the plaintiff's original claim:

> In reaching this conclusion, we recognize that the MMLLPP did not assign its rights to the township until after this lawsuit was filed. Therefore, at the time the township initiated the lawsuit, it was not the real party in interest as it pertained to the first

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> $50,000 of damages sought in the complaint. However, in denying RPS's motion for summary disposition, the trial court granted the township leave to amend its complaint to properly reflect that it was litigating as the assignee of both the Macks and the MMLLPP. RPS does not assert, and we do not find, any error in the trial court's grant of leave to amend. See MCR 2.116(I)(5). Further, although the township agreed to remit any damages awarded by the trial court of more than $50,000 to the Macks, to be a real party in interest, a plaintiff need only be vested with the right of action on the claim; the beneficial interest may be with another. *Barclae*, 300 Mich App at 483.

Cannon Twp, 311 Mich App at 412-413.

The decision in *Cannon Twp* therefore supports the Court of Appeals decision that C-Spine is a real party in interest in this action. Pursuant to the holdings in *C-Spine* and *Cannon*, the timing of the assignments has no bearing on whether the plaintiff is a real party in interest. In the situation where the plaintiff assigns its claims *before* the commencement of the action (*C-Spine*), the trial court should utilize MCR 2.205(A) and join necessary parties, *unless* the parties to the assignment enter into counter-assignments or mutual revocations of the assignments, thereby rendering joinder unnecessary. In the situation where the plaintiff receives an assignment *after* the commencement of the action (*Cannon* and *C-Spine*), the trial court should permit amendment of the complaint to name the plaintiff in the capacity as "assignee" of the claim. Either way, the plaintiff is the real party in interest such that the action should be allowed to continue. *C-Spine* (AT-Apx 351) (noting that, "[p]ractically speaking, C-Spine was a real party in interest without the counter-assignments.").

Application of these principles avoids the situation that Progressive advocates for here, where the defendant wholly avoids liability for payment of medical expenses that have been incurred, despite the fact that the medical provider timely pursued an action to recover those expenses. For all of these reasons, the Court of Appeals properly held that C-Spine is the real party in interest in this action.

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To the extent this Court were to hold that the action was in fact initiated before C-Spine became the "real party in interest," another court rule would then come into play. If C-Spine was not the real party in interest at the time it filed this action, the trial court could have allowed substitution of parties under MCR 2.202(D). MCR 2.202(D) provides for substitution of parties at any stage in the litigation:

> Substitution of parties under this rule may be ordered by the court either before or after judgment or by the Court of Appeals or Supreme Court pending appeal. If substitution is ordered, the court may require additional security to be given.

MCR 2.202(D).

Given the broad scope of MCR 2.202(D), a finding that C-Spine was not the real party in interest at the time the action was commenced would not result in dismissal of this action. Instead, the trial court could have allowed substitution of the factoring companies for C-Spine, thus allowing the action to continue against Progressive. See *DeLong*, 308 Mich at 68-69; *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 547 n 20; 730 NW2d 481 (2007). Thus, regardless of whether C-Spine was a real party in interest at the time it commenced this action, Progressive was not entitled to partial dismissal of the factoring companies' claims in this action.

C. The One-Year Back Rule, MCL 500.3145, Has No Bearing on this Case.

In its supplemental brief, Progressive makes mention of the one-year back rule, MCL 500.3145. While it is not altogether clear that Progressive views this as an alternative basis for the relief that it seeks in this appeal, to the extent that Progressive is asserting that the one-year back rule applies in this case, that argument must be rejected.

MCL 500.3145 provides for the period of limitations for actions for recovery of PIP benefits:

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> (1) An action for recovery of personal protection insurance benefits payable under this chapter for an accidental bodily injury may not be commenced later than 1 year after the date of the accident that caused the injury unless written notice of injury as provided in subsection (4) has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury.
>
> (2) Subject to subsection (3), if the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss, or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.
>
> (3) A period of limitations applicable under subsection (2) to the commencement of an action and the recovery of benefits is tolled from the date of a specific claim for payment of the benefits until the date the insurer formally denies the claim. This subsection does not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence.
>
> (4) The notice of injury required by subsection (1) may be given to the insurer or any of its authorized agents by a person claiming to be entitled to benefits for the injury, or by someone in the person's behalf. The notice must give the name and address of the claimant and indicate in ordinary language the name of the person injured and the time, place, and nature of the person's injury.
>
> (5) An action for recovery of property protection insurance benefits may not be commenced later than 1 year after the accident.
>
> MCL 500.3145.

C-Spine commenced this action on May 11, 2020, seeking payment for unpaid medical expenses for services it provided to Jose Cruz-Muniz between August 2019 and October 2019. Complaint (AT-Apx 91); Invoices (AT-Apx 97-99). For the reasons set forth above, C-Spine had standing to sue and was a real party in interest at the time of the commencement of this action. Because C-Spine always had standing to sue in this action, the one-year-back rule does not bar its claims. The one-year back rule simply has no application to this case and Progressive's reliance upon MCL 500.3145 is misplaced.

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Even assuming Progressive's argument is correct and C-Spine did not have standing to bring this action and/or was not the real party in interest because it assigned its rights to bring its claims to various factoring companies prior to commencing this action, the one-year back rule still does not entitled Progressive to summary disposition. As set forth above, the appropriate outcome would be for the trial court to allow substitution of the factoring companies for C-Spine as to those claims pursuant to MCR 2.202(D), thus allowing the action against Progressive to continue. *DeLong*, 308 Mich at 68-69 (court should allow substitution rather than grant dismissal).

The case law cited by Progressive in support of its argument regarding the one-year back rule is also problematic. The main cases relied upon by Progressive are the April 6, 2023 unpublished opinion of the Court of Appeals in *Robinson v SMART* (AT-Apx 396-402) and the June 22, 2023 published decision of the Court of Appeals in *Wallace v SMART*, __ Mich App __; __ NW2d __ (2023). The Court of Appeals held in *Robinson* that, while Ms. Robinson timely sued SMART to recover the cost of medical services, she had assigned her rights to sue to the medical providers, who were now the real parties in interest, and the mutual revocations did not reassign any "timely" claims to plaintiff because the revocations were signed more than a year after services were rendered. *Robinson* (AT-Apx 396-402). The *Robinson* Court therefore concluded that Ms. Robinson's claims for unpaid medical bills were barred by the one-year back rule, MCL 500.3145(1). *Id.* The Court's ruling in *Robinson* thereafter formed the basis for its June 22,2023 published decision in *Wallace v SMART*, __ Mich App __; __ NW2d __ (2023), in which that Court held that, while the revocations of the assignments transferred the providers' interests to the claims for benefits back to plaintiff, "by the time plaintiff obtained these revocations, the providers no longer had valid claims for benefits by operation of the one-year back rule. See *Robinson*, unpub op at 7." *Wallace*, *slip op* at 5.

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In holding that Ms. Robinson's claims were barred by the one-year back rule, the *Robinson* Court relied upon an Arizona case, *Stephens v Trextron, Inc*, 127 Ariz 227; 619 P.2d 736 (1980), in which the Arizona court rejected an attempt to make an assignment retroactive to the date the complaint was filed so as to avoid the statute of limitations. *Robinson* (AT-Apx 402). The difficulty with the *Robinson* Court's reliance upon *Stephens*, however, is that the *Stephens* decision was rejected in *Wood v PACCAR, Inc*, 2020 WL 1494068 (ND Iowa, March 27, 2020) (A) on the basis of FRCivP 17(a)(3), which was specifically relied upon by the *C-Spine* Court in holding that the plaintiff-assignor was a real party in interest. *C-Spine* (AT-Apx 350-351).

In *Wood*, the plaintiff's third-party rights pertaining to his on the job injury were deemed assigned by operation of law to Ecole, the plaintiff's workers' compensation carrier. Prior to the expiration of the statute of limitations, plaintiff filed suit against various third parties for claims arising out of the accident. The defendants moved to dismiss, arguing that plaintiff was not a real party in interest and could not pursue his claims because any claims he had against defendants resulting from the accident were automatically assigned to Ecole by operation of law. Plaintiff argued that he is the real party in interest, but, even assuming that his status as a real party in interest was ever assigned to Ecole, Ecole reassigned all rights back to plaintiff, thereby avoiding the statute of limitations bar.

The *Wood* Court held that, pursuant to FRCivP 17(a)(3), the reassignment that occurred *after* expiration of the statute of limitations "ratified" the plaintiff's rights to maintain an action, and the ratification "relates back to Wood's timely filing of the initial complaint in August 2018, which was within the statute of limitations." *Wood* at 8. This is precisely the conclusion reached by the Court of Appeals in *C-Spine*. The *C-Spine* Court specifically noted that its "approach to the shifting

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assignments in this case also tracks that of the federal courts applying FRCivP 17, which uses precisely the same language as MCR 2.201(B)." *C-Spine* (AT-Apx 350-351). Under the holding in *C-Spine*, and consistent with the holding in *Wood*, the Court of Appeals should have rejected the ruling in *Stephens*. As in *C-Spine* and *Wood*, the counter-assignments and amended purchase agreements preserved C-Spine's right to maintain its action against Progressive.

Finally, the plain language of MCL 500.3145(1) does not support Progressive's argument. MCL 500.3145(1) provides that an action for recovery of PIP benefits "may not be commenced later than 1 year after the date of the accident that caused the injury" unless written notice of the injury is provided to the insurer within 1 year after the accident or the insurer has previously paid PIP benefits for the injury. MCL 500.3145(2), in turn, provides that if notice is given or a payment has been made, an action may be commenced at any time within 1 year after the most recent expense has been incurred, but "the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."

Here, there is no dispute that C-Spine commenced an action within 1 year after it incurred expenses for services provided to Jose Cruz-Muniz arising out of a motor vehicle accident that caused him injury, in compliance with MCL 500.3145(1). Although the counter-assignment was signed more than a year after services were rendered[2], Progressive fails to explain how a counter-assignment "commences" a new "action" for purposes of MCL 500.3145. According to the plain

[2] It appears that the counter-assignment was signed on January 11, 2021, while the amended purchase agreements were signed on July 29, 2020. Counter-Assignment (AT-Apx 255-260); Purchase Agreement Amendments (AT-Apx 262-267); Email Correspondence (AT-Apx 282). The amended purchase agreements were therefore signed within one year of services rendered to Mr. Cruz-Muniz.

language of §3145, the one-year back rule is measured from the date that suit was filed. See MCL 600.1901; MCR 2.101(B) ("A civil action is commenced by filing a complaint with a court"). There is no language in §3145 that suggests that the one-year back rule is measured from the date that the counter-assignments were executed. Section 3145 therefore does not provide a basis for summary disposition as to Progressive.

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RELIEF REQUESTED

Based on the foregoing, amicus curiae, the Michigan Association for Justice, requests that this Court affirm the Court of Appeals December 8, 2022 decision.

MARK GRANZOTTO, P.C.

/s/ Mark Granzotto

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Dated: October 21, 2024.

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CERTIFICATION PURSUANT TO MCR 7.305(A)(1)

Mark Granzotto, attorney for Amicus Curiae the Michigan Association For Justice, hereby certifies pursuant to MCR 7.305(A)(1) that this brief was typed using the Corel Word Perfect word processing program. That program has a function which can calculate the total number of words contained in a document. According to that program function, there are 4,785 words in this brief.

/s/ Mark Granzotto
Counsel for Amicus Curiae
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EXHIBIT A

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2020 WL 1494068
Only the Westlaw citation is currently available.
United States District Court, N.D. Iowa, Eastern Division.

Michael Gerald WOOD, Plaintiff,
v.
PACCAR, INC., Peterbilt Motors Company, a Wholly Owned Subsidiary of PACCAR, Inc., and Unknown Fabricators and Manufactures, Defendants,
JMJ Equipment Transport, Inc., Claimant.

No. 19-CV-1010-LRR
|
Signed 03/27/2020

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ORDER

LINDA R. READE, JUDGE

*1 *I. INTRODUCTION...*——

II. RELEVANT PROCEDURAL HISTORY...——

III. SUBJECT MATTER JURISDICTION...——

IV. SUMMARY JUDGMENT STANDARD...——

V. RELEVANT FACTUAL BACKGROUND...——
A. The Parties...——

B. Overview of the Dispute...——

VI. ANALYSIS...——
A. Parties' Arguments...——

B. Legal Conclusions...——

VII. CONCLUSION...——

I. INTRODUCTION

The matter before the court is Defendants PACCAR, Inc. ("Paccar") and Peterbilt Motors Company's ("Peterbilt") (collectively, "Defendants") "Motion for Summary Judgment" ("Motion") (docket no. 54).

II. RELEVANT PROCEDURAL HISTORY

On August 22, 2018, Plaintiff Michael Gerald Wood filed a "Petition" (docket no. 3) in the Iowa District Court for Dubuque County. On August 28, 2018, Wood filed the "First Amended Petition at Law" (docket no. 3-1) in the Iowa District Court for Dubuque County. On April 23, 2019, Defendants filed a Notice of Removal (docket no. 1), bringing the case before this court.

On August 7, 2019, Wood filed the "Second Amended Complaint" (docket no. 32), alleging strict liability (Count I) and negligence (Count II) against Defendants; and products liability (Count III) against unknown fabricators and manufacturers pursuant to Iowa Code section 613.18(3). *See generally* Second Amended Complaint ¶¶ 10-39. On August 21, 2019, Defendants filed an Answer (docket no. 33).

On December 18, 2019, Defendants filed the Motion. On

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January 15, 2020, Wood filed the Resistance (docket no. 67). On January 24, 2020, Defendants filed the Reply (docket no. 78). Wood requests oral argument. *See* Resistance at 1. The court finds that oral argument is unnecessary. Accordingly, Wood's request is denied. The matter is fully submitted and ready for decision.

III. SUBJECT MATTER JURISDICTION

The court has diversity jurisdiction over the claims because complete diversity exists between the parties and Wood alleges that the amount in controversy exceeds $75,000. *See* U.S.C. § 1332(a)(1) ("The district courts have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 ... and is between ... citizens of different States.").

IV. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). "Summary judgment is proper 'if the pleadings, the discovery and disclosure materials on file, and any affidavits show' " an absence of a genuine dispute as to a material fact. *Hilde v. City of Eveleth*, 777 F.3d 998, 1003 (8th Cir. 2015) (quoting *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc)). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Massey-Diez v. Univ. of Iowa Cmty. Med. Servs., Inc.*, 826 F.3d 1149, 1157 (8th Cir. 2016) (quoting *Gazal v. Boehringer Ingelheim Pharm., Inc.*, 647 F.3d 833, 837-38 (8th Cir. 2011)). "The movant 'bears the initial responsibility of informing the district court of the basis for its motion,' and must identify 'those portions of [the record] ... which it believes demonstrate the absence of a genuine issue of material fact.' " *Torgerson*, 643 F.3d at 1042 (alterations in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Once the movant has done so, "the nonmovant must respond by submitting evidentiary materials that set out 'specific facts showing that there is a genuine issue for trial.' " *Id.* (quoting *Celotex Corp.*, 477 U.S. at 324).

***2** On a motion for summary judgment, the court must view the facts "in the light most favorable to the nonmoving party." *Id.* (quoting *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009)). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial," and summary judgment is appropriate. *Ricci*, 557 U.S. at 586 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "The nonmovant 'must do more than simply show that there is some metaphysical doubt as to the material facts....' " *Torgerson*, 643 F.3d at 1042 (quoting *Matsushita*, 475 U.S. at 586). Instead, "[t]o survive a motion for summary judgment, the nonmoving party must substantiate [its] allegations with sufficient probative evidence [that] would permit a finding in [its] favor based on more than mere speculation, conjecture, or fantasy." *Williams v. Mannis*, 889 F.3d 926, 931 (8th Cir. 2018) (third alteration in original) (quoting *Barber v. C1 Truck Driver Training, LLC*, 656 F.3d 782, 801 (8th Cir. 2011)). Mere "self-serving allegations and denials are insufficient to create a genuine issue of material fact." *Anuforo v. Comm'r of Internal Revenue*, 614 F.3d 799, 807 (8th Cir. 2010). "Evidence, not contentions, avoids summary judgment." *Reasonover v. St. Louis Cty.*, 447 F.3d 569, 578 (8th Cir. 2006) (quoting *Mayer v. Nextel W. Corp.*, 318 F.3d 803, 809 (8th Cir. 2003)).

V. RELEVANT FACTUAL BACKGROUND

A. The Parties

Wood is a resident and citizen of the State of Arizona. *See* Second Amended Complaint ¶ 1. Paccar is a Delaware corporation with its principal place of business in Bellevue, Washington. *Id.* ¶ 2. Peterbilt is an unincorporated operating division of Paccar with its headquarters and principal place of business in Denton, Texas. *Id.* ¶ 3.

B. Overview of the Dispute

On September 12, 2016, Wood was operating a 2014 Peterbilt Model 579 heavy truck that was involved in a motor vehicle accident. *Id.* ¶ 9; Defendants' Statement of Undisputed Facts in Support of Motion for Summary Judgment ("SUF") (docket no. 58-1) ¶ 1. Wood was driving the truck in the scope of his employment with JMJ Equipment Transport on NW Arterial Road near the intersection of Plaza Drive in Dubuque, Iowa, when

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another motorist, David McGhee, failed to yield at the intersection and struck Wood. Second Amended Complaint ¶ 9; SUF ¶ 1. McGhee was driving a Honda CR-V, which hit the Peterbilt truck, resulting in the truck striking a traffic signal pole at the intersection. *Id.* Wood and McGhee both sustained injuries. *Id.*

Wood is an Arizona resident, and his employer, JMJ Equipment Transport, Inc. ("JMJ Transport"), is an Arizona business. SUF ¶ 2. JMJ Transport's workers' compensation carrier is Ecole, also an Arizona business. *Id.* Following the September 2016 accident, Wood received workers' compensation benefits from Ecole in Arizona. SUF ¶ 3. Wood has received in excess of $1,100,000 in workers' compensation benefits from Ecole in Arizona. *Id.* Wood will continue to receive workers' compensation benefits coverage from Ecole in Arizona, for current and future treatment. *Id.*

On May 20, 2018, Wood's counsel informed Ecole's counsel that he had been retained for all third-party claims arising from Wood's injuries. SUF ¶ 8. On July 26, 2018, counsel for Ecole informed Wood's counsel by letter that, under Arizona law, "all third[-]party rights pertaining to Woods' on the job injury on September 12, 2016 have been deemed assigned to Ecole, and on behalf of Ecole, demand is hereby made that Woods take no action to interfere with the same." Defendants' Exhibit G (docket no. 58-4) at 2; SUF ¶ 12.[1] On August 10, 2018, Ecole filed suit against McGhee in Arizona. SUF ¶ 16. On August 12, 2018, Wood filed suit against McGhee and Paccar in Iowa. *Id.* ¶ 21. On September 12, 2018, the two-year statute of limitations expired for any claims against Paccar arising out the accident. *Id.* ¶ 22. In an undated letter, which was signed by Ecole and delivered to Wood's counsel in April 2019, Ecole stated that:

> ***3** This letter serves to formally confirm on behalf of Ecole that Ecole never asserted any third[-]party rights except as to the Hartford policy which insured McGhee as of the date of the accident, and all other rights were considered by Ecole to remain available to Woods should he desire to pursue the same. This was confirmed by the aforementioned July 26 correspondence.

Id. ¶¶ 40-41; Defendants' Exhibit N (docket no. 58-11); Defendants' Exhibit O (docket no. 58-12).

VI. ANALYSIS

A. Parties' Arguments

Defendants argue that, pursuant to Federal Rule of Civil Procedure 17, Wood "is not a real party in interest and, thus, cannot pursue his claims against [them]." Defendants' Brief in Support of Motion for Summary Judgment ("Defendants' Brief") (docket no. 58) at 5. Specifically, Defendants assert that "any claims [Wood] had against [Defendants] (or any other third party) resulting from the [accident] were automatically assigned to Ecole by operation of [Arizona] law under A.R.S. § 23-1023." *Id.* Defendants maintain that "Arizona law, not Iowa law, determines whether [Wood] is a real party in interest." *Id.* at 6. Specifically, Defendants assert that, pursuant to Restatement (Second) of Conflict of Laws § 185 and *Moad v. Dakota Truck Underwriters*, 831 N.W.2d 111 (Iowa 2013), because Wood "obtained workers' compensation benefits in Arizona through Ecole, an Arizona benefits provider," this court "must apply Arizona state law to determine what interest Ecole (and, by implication, [Wood]) has in tort against third parties (including [Defendants]) as a result of the [accident]." *Id.* at 6-7. Defendants contend that, under Arizona law, the "automatic statutory assignment of Wood's claims to Ecole on September 13, 2017 included each and every claim Wood could have asserted against ... [Defendants] as a result of the [accident]." *Id.* at 7. Defendants argue that summary judgment is appropriate because "Ecole's reassignment of claims in April 2019 occurred long after the statute of limitations expired and did not operate retroactively." *Id.* at 9. Thus, Defendants maintain that Wood "was not the real party in interest under Fed. R. Civ. P. 17(a)(1) at the time he filed this action, and because his claims were not reassigned until after the statute of limitations expired, such claims are incurably time-barred." *Id.* at 12.

Wood responds that Defendants' summary judgment motion should be denied because he is the real party in interest. *See generally* Wood's Brief in Support of His Resistance to Defendant[s'] Motion for Summary Judgment ("Wood's Brief") (docket no. 75) at 21. Specifically, Wood argues that, "even assuming that [his] status as a real party in interest was ever assigned to Ecole, Ecole reassigned all Wood's rights as of July 26, 2018, thereby avoiding the statute of limitations bar[.]" *Id.* Further, Wood maintains that, "[w]hen Ecole assigned the rights to Wood this also operated as ratification under the joinder rules of [Rule] 17(a)(3)." *Id.* Additionally, Wood argues that, "[e]ven assuming arguendo, that the [court] were to apply A.R.S. [§] 23-1023 to this case, Fed. R. Civ. [P.] 17(a) governs the real party in interest issue and requires denial of the motion for summary judgment based on relation back." *Id.* at 28. Wood maintains that he "cured any possible real party in interest deficiencies

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before Defendant[s] ever objected to them." *Id.* at 33. Wood concludes that Defendants are "not entitled to summary judgment based on its objection and the motion should be summarily denied in its entirety." *Id.* at 38.

B. Legal Conclusions

***4** Fed. R. Civ. P. 17(a)(1) provides that "[a]n action must be prosecuted in the name of the real party in interest." *Id.* "The function of this rule 'is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata.' " *Curtis Lumber Co., Inc. v. Louisiana Pacific Corp.*, 618 F.3d 762, 771 (8th Cir. 2010) (quoting Fed. R. Civ. P. 17(a) advisory committee note (1966)). Thus, "Rule 17(a) requires that the plaintiff 'actually possess, under the substantive law, the right sought to be enforced.' " *Curtis Lumber Co.*, 618 F.3d at 771 (quoting *United HealthCare Corp. v. Am. Trade Ins. Co., Ltd.*, 88 F.3d 563, 569 (8th Cir. 1996)).

First, the court must determine what law applies to determine the real party in interest. "A district court, sitting in diversity, must follow the choice-of-law approach prevailing in the state in which it sits." *Jackson v. Travelers Ins. Co.*, 26 F.Supp.2d 1153, 1156 (S.D. Iowa 1998) (quoting *Dorman v. Emerson Elec. Co.*, 23 F.3d 1354, 1358 (8th Cir. 1990)).

In resolving a choice-of-law issue, courts apply the following four analytical steps: "(1) characterize the nature and the cause of action; (2) decide if a conflict of law exists; (3) identify the law that applies based on the forum state's choice-of-law principles; and (4) determine which state's substantive law applies based on the application of the forum state's choice-of-law principles." *Weitz Co., LLC v. Lexington Ins. Co.*, 982 F.Supp.2d 975, 982 (S.D. Iowa 2013) (citing *Jackson*, 26 F.Supp.2d at 1156-57). Here, while Wood's claims against Defendants sound in tort, *see generally* Second Amended Complaint, the issue to be resolved in the instant Motion is whether Wood is a real party in interest. As Defendants assert in their Reply Brief, "Arizona law is irreconcilably inconsistent with Iowa law" as A.R.S. § 23-1023(B) "grants an assignment of the totality of potential claims against third parties to the [workers' compensation] carrier," while in contrast, "Iowa Code [section] 85.22 grants the [workers' compensation] carrier only a subrogation interest in part of [a] claim against third-parties." Defendants' Reply Brief at 2. Specifically, A.R.S. § 23-1023(B) provides that, "[i]f the employee who is entitled to compensation under this chapter or the employee's dependents do not pursue a remedy pursuant to this section against the other person by instituting an action within one year after the cause of action accrues ... the claim against the other person is deemed assigned to the insurance carrier[.] ..." *Id.* On the other hand, Iowa Code § 85.22 provides that, "[i]n case the employee fails to bring such action within ninety days, ... within thirty days after written notice ... given by the employer or the employer's insurer ... then the employer or the insurer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might." *Id.* In comparing the two statutes, the court finds that a conflict exists. *See Am. Commercial Lines, Inc. v. Valley Line Co.*, 529 F.2d 921, 925 (8th Cir. 1976) ("The rights of an assignee differ from those of a person entitled to subrogation.").

In *Moad v. Dakota Truck Underwriters*, 831 N.W.2d 111 (Iowa 2013), the Iowa Supreme Court adopted Restatement (Second) of Conflict of Laws section 185. *Id.* at 118-19. Section 185 provides that "[t]he local law of the state under whose workmen's compensation statute an employee has received an award for an injury determines what interest the person who paid the award has in any recovery for tort or wrongful death that the employee may obtain against a third person on account of the same injury." REST 2d CONFL § 185. The comments to § 185 provide the following rationale:

> ***5** Situations arise where an employee while acting in the course of his [or her] employment is injured by the wrongful conduct of a third party who is not declared immune from liability for tort or wrongful death by an applicable workmen's compensation statute (*see* § 184). In such situations, the third party remains liable even after an award has been rendered and paid. The workmen's compensation statutes differ as to what interest the person who has paid the award has in the recovery on the cause of action against the third party. Under some statutes, acceptance of compensation by an injured employee or his [or her] dependents terminates his [or her] rights against the third party. In such a case, only the person who has paid the award (either the employer or an insurer) has an interest in the cause of action. Other statutes provide, however, that the person who has paid the award shall be reimbursed out of the proceeds of the judgment, and that the employee shall receive any sum that may remain.
>
> Under the rule of this Section, the local law of the state under whose workmen's compensation statute the claimant has received an award for an injury determines what interest the person who paid the award

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> has in the recovery on any cause of action for tort or wrongful death that the employee may have against a third person on account of the same injury.

REST 2d CONFL § 185 cmt. a. Because Wood obtained workers' compensation benefits in Arizona through Ecole, an Arizona benefits provider, the court finds that Arizona law is applicable for determining the real party in interest in this matter.

Defendants argue that, pursuant to A.R.S. § 23-103(B), the "automatic statutory assignment of Wood's claims to Ecole on September 13, 2017 included each and every claim Wood could have asserted against ... [Defendants] as a result of the [accident]." Defendants' Brief at 7. Defendants maintain that "Arizona law plainly provides that an automatic assignment pursuant to A.R.S. § 23-1023 transfers an employee's interest in any claim—including tort claims against third parties—to the workers' compensation carrier, and that the employee retains no interest in any claim against third parties." *Id.*; *see also Stephens v. Textron, Inc.*, 619 P.2d 736, 738 (Ariz. 1980) (providing that a claim assigned pursuant to A.R.S. § 23-1023(B) divests the plaintiff of any interest in the action); *Hertel v. Home Ins. Co.*, 604 P.2d 269, 271 (Ct. App. Ariz. 1979) (explaining that, when a claim is assigned to a workers' compensation carrier under A.R.S. § 23-1023, "the whole claim is assigned to the carrier and there is no equitable or beneficial interest which remains in the employee"); *K.W. Dart Truck Co. v. Noble*, 567 P.2d 325, 327 (Ariz. 1977) ("There is no implication from the language of the statute that the whole claim is not assigned to the carrier. Nor is there an equitable or beneficial interest which remains in the employee.").

Here, the accident giving rise to the present action occurred on September 12, 2016. Following the September 2016 accident, Wood received workers' compensation benefits from Ecole in Arizona. It is undisputed that Wood did not file any action against any third-party, including Defendants, within one year of the accident. Therefore, pursuant to A.R.S. § 23-1023(B), all third-party claims that Wood may have had were assigned to Ecole. Indeed, on July 26, 2018, counsel for Ecole informed Wood's counsel by letter that, under Arizona law, "all third[-]party rights pertaining to Woods' on the job injury on September 12, 2016 have been deemed assigned to Ecole, and on behalf of Ecole, demand is hereby made that Woods take no action to interfere with the same." Defendants' Exhibit G at 2; SUF ¶ 12. While Wood claims that the July 2018 letter constitutes a reassignment of third-party rights, the court finds that, on its face, such an argument is unpersuasive. The caption alone at the top of the letter makes clear that the July 2018 letter is not a letter of reassignment of third-party claims to Wood. The caption reads: "**NOTICE OF AUTOMATIC STATUTORY ASSIGNMENT OF ALL THIRD-PARTY RIGHTS TO ECOLE [AND] DEMAND TO DESIST FROM INTERFERENCE WITH SAME**." Defendants' Exhibit G (emphasis in original). Further, in the July 2018 letter, Ecole states that it "*will consider* assigning rights to other third parties in exchange for assignment of the Hartford policy to Ecole[,]" but "[e]ither way, demand is made that Woods desist from pursuing any claims inconsistent with Ecole's rights." *Id.* (emphasis added). Additionally, the July 2018 letter provides that "Mr. Woods must refrain from bringing any claims in Iowa which will interfere with Ecole's subrogation rights." *Id.* at 2. Based on the foregoing, on its face, the July 2018 letter does not appear to constitute a reassignment of third-party claims to Wood.

***6** However, in October 2018, Ecole's counsel, by email to Wood's counsel suggested that the July 2018 letter may have served as evidence of Ecole's willingness to reassign certain third-party claims to Wood. Specifically, the email, dated October 16, 2018, provides that:

> We advised you in our letter that we had no intent of pursuing third parties. It was incumbent upon you to ask for what you needed. Not on my client to guess as to what you need.
>
> You may interpret the July letter as offering you those rights, as we had no intent on pursuing them. I'm happy to provide clarification if you would like to consider that a "reassignment" and will speak to Ecole about that in advance of whenever we can get a call scheduled.

Wood's Appendix (docket no. 68) at 206. In an undated letter from April 2019, Ecole formally reassigned third-party claims, except for those against David McGhee, to Woods. The April 2019 letter provides in pertinent part:

> This letter serves to formally confirm on behalf of Ecole that Ecole never asserted any third[-]party rights except as to the Hartford policy which insured McGhee as of the date of the accident, and all other rights were considered by Ecole to remain available to Woods should he desire to pursue the same. This was confirmed by the aforementioned July 26[, 2018] correspondence.
>
> This confirmation of reassignment, pursuant to A.R.S. § 23-1023(B)(4), does not in any way affect any statutory liens Ecole may possess in this matter against third parties other than McGhee.

Defendants' Exhibit N.

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It is clear that, on its face, the July 2018 letter did not constitute a reassignment of third-party claims to Wood by Ecole, prior to Wood filing this action. However, informally, by October 2018, and formally, by April 2019, both dates after the two-year statute of limitations had run, it is clear that Ecole had reassigned third-party claims, except against McGhee, to Wood. Thus, the question that remains is whether Ecole's reassignment relates back to Wood's filing of this action in August 2018, which was within the applicable statute of limitations.

"In a diversity action, state law determines the issue of who is a real party in interest." *Jaramillo v. Burkhart*, 999 F.2d 1241, 1246 (8th Cir. 1993). However, while state law determines the real party in interest, "federal law governs the substitution procedure" for a district court to follow. *Kuelbs v. Hill*, 615 F.3d 1037, 1041 (8th Cir. 2010); *see also Ashley Cty., Ark. v. Pfizer, Inc.*, 552 F.3d 659, 665 (8th Cir. 2009) (providing that federal procedural rules apply to procedural issues in diversity actions, but state law is applicable in substantive issues). Accordingly, the court will rely on Fed. R. Civ. P. 17(a) for determining whether Ecole's reassignment constituted a ratification under Rule 17(a)(3) for purposes of relating back to Wood's filing of this action in August 2018.

Fed. R. Civ. P. 17(a)(3) provides that a "court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest." *Id.* Fed. R. Civ. P. 17(a) "requires that the party who brings an action actually possess, under the substantive law, the right sought to be enforced." *United HealthCare Corp. v. Am. Trade Ins. Co., Ltd.*, 88 F.3d 563, 569 (8th Cir. 1996). The purpose of this requirement is "to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata." *Id.* (quoting Fed. R. Civ. P. 17(a), Advisory Committee Note). Fed. R. Civ. P. 17 also "ensures that the real party in interest rule is not used to preclude cases from being heard on the merits in appropriate circumstances." *BBJ, Inc. v. MillerCoors, LLC*, No. 12-cv-11305-IT, 2017 WL 925004, at *4 (D. Mass. Mar. 8, 2017); *see also Estate of Butler ex rel. Butler v. Maharishi Univ. Mgmt.*, 460 F.Supp.2d 1030, 1037 (S.D. Iowa 2006) ("Rule 17 provides a method for preventing the forfeiture of legitimate actions that are mistakenly brought by a party other than the real party in interest."). "An agreement which ratifies the commencement and continuation of an action or reassigns the respective interests is normally sufficient under Rule 17 to cure any real party in interest defects." *DeVries v. Weinstein Int'l Corp.*, 80 F.R.D. 452, 459 (D. Minn. 1978); *see also Audio-Visual Marketing Corp. v. Omni Corp.*, 545 F.2d 715, 719 (10th Cir. 1976) (providing that, when a real party in interest objection is raised, the basis for such an objection may be "cured by reassignment and ratification," which is "in line with Rule 17(a) which states that an action should not be dismissed on the ground that it is not prosecuted in the name of the real party in interest until the plaintiff has been given a reasonable time to remedy the situation"); *Tip Top Credit Union v. Cumis Ins. Soc'y*, Case No. 84-1794-C, 1988 WL 383484, at *3 (D. Kan. Jan. 29, 1988) ("A ratification by the real party not included in the action to the effect that the party suing is capable of enforcing the right and that it will be bound by the results of that action is deemed sufficient to cure any objections. *Nat. Safe Corp. v. Texidor Sec. Equip., Inc.*, 101 F.R.D. 467, 469 (D.P.R. 1984)"); *Resolution Trust Corp. v. Scaletty*, 810 F.Supp. 1505, 1507-09 (D. Kans. 1992) (allowing ratification to cure real party in interest deficiency); *Butler*, 460 F.Supp.2d at 1039 (finding that, "[u]nder Rule 17, ... ratification avoids a statute of limitations bar, because the action is treated as if brought in the name of the real party in interest ... at the commencement of the action on February 27, 2006"); *BBJ, Inc.*, 2017 WL 925004, at *4 ("Here, the purposes of the real party in interest rule have been served, as the reassignment back to BBJ protects Defendants from facing a subsequent similar action brought by the former assignee. Accordingly, the court finds ratification in the reassignment of the claims back to BBJ, and considers Article III standing 'as if [the action] had been originally commenced by the real party in interest.' ") (quoting Fed. R. Civ. P. 17(a)(3)).

***7** Here, while Wood claims that Ecole ratified the reassignment in July 2018, prior to the statute of limitations running, a claim that appears unreasonable on its face, it is clear that, by October 2018, Ecole had informally ratified and reassigned third-party claims, except for McGhee, to Woods. *Compare* Defendants' Exhibit G (July 2018 letter from Ecole) *with* Wood's Appendix at 206 (October 2018 email from Ecole's counsel to Wood's counsel, stating "[y]ou may interpret the July letter as offering you those [third-party] rights, as we had no intent on pursuing them. I'm happy to provide clarification if you would like to consider that a "reassignment" and will speak to Ecole about that[.]"). Even more clear, by April 2019, Ecole formally ratified and reassigned third-party claims, except for McGhee, to Woods. *See* Defendants' Exhibit N (April 2019 letter

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from Ecole, providing that "[t]his letter serves to formally confirm on behalf of Ecole that Ecole never asserted any third[-]party rights except as to the Hartford policy which insured McGhee as of the date of the accident, and all other rights were considered by Ecole to remain available to Woods should he desire to pursue the same. This was confirmed by the aforementioned July 26[, 2018] correspondence."). Fed. R. Civ. P. 17(a)(3) provides that, "[a]fter ratification ... the action proceeds as if it had been originally commenced by the real party in interest." *Id.* Accordingly, any real party in interest and/or statute of limitations issue in this case is avoided because Ecole's April 2019 ratification and reassignment of third-party rights to Wood relates back to Wood's timely commencement of this action in August 2018. *See Butler*, 460 F.Supp.2d at 1039 (finding that, "[u]nder Rule 17, ... ratification avoids a statute of limitations bar, because the action is treated as if brought in the name of the real party in interest ... at the commencement of the action"); *BBJ, Inc.*, 2017 WL 925004, at *4 (same).

Defendants complete reliance on Arizona cases is misplaced. Arizona procedural law does not govern here. As the court has already found, Fed. R. Civ. P. 17(a) governs the determination of whether Ecole's ratification by reassignment procedurally relates back to when Wood filed the complaint in this action, not Arizona law. *See Kuelbs v. Hill*, 615 F.3d 1037, 1041 (8th Cir. 2010) (providing that, while state law determines the real party in interest, "federal law governs the substitution procedure" for a district court to follow); *see also Ashley Cty., Ark. v. Pfizer, Inc.*, 552 F.3d 659, 665 (8th Cir. 2009) (providing that federal procedural rules apply to procedural issues in diversity actions, but state law is applicable in substantive issues). Moreover, none of the Arizona cases cited by Defendants address reassignment in the context of Fed. R. Civ. P. 17(a). Finally, the court finds additional support for its conclusions in Judge Froeb's special concurrence in *Dunn v. Progressive Industries, Inc.*, 734 P.2d 604 (Ct. App. Ariz. 1986), which the court finds persuasive. In his special concurrence, Judge Froeb pointed out that:

> One faulty assumption made under both *Stephens [v. Textron, Inc.*, 619 P.2d 736 (Ariz. 1980)] and *Lawson [v. Arnold*, 670 P.2d 409 (Ct. App. Ariz. 1983)] is that the insurer had nothing to reassign to the plaintiff after the running of the two-year statute of limitations. The statute of limitations is not a jurisdictional bar to a cause of action. It is an affirmative defense that must be raised or it is waived.... It has no legal effect upon a cause of action until the court enters an order giving it judicial effect by dismissing the complaint. Until then, it is nothing more than an allegation in the defendant's answer. Theoretically, a cause of action exists *ad infinitum.* Until the statute of limitations is ruled on by the court as a defense to the claim, the claim continues to exist in legal contemplation.

Id. at 607. Further, Judge Froeb noted that "A.R.S. § 23-1023(B) specifically allows the reassignment of a claim from the insurer to the injured party, but the statute does not limit the time within which a reassignment may be made." *Id.* Judge Froeb explained that the defendant in *Dunn*, when he filed his claim, "had no interest in it, and when he obtained the reassignment, the period of limitations had run." *Id.* at 608. Judge Froeb stated that, "[a]lthough [the plaintiff] could not *maintain* his claim without being the real party in interest, when he became the real party in interest his claim *could* be maintained." *Id.* (emphasis in original). Turning to Rule 17(a),[2] Judge Froeb explained that Rule 17(a) "allows for the ratification of the plaintiff's status as the real party in interest within a reasonable time." *Id.* Bearing the foregoing in mind, Judge Froeb offered the following analysis of the plaintiff's action:

> ***8** Rule 17(a) is directly applicable to [the plaintiff's] cause of action. His lack of ownership in the claim is cured when he obtains the reassignment. As we held in *Hugh Kelly Enterprises, Inc. v. Ferry-Morse Seed Co.*, 118 Ariz. 392, 577 P.2d 1 (App. 1978), assignment of the cause of action ratified the real party in interest's claim. Even though the plaintiff in *Hugh Kelly Enterprises* did not own his claim when it was filed, the assignment gave his claim life. We held that the ratification related back to the filing date of the original complaint by the operation of [R]ule 17(a). In view of this, the asserted bar of the statute of limitations would be unavailing against [the plaintiff's] claim.

Id.

Judge Froeb's special concurrence is directly on point to this case and fully comports with Fed. R. Civ. P. 17(a)(3). Pursuant to Fed. R. Civ. P. 17(a)(3), Ecole's reassignment in April 2019, ratified Wood's third-party rights, except as to McGhee. In accordance with Rule 17(a), the ratification relates back to Wood's timely filing of the initial complaint in August 2018, which was within the statute of limitations. *See* Fed. R. Civ. P. 17(a)(3) ("After ratification, ... the action proceeds as if it had been originally commenced by the real party in interest."). Thus, Wood was the real party in interest prior to Defendants even raising the issue in August and December 2019. *See* Answer (docket no. 33) at 10, ¶ 6 (raising affirmative defense of real party in interest in August 2019); *compare with* Defendants' Exhibit N (Ecole's Letter formally ratifying and reassigning third-party claims to Wood, which was received by Wood's counsel in April 2019). Accordingly, Defendants' Motion for Summary Judgment shall be denied.

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VII. CONCLUSION

In light of the foregoing, Defendants PACCAR, Inc. and Peterbilt Motors Company's Motion for Summary Judgment (docket no. 54) is **DENIED**.

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2020 WL 1494068

Footnotes

1 In Wood's "Response to [Defendants'] Statement of Facts in Support of Motion for Summary Judgment" (docket no. 67-3), Wood admits that Defendants' Exhibit G "is a fair and accurate copy of ... [Ecole's counsel's] letter to [Wood's counsel] dated July 26, 2018 and it contains, in part, the quoted language, cited in [Defendants'] statement at paragraph 12." *Id.* at ¶ 12. Wood complains that the quoted language sets forth Ecole's legal conclusions and is not a statement of fact. The court disagrees. Because Wood admits the accuracy of Exhibit G, the court will consider it as part of the factual background for the instant Motion.

2 Arizona Rule of Civil Procedure 17(a) is identical to Fed. R. Civ. Pro. 17(a).

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