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STATE OF MICHIGAN

IN THE SUPREME COURT

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff/Appellee,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant

_____/

Supreme Court No. 165537
Court of Appeals No. 358170
Macomb Circuit No. 20-001710-NF

**Consolidated With:**

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

_____/

Supreme Court No. 165538
Court of Appeals No. 358171
Macomb Circuit No. 20-000386-NF

# INSURANCE ALLIANCE OF MICHIGAN'S *AMICUS CURAIE* BRIEF IN SUPPORT OF DEFENDANT/APPELLANT PROGRESSIVE MICHIGAN INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL

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## STATEMENT OF JURISDICTION

The Insurance Alliance of Michigan (hereinafter referred to as "IAM") agree with the parties' statements of the basis for jurisdiction.

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## QUESTIONS PRESENTED

1. 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 revoked the assignments or executed counter-assignments and try to assign those rights back to Plaintiff?

Trial Court answered: "No."

Court of Appeals answered: "Yes."

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

Defendant-Appellant Progressive answers: "No."

IAM answers: "No."

2. Whether the one-year-back rule of the No-Fault Act, MCL 500.3145(2), has any effect on Plaintiff C-Spine's standing and status as a real-party-in-interest?

Trial Court answered: "Not Applicable."

Court of Appeals answered: "Not Applicable."

Plaintiff-Appellee C-Spine answers: "No."

Defendant-Appellant Progressive answers: "Yes."

IAM answers: "Yes."

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## STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

IAM is a government affairs and public information association proud to represent property/casualty insurance companies and related organizations operating in Michigan. IAM member companies provide insurance to approximately 95% of the automobile, 90% of the homeowners, and 60% of the commercial markets in Michigan. IAM's purpose is to serve the Michigan insurance industry and the insurance consumer as a central focal point for educational, media, legislative and public information on insurance issues. IAM serves as the official spokesperson for the property/casualty insurance industry in Michigan.

IAM has a strong interest in the proper development and maintenance of Michigan insurance law, including automobile no-fault law. This includes as a top priority the proper interpretation and application of legislation affecting such insurance. It also includes the proper interpretation of rules and statues governing insurance policies as a matter of contract law and related common law doctrines that occasionally come into play in disputes between and among insurers, insureds, and health care providers regarding coverage and payment for medical bills arising out of auto accidents. Decisions regarding insurers' rights, defenses, and obligations relating to the Michigan No-Fault Act can unsettle the industry, upset underwriting and reserves based on past precedent, and render insurance unavailable or more costly to consumers. IAM, therefore, regularly files amicus briefs to offer the industry's perspective on important legal issues.

[1] The undersigned certifies that counsel for neither party authored this brief in whole or in part. The undersigned further certifies that no party and no other person or entity other than amicus made a monetary contribution intended to fund the preparation or submission of this brief.

This Court has long recognized that the function of an amicus is to shed additional light on a case, particularly where there is an important public interest. See *City of Grand Rapids v Consumers' Power Co,* 216 Mich 409, 415; 185 NW 852 (1921) ("This court is always desirous of having all the light it may have on the questions before it. In cases involving important public interest leave is generally granted to file a brief as *amicus curiae*….")

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## STATEMENT OF FACTS AND STANDARD OF REVIEW

IAM adopts and agrees with the statement of facts and standard of review contained in Defendant/Appellant Progressive Michigan Insurance Company's Application and Supplemental Briefing.

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## *Law and Analysis*

### I. ALLOWING C-SPINE TO PROCEED WITH A CAUSE OF ACTION THAT WAS ASSIGNED TO OTHER PARTIES PRIOR TO FILING CONTRAVENES THE PURPOSE OF THE NO-FAULT ACT'S COST CONTAINMENT MEASURES AND FLIES IN THE FACE OF THE ONE-YEAR BACK RULE AND ITS PURPOSE

Issues of statutory interpretation are questions of law that this Court reviews de novo. *Spectrum Health Hosps v Farm Bureau Mut Ins Co*, 492 Mich 503, 515; 821 NW2d 117 (2012). As this Court has previously recognized:

> The primary goal of statutory interpretation is to "ascertain the legislative intent that may reasonably be inferred from the statutory language." "The first step in that determination is to review the language of the statute itself." Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. We may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, "[t]he words of a statute provide 'the most reliable evidence of its intent . . ..'"

*Krohn v Home-Owners Ins Co*, 490 Mich 145, 156-57; 802 NW2d 281 (2011) (quoting *Klooster v City of Charlevoix*, 488 Mich 289, 296; 795 NW2d 578 (2011)).

The goal of statutory interpretation "'is to give effect to the Legislature's intent, focusing first on the statute's plain language.'" *Malpass v Dep't of Treasury*, 494 Mich 237, 247-248; 833 NW2d 272 (2013) (quoting *Klooster*, 488 Mich at 296). In determining the legislative intent, the Court is to "examine the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme." *Madugula v Taub*, 496 Mich 685, 696; 853 NW2d 75 (2014). When a statute's language is unambiguous, "the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted." *Malpass*, 494 Mich at 249 (citation and quotation marks omitted).

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As this Court is aware, the legislative purpose underlying the No-Fault Insurance System is to keep "insurance premiums at affordable rates while providing victims of motor vehicle accidents assured, adequate, and prompt reparation for certain economic losses." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 217-218; 815 NW2d 412 (2012)."The no-fault act was as concerned with the rising cost of health care as it was with providing an efficient system of automobile insurance." *Dean v Auto Club Ins Ass'n*, 139 Mich App 266, 273; 362 NW2d 247 (1984). Importantly, the survival of the No-Fault system is what should be protected and it is up to the judiciary, who are the legislative enforcers, to uphold and safeguard the fiscal integrity of it. While pursuit and efforts towards the goals of keeping rates affordable and ensuring prompt and adequate reparation should be balanced, the ultimate goal should be keeping the system in place; therefore, why particular emphasis should be placed on cost containment measures.

Part of the cost containment measures enacted by our legislature include MCL 500.3145, also known as the “one year back rule.” Under MCL 500.3145(2), a claimant for PIP benefits "may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." The one-year-back rule in MCL 500.3145(2) "is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 203; 815 NW2d 412 (2012). “[T]he one-year-back rule is not a statute of limitations, but a damages-limiting provision.” *Id.* at 212.

Allowing a provider to proceed with a cause of action that was assigned to a third-party prior to filing the complaint disregards the purpose of the No-Fault Act’s cost containment measures. This could potentially allow stale claims to be revived through

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assignments and revocations, despite the clear intention of the Legislature. Moreover, any argument that the patient would become liable for these expenses if not allowed to circumvent the one-year-back rule through assignments, is contrary to the No-Fault Act. The patients are also protected by the one-year-back rule as it prevents providers from pursuing the patient for the remaining balance after payment by the insurers. See *Auto-Owners Ins Co v Compass Healthcare PLC*, 326 Mich App 595, 602; 928 NW2d 726 (2018). Lastly, allowing claims to circumvent the one-year back rule through the use of assignments and revocation rewards the providers for engaging in this type of gamesmanship and amounts to impermissible judicial activism.

### A. THE PURPOSE OF THE ONE-YEAR BACK RULE IS TO LIMIT DAMAGES AND KEEP INSURANCE COST LOW. ALLOWING C-SPINE TO CIRCUMVENT THIS RULE THROUGH ASSIGNMENTS IS CONTRARY TO THAT PURPOSE AND COULD MAKE THIS PORTION NUGATORY.

The No-Fault Act "represents the policy of this state that the existence of no-fault insurance shall not increase the cost of health care." *Dean v Auto Club Ins Assoc*, 139 Mich App 266, 274; 362 NW2d 247 (1984). Furthermore, the No-Fault Act was intended to create an affordable system that would restrain insurance premiums. *Stevenson v Reese*, 239 Mich App 513, 519; 609 NW2d 195 (2000); see also *Davey v Detroit Auto Inter-Ins Exch*, 414 Mich 1, 10; 322 NW2d 541 (1982). In short, while the No-Fault Act sought to "provide individuals injured in motor vehicle accidents assured, adequate and prompt reparation for certain economic losses," it was also intended to provide these benefits "at the lowest cost to the individual and the system." *Gooden v Transamerica Ins Corp of America*, 166 Mich App 793, 800; 420 NW2d 877 (1988).

Part of the cost containment measures enacted by the legislature include MCL 500.3145, also known as the "one year back rule." Under MCL 500.3145, a claimant for

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PIP benefits "may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." The one-year-back rule in MCL 500.3145(2) "is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 203; 815 NW2d 412 (2012). “[T]he one-year-back rule is not a statute of limitations, but a damages-limiting provision.” *Id.* at 212. This Court has previously stated that:

> Given that Michigan is the only state with a no-fault automobile-injury reparations scheme with mandatory, unlimited, lifetime medical benefits, the Legislature adopted a unique approach to defining the temporal limitations for filing suit without allowing open-ended liability or time-barring claims before they accrue. The Legislature addressed this problem by enacting the one-year-back rule, which limits recovery to losses incurred within one year before suit was filed. Thus, the creation of MCL 500.3145(1) was the Legislature's reasonable and simple approach to resolving the problem of allowing a reasonable amount of time for pursuing a claim while protecting the fiscal integrity of the no-fault system

*Id.* at 220-221.

The purpose of the one-year back rule is to allow a reasonable time for pursuing a claim while protecting the financial integrity of the system. Allowing claims that are older than one-year to be pursued undermines this purpose and exposes the system to potentially unlimited liability.

Here, Plaintiff/Appellee had assigned its right to pursue No-Fault PIP benefits and its account receivables to third-parties. Though Plaintiff may have had a statutory right to seek payment of certain medical benefits, it instead opted to transfer that right to the a third-party, an option it had and was free to exercise. See *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017). Following the

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assignment of these claims the "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 v Rockford Pub Sch*, 311 Mich App 403, 412; 875 NW2d 242 (2015). "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt v Bailey*, 260 Mich App 636, 652-653; 680 NW2d 453 (2004). As such, Plaintiff's assignee were subject to MCL 500.3145(2), which limits their ability to bring suit for claims to only those incurred within one year of filing.

Plaintiff/Appellee C-Spine filed suit seeking payment of No-Fault benefits that it has assigned to a number of factoring companies. At the time the complaint was filed, C-Spine did not have the legal right to pursue these claims. Rather, the factoring companies had the legal right and would have needed to file their own suit to pursue payment of these benefits. Instead, they sat on their rights and appear to have taken no action until after Plaintiff/Appellee C-Spine filed suit. At this point, the claim was well over one-year old. As such, the time period set under MCL 500.3145(2) lapsed and the claim was no longer viable. The factoring companies clearly did not pursue their claims with reasonable diligence. See MCL 500.3145(3).

It was not until after the complaint had been filed and one (1) year had passed since the claim arose that Plaintiff/Appellee C-Spine sought counter-assignments or revocations from the factoring companies. At this point, however, it was too late; the claim was stale. Plaintiff/Appellee C-Spine, clearly recognizing the error, then sought to circumvent this by providing an "effective date" of prior to the date the complaint was filed.

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Allowing providers like Plaintiff/Appellee to circumvent the one-year-back rule through the use of assignments in this way threatens the continued fiscal stability of our No-Fault system. Our Legislature adopted a unique approach to the issues that our No-Fault system may encounter by defining the temporal limitations for filing suit without allowing open-ended liability or time-barring claims before they accrue. "Permitting a claimant to recover all losses incurred both before and after an action is filed, without any limitation, would nullify this legislative compromise and render the no-fault system unsustainable." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 221; 815 NW2d 412 (2012).

### B. Any Argument That The Patient Would Be Liable For Any Expense Not Paid By Insurance Is Directly Contradicted By The Law In Michigan

The Coalition Protecting Auto-No-Fault (hereinafter referred to as "CPAN") argues that patients, as well providers, must be able to pursue payment of these bills or patients could face contractual liability from the providers. This is simply not true. Providers, similar to complaints and insurers, are still subject to the one-year-back rule under MCL 500.3145(2). See *Auto-Owners Ins Co v Compass Healthcare PLC*, 326 Mich App 595, 602; 928 NW2d 726 (2018). Because the No-Fault Act still applies, the one-year-back rule controls and there can be no contractual liability on the part of the patient.

In *Compass*, the claimant was injured in an accident and received treatment from numerous providers. *Id.* at 600. The claimant's no-fault PIP insurer, Home-Owners, issued payment to the providers based on what was reasonable and necessary for the services provided to the claimant. *Id.* Despite receiving payment from Home-Owners, the medical providers sought "payment of 'balance bills' from a patient-insured on a *contractual* liability theory, rather than under the No-Fault Act, after a provider's charges were audited for reasonableness and the provider was paid a partial payment based on the findings of

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those audits." *Id.* at 606. The Court of Appeals agreed with the trial court that a medical provider cannot seek payment of "balance bills," or the differential of the charge and the payment made by a No-Fault insurer, against the No-Fault insurer's insured under a contractual liability theory. *Id.* at 608-609. Such a claim, if any, falls under the constraints of the Michigan No-Fault Act, including the one-year back rule, MCL 500.3145(2). *Id.* at 609, 611-613. The court stated:

> To conclude that defendants could prevail on the theory of an implied contract is contrary to the purpose of the no-fault act, and its implications would allow medical providers to circumvent the protective nature of the act. Therefore, we conclude that any claim defendants may have against [the claimant] would be for payment of services rendered to an injured person "covered by personal protection insurance" under the no-fault act. See MCL 500.3157

*Id.* at 611. Moreover, the court was clear that because the claim fell squarely under the No-Fault Act, the one-year-back rule also applied:

> Moreover, given our conclusion that any claim by defendants would still fall squarely within the parameters of the no-fault act, defendants' recovery would be subject to the one-year-back rule found in MCL 500.3145.
>
> In this case, Home-Owners made a reasonable payment to Compass Health on behalf of [its insured] on August 5, 2014. Therefore, in order to contest the reasonableness of the amount paid or to pursue the remaining $782.86, defendants would have had to file suit against [the insured] on or before August 5, 2015. See MCL 500.3145 [. . .].
>
> Defendants concede that they did not file any action in the trial court. Accordingly, any claim defendants may have had against [the claimant] is now barred by the one-year-back rule. The trial court did not abuse its discretion by concluding the same. [Id. at 612-613.]

Furthermore, it has long been understood that providers cannot go after patients directly for unpaid bills related to a no-fault accident:

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> Accordingly, plaintiffs are protected, by both the defendants' promise and the directive of the Commissioner of Insurance, from incurring damages as a result of defendants' payment of less than the full amount billed by plaintiffs' health care providers.

*McGill v Automobile Ass'n*, 207 Mich App 402, 407; 526 NW2d 12 (1994)

> Notwithstanding the fact that refusing to pay unreasonable medical expenses is allowed under the insurance contract, in an effort to hold the insured harmless should the health care provider sue the insured, the insurer has agreed to fully defend and indemnify the insured from liability for necessary services priced in excess of what the insurer considers to be reasonable and customary.

*LaMothe v Auto Club Ass'n*, 214 Mich App 577, 583; 543 NW2d 42 (1995). See e.g., *McGill*, 207 Mich App at 406-407 (holding that insurers must defend and indemnify their insureds in the event they are sued by their providers for the outstanding balance.), citing and quoting Insurance Bureau Bulletin 92-03, October 23, 1992. See also *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365 (2003), aff'd 472 Mich 91 (2005) (AOPP), citing *LaMothe*, 214 Mich App 577 ("The fact that the amount paid is less than the amount the health-care provider charged does not violate the act where the amount paid is based on a proper determination of what is reasonable and the insurer will defend and indemnify the insured if the health-care provider sues the insured for the balance").

CPAN's argument that patients would become liable for the unpaid balance should they not be able to bring the provider's claim despite the assignment, is, frankly, absurd. The No-Fault Act, in its effort to prevent price-gouging, protects the patients as well as the insurers by preventing suits when the benefits are over a one (1) year old. This also protects patients from becoming personally liable for balance bills due to reductions under

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the No-Fault Act. There is no reason to allow providers and patients to bring forward the same claim when an assignment has been executed by the patient or, in this case, a medical provider. The patient faces no increased liability by not being able to bring these claims forward as the No-Fault Act also serves to protect their interest.

### C. Allowing C-Spine to Circumvent the One-Year-Back Rule through the Misuse of Assignments Would Make This Section Of The Statute Nugatory And Would Reward Providers Who Are Clearly Engaged In Poor Gamesmanship. Moreover, Allowing C-Spine To Pursue These Claims Would Amount to Impermissible Judicial Activism

As this Court is keenly aware, it "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute." *Hannay v Dep't of Transp*, 497 Mich 45, 57; 860 NW2d 67 (2014) (quotation marks and citation omitted). This is especially true with the No-Fault Act, as this Court has previously stated that “the judicial branch cannot amend the no-fault act to make it ‘better.’ That is an authority reserved solely to the Legislature.” *Johnson v Recca*, 492 Mich 169, 187; 821 NW2d 520 (2012).

Allowing Plaintiff/Appellee C-Spine to circumvent the one-year back rule through the use of assignments renders the one-year-back rule, MCL 500.3145, superfluous. The Legislature intended for this section to limit recovery in no-fault cases to protect the integrity of the system and to prevent potentially unlimited liability. In this case, Plaintiff/Appellee C-Spine’s assignees cannot bring forward these claims independently because they are barred by the one-year back rule. Moreover, Plaintiff/Appellee’s C-Spine’s counter-assignments and revocations cannot revive a claim that is already time-barred and stale. Doing so would amount to making an assignment more valuable than the right being assigned. It would essentially be allowing the provider to create a greater right than it possessed at the time of the revocation as it would allow the plaintiff to

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proceed with a claim that is dead. This Court has previously rejected this legal proposition in *Jones v Chambers*, 353 Mich 674, 681-682; 91 NW2d 889 (1958), stating:

> The assignment created nothing. It simply passed to plaintiffs' insurer rights already in existence, if any. If plaintiffs' insured had no rights, then plaintiffs' insurer acquired none by virtue of the assignment. To rule otherwise would be to give to such an assignment some strange alchemistic power to transform a dross and worthless cause of action into the pure gold from which a judgment might be wrought.

Allowing a revocation of an assignment to revive a previously barred claim would be contrary to this precedent.

Moreover, allowing Plaintiff/Appellee C-Spine to rehabilitate a claim barred by the No-Fault Act would reward its poor gamesmanship. For example, the flagrant discovery abuses and misleading conduct on the part of Plaintiff/Appellee C-Spine—which appeared in this case where there is suggestion of back-dating assignments in an attempt to save its stale claims—is well-documented in the dissenting opinion of *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, 344 Mich App 626, 638 (2022). This apparent frustration of the Court of Appeals also carried over to other cases, where the following was stated:

> I concur with the majority that the case must be reversed and remanded under *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co* [C-Spine I], Mich App , ; NW2d (2022) (Docket No. 358170), 2022 Mich. App. LEXIS 7057,1 which governs the outcome of this appeal**.** I also write to express my agreement with the majority that C-Spine's attorneys have conducted themselves herein a manner unbecoming of members of the legal profession by engaging in gamesmanship during discovery and misleading the trial court with half-truths. Accordingly, I concur.

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*C-Spine Orthopedics PLLC v. Progressive Marathon Ins. Co*, unpublished per curiam opinion of the Court of Appeals, issued December 14, 2023 (Docket No. 362290) (Kelly, J., concurring).[2]

Another Judge stated:

> 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 Mich. App. LEXIS 7057 (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**.**

*C-Spine Orthopedics, PLLC v. Allstate Ins. Co.*, unpublished per curiam opinion of the Court of Appeals, issued March 30, 2023 (Docket No. 360887) (Markey, J., concurring).[3]

In addition, the following was written:

> I write separately only to express my dismay at both the messiness of the lower court discovery and also what appears to be plaintiff counsel's misleading of the trial court, which contributed to that messiness. [ . . .] I would like to give plaintiff's counsel the benefit of the doubt, given that intentional misleading of the trial court, indeed, any manipulation of the legal process is deserving of sanctions. See, *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 89; 618 NW2d 66 (2000); *Miller v Riverwood Recreation Ctr, Inc*, 215 Mich App 561, 572; 546 NW2d 684 (1996). However, it is difficult to do so when plaintiff counsel's actions smack of gamesmanship—which one of discovery's primary purposes is to eliminate. *People v Burwick*, 450 Mich 281, 298; 537 NW2d 813 (1995).

*C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued February 9, 2023 (Docket no. 358773) (Servitto, J., concurring).[4]

[2] Attached as Exhibit A
[3] Exhibit B
[4] Exhibit C

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Allowing Plaintiff/Appellee C-spine to be rewarded for these flagrant discovery violations and this clear, poor gamesmanship would result in clear injustice and reward this type of behavior, which extends to this case. Moreover, allowing these assignments to evade the one-year back rule is precisely the type of "unrestrained, mistaken use of the power of interpretation [that] wrongly creates a 'judicial veto,'" which has been condemned by this Court. *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 68 n 55; 921 NW2d 247 (2018).

The harms caused by such activism include: (1) uncertainty whether the plain language of a statute will be enforced, *Robinson v City of Detroit*, 462 Mich 439, 467-468; 613 NW2d 307 (2000); (2) uncertainty whether the plain language of the parties' agreement will be enforced, *Kendzierski v Macomb Co,* 503 Mich 296, 312; 931 NW2d 604 (2019); (3) frequent litigation and re-litigation of once-believed settled doctrines, *People v Davis*, 472 Mich 156, 190; 695 NW2d 45 (2005) *(*Kelly, J*., Dissenting)*; (4) "surprise" issues raised *sua sponte* by the Court for the first time on appeal, *People v Worthington*, 503 Mich 863; 917 NW2d 397, 398 (2018) (Viviano, J., *Concurring*), and (5) consideration of completely unpreserved issues, *Fountain v Filson,* 336 US 681; 69 S Ct 754; 93 L Ed 971 (1949). Such activism leaves the bench and bar in a state of flux and unrest, being unable to decide cases and unable to advise clients. Such decision making, untethered by bedrock legal principles, undermines confidence in the judicial system.

## II. A DECISION OF THIS COURT HOLDING THAT C-SPINE HAS STANDING AND IS A REAL-PARTY-IN-INTEREST WOULD CONTRAVENE THE PURPOSE OF THE STANDING DOCTRINE, MICHIGAN COMPILED LAWS AND MICHIGAN COURT RULES, RENDERING ALL NUGATORY AND SURPLUSAGE.

In addition to Plaintiff/Appellee C-Spine's attempt to circumvent the one-year-back rule, Plaintiff/Appellee C-spine is attempting to circumvent the application of the standing

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and real-party-in-interest doctrine. Plaintiff/Appellee C-Spine did not have standing and was not the real-party-in-interest at the time it filed suit. If its attempts are allowed to succeed, the standing and real-party-in-interest doctrine will be rendered nugatory surplusage.

### A. A Plaintiff Who Assigned its Right to Recovery, and Where the Assignment is in Effect at the Time Suit is Filed, Does Not Have Standing at the Time the Suit is Filed.

A plaintiff who assigns its right to recovery to a third-party, and then files suit when such assignments are still in effect, do not have standing. Put simply, this is because standing is determined at the time the suit is filed. See *Girard v Wagenmaker*, 437 Mich 231; 470 NW2d 372 (1991). “The principle of statutory standing is jurisdictional; if a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits.” *In re Beatrice Rottenberg Living Trust*, *infra* at 355. As Plaintiff/Appellee C-Spine lacks standing, for the reasons more thoroughly detailed below, the Court of Appeals erred in its ruling.

The assignments at-issue occurred prior to Plaintiff filing suit. An assignment of rights occurs when the assignor transfers his or her rights or interests to the assignee. See *State Treasurer v Abbott*, 468 Mich 143, 150 n 8; 660 NW2d 714 (2003). When the plaintiff assigns its rights to recovery to another party, the plaintiff is transferring its legal right to recover. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004).

Prior to Plaintiff/Appellee C-Spine executing the assignments to other providers, Plaintiff/Appellee C-Spine was assigned the right to recovery by the underlying patient. Plaintiff/Appellee C-Spine, therefore, stood in the position that the patient was in prior to

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the to the assignment. Therefore, it follows that Plaintiff/Appellee C-Spine's assignees, i.e., factoring companies, then also stood in Plaintiff/Appellee C-Spine's shoes when the second assignments were executed for the reason that assignments do not create new rights. See *Jones v Chambers*, 353 Mich 674, 681-682; 91 NW2d 889 (1958).

It has been a longstanding principle that "an assignment divests the assignor of any interest in the subject matter of the assignment." 6A CJS, Assignments, § 88. "Thus, because a legal assignment vests the right to enforce the rights in the assignee, an assignor retains no rights to enforce the rights after they have been assigned, i.e., the assignor loses the right that allows her to prosecute the claim." *Robinson v Szczotka*, ___NW2d___; Unpublished Opinion of the Court of Appeals Per Curiam, issued April 6. 2023 (Docket No. 359646).[5]

When the underlying patient/claimant assigned the right to recovery to Plaintiff/Appellee C-Spine, the patient/claimant no longer stood in that position and therefore, no longer possessed the right to recover. The same rationale requires the determination that when Plaintiff/Appellee C-Spine assigned its right to recover to the assignees, they then stood in the position that Plaintiff/Appellee C-Spine was in prior to the assignment. Accordingly, Plaintiff/Appellee C-Spine lost the right to recovery which would allow it to prosecute its claim. Accordingly, at the time the suit was filed, Plaintiff/Appellee C-Spine had no legal right to recovery and lacked standing. Moreover, Plaintiff/Appellee C-Spine was no longer the real-party-in-interest.

Plaintiff/Appellee C-Spine also argues that because it listed the effective date of the counter assignment as a date prior to when it filed this suit, it has standing. "[T]he

[5] Exhibit D

party filing suit must have had standing to sue when the complaint was filed. See *Enzo APA & Son, Inc v Geapag AG*, 134 F3d 1090, 1093 (CA Fed, 1998) (one must hold legal title to the patent to sue for infringement of the patent; "nunc pro tunc assignments are not sufficient to confer retroactive standing") and *Gaia Techs. v Reconversion Techs.*, 93 F.3d 774, 777-780 (CA Fed, 1996) (like other personal property, patents, and trademarks may be assigned to others, and a *nunc pro tunc* assignment executed after a lawsuit is filed may not retroactively confer standing). See also *Robinson, supra.* However, at the time the case was filed, because C-Spine has assigned its rights third-parties, it did not have standing in relation to those claims.

As in *Enzo* and *Gaia Techs*, Plaintiff/Appellee C-Spine and/or the factoring companies executed the counter assignments after suit was already filed. Such counter-assignments were then backdated and provided an earlier effective date, which should be insufficient to confer Plaintiff/Appellee C-Spine with retroactive standing. If Plaintiff/Appellee C-Spine wanted the legal right to recover at the time it filed suit, it could have executed such counter-assignment prior to filing suit, or it could have foregone such assignments to the providers altogether.

Importantly, the Court in *Bd of Trs v City of Pontiac*, 309 Mich App 611, 621; 873 NW2d 783 (2015), stated that following regarding standing:

> In general, standing requires a party to have a sufficient interest in the outcome of litigation to ensure vigorous advocacy and in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.

A litigant has standing when there is a legal cause of action; however, a plaintiff must assert their own legal rights—they cannot "rest their claims to relief on the rights or



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interests of third parties." *Id.* at 622. Ultimately, when Plaintiff/Appellee C-Spine filed suit, the right to recovery stood with the factoring company assignees. It follows that when Plaintiff/Appellee C-Spine filed suit, it impermissibly rested its claim on the right to recovery held by the third-party factoring companies.

The law is clear that an attempt to circumvent standing via revocations of assignments and counter assignments does not provide a plaintiff with standing as standing must exist at the time the suit is filed. A decision to the contrary would nullify the standing doctrine by allowing courts and parties to entertain actions based on the rights of third parties.

### B. Similar to Standing, the Real-Party-In-Interest Doctrine Is Violated And Rendered Nugatory and Surplusage if C-Spine is Allowed to Bring the Claims of Third-Parties that they Assigned their Rights to.

"'[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest doctrine, they are distinct concepts.'" *Maki Estate v Coen*, 318 Mich App 532, 539 n 1 (2017), quoting *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355 (2013) (alteration in original). MCR 2.201(B) and MCL 600.2041 both set forth the real-party-in-interest doctrine with almost the exact same language. As standing and the real party-in-interest doctrine overlap, the analysis for standing is almost identical. Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest." Under MCL 600.2041, "[e]very action must be prosecuted in the name of the real party in interest."

"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." *Fansler v Richardson*, 266 Mich App 123; 698 NW2d 916 (2005). A plaintiff must be the real-party-in-interest at the time of filing. *Id.* Since at the time of filing the present suit, Plaintiff/Appellee C-Spine no longer

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possessed the right to recover as it had assigned this right to the provider assignees, Plaintiff/Appellee C-Spine was not vested with the right to bring its suit and was not the real-party-in-interest. Rather, the Plaintiff/Appellee C-Spine's assignees were the real-parties-in-interest at the time the subject lawsuit was filed.

The purpose of the real-party-in-interest doctrine would be destroyed if this Court were to adopt the position of Plaintiff/Appellee C-Spine. The real-party-in-interest doctrine "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Id.* at 482

As Plaintiff/Appellee C-Spine did not possess the right to recover at the time it filed its lawsuit, the lawsuit was not initiated by the real-party-in-interest. It also no longer was in a position to assure sincere and vigorous advocacy of the factoring companies' right to recover. Whether or not the provider assignees recovered, the issue was moot Plaintiff/Appellee C-Spine. Plaintiff/Appellee C-Spine would neither receive nor lose any benefit if its assignees litigated their right to recover or failed to do so. Plaintiff/Appellee C-Spine had no beneficial interest, besides wanting money, when it brought underlying lawsuit, and was certainly not the real-party-in-interest. In the end, the Court of Appeals erred when it determined that Plaintiff/Appellee C-Spine was the real party in interest.

Additionally, if the Court of Appeals' decision is upheld or if Defendant/Appellee's Application is denied, this court would be disregarding other cases that have been decided that have applied a similar framework to that being supported by Defendant/Appellee Progressive and IAM, including, but not limited to: *Carter v Progressive Mich Ins Co*, Unpublished Opinion of the Michigan Court of Appeals Per

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Curiam, issued February 29, 2024 (Docket No. 365522);[6] *Saad v American Select Ins Co*, Unpublished Opinion of the Michigan Court of Appeals Per Curiam, issued January 18, 2024 (Docket No. 362247);[7] *Farrar v Suburban Mobility Auth for Reg'l Transp*, 345 Mich App 472; 7 NW3d 80 (2023); and *Robinson, supra.*

***Relief Requested***

**For the foregoing reasons**, INSURANCE ALLIANCE OF MICHIGAN, respectfully requests that this Honorable Court GRANT leave to Appeal and recognize that (1) a patient or provider who assigns the right to claim No-Fault PIP benefits to a third-party is no longer the real-party-in-interest and does not have standing and that (2) revocations of assignments cannot be applied retroactively; thereby, skirting the application of the one-year back rule under MCL 500.3145(2).

Respectfully submitted,

**WILLINGHAM & COTÉ, P.C.**
Attorneys for *Amicus Curiae* Insurance Alliance of Michigan

Dated: October 21, 2024

BY: */s/ Stephen D. Foucrier*
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[6] Exhibit E
[7] Exhibit F

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# EXHIBIT A

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# C-Spine Orthopedics PLLC v. Progressive Marathon Ins. Co.

Court of Appeals of Michigan

December 14, 2023, Decided

No. 362290

**Reporter**
2023 Mich. App. LEXIS 9142 *; 2023 WL 8699191

C-SPINE ORTHOPEDICS PLLC, Plaintiff-Appellant, and CARMIYA ANDREWS, Other-Party, v PROGRESSIVE MARATHON INSURANCE COMPANY and PROGRESSIVE MICHIGAN INSURANCE COMPANY, Defendants-Appellees.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History: [*1]** Oakland Circuit. LC No. 2020-185418-NF.

C-Spine Orthopedics PLLC v. Progressive Marathon Ins. Co., 2023 Mich. App. LEXIS 1245 (Mich. Ct. App., Feb. 22, 2023)

**Counsel:** For C-SPINE ORTHOPEDICS PLLC, Plaintiff - Appellant: MATTHEW SCOTT PAYNE.

For PROGRESSIVE MARATHON INSURANCE COMPANY, Defendant - Appellee: NEIL HANSEN.

**Judges:** Before: O'BRIEN, P.J., and K. F. KELLY and M. J. KELLY, JJ. K. F. KELLY, J. (concurring).

## Opinion

PER CURIAM.

In this third case involving plaintiff, C-Spine Orthopedics, PLLC, and defendants Progressive Marathon Insurance Company and Progressive Michigan Insurance Company,[1] we are once again asked to determine whether C-Spine has standing and is a real party in interest under MCR 2.201(B)(1) that may maintain a first-party no-fault action against Progressive. In the first case, C-Spine Orthopedics, PLLC v Progressive Ins Co [C-Spine I], Mich App , NW2d (2022) (Docket No 358170); slip op at 1-4, 2022 Mich. App. LEXIS 7057, the Court held that C-Spine had standing and was a real-party-in-interest under MCR 2.201(B)(1) because it had a statutory right to bring a direct cause of action seeking first-party no-fault benefits under MCL 500.3112, because the action was brought for the benefit of the factoring companies, and because the factoring companies had counter-assigned its interests in the underlying PIP claims back to C-Spine. In C-Spine Orthopedics, PLLC v Progressive Marathon Ins Co [C-Spine II], unpublished per curiam opinion of the Court of Appeals, issued February 9, 2023 (Docket No. 358773); unpub op at 1-2, 2023 Mich. App. LEXIS 949, the Court held that C-Spine **[*2]** had standing and was a real-party-in-interest because the relevant facts were identical with those in *C-Spine I*. In this case, for the reasons stated in this opinion, we reverse the trial court's order granting Progressive summary disposition and remand for further proceedings.

I. BASIC FACTS

Underlying the current appeal, in February 2020, Carmiya Andrews was injured in a motor vehicle crash and received treatment from C-Spine. Following each appointment with C-Spine, Andrews assigned to C-Spine her right to collect personal protection insurance (PIP) benefits from Progressive, her auto insurer. On December 29, 2020, C-Spine filed this action against Progressive, seeking unpaid PIP benefits totaling $255,217.90 related to the medical treatment that it provided to Andrews for injuries she sustained in the crash.

During discovery, Progressive requested C-Spine to produce all documents that made it the real party in

[1] For ease of reference, defendants will collectively be referred to as "Progressive."

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interest to sue Progressive. In response, C-Spine produced over 300 pages of documents, including Andrews's medical records and the various assignments of PIP benefits that Andrews signed following her medical appointments. Progressive also served C-Spine with requests to admit, **[*3]** including the following:

> **Request for Admission No. 3**: Please admit that the Plaintiff sold at least a portion of a receivable, relating to treatment provided to Carmiya Andrews, to another legal person or entity.
>
> **RESPONSE: Deny**
>
> **Request for Admission No. 4**: Please admit that the Plaintiff assigned the rights to at least a portion of a receivable, relating to treatment provided to Carmiya Andrews to another legal person or entity.
>
> **RESPONSE: Deny**

Further, C-Spine was asked to produce any documents regarding any transfer of interest between C-Spine and any potential factoring companies. C-Spine indicated that such documents were "N/A [not available]."

Eventually, however, C-Spine produced contractual agreements between it and various factoring companies, including EzMed Servicing, LLC and MedFinance Servicing, LLC. Among C-Spine's interests in other accounts receivable, the medical factoring agreements transferred C-Spine's interests in the accounts receivable for the payment of Andrews's PIP benefits. The agreement between C-Spine and EzMed was entered into as of December 10, 2020. That agreement provided that C-Spine "desires, subject to the express terms, provisions, conditions, limitations, **[*4]** waivers, and disclaimers as may be expressly set forth herein, to *sell, transfer, assign, and convey* [C-Spine's] *legal and equitable rights and interests* in each Medical Lean, Letter of Protection, and/or Accounts Receivable" identified in the schedule of accounts attached to the factoring agreement. (Emphasis).

It further provided that EzMed "wishes to purchase, and [C-Spine] wishes to sell, subject to the terms herein, [C-Spine's] Rights, Title, and Interests in certain Accounts Receivable on which [C-Spine] has not yet received payment from any other source." Notably, the agreement provided that EzMed "shall purchase from [C-Spine], and [C-Spine] shall sell, transfer, assign, and convey to [EzMed], without recourse, [C-Spine's] Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts . . ., as well as [C-Spine's] Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts . . . ." C-Spine warranted that the factoring agreement "constitutes a valid assignment to [EzMed] off all Rights, Title, and Interests of [C-Spine] in the Accounts Receivable and **[*5]** the proceeds thereof, and following such assignment, [EzMed] shall own all Rights, Title, and Interests to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable." The accompanying bill of sale provided that C-Spine granted, assigned, transferred, and conveyed to EzMed "all of [C-Spine's] rights, title, interest, *and claims*" in the accounts receivable. (Emphasis added). The factoring agreement between MedFinance and C-Spine was entered into on March 12, 2020. It included identical provisions.

After receiving the factoring agreements, Progressive moved for summary disposition under *MCR 2.116(C)(5)* and *(C)(10)*. Progressive argued that the factoring agreements revealed that C-Spine had sold its right to pursue payment for Andrews's outstanding bills to multiple third-party factoring companies, and, as a result, C-Spine was not the real party in interest and lacked standing to pursue its claim against Progressive.

In response, C-Spine argued that it had only transferred to the factoring companies the beneficial interest in Andrews's accounts receivable. It claimed that it retained the chose in action, i.e., the ownership of the legal claims **[*6]** asserted in the action, and that, as a result, it was always a real party in interest and a proper plaintiff. In support of its position, it submitted affidavits purportedly from "the parties to the factoring agreements that have explained in sworn testimony that [C-Spine] was obligated to pursue collection of PIP benefits for the factoring companies' benefit."[2] Yet, the

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[2] C-Spine also sententiously claimed that Progressive was engaging in "pure gamesmanship intended to circumvent payment of compensable benefits on a technicality." This argument is curious given that, as noted above, C-Spine was less than forthright in its response to the requests to admit when it flatly denied transferring *any* interest in Andrews's accounts to any other legal entity, and in response to the request to produce when it stated that any documents evidencing a transfer were not available. Indeed, C-Spine's gamesmanship was identified in *C-Spine II, 2023 Mich. App. LEXIS 949 at *15* (stating that C-Spine's lawyer's "actions smack of gamesmanship" given her misleading statements to the court regarding the parties whom she represented and her misleading statements regarding the dates upon which the

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documentation did not support C-Spine's proclamations. The first affidavit, although notarized, was completely illegible. The second and third affidavits, which were signed and notarized, pertained to the treatment of "Albert Jackson," not Carmiya Andrews. The fourth and fifth affidavits were neither signed, nor notarized. Consequently, C-Spine produced no sworn affidavits from any parties involved in the factoring agreements indicating that C-Spine had only transferred the beneficial interest in Andrews's accounts receivable to the factoring companies. Moreover, inexplicably, C-Spine did not direct the trial court to any language in the subject factoring agreements[3] supporting its position that it had transferred only the beneficial interest to the factoring companies and that it had retained its chose in action obligating **[*7]** it to collect the PIP benefits for the factoring companies' benefit.

Moreover, inexplicably, C-Spine did not direct the trial court to any language in the actual factoring agreements, which had been tardily produced as a result of a protective order,[4] which supported its position that it transferred only the beneficial interest to the factoring companies, that it retained its chose in action, and that it was obligated to collect the PIP benefits for the factoring companies benefits.

At oral argument, Progressive pointed out the complete lack of documentary evidence supporting C-Spine's claim that it had only transferred the beneficial interest to the factoring companies. It also noted that it was only through a discovery "battle" that the factoring agreements had been provided. In response, C-Spine's lawyer complained that it was "a little bit misleading to say that there was any sort of discovery battle." He stated:

> I wanna make it very clear for this Court that my client doesn't actually possess any of these factoring documents. Every time they're requested, I have to go to the factoring company and request them.

C-Spine asserted that the real-party-in-interest statute allowed it to **[*8]** bring the action in its own name without joining the party for whose benefit the action was brought. He then claimed that Progressive would not have to pay twice "because the factoring companies don't sue." He then added that, the factoring companies did not "have the rights left anyway" because "[e]ven if these assignments did actually transfer a right to pursue completely away, the factoring companies no longer have any rights by operation of [MCL 500.]3145." Progressive's lawyer agreed that its interest was in not having to pay twice; however, he again noted that "according to the documents we received, [C-Spine] sold their rights" to the factoring companies."

The trial court determined that, based upon the pleadings and the oral argument, C-Spine lacked standing because it had sold its rights to third-party factoring companies. As a result, the court granted Progressive's motion for summary disposition. This appeal follows.

## II. EXPANSION OF THE RECORD ON APPEAL

We first address Progressive's argument that C-Spine is improperly attempting to expand the record on appeal. In its brief on appeal, C-Spine has produced additional documentation showing that the factoring companies have counter-assigned **[*9]** to C-Spine all rights and interests in Andrews's accounts receivable. C-Spine has not moved this Court for permission to expand the record on appeal. "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc, 251 Mich App 41, 56; 649 NW2d 783 (2002)*.

Under *MCR 7.216(A)(4)*, this Court may, "at any time, in addition to its general powers, in its discretion, and on the terms it deems just . . . permit amendments, corrections, or additions to the transcript or record." We decline to exercise our discretion to permit expansion of the record in this case because doing so would not be just. First, we are aware that, during discovery, C-Spine flatly denied that it had assigned any interest in

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counter-assignments were actually created as opposed to the dates that they purported to have been created). In light of such uncontroverted record facts, it is apparent that C-Spine's lawyers have engaged in extensive and troubling gamesmanship in each of these related cases.

[3] The factoring agreements were tardily produced as a result of a protective order that was entered on January 5, 2022. Under the order, C-Spine's lawyers were ordered to provide to Progressive's lawyers the factoring agreements between it and MedFinance and Well States Healthcare within 10 days. The factoring agreements were not provided until March 14, 2022, which significantly exceeded the 10-day deadline set forth in the protective order.

[4] The record reflects that a protective order was entered on January 5, 2022, wherein C-Spine's lawyers were ordered to provide to Progressive's lawyers the factoring agreements between it and MedFinance and Well States Healthcare within 10 days. The factoring agreements were not provided until March 14, 2022, which significantly exceeded the 10-day deadline set forth in the protective order.

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Andrews's benefits to any third party. Given its later disclosures during discovery, that representation has been proven to be false. Second, when ordered to produce within 10 days the factoring agreements under a protective order, C-Spine significantly exceeded that deadline by providing the documentation months later. Third, the counter-assignments were signed on December 1, 2020 and July 16, 2021. Thus, when C-Spine filed its March 25, 2022 response to Progressive's motion for summary **[*10]** disposition, C-Spine was well aware that it was in possession of all the legal and equitable rights and interests it had transferred to the factoring companies. Rather than so advising the trial court of that seemingly critical change in circumstance, C-Spine opted instead to maintain—without documentary support—its position that it had only transferred the beneficial interest in the accounts to the factoring companies. Fourth, we take judicial notice of the fact that this is not the first case between C-Spine and Progressive that has been marred by discovery irregularities. In *C-Spine I, Mich App at ; slip op at 2, 2022 Mich. App. LEXIS 7057*, the majority charitably classified the lower court record as "messy," noting that C-Spine had only produced samples of factoring agreements rather than actual copies of the contracts purportedly transferring its interests in the relevant accounts receivable to the factoring companies. In *C-Spine II, 2023 Mich. App. LEXIS 949 at *3*, the majority noted that "[d]iscovery relating to the factoring company contracts was just as confusing in this case as it was in *C-Spine I*." In conclusion, it is apparent that discovery issues relating to the factoring agreements (and the counter-assignments) have existed in three **[*11]** cases between the same parties. Overall, we conclude that the record in this case demonstrates a cunning pattern of gamesmanship related to C-Spine's relationship with factoring companies. For the above reasons, therefore, it would not be just to relieve C-Spine's lawyer from the consequences for its ill-advised concealment of the pertinent documentation supporting its position.

Accordingly, no expansion of the record is permitted in this case, and we will not consider the counter-assignments.

III. SUMMARY DISPOSITION

A. STANDARD OF REVIEW

C-Spine argues that the trial court erred by granting summary disposition. We review de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc, 285 Mich App 362, 369; 775 NW2d 618 (2009)*.

B. SHIFTING BURDEN ON MOTIONS FOR SUMMARY DISPOSITION

A party moving for summary disposition under *MCR 2.116(C)(10)* must support the motion with enough detail that the opposing party is on notice of the need to respond. *Id.*; see also *MCR 2.116(G)(4)* (stating that the moving party must "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact"). The motion must be supported "with affidavits, depositions, admissions, or other documentary evidence in support of the grounds **[*12]** asserted." *Barnard Mfg, 285 Mich App at 369*; *MCR 2.116(G)(3)(b)*. In this case, Progressive supported its motion for summary disposition with documentary evidence showing that C-Spine had transferred its entire interest in Andrews's PIP claim to third-party factoring companies.

A properly supported motion for summary disposition shifts the burden to the opposing party to establish that a genuine issue of disputed fact exists. *Quinto v Cross & Peters Co, 451 Mich 358, 362; 547 NW2d 314 (1996)*. In doing so, the nonmoving party cannot rely on mere allegations or denials, but must instead, "by affidavits or as otherwise provided in [*MCR 2.116*], set forth specific facts showing that there is a genuine issue for trial." *Barnard Mfg, 285 Mich App at 374* (quotation marks and citations omitted). C-Spine, as detailed above, argued that it only transferred the beneficial interest to the factoring companies. It provided no affidavits or documentary evidence in support of that position. Consequently, we conclude that it did not meet its burden to establish that a genuine issue of disputed fact existed as to whether or not it transferred its entire interest to the factoring companies. Because C-Spine did not meet its burden to show that there was a genuine issue of disputed fact, see *id., at 626*, Progressive should have been entitled to summary disposition. See **[*13]** *MCR 2.116(G)(4)*.[5]

C. BINDING AUTHORITY

[5] We note that the trial court was not under any obligation to independently scour the factoring agreements to ascertain whether some provision, unidentified by C-Spine, actually supported C-Spine's position that it only transferred the beneficial interest to the factoring companies, notwithstanding the repeated provisions indicating that it was transferring *all* of its rights, interests, and claims related to the accounts receivable, including Andrews's account receivable. See *Barnard Mfg, 285 Mich App at 377*.

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We are, however, constrained to follow the decision in *C-Spine I*, which held that, regardless of whether C-Spine, under similar circumstances, transferred its entire interest to a factoring company, it was nevertheless a real party in interest with standing to pursue a first-party no-fault claim against Progressive. C-Spine I, Mich App at ; 2022 Mich. App. LEXIS 7057 at *3 (assuming that the factoring agreements in that case (which were not actually produced) "assigned the entirety of C-Spine's interests in the [injured parties'] accounts receivable to one or more factoring companies."). The facts in this case and in *C-Spine I* are similar. In both cases, Progressive insured an individual whom was injured in a motor vehicle crash; that individual received medical treatments from C-Spine and assigned the right to collect PIP benefits to C-Spine; C-Spine, thereafter, sold its rights and interests to third-party factoring companies. See C-Spine I, Mich App at ; slip op at 2-3, 2022 Mich. App. LEXIS 7057. There were also differences, but, given the assumptions of the *C-Spine I* majority, the differences are not dispositive. For example, in *C-Spine I*, only a sample of a factoring agreement was provided. **[*14]** Id. at ; slip p at 2, 2022 Mich. App. LEXIS 7057. In this case, actual copies of the factoring agreements were provided. And, as shown above, they unambiguously transferred all of C-Spine's legal and equitable rights, interests, and claims related to Andrews's accounts receivable. Additionally, unlike this case, the record in *C-Spine I*, included documentation showing that the factoring companies counter-assigned the pertinent interests back to C-Spine.

In *C-Spine I*, this Court held that standing was not a barrier to C-Spine's claim because MCL 500.3112 grants C-Spine standing to "'assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person.'" C-Spine I, Mich App at ; slip op at 3, 2022 Mich. App. LEXIS 7057, quoting MCL 500.3112. Likewise, in this case, C-Spine has statutory standing to pursue a direct cause of action against Progressive. Next, the *C-Spine I* majority concluded:

> The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. MCR 2.201(B)(1) provides:
>
> > A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose **[*15]** 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*. [Emphasis added.]
>
> 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.
>
> This Court has explained the principle underlying MCR 2.201(B)(1) as follows: "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 Club Ins Ass'n, 211 Mich App 55, 95; 535 NW2d 529 (1995). C-Spine is "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 the plain language of MCL 500.3112. That the "beneficial interest" resided with the factoring companies did not eliminate C-Spine as a real party in interest. [C-Spine I, Mich App at ; slip op at 3-4, 2022 Mich. App. LEXIS 7057.]

Although *C-Spine I* considered, as part of its analysis, the existence of counter-assignments returning to C-Spine the rights and interests that C-Spine **[*16]** had sold to the factoring companies, the Court's dispositive ruling was that, regardless of the fact that C-Spine assigned away the entirety of its rights, it could maintain a cause of action against Progressive. In this case, the record reflects that C-Spine sold all of its legal and equitable interests, rights, and claims to Andrews's accounts receivable to factoring companies, but despite that total divestment, *C-Spine I* concludes that it is appropriate for C-Spine to remain a real party in interest.

Were we not bound by *C-Spine I*, we would follow the reasoning set forth in the dissent in *C-Spine I* and affirm the trial court's grant of summary disposition. The dissent explained:

> C-Spine argues that assignors and assignees are both real parties in interest after rights have been assigned; therefore, the factoring companies and C-Spine were parties in interest for purposes of the litigation. C-Spine, citing MCR 2.202(B), contends that "even if the trial court had been correct that [C-Spine] effectively transferred its rights to the

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benefits at issue, the appropriate remedy is merely to join any other entity that supposedly or allegedly has a duplicative interest in the cause of action." C-Spine **[*17]** maintains that Progressive's sole legitimate interest was avoidance of duplicate payment and that joinder would have protected that interest. C-Spine asserts that the reason for the "real party in interest" requirement is to prevent double recovery and multiple lawsuits. C-Spine claims that the only relief available to Progressive was joinder of the factoring companies, not dismissal of the lawsuit.
* * *

Subject to certain circumstances, "[a]n action must be prosecuted in the name of the real party in interest . . . ." MCR 2.201(B). In Barclae v Zarb, 300 Mich App 455, 483; 834 NW2d 100 (2013), this Court observed as follows:

> 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. [Quotation marks and citations omitted.] **[*18]**

An assignee of a cause of action becomes the real party in interest in relation to that particular cause of action, considering that the assignment vests in the assignee all the rights earlier held by the assignor. Kearns v Mich Iron & Coke Co, 340 Mich 577, 582-584; 66 NW2d 230 (1954); Cannon Twp [v Rockford Pub Schs], 311 Mich App [403,] 412-413; [875 NW2d 242 (2015)]; Burkhardt v Bailey, 260 Mich App 636, 653; 680 NW2d 453 (2004). This caselaw does not support C-Spine's contention that an assignor remains a real party in interest after an assignment. Indeed, 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. Critical to the proper analysis of these lawsuits, caselaw provides that standing is determined at the time a complaint is filed. 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). And C-Spine and my colleagues in the majority do not argue to the contrary.

In support of its position that assignors and assignees remain real parties in interest after an assignment, C-Spine cites and quotes MCL 600.2041, which provides, in part:

> 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* . . . . [Emphasis **[*19]** added.]

The emphasized language is the language that C-Spine emphasizes when making its argument. Similarly, MCR 2.201(B)(1) provides:

> (B) 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.

With respect to contracts made for the benefit of another, this is plainly a reference to contracts with third-party beneficiaries, allowing a contracting party who does not receive a direct benefit to file suit if the other contracting party's promise directed at the third-party beneficiary is not fulfilled. See Capital Mtg Corp v Mich Basic Prop Ins Ass'n, 78 Mich App 570, 575; 261 NW2d 5 (1977) ("[A] party in whose name a contract has been made for the benefit of another may sue in his own name without joining the other party"). The purchase agreements or assignments to the factoring companies in these cases did not involve third-party beneficiaries. Rather, the purchase agreements between C-Spine and the factoring companies simply entailed **[*20]** C-Spine's straightforward sale of its interests and rights in accounts receivable to the factoring

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companies in exchange for immediate payment on those accounts at a discounted rate.

With respect to a party being authorized by statute to sue for the benefit of another, MCL 600.2041; MCR 2.201(B)(1), it is true that under the current version of MCL 500.3112, C-Spine was statutorily authorized to directly file a cause of action against Progressive. The majority concludes that C-Spine had statutory standing to bring the claims on the basis of MCL 500.3112. I initially note that even though the amendment of MCL 500.3112 adding a direct cause of action for healthcare providers was in effect, 2019 PA 21, C-Spine's 2020 complaints, as noted earlier, relied solely on Sandra's and Jose's assignments in pursuing the actions and in claiming that it was the real party in interest. "[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest rule, they are distinct concepts." *In re Beatrice Rottenberg Living Trust, 300 Mich App 339, 355; 833 NW2d 384 (2013)* (emphasis added). Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id.*
* * *

While C-Spine had a statutory **[*21]** legal cause of action under MCL 500.3112, it chose not to pursue that route, relying instead on the assignments from Sandra and Jose to state a legal cause of action. Regardless, in either case, C-Spine still needed to be the real party in interest when the suits were commenced, and the majority appears to accept that premise.

The majority addresses the real-party-in-interest provision in MCR 2.201(B)(1), holding as follows:

> 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.
>
> [C-Spine] is "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 the plain language of MCL 500.3112. That the "beneficial interest" resided with the factoring companies did not eliminate C-Spine as a real party in interest.

In my view, this analysis ignores the fact that C-Spine assigned or sold all of its rights and interests in PIP benefits to the factoring companies before the suits were filed, thereby losing its status as a **[*22]** real party in interest under the authorities cited earlier. The factoring companies became the real parties in interest at that point, although there might have been legal impediments to them filing suit against Progressive.

I additionally believe that the majority's position reflects a misunderstanding of MCR 2.201(B)(1). The provision addresses circumstances in which (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 statute sues for the benefit of another person. This third situation, which forms an integral part of the majority's holding through reliance on MCL 500.3112, plainly concerns statutory provisions that authorize a party to sue for the benefit of another person. Again, in its complaints, C-Spine did not allege a cause of action or standing under MCL 500.3112, but I shall proceed with my analysis assuming application of MCL 500.3112. As noted earlier, MCL 500.3112 states that "[a] health care provider . . . may make a claim and assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations **[*23]** provided to an injured person." This statute simply authorizes a healthcare provider such as C-Spine to sue for its own benefit or on its own behalf, i.e., to recover overdue PIP benefits for its products, services, or accommodations. At most, the statute can also be viewed as authorizing a healthcare provider to sue for the benefit of an injured person, considering that payment by an insurer to a healthcare provider can potentially preclude the healthcare provider from seeking payment from the injured person who enjoyed the benefit of healthcare services. But MCL 500.3112 in no form or manner authorizes a healthcare provider to sue for the benefit of factoring companies or others. Accordingly, MCR 2.201(B)(1) and MCL 600.2041 did not give C-Spine the status of a real party in interest at the time the suits were filed in light of the sales of all of C-Spine's interests and rights in the accounts receivable.

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Although we believe that *C-Spine I* was wrongly decided for the reasons set forth in the *C-Spine I* dissent, we decline to call for a conflict panel under MCR 7.215(J)(2) because *C-Spine I*'s holding is currently on appeal to the Michigan Supreme Court. See *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co, 994 NW2d 516 (2023)*.

Reversed and remanded. We do not retain jurisdiction. C-Spine may tax costs. MCR 7.219(A) **[*24]** .

/s/ Colleen A. O'Brien

/s/ Michael J. Kelly

**Concur by:** Kirsten Frank Kelly

## Concur

K. F. KELLY, J. (*concurring*)

I concur with the majority that the case must be reversed and remanded under *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co [C-Spine I], Mich App , ; NW2d (2022) (Docket No. 358170), 2022 Mich. App. LEXIS 7057*,[1] which governs the outcome of this appeal. I also write to express my agreement with the majority that C-Spine's attorneys have conducted themselves in a manner unbecoming of members of the legal profession by engaging in gamesmanship during discovery and misleading the trial court with half-truths. Accordingly, I concur.

/s/ Kirsten Frank Kelly

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[1] On September 13, 2023, the Michigan Supreme Court scheduled argument to consider Progressive Michigan's application for leave to appeal, instructing the parties to address "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." ***C-Spine Orthopedics, PLLC v Progressive Mich Ins Co, __ Mich __; 994 NW2d 516 (2023)***.

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# EXHIBIT B

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# C-Spine Orthopedics, PLLC v. Allstate Ins. Co.

Court of Appeals of Michigan

March 30, 2023, Decided

No. 360887

**Reporter**
2023 Mich. App. LEXIS 2269 *; 2023 WL 2717450

C-SPINE ORTHOPEDICS, PLLC, Plaintiff-Appellant, v ALLSTATE INSURANCE COMPANY, Defendant-Appellee.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History: [*1]** Macomb Circuit Court. LC No. 2020-002560-NF.

*C-Spine Orthopedics PLLC v. Allstate Ins. Co., 2022 Mich. App. LEXIS 4539 (Mich. Ct. App., Aug. 2, 2022)*

**Counsel:** For C-SPINE ORTHOPEDICS PLLC, Plaintiff - Appellant: MATTHEW SCOTT PAYNE.

For ALLSTATE INSURANCE COMPANY, Defendant - Appellee: KAITLYN ADELL CRAMER.

**Judges:** Before: CAVANAGH, P.J., and MARKEY and BORRELLO, JJ. MARKEY, J. (concurring).

## Opinion

PER CURIAM.

Plaintiff, C-Spine Orthopedics, PLLC (C-Spine), appeals by right the trial court's order granting summary disposition in favor of defendant, Allstate Insurance Company (Allstate). The lawsuit involves C-Spine's effort to collect personal protection insurance (PIP) benefits under the no-fault act, *MCL 500.3101 et seq.*, pursuant to certain assignments executed by Darryl Beavers, who was injured in a motor vehicle accident and had received medical treatment from C-Spine in relation to the injuries. Allstate insured the car in which Beavers was riding when he was injured, and there is no dispute that Allstate is the responsible no-fault insurer. The trial court ruled that C-Spine was not the real party in interest and lacked standing at the time the action was filed. The court reasoned that C-Spine had transferred all of its rights and interests in certain accounts receivable, including those in relation to services provided to Beavers, **[*2]** to third-party factoring companies before commencing the suit. C-Spine eventually obtained counter-assignments executed by the factoring companies, ostensibly conveying the accounts receivable back to C-Spine, but the trial court refused to consider the counter-assignments because they were not produced until after the close of discovery. We are compelled by binding precedent to reverse and remand for further proceedings under *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co, Mich App ; NW2d , 2022 Mich. App. LEXIS 7057 (2022)* (Dockets Nos. 358170 and 358171).

The facts in this case largely parallel the facts in *C-Spine Orthopedics*—(1) auto accident victims obtained medical treatment and services from C-Spine for injuries incurred in the accidents; (2) the victims assigned their rights to obtain no-fault PIP benefits from responsible insurers to C-Spine; (3) C-Spine transferred all of its rights and interests in certain accounts receivable to third-party factoring companies, including those associated with the underlying auto-accident victims; (4) C-Spine then commenced civil suits against the no-fault insurers for payment of services rendered to the victims; (5) the insurers moved for summary **[*3]** disposition on the basis that C-Spine was not the real party in interest and lacked standing in light of the transfers; (6) C-Spine produced backdated counter-assignments from the factoring companies, conveying the accounts receivable back to C-Spine; and (7) the trial court eventually granted summary disposition in favor of the insurers. See *C-Spine Orthopedics, Mich App at ; 2022 Mich. App. LEXIS 7057 at *5*.

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In this case, the trial court did not take into consideration the counter-assignments offered by C-Spine because they were produced after the close of discovery. And in *C-Spine Orthopedics*, the trial court effectively did not take into consideration the counter-assignments because they were not executed until after the litigation was commenced. *Id. at ___; 2022 Mich. App. LEXIS 7057 at *4*.

As indicated at the outset of this opinion, the majority opinion in *C-Spine Orthopedics* controls. In pertinent part, this Court held:

> Under *MCR 2.201(B)*, "[a]n action must be prosecuted in the name of the real party in interest" subject to several qualifications. This procedural rule requires that a complaint be brought by the party to whom a claim belongs, or by a party who has a legal right to bring the action. This concept is distinct **[*4]** from standing, which asks whether a litigant has a right to have a court consider a claim.
>
> Standing is not a barrier to C-Spine's case because *MCL 500.3112* grants C-Spine the right to "assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." As a provider, C-Spine has statutory standing to bring a claim on its own behalf. Statutory standing, which necessitates an inquiry into whether a statute authorizes a plaintiff to sue at all, must be distinguished from whether a statute permits an individual claim for a particular type of relief. Whether C-Spine has an actionable claim for relief is a different question than whether it has a right to litigate its current grievance in our courts.
>
> The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. *MCR 2.201(B)(1)* provides:
>
> "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* ***[*5]*** *the party for whose benefit the action is brought*." [Emphasis added.]
> 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.
>
> This Court has explained the principle underlying *MCR 2.201(B)(1)* as follows: 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. C-Spine is vested with the right of action against Progressive based on the assignments from the [injured motorists], and is authorized by statute to sue in its own name under the plain language of *MCL 500.3112*. That the beneficial interest resided with the factoring companies did not eliminate C-Spine as a real party in interest. [*C-Spine Orthopedics, ___ Mich App at ___; 2022 Mich. App. LEXIS 7057 at *7* (quotation marks and citations omitted; emphasis in original).]

Applying *C-Spine Orthopedics*, we must conclude that C-Spine, having statutory standing under *MCL 500.3112*, has standing in this case and is the real party in interest. Accordingly, we reverse the trial court's ruling granting **[*6]** summary disposition in favor of Allstate. We do note that because the trial court did not take into consideration the counter-assignments given that they were not produced until after discovery, which ruling is not challenged on appeal, *C-Spine Orthopedics* would appear to dictate that the factoring companies be added to the suit on remand as necessary parties, *MCR 2.205(A)*, to eliminate the risk of a second lawsuit by the factoring companies. *C-Spine Orthopedics, ___ Mich App at ___; 2022 Mich. App. LEXIS 7057 at *7*.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. We decline to award taxable costs under *MCR 7.219*.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Stephen L. Borrello

**Concur by:** Jane E. Markey

## Concur

MARKEY, J. (*concurring*).

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 Mich. App. LEXIS 7057 (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.

I respectfully concur.

/s/ Jane E. Markey

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# EXHIBIT C

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Neutral
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# C-Spine Orthopedics, PLLC v. Progressive Marathon Ins. Co.

Court of Appeals of Michigan

February 9, 2023, Decided

No. 358773

**Reporter**
2023 Mich. App. LEXIS 949 *; 2023 WL 1871952

C-SPINE ORTHOPEDICS, PLLC, Plaintiff-Appellant, v PROGRESSIVE MARATHON INSURANCE COMPANY, Defendant-Appellee.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** **[*1]** Macomb Circuit Court. LC No. 2020-002250-NF.

*C-Spine Orthopedics PLLC v. Progressive Marathon Ins. Co., 2022 Mich. App. LEXIS 2287 (Mich. Ct. App., Apr. 26, 2022)*

**Counsel:** For C-SPINE ORTHOPEDICS PLLC, Plaintiff - Appellant: MATTHEW SCOTT PAYNE.

For PROGRESSIVE MARATHON INSURANCE COMPANY, Defendant - Appellee: FREDERICK VAUGHN LIVINGSTON.

**Judges:** Before: GLEICHER, C.J., and SERVITTO and YATES, JJ. SERVITTO, J. (concurring).

## Opinion

PER CURIAM.

The legal issue now before us was recently decided in the nearly factually identical appeal of *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co, Mich App ; NW2d , 2022 Mich. App. LEXIS 7057 (2022) (Docket No. 358170) (C-Spine I)*. Underlying the current appeal, Albert Jackson was injured in a motor vehicle accident and received treatment from C-Spine Orthopedics, PLLC. C-Spine filed suit alleging that Progressive Marathon Insurance Company refused to pay its reasonable charges for necessary care it provided to Jackson. Jackson assigned to C-Spine his right to seek no-fault personal protection insurance (PIP) benefits from Progressive, and C-Spine brought this first-party no-fault action under *MCL 500.3112*, which imbues healthcare providers with a statutory right to bring a direct cause of action against an insurer "to recover overdue benefits payable for charges for products, services, or accommodations provided **[*2]** to an injured person."

Before filing this suit, however, C-Spine entered into assignment agreements of its own with several factoring companies. As described in *C-Spine I, Mich App at , slip op at 2, 2022 Mich. App. LEXIS 7057*, "Factoring companies provide financing to businesses with cash flow issues by purchasing outstanding invoices at a discounted rate." In exchange for sums paid by the factoring companies, C-Spine assigned them its rights to bring first-party lawsuits seeking payment of the outstanding invoice balances, including Jackson's invoices.

Just as in *C-Spine I, Mich App at , 2022 Mich. App. LEXIS 7057 at *2*, "After the lawsuit was filed, C-Spine and the factoring companies signed counter-assignments and 'purchase agreement amendments,' reinvesting C-Spine with the right to bring suits seeking payment of outstanding balances." At issue is whether C-Spine is entitled to pursue a reimbursement claim against Progressive despite that when the suit was filed, C-Spine had transferred its interests in Jackson's debt to the factoring companies.

Based on *C-Spine I*, the counter-assignments and purchase agreement amendments permit C-Spine to maintain its causes of action under *MCL 500.3112*. Accordingly, we reverse the circuit **[*3]** court's contrary judgment and remand for further proceedings.

I. THE RELEVANT FACTS

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Albert Jackson accumulated an account balance of $118,878.40 for treatment provided by C-Spine between November 2019 and early June 2020. C-Spine filed this lawsuit in late June 2020, less than a year after Jackson's initial encounter with C-Spine. Jackson signed separate assignment agreements after each visit.

Discovery relating to the factoring company contracts was just as confusing in this case as is it was in *C-Spine I*. See *C-Spine I, Mich App at , 2022 Mich. App. LEXIS 7057 at *3*. But "[t]hese uncertainties do not matter legally because we assume that the factoring agreements assigned the entirety of C-Spine's interests in [Jackson's] accounts receivable to one or more factoring companies." *Id.* Moreover, it is sufficiently clear that the factoring companies reinvested C-Spine with the right to pursue and settle lawsuits, including the current matter, through several counter-assignments and purchase-agreement amendments.

Progressive moved for summary disposition under *MCR 2.116(C)(5)* and *(10)*, arguing that C-Spine had assigned its interests in Jackson's accounts receivable to the factoring companies and therefore lacked standing, **[*4]** legal capacity, or the legal right to bring claims. In response C-Spine relied on the counter-assignments and purchase-agreement amendments, among other arguments.

The circuit court at first denied summary disposition, finding that the counter-assignments had re-conferred an ownership interest in the accounts receivable to C-Spine, rendering C-Spine the real party in interest with standing to file suit. About three months later, and after additional discovery, Progressive again sought summary disposition under *MCR 2.116(C)(5)* and *(10)*, contending that at least three of the counter-assignments or amendments to the purchase agreements had been backdated to mislead the court and to disguise that C-Spine had filed suit without any genuine legal interest. C-Spine retorted that although the counter-assignments were executed after its initial complaint was filed, C-Spine and the factoring companies had "specified the effective dates" as stated on the face of the counter-assignments, and that "the counter-assignments convey standing to [C-Spine] regardless of the date they were signed." (Emphasis omitted.)

The circuit court granted summary disposition to Progressive, ruling that C-Spine lacked standing when the **[*5]** complaints were filed as the reconveyances and amendments were made after the complaint was filed. C-Spine appeals by right.

II. ANALYSIS

Given the factual and legal similarity between this case and *C-Spine I*, we adopt the legal analysis in *C-Spine I* whole cloth:

> Under *MCR 2.201(B)*, "[a]n action must be prosecuted in the name of the real party in interest" subject to several qualifications. This procedural rule requires that a complaint be brought by the party to whom a claim belongs, or by a party who has a legal right to bring the action. This concept is distinct from standing, which asks whether a litigant has a right to have a court consider a claim.
>
> Standing is not a barrier to C-Spine's case because *MCL 500.3112* grants C-Spine the right to "assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." As a provider, C-Spine has *statutory* standing to bring a claim on its own behalf. "Statutory standing, which necessitates an inquiry into whether a statute authorizes a plaintiff to sue at all, must be distinguished from whether a statute permits an individual claim for a particular type of **[*6]** relief." *Miller v Allstate Ins Co, 481 Mich 601, 608; 751 NW2d 463 (2008)*. Whether C-Spine has an actionable claim for relief is a different question than whether it has a right to litigate its current grievance in our courts.
>
> The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. *MCR 2.201(B)(1)* provides:
>
> > 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*. [Emphasis added.]
>
> 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.

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This Court has explained the principle underlying MCR 2.201(B)(1) as follows: "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 Club Ins Ass'n, 211 Mich App 55, 95; 535 NW2d 529 (1995). C-Spine is "vested with the right of action" against Progressive based on the assignments **[*7]** from the Cruzes, and is "authorized by statute" to sue in its own name under the plain language of MCL 500.3112. That the "beneficial interest" resided with the factoring companies did not eliminate C-Spine as a real party in interest.

We acknowledge that without the counter-assignments, Progressive might have had a legitimate concern that it could face a second lawsuit brought by the factoring companies.[1] But in this hypothetical situation another court rule would have come into play, permitting the case to go forward with the factoring companies joined as necessary party-plaintiffs. MCR 2.205(A) generally requires that "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." This has long been the rule in Michigan. See DeLong v Marston, 308 Mich 63, 68-69; 13 NW2d 209 (1944) ("If this suit was brought in the name of a party who is only nominally interested rather than being 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.").

The necessary **[*8]** joinder rule and real-party-in-interest principles go hand-in-hand to prevent double recoveries and to obviate the risk of subsequent suits. Indeed, the real-party-in-interest requirement exists to "protect[ ] a defendant from multiple lawsuits for the same cause of action." Kalamazoo v Richland Twp, 221 Mich App 531, 534; 562 NW2d 237 (1997).

> Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain . . . . [S]o long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the defendant is not harmed. [Kearns v Mich Iron & Coke Co, 340 Mich 577, 581; 66 NW2d 230 (1954) (quotation marks and citations omitted).]

Even if C-Spine and the factoring companies had not signed the counter-assignments, joinder of the factoring companies would have resulted in a single judgment, eliminating any risk to Progressive of a second lawsuit.

We need not dwell on that hypothetical procedural pathway, however, because when the factoring contracts surfaced, **[*9]** C-Spine and its factoring creditors voluntarily entered into counter-assignments and purchase agreement amendments transferring the "beneficial interest" in [Jackson's] no-fault claims back to C-Spine. Those contracts eliminated any risk that Progressive would pay twice for the same benefit claims.

In Cannon Twp v Rockford Pub Sch, 311 Mich App 403, 412-413; 875 NW2d 242 (2015), this Court held a mid-litigation assignment changed the real party in interest and thereby preserved the plaintiff's original claim. Cannon Township sued the Rockford Public Schools alleging that the schools' negligence "caused a large volume of water to be discharged into the sewer line, which eventually led to a sewage backup" in the home of Robert and Pamela Mack. Id. at 408. The Macks made an insurance claim and also sued the township. The township settled with the Macks for $50,000, agreeing that its insurer, the Michigan Municipal League Liability and Property Pool (MMLLPP), would pay that amount in partial compensation for the damages. *Id.*

> In exchange, the Macks agreed to release the township from any future liability and to "fully assign" to the township their claim "in total, including but not limited to any and all damages in excess of the Settlement Sum and including but not limited **[*10]** to any and all claims against [the schools] related to" the . . . event. [*Id.*]

The parties understood that as the Macks' assignee, the township planned to sue the schools, and that any amount recovered over $50,000 would be remitted to the Macks. *Id.*

The township sued the schools as the Macks'

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assignee. A year after the suit was filed, the township entered into another assignment agreement, this time with the MMLLPP. Under this agreement, the MMLLPP assigned its subrogation right to pursue a claim against the schools to the township. *Id. at 408-409*. The schools sought summary disposition, arguing among other things that the township was not the real party in interest "because it had paid no money to the Macks and therefore had no basis to pursue an equitable subrogation claim[.]" *Id. at 409*. The trial court denied the motion, and the schools appealed. *Id.* at 40.

This Court noted that "there is no dispute that the township did not suffer damages and did not itself pay any money to the Macks." *Id. at 412*. Because the township was the assignee of the Macks and the MMLLPP, it became "the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held **[*11]** by the assignor." *Id.* Relevant here, we specifically recognized "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 $50,000 of damages sought in the complaint." *Id.* This was remedied by an amendment to the complaint, we explained. And although the township did not stand to benefit directly from the suit because it had agreed to remit any damages above $50,000 to the Macks, we clarified that "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." *Id. at 413*.

We find *Cannon Twp* controlling here. Our approach to the shifting assignments in this case also tracks that of the federal courts applying *FR Civ P 17*, which uses precisely the same language as *MCR 2.201(B)*. See, e.g., *Hess v Eddy, 689 F2d 977, 981 (CA 11, 1982)*, abrogated on other grounds by *Jones v Preuit & Mauldin, 876 F2d 1480, 1482 (CA 11, 1989)* ("The Rule provides that when an action is brought by someone other than the real party in interest, the suit need not be dismissed if the real party in interest subsequently joins or ratifies the action."); *DeVries v Weinstein Int'l Corp, 80 FRD 452, 459 (D Minn, 1978)* ("An agreement which ratifies the commencement and continuation **[*12]** of an action or reassigns the respective interests is normally sufficient under *Rule 17* to cure any real party in interest defects.") (quotation marks and citation omitted).

Finally, we observe that our resolution of the real-party-in-interest issue presented here aligns with the overall purpose of the Michigan Court Rules, which declare at their outset that the "rules are to be construed, administered, and employed by the parties and the court to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." *MCR 1.105*. C-Spine claims to have provided almost $300,000 worth of services for which it has not been paid. The no-fault act establishes a comprehensive mechanism for resolving this dispute on its merits. Progressive's insistence that C-Spine's failure to obtain the counter-assignments *before* filing suit dooms its claims not only affords Progressive a potential windfall, but contravenes our court rules' animating spirit. "Procedure should be the handmaid of justice," our Supreme Court has declared, "a means to an end," rather than "an end in itself . . . oblivious to the practical needs **[*13]** of those to whose ills it is designed to minister." *Allstate Ins Co v Hayes, 442 Mich 56, 64; 499 NW2d 743 (1993)* (quotation marks and citation omitted). Practically speaking, C-Spine was a real party in interest without the counter-assignments, and eliminated any risk of double recovery by entering into them.

[1] We need not decide whether the factoring companies would have standing to sue Progressive, but raise the question. *MCL 500.3112* affords "health care provider[s] listed in *section 3157*" a "direct cause of action against an insurer." *MCL 500.3157* refers to a "health care provider," in relevant part, as "a physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by [PIP]." It is unclear whether a factoring company would fall in that category. [*C-Spine I, Mich App at , 2022 Mich. App. LEXIS 7057 at *56*.]

Just as in *C-Spine I*, the circuit court improperly determined that C-Spine lacked standing to file suit and therefore erroneously dismissed the action.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

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/s/ Elizabeth L. Gleicher

/s/ Christopher P. Yates

**Concur by:** Deborah A. Servitto

## Concur

SERVITTO, J. (*concurring*).

I concur with the well-reasoned analysis and in the result **[*14]** reached by the majority. I write separately only to express my dismay at both the messiness of the lower court discovery and also what appears to be plaintiff counsel's misleading of the trial court, which contributed to that messiness. For example, the date that the counter-assignments were drafted and signed was a continuing question throughout the proceedings. At a February 1, 2021 hearing on defendant's motion for partial summary disposition, plaintiff's counsel had represented that she was counsel for "all of the companies, all of the factoring companies, C-Spine, everyone," even though the only party involved in the case was C-Spine. In a May 20, 2021 response to defendant's third interrogatories, request for production of documents, and requests to admit, signed only by plaintiff's counsel, counsel stated it was unknown whether the counter-assignments were created after the complaint was filed. More importantly, after the trial court denied defendant's motion for partial summary disposition, and upon further discovery, plaintiff's counsel revealed that she had *now* "received permission" to disclose the dates the counter-assignments were created and sent to the parties for execution **[*15]** (which post-dated the filing of the complaint). I would like to give plaintiff's counsel the benefit of the doubt, given that intentional misleading of the trial court, indeed, any manipulation of the legal process is deserving of sanctions. See, *Kalamazoo Oil Co v Boerman, 242 Mich App 75, 89; 618 NW2d 66 (2000)*; *Miller v Riverwood Recreation Ctr, Inc, 215 Mich App 561, 572; 546 NW2d 684 (1996)*. However, it is difficult to do so when plaintiff counsel's actions smack of gamesmanship—which one of discovery's primary purposes is to *eliminate*. *People v Burwick, 450 Mich 281, 298; 537 NW2d 813 (1995)*.

/s/ Deborah A. Servitto

# EXHIBIT D

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# Robinson v. Szczotka

Court of Appeals of Michigan

April 6, 2023, Decided

No. 359646

**Reporter**
2023 Mich. App. LEXIS 2417 *; 2023 WL 2816798

TIFFANY SHANTEL ROBINSON, Plaintiff-Appellee, v JANET ELAINE SZCZOTKA, and THE ASU GROUP-ASU RISK MANAGEMENT, Defendants, and SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, also known as SMART. Defendant-Appellant.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Subsequent History:** Reconsideration denied by *Robinson v. Szczotka, 2023 Mich. App. LEXIS 3437 (Mich. Ct. App., May 16, 2023)*

Held in Abeyance at *Robinson v. Szczotka, 2023 Mich. LEXIS 1938 (Mich., Nov. 22, 2023)*

**Prior History:** **[*1]** Wayne Circuit Court. LC No. 20-012733-NI.

*Robinson v. SMART, 2022 Mich. App. LEXIS 1927 (Mich. Ct. App., Apr. 7, 2022)*

**Counsel:** For TIFFANY SHANTEL ROBINSON, Plaintiff - Appellee: SAM EMANUEL ELIA, MARK GRANZOTTO.

For JANET ELAINE SZCZOTKA, Defendant: MARK G. VASQUEZ.

For SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, Defendant - Appellant: JONATHAN R. FRESHOUR.

**Judges:** Before: K. F. KELLY, P.J., and MURRAY and SWARTZLE, JJ.

## Opinion

PER CURIAM.

Defendant-appellant, Suburban Mobility Authority for Regional Transportation (SMART), appeals by leave granted[1] the November 29, 2021 order granting in part and denying in part SMART's motion for partial summary disposition. In partially granting the motion, the court held that plaintiff, Tiffany Shantel Robinson, had the right to pursue personal insurance protection (PIP) benefits from SMART even though plaintiff had previously assigned her claims to several medical providers because (1) SMART had no standing to enforce those assignments between plaintiff and her medical providers, and (2) plaintiff and her medical providers executed valid revocations of those assignments, thereby returning the right to pursue those PIP benefits to plaintiff. We reverse the trial court's order and remand for further proceedings consistent with this opinion. **[*2]**

I. BACKGROUND

Plaintiff was injured in an automobile accident and subsequently accrued medical bills related to her resulting injuries from Northland Radiology, Quest Physical Therapy, Aligned Chiropractic, Dependable Transportation, Michigan Business Management, and Garden City Hospital. Before plaintiff initiated this litigation, she assigned her rights to recover PIP benefits to several of her medical providers, including Northland Radiology, Quest Physical Therapy, Dependable Transportation, Aligned Chiropractic, and Elite Diagnostics.

Thereafter, on September 28, 2020, plaintiff filed a complaint to collect first-party no-fault PIP benefits, underinsured motorist benefits, and uninsured motorist

[1] *Robinson v Szczotka*, unpublished order of the Court of Appeals, entered April 7, 2022 (Docket No. 359646).

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benefits from both SMART and defendant ASU Risk Management. Two months later, the parties stipulated to the dismissal of ASU Risk Management as well as the claims for underinsured and uninsured motorist benefits, leaving at issue only plaintiff's claim for PIP benefits against SMART.

SMART eventually moved for partial summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), arguing that plaintiff had no standing to pursue a cause of action to recover claims that she had already assigned **[*3]** to her medical providers. SMART noted that one of plaintiff's medical providers, the Michigan Institute of Pain and Headache, PC, had already filed its own lawsuit to collect on its bills related to plaintiff's accident based on its assignment of benefits from plaintiff, and that the other medical providers were also free to do so.

In responding, plaintiff did not contest the factual or legal premises of SMART's motion but instead asserted that *after* she filed her complaint, she and a number of her medical providers executed "Mutual Revocation[s] of Assignment(s)." Plaintiff alleged that these contracts "revoked, rescinded, and nullified" the assignments *nunc pro tunc*, or retroactively, such that plaintiff recovered her rights to PIP benefits dating back to when she assigned them to her medical providers.[2] These assignments, plaintiff argued, should be considered to have never existed, and the medical providers waived any independent causes of action. Plaintiff acknowledged that her medical providers had failed to bring their claims to recover medical bills in a timely manner pursuant to the one-year-back rule, see MCL 500.3145(1), and stated that the only fair avenue for recovery of those medical **[*4]** bills was to revoke her assignments retroactively and litigate her own timely filed claims.

SMART reply made several points. First, it argued that it had standing to challenge the effect of the assignments because it had a real interest in claims that the medical providers might bring against it. Second, while admitting that it was not challenging the validity of the assignments, SMART argued that a valid assignment is one manifesting a present intent to transfer, where the assignor does not retain any power of revocation. Third, SMART asserted that when plaintiff filed her complaint, she had already executed assignments to her medical providers, and thus those claims belonged to those medical providers, who therefore bore responsibility for pursuing their claims in a timely manner pursuant to the one-year-back rule, MCL 500.3145(1). Because those medical providers failed to pursue their claims in a timely manner, their right to sue for PIP benefits was extinguished by operation of the one-year-back rule. To this point, SMART argued that these medical providers' claims were extinguished before the revocations were executed on September 20, 2020, and so there remained no claims to "give back" to plaintiff **[*5]** through the revocations. Essentially SMART asserted that once plaintiff's medical providers' claims had expired, the parties could properly not thereafter work around the one-year-back rule and effectively restore their expired rights by operating as though the assignments had never existed.

As noted, the trial court granted SMART's motion in part, concluding that plaintiff could not properly claim compensation for the medical bills of Michigan Institute of Pain and Headache (d/b/a Metro Pain Clinic), because that medical provider filed its own suit in district court. Relative to the other providers, the court ultimately held that SMART did not have the authority to enforce plaintiff's assignments with her providers and that those parties to the assignments could, and did, revoke those contracts:

> But in the end, I do believe that the contract is between [plaintiff] and the providers. And if they decide to revoke it, the Plaintiff can always get it.
>
> Now, as I said earlier, the insurance company, or in this case, SMART and/or Allstate, they're only going to have to pay once, if any. They don't have to pay twice 'cause two different entities are going after these bills.
>
> But a lot of times, **[*6]** I mean, I can see today where you're going to have a Plaintiff going after the bills and a provider. And they're going to duke it out at trial.
>
> And it could get confusing, I don't know. It's never happened before, but I think theoretically, it could happen. They can both go after the bills. But I would instruct the jury you only got to pay once, if you have to pay at all or something like that.
>
> So for those reasons, I think that I respectfully disagree with [defendant's] position, . . . but it was

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[2] Each of the revocations, dated September 20, 2020, contained the following language:

> The assignments are revoked nunc pro tunc the date the assignment(s) was/were entered into and should be considered as if it/they never existed and that both [parties of this revocation] wish to revoke and rescind any and all Assignment of Rights as if it never existed by the execution of this agreement.

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an interesting argument. And I will respectfully deny summary at this time.

II. ANALYSIS

The dispositive question on appeal is whether the revocation of the assignments allowed plaintiff to maintain her PIP claim that was filed prior to the revocation. This involves determining the meaning and effect of the assignments and revocations of those assignments, as well as the impact of those on plaintiff's ability to bring this claim.

A. STANDARDS OF REVIEW

"Construction and interpretation of a contract are questions of law that we review de novo, meaning that we do so without deference to the trial court's decision." Calhoun Co v Blue Cross Blue Shield Mich, 297 Mich App 1, 12; 824 NW2d 202 (2012), citing Comerica Bank v Cohen, 291 Mich App 40, 46; 805 NW2d 544 (2010). In Meagher v Wayne State Univ, 222 Mich App 700, 721-722; 565 NW2d 401 (1997), we explained:

> Under ordinary contract principles, if contractual language **[*7]** is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. The language of a contract should be given its ordinary and plain meaning. [Citations omitted.]

This Court also reviews de novo a motion for summary disposition. Allen Park Retirees Ass'n, Inc v Allen Park, 329 Mich App 430, 443; 942 NW2d 618 (2019). A motion under MCR 2.116(C)(7) is appropriate where there has been an "assignment or other disposition of the claim before commencement of the action." MCR 2.116(C)(7). In reviewing a motion under MCR 2.116(C)(7), "[t]he contents of the complaint must be accepted as true unless contradicted by the documentary evidence, which must be viewed in a light most favorable to the nonmoving party." Allen Park Retirees Ass'n, Inc, 329 Mich App at 444. "If there is no factual dispute, the determination whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law." *Id.*

Summary disposition is appropriate under (C)(8) when a party fails to state a claim on which relief can be granted and is appropriate under (C)(10) when there is no **[*8]** genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. Capitol Props Group, LLC v 1247 Ctr Street, LLC, 283 Mich App 422, 425; 770 NW2d 105 (2009).

B. REAL PARTY IN INTEREST

Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest[.]" "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." Barclae v Zarb, 300 Mich App 455, 483; 834 NW2d 100 (2013) (quotation marks and citation omitted). The real party in interest rule "'requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim' that is asserted in the complaint." Estate of Maki v Coen, 318 Mich App 532, 539; 899 NW2d 111 (2017), quoting In re Beatrice Rottenberg Trust, 300 Mich App 339, 356; 833 NW2d 384 (2013). "A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." Barclae, 300 Mich App at 483 (quotation marks and citation omitted). The real party in interest doctrine is a "standing doctrine" that "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Id.* (quotation marks and citation omitted).

"[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest **[*9]** rule, they are distinct concepts." In re Beatrice Rottenberg Living Trust, 300 Mich App at 355. Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id.* "[I]f a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits." *Id.*, citing Miller v Allstate Ins Co, 481 Mich 601, 608-612; 751 NW2d 463 (2008); see also Grady v Wambach, 339 Mich App 325, 330; 984 NW2d 463 (2021). Jurisdiction is not an issue in this case.

With respect to assignments, the general rule is 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." Cannon Twp. v. Rockford Pub. Sch., 311 Mich App 403, 412; 875

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N.W.2d 242 (2015). Once a valid assignment occurs, the assignee then stands in the shoes of the assignor and may enforce the rights assigned. "[A]n assignment divests the assignor of any interest in the subject matter of the assignment." 6A CJS, Assignments, § 88. Thus, because a legal assignment vests the right to enforce the rights in the assignee, an assignor retains no rights to enforce the rights after they have been assigned, i.e., the assignor loses the right that allows her to prosecute the claim.

C. FILING A LAWSUIT TO COLLECT ON MEDICAL BILLS **[*10]** WHEN THE RIGHT TO COLLECT WAS PREVIOUSLY ASSIGNED

Pursuant to the no-fault act,[3] insured individuals may recover PIP benefits for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). Under this provision, plaintiff could have pursued her PIP claims against SMART, but she did not. Instead, she assigned the right to bring those claims to her medical providers. Although medical providers also have an independent statutory right to bring a claim to recover for services rendered, under MCL 500.3112, that statute does not address the legal effect of an assignment on an insured's maintaining an action to collect benefits that were the subject of an assignment.

Though plaintiff had a statutory right to seek payment of certain medical benefits, she instead opted to transfer that right to the medical providers, an option she had and was free to exercise. Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017). "No particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation." Burkhardt v Bailey, 260 Mich App 636, 655; 680 NW2d 453 (2004) (quotation marks and citation omitted). SMART **[*11]** does not contest the validity of the assignments.

At the time plaintiff commenced this action, she was not the real party in interest because plaintiff's rights to recover the unpaid medical bills were divested by virtue of the assignments. See Estate of Maki, 318 Mich App at 539 (providing that the real party in interest rule "requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim that is asserted in the complaint.") (alteration in original; quotation marks and citation omitted). As noted at the outset, following the assignment of these claims the "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. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." Burkhardt, 260 Mich App at 653. That being the case, the medical providers as assignees held the right to seek to recover the unpaid medical bills, and plaintiff no longer had a cause of action to pursue, having transferred it away. Cannon Twp, 311 Mich App at 412 ("an assignee of a cause of action becomes the real party in interest with respect to that cause of action, **[*12]** inasmuch as the assignment vests in the assignee all rights previously held by the assignor.").[4]

Although the medical providers, as the real parties in interest, owned the right to bring an action to recover the unpaid medical bills, the record shows that, except for one provider, none of the medical providers utilized the assignment by bringing suit within a year of providing the services. MCL 500.3145(1). Thus, the medical provider's rights under the assignment were statutorily barred. While plaintiff timely sued to recover the cost of the medical services, she had assigned those rights to the medical providers, who were now the real parties in interest. In order to remedy that situation, the revocations were signed during the course of the trial court proceedings and contained the "nunc pro tunc" language in an attempt to essentially eradicate the original assignments. The attempt, though creative, did not have the intended effect.

*Nunc pro tunc* refers to a court's inherent power to give modifications to its own orders and judgments retroactive effect in order to make a record of what actually occurred but that had been omitted from the order. Michigan Pleading & Practice (2d ed), § 19.43. See also Shifferd v Gholston, 184 Mich App 240, 243; 457 NW2d 58 (1990) ("An entry nunc pro tunc is proper to supply **[*13]** an omission in the record of action really

[3] MCL 500.3101 et seq.

[4] Although a valid assignment is one in which the assignor "manifest[s] an intent to transfer and must not retain any control or any power of revocation," Burkhardt, 260 Mich App at 655, as a matter of contract plaintiff was free to subsequently negotiate with the medical providers to revoke the assignments or transfer the assignments to her to allow her to pursue those claims.

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had, but omitted through inadvertence or mistake") and *Grand Rapids v Coit, 151 Mich 109, 109; 114 NW 880 (1908)*. "The function of such an order is to supply an Omission in the record of action previously taken by the court but not properly recorded; an order nunc pro tunc may not be utilized to supply previously omitted action." *Sleboede v Sleboede, 384 Mich 555, 558-559; 184 NW2d 923 (1971)*.

The term "*nunc pro tunc*" has also been used in reference to licensing assignments in some federal patent and trademark decisions, holding that a *nunc pro tunc* assignment may not be used to cure a standing defect; rather, the party filing suit must have had standing to sue when the complaint was filed. See *Enzo APA & Son, Inc v Geapag AG, 134 F3d 1090, 1093 (CA Fed, 1998)* (one must hold legal title to the patent to sue for infringement of the patent; "nunc pro tunc assignments are not sufficient to confer retroactive standing") and *Gaia Techs. v Reconversion Techs., 93 F.3d 774, 777-780 (CA Fed, 1996)* (like other personal property, patents, and trademarks may be assigned to others, and a *nunc pro tunc* assignment executed after a lawsuit is filed may not retroactively confer standing).

The court in *Enzo APA & Son, 134 F3d 1090*, came to the same conclusion:

> [A]s has been aptly stated, nunc pro tunc assignments are not sufficient to confer retroactive standing on the basis that:
>
> As a general matter, parties should possess rights before **[*14]** seeking to have them vindicated in court. Allowing a subsequent assignment to automatically cure a standing defect would unjustifiably expand the number of people who are statutorily authorized to sue. Parties could justify the premature initiation of an action by averring to the court that their standing through assignment is imminent. Permitting non-owners and licensees the right to sue, so long as they eventually obtain the rights they seek to have redressed, would enmesh the judiciary in abstract disputes, risk multiple litigation, and provide incentives for parties to obtain assignment in order to expand their arsenal and the scope of litigation. Inevitably, delay and expense would be the order of the day. [*Id. at 1093-1094*, quoting *Procter & Gamble Co v Paragon Trade Brands, Inc, 917 F Supp 305, 310 (D Del, 1995)*.]

While the present case is not a patent or trademark case, the same logic applies: one must be the real party in interest at the time the lawsuit is filed, and a retroactive, or *nunc pro tunc*, revocation may not be used to correct a factual problem that existed when the lawsuit was filed. While plaintiff and her medical providers were at liberty to mutually decide to revoke the assignments, the revocations were effective as of the date that the revocations were executed **[*15]** and could not essentially eliminate the fact that the assignments had occurred prior to plaintiff filing suit. And, the medical providers had no timely claims to return to plaintiff as of the date of the revocations because the revocations occurred more than a year after services were rendered. Thus, the mutual revocations did not reassign any timely claims to plaintiff.

Plaintiff further argues that mutual revocation of an agreement returns the parties to the status quo as it existed prior to the assignment. While this may be true in some cases, the same cannot be said when the revocation occurs after the time for performance matures or the rights of the parties become fixed. "An assignment may be revoked before the rights of the parties become fixed." 6A CJS, Assignments § 71. Thus, although the revocation may have some effect between plaintiff and the medical providers, as to defendant and the court, it cannot impact how plaintiff stood at the time the complaint was filed:

> As an assignee, appellant can stand in no better position than the assignor. And since the Fund was barred by the statute of limitations, so was appellant. Their attempt to make the assignment retroactive to the **[*16]** date the complaint was filed may have some meaning between them, but it is meaningless as to third parties. [*Stephens v Textron, Inc, 127 Ariz 227, 230; 619 P2d 736 (1980)* (citation omitted).]

Here, it is undisputed that at the time she filed the complaint, plaintiff had assigned her rights to recover the unpaid medical bills to her medical providers. Because the rights of plaintiff viz-a-viz defendant and the court had essentially become fixed under the assignment agreements, the revocations could not impact plaintiff's status at the time the complaint was filed. Because plaintiff was not a real party in interest at the time she filed the lawsuit, the trial court erred in denying defendant's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Christopher M. Murray

/s/ Brock A. Swartzle

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# EXHIBIT E

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As of: October 21, 2024 3:15 PM Z

# Carter v. Progressive Mich. Ins. Co.

Court of Appeals of Michigan

February 29, 2024, Decided

No. 365522

**Reporter**
2024 Mich. App. LEXIS 1573 *; 2024 WL 885855

LAKYRA LASHAE CARTER, Plaintiff-Appellant, v PROGRESSIVE MICHIGAN INSURANCE COMPANY, Defendant-Appellee.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** **[*1]** Wayne Circuit Court. LC No. 21-007602-NF.

**Counsel:** For LAKYRA LASHAE CARTER, Plaintiff - Appellant: THOMAS P NELSON, ERIK J STONE.

For PROGRESSIVE MICHIGAN INSURANCE COMPANY, Defendant - Appellee: DREW W BROADDUS.

**Judges:** Before: FEENEY, P.J., and REDFORD and YATES, JJ.

## Opinion

PER CURIAM.

Plaintiff, Lakyra Lashae Carter, was injured in a motor-vehicle collision, and she assigned her right to recover first-party no-fault benefits to several medical providers who gave her care. In the wake of those assignments, she filed suit seeking first-party no-fault benefits from her insurer, defendant, Progressive Michigan Insurance Company (Progressive). The trial court resolved this dispute by awarding summary disposition to Progressive under MCR 2.116(C)(6) (another action initiated between same parties involving same claim) and MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. FACTUAL BACKGROUND

On May 16, 2021, plaintiff was involved in a motor-vehicle collision. At that time, plaintiff had an automobile insurance policy with Progressive. Plaintiff suffered injuries requiring medical treatment, services, or accommodations, and she entered into assignments with medical providers American Medical Center ("American Medical"), A One Rehab, **[*2]** LLC ("A One"), Nerveana, LLC ("Nerveana"), and TJ Medical Supplies LLC ("TJ Medical").

On June 23, 2021, plaintiff filed this case, accusing defendant of unreasonably refusing to reimburse plaintiff for personal protection insurance (PIP) benefits that she was entitled to receive for expenses she incurred for her treatment by various providers. Defendant moved for summary disposition, arguing that plaintiff's claims for medical services rendered by medical providers with which plaintiff had entered into assignment contracts were barred because plaintiff lacked standing and was not the real party in interest. Plaintiff responded to the motion, attaching four revocations of assignments executed by American Medical, A One, Nerveana, and TJ Medical after plaintiff filed suit.

The trial court awarded defendant summary disposition under MCR 2.116(C)(6) and MCR 2.116(C)(10). To reach that result, the trial court explained that, to the extent plaintiff entered into assignments with medical providers, plaintiff was not the real party in interest and lacked standing to bring the lawsuit when she filed her complaint. The trial court further found that the assignments were irrevocable, the revocations were invalid, and plaintiff's **[*3]** claims were barred by the one-year-back rule. After the trial court rendered its written order on March 23, 2023, granting defendant's motion for summary disposition, plaintiff appealed.

II. LEGAL ANALYSIS

Plaintiff insists that the trial court erred in granting summary disposition to defendant based on plaintiff's assignments of her first-party claims. "We review de

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novo a trial court's decision on a motion for summary disposition." El-Khalil v Oakwood Healthcare, Inc, 504 Mich 152, 159; 934 NW2d 665 (2019). The trial court relied on MCR 2.116(C)(6) and (10) in granting summary disposition. According to MCR 2.116(C)(6), summary disposition is appropriate when "[a]nother action has been initiated between the same parties involving the same claim." According to MCR 2.116(C)(10), summary disposition is warranted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." There exists a genuine issue of material fact "'when the record leaves open an issue upon which reasonable minds might differ.'" El-Khalil, 504 Mich at 160. The trial court concluded that, because plaintiff "signed an assignment to the provider of her right to collect or pursue a case against the insurer, she is not the real party in interest and lacks standing to pursue those claims[.]" "Whether a **[*4]** party has standing presents a question of law that this Court reviews de novo." Trademark Props of Mich, LLC v Fed Nat'l Mortgage Ass'n, 308 Mich App 132, 136; 863 NW2d 344 (2014).

Under MCL 500.3107(1)(a), PIP benefits are payable for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." The no-fault act allows injured claimants "to pursue recovery of PIP benefits themselves or they may assign their right to recovery to their medical providers." Wallace v Suburban Mobility Auth for Regional Transp, Mich App , ; NW2d (2023) (Docket No. 360537); 2023 Mich. App. LEXIS 4507. "In determining whether an assignment has been made, the question is one of intent." Burkhardt v Bailey, 260 Mich App 636, 655; 680 NW2d 453 (2004) (quotation marks and citation omitted). A written agreement assigning a subject matter must express "the assignor's intent to transfer the subject matter clearly and unconditionally to the assignee." *Id.* (quotation marks and citation omitted). "No particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation." Id. at 654-655 (quotation marks and citations omitted).

"When an assignment occurs, the assignee of a cause of action **[*5]** 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." Farrar v Suburban Mobility Auth for Regional Transp, Mich App , ; NW2d (2023) (Docket Nos. 358872 and 358884); 2023 Mich. App. LEXIS 952 (quotation marks and citations omitted). The real party in interest requirement is a "standing doctrine," which "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy." Barclae v Zarb, 300 Mich App 455, 483; 834 NW2d 100 (2013) (quotation marks and citation omitted). In *Farrar*, we held, upon execution of valid assignment contracts with medical providers, the "providers became the real parties in interest with respect to their claims for benefits, and only they could sue to recover those benefits. Plaintiff, therefore, did not have standing to sue to recover the benefits associated with those providers, and the trial court erred when it concluded otherwise." Farrar, Mich App at ; 2023 Mich. App. LEXIS 952.

This case is similar to *Farrar*. Plaintiff executed assignments with American Medical, A One, Nerveana, and TJ Medical. When plaintiff executed those assignments, American Medical, A **[*6]** One, Nerveana, and TJ Medical became the real parties in interest in this matter, and plaintiff lost the ability to pursue claims related to those providers. Defendant does not contest the validity of the assignments; it only challenges the validity of the revocations. The trial court correctly ruled that plaintiff executed valid assignments to medical providers before filing this case,[1] so plaintiff lacked standing to sue to recover benefits related to those providers. Plaintiff does not argue any of the medical bills at issue in this case relate to assignments executed after this case was filed.

The revocations of assignments do not impact plaintiff's standing to bring this suit. "[O]ne must be the real party in interest at the time the lawsuit is filed, and a retroactive, or *nunc pro tunc*, revocation may not be used to correct a factual problem that existed when the lawsuit was filed." Wallace, Mich App at ; 2023 Mich. App. LEXIS 4507 (quotation marks and citation

[1] The record includes assignments, executed by A One, dated before the date of plaintiff's collision. A One's revocation of assignments, however, indicates A One did execute assignments for medical expenses related to the collision in this case. Because the record includes incorrect assignments for A One, we cannot determine whether A One's assignments were executed before or after the complaint was filed. But plaintiff does not argue that her assignments with A One were executed after she filed this case. In any event, summary disposition was proper because plaintiff's claims involving A One are barred by the one-year-back rule, as we explain later. See MCL 500.3145(1).

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omitted). Plaintiff has provided no evidence to suggest the revocations were effective before the date plaintiff filed this suit. Plaintiff's arguments regarding the validity of the revocations are irrelevant because they are not **[*7]** outcome-determinative. Regardless of whether the revocations were validly executed, plaintiff lacked standing to initiate the litigation.

Beyond that, plaintiff may not execute revocations of assignments to avoid application of the one-year-back rule. *Id.* Under MCL 500.3145(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.

"The one-year-back rule is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Ass'n, 491 Mich 200, 203; 815 NW2d 412 (2012)*. Where a revocation of assignment is obtained after a provider's right to collect on a claim has "already been extinguished by the one-year-back rule," there are "no actionable causes of action to give back to plaintiff." *Wallace, Mich App at ; 2023 Mich. App. LEXIS 4507*.

Here, plaintiff's collision occurred on May 16, 2021. **[*8]** All of the revocations of assignments are dated later than one year after that collision: Nerveana's revocation is dated November 2, 2022; TJ Medical's revocation is dated November 13, 2022; A One's revocation is dated November 21, 2022; and American Medical's revocation is dated December 12, 2022. Thus, each revocation of assignment was obtained after the provider's claims were extinguished by the one-year-back rule, so no viable cause of action remains for the plaintiff to assert in this case.[2]

Affirmed.

/s/ Kathleen A. Feeney

/s/ James Robert Redford

/s/ Christopher P. Yates

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[2] On appeal, plaintiff challenges defendant's standing to contest the validity of the revocations and she relies on *Bowles v Oakman, 246 Mich. 674, 678; 225 N.W. 613 (1929)*, for her argument. The trial court's order granting defendant's motion for summary disposition concluded that "the plain language of the assignments state they are *irrevocable* and cannot be passed back and forth at will under the law of contracts and that suit was filed before the revocations (which are invalid) were attempted, *and they do not relate back to the filing of the complaint*." (Emphasis added). Thus, even if we assume for the sake of argument that the revocations obtained by plaintiff were all valid, plaintiff would have no viable claims because of the one-year-back rule. **[*9]** *Wallace, Mich App at ; 2023 Mich. App. LEXIS 4507*.

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# EXHIBIT F

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# Saad v. Am. Select Ins. Co.

Court of Appeals of Michigan

January 18, 2024, Decided

No. 362247

**Reporter**
2024 Mich. App. LEXIS 431 *; 2024 WL 203771

HASSAN AHMED SAAD, Plaintiff-Appellant, v AMERICAN SELECT INSURANCE COMPANY and SABER MOHAMED YAFFAI, Defendants-Appellees.

**Notice:** THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

**Prior History:** **[*1]** Wayne Circuit Court. LC No. 20-010266-NI.

*Saad v. Am. Select Ins. Co., 2023 Mich. App. LEXIS 1283 (Mich. Ct. App., Feb. 22, 2023)*

**Counsel:** For HASSAN AHMED SAAD, Plaintiff - Appellant: ERIK J. STONE.

For AMERICAN SELECT INSURANCE COMPANY, Defendant - Appellee: L. CHARLYNN TURNER.

For SABER MOHAMED YAFFAI, Defendant - Appellee: CHRISTOPHER J. SCOTT.

**Judges:** Before: GLEICHER, P.J., and BORRELLO and SHAPIRO, JJ.

## Opinion

PER CURIAM.

In this first-party no-fault action, plaintiff Hassan Ahmed Saad appeals as of right the trial court's order granting summary disposition of his claim for benefits in favor of defendant American Select Insurance Company (ASIC) based on the lack of standing under *MCR 2.116(C)(5)* and *(C)(10)*. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Saad initiated this action alleging, as relevant to the issues on appeal, that ASIC had unreasonably and unlawfully refused to pay personal protection insurance (PIP) benefits to which he was entitled under the no-fault act and his insurance policy arising out of an October 11, 2019 motor vehicle accident involving Saad and defendant Saber Mohamed Yaffai. Specifically, Saad sought to recover for unpaid medical expenses for treatment that he had received at the following five medical providers: 4 Transport, 411 Help, Gravity Imaging, SHP Services, **[*2]** and Spine & Health. Saad had executed a series of assignments transferring his right to collect or pursue PIP benefits for services he received from these medical providers. Despite the assignments, Saad filed suit against ASIC in August 2020, seeking PIP benefits for unpaid medical bills from these providers.

ASIC sought summary disposition on the ground that Saad lacked standing to pursue these claims as a result of the assignments. Saad responded by asserting that the issue was moot because he had subsequently obtained revocations of the assignments to the above medical providers. Saad attached the purported revocations from all of the above entities except SHP Services. Of the attached revocations, only the revocation from Spine & Health included a date; that revocation was dated January 24, 2022.

ASIC argued in reply that Saad could only regain standing as of the date of the revocations. Further, ASIC argued that, pursuant to *MCL 500.3145*,[1] even if it were

[1] *MCL 500.3145* provides in relevant part as follows:

> (1) An action for recovery of [PIP] 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

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assumed that all of the revocations were executed on January 24, 2022, Saad could only seek recovery for any allegedly unpaid medical expenses incurred on or after January 24, 2021. Because the bills at issue were for expenses incurred before **[*3]** January 24, 2021, ASIC maintained that Saad's claims were time barred and should be dismissed on summary disposition because she never regained standing to assert pursue those claims.

At the hearing on ASIC's summary disposition motion, ASIC reiterated that to the extent Saad's assignments to the medical providers may have been revoked, Saad's claims were nonetheless barred by the one-year-back rule in MCL 500.3145 and Saad was not the real party in interest—as a result of the assignments—during the time frame in which the allegedly unpaid medical expenses at issue could have been pursued. Saad argued in response that the revocations rendered the assignments void *ab initio*. Saad also argued for the first time that the one-year period remained tolled because ASIC never provided him a formal denial of benefits.

The trial court granted ASIC's motion for summary disposition and dismissed the action. Saad moved for reconsideration and submitted new revocations that were notarized and dated May 11, 2022. The court denied Saad's motion and Saad filed a claim of appeal.

II. ANALYSIS

Saad challenges the dismissal of his claims, contending the revocations restored his standing retroactively to the date that he filed the lawsuit and the one-year-back period remained tolled because ASIC never **[*5]** provided a written claim denial.

We review de novo a lower court's resolution of a summary disposition motion and review for an abuse of discretion a court's denial of a reconsideration motion. Maiden v Rozwood, 461 Mich 109, 118; 597 NW2d 817 (1999); Woods v SLB Prop Mgmt, LLC, 277 Mich App 622, 629; 750 NW2d 228 (2008). Questions involving the interpretation and application of statutes are reviewed de novo. Linden v Citizens Ins Co of America, 308 Mich App 89, 91; 862 NW2d 438 (2014).

Summary disposition under MCR 2.116(C)(5) is based on the ground that the "party asserting the claim lacks the legal capacity to sue," while MCR 2.116(C)(10) provides for summary disposition if "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Under both subrules, a court must consider the pleadings and documentary evidence submitted by the parties. MCR 2.116(G)(5); Wortelboer v Benzie County, 212 Mich App 208, 213; 537 NW2d 603 (1995); Maiden, 461 Mich at 120. When considering a motion under MCR 2.116(C)(10), the evidence must be evaluated "in the light most favorable to the party opposing the motion," and if "the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." Maiden, 461 Mich at 120.

Here, there is no indication that any of the medical expenses for which Saad sought recover were incurred any later than April 1, 2020. Saad filed this lawsuit on August 12, **[*6]** 2020. Generally, and subject to certain conditions not put in issue by the parties' arguments, an action for PIP benefits "may be commenced at any time within 1 year after the most recent allowable expense, work loss, or survivor's loss has been incurred." MCL 500.3145(1). However, the one-year-back rule in MCL 500.3145(2) provides that "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." "The one-year-back rule is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." Joseph v Auto Club Ins Ass'n, 491 Mich 200, 203; 815 NW2d 412 (2012).

Although it would ordinarily appear that Saad timely filed his lawsuit, he had previously executed assignments of his rights to pursue his claims for the medical expenses

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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 [PIP] 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 **[*4]** not apply if the person claiming the benefits fails to pursue the claim with reasonable diligence.

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at issue to his medical providers. "When an assignment occurs, the 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." *Wallace v Suburban Mobility Auth for Regional Transp*, __ Mich App __, __; __ NW2d __ (2023) (Docket No. 360537); slip op at 3 (quotation marks and citation omitted). As this Court has explained,

> A real party in interest is the one who is vested with the right **[*7]** of action on a given claim, although the beneficial interest may be in another. The real-party-in-interest doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy and protects a defendant from multiple lawsuits for the same cause of action. [*Id.* at __; slip op at 3-4 (quotation marks and citations omitted).]

During the course of the proceedings in the trial court, Saad obtained revocations of these assignments from at least four of the medical providers executed, at the earliest, on January 24, 2022.

This Court was presented with a virtually identical factual scenario in *Wallace*. In that case, the plaintiff

> received medical treatment from various medical providers and executed assignments of rights in exchange for the treatment. Plaintiff filed suit within one year of the accident, but the medical providers did not. During the lower court proceedings[, almost two years after suit was commenced], the medical providers revoked the assignments in an apparent effort to save their claims from application of the "one-year-back rule," MCL 500.3145, by transferring those claims back to plaintiff. [*Id.* at __; slip op at 2.]

The **[*8]** defendant argued on appeal in this Court that the plaintiff's claims were barred by the one-year-back rule because the plaintiff's assignments to her medical providers "divested plaintiff the right to pursue those PIP benefits" and the medical providers' claims under the assignments were already barred by the one-year-back rule by the time they executed the revocations of the assignments. *Id.* at __; slip op at 4. Thus, the defendant argued that the plaintiff "was also barred by the one-year-back rule from pursuing those claims." *Id.*

This Court concluded that the trial court had erred by denying the defendant's motion for summary disposition. *Id.* at __; slip op at 6. This Court reasoned:

> In this case, the majority of benefits at issue were assigned to the medical providers before plaintiff filed her complaint. Plaintiff executed assignments to C-Spine Ortho, Sierra Surgical, Select Specialists, and Baz Eagle Transportation between October 2019 and January 2020. Thus, upon execution of these assignments, these providers became the real parties in interest to the claims for benefits, and only the providers could bring an action to recover said benefits. . . . After executing the assignments **[*9]** and during the litigation, plaintiff obtained revocations for the assignments from C-Spine Ortho, Sierra Surgical, Select Specialists, and Baz Eagle Transportation in January 2022, after she filed her complaint.
> While the revocations of the assignments reassigned the providers' claims for benefits back to plaintiff, the revocations occurred more than a year after [the defendant] denied the medical providers' claims for benefits. Plaintiff and the providers executed the revocations in January 2022, and these revocations transferred the providers' interests to the claims for benefits back to plaintiff. However, by the time plaintiff obtained these revocations, the providers no longer had valid claims for benefits by operation of the one-year-back rule. . . . [The defendant] denied Sierra Surgical's claims on January 24, 2020, Select Specialists' claims on February 11, 2020, Baz Eagle Transportation's claims on February 28, 2020, and C-Spine Ortho's claims on April 8, 2020. As such, the providers needed to bring an action against [the defendant] within one year of its formal denial, which they failed to do.
> * * *
>
> . . . when the transfer of the beneficial interest from the medical providers **[*10]** to plaintiff occurred in this case, the medical providers did not transfer an interest in a claim to which liability attached. When the medical providers revoked their assignments for the benefit of plaintiff to pursue her claims after the litigation began, the medical providers could no longer recover their claims by operation of the one-year-back rule. See MCL 500.3145. . . .
> * * *
>
> By January 2022, when plaintiff obtained the revocations, each provider's right to collect on these claims for benefits had already been extinguished by the one-year-back rule. Thus, there remained no actionable causes of action to give back to plaintiff. Therefore, the trial court erred in denying in part

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> [the defendant's] motion for summary disposition of plaintiff's claims as it relates to the benefits plaintiff assigned to C-Spine Ortho, Sierra Surgical, Select Specialists, and Baz Eagle Transportation before she filed her complaint. [*Id.* at __; slip op at 5-6.]

Our reasoning in *Wallace* applies with equal force to this case and is dispositive in resolving this appeal. When Saad assigned his rights to collect benefits and pursue payment to his medical providers, the medical providers became the real parties in interest **[*11]** with respect to those benefits and they were the only parties who could bring an action to recover those PIP benefits. *Id.* at __; slip op at 5. By the time Saad secured assignment revocations from the medical providers on January 24, 2022, the medical providers were already barred by the one-year-back rule in *MCL 500.3145* from bringing their own claims to recover those benefits because there is no claim on this record for PIP benefits related to any medical expenses occurred after April 1, 2020, which is well more than one year before January 24, 2022. Accordingly, at the time of the revocations, the medical providers did not have any viable claims to assign back to Saad. *Id.* at __; slip op at 5-6.

Saad additionally asserts in his appellate brief that "the one year back rule was not implemented in this case because a denial was never received." Saad apparently relies on *MCL 500.3145(3)*, which provides that 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*." (Emphasis added.)

Saad fails to further elaborate regarding how he believes **[*12]** the record supports this assertion. At the motion hearing, Saad's counsel stated: "I just this morning reviewed my records and have no form am [sic] denial from American as to these claims." Based on Saad's failure to cogently develop this argument, we deem it abandoned. "It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor, 457 Mich 232, 243; 577 NW2d 100 (1998)* (quotation marks and citation omitted).

Moreover, to the extent Saad appears to contend that he never received written denial, "a formal denial [for purposes of the tolling provision in *MCL 500.3145(3)*] need not be in writing." *Encompass Healthcare, PLLC v Citizens Ins Co, 344 Mich App 248, 261; NW2d (2022)*. The denial must merely be "sufficiently direct." *Id.* (quotation marks and citation omitted). The test is whether the denial "unequivocally impresse[s] upon the insured that the extraordinary step of pursuing relief in court must be taken." *Id. at 260* (quotation marks and citation omitted; alteration in original).

Here, Saad never claimed he believed ASIC was still considering his claim for PIP benefits. Indeed, **[*13]** Saad filed suit based on ASIC's lack of payment, making it difficult to imagine that it had not been "unequivocally impresse[d]" upon him "that the extraordinary step of pursuing relief in court must be taken." *Id.* (quotation marks and citation omitted). Saad has not demonstrated that he was entitled to the benefit of the tolling provision in *MCL 500.3145(3)* under these circumstances.

Accordingly, the trial court did not err in granting ASIC's motion for summary disposition or denying Saad's motion for reconsideration.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Stephen L. Borrello

/s/ Douglas B. Shapiro

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STATE OF MICHIGAN

IN THE SUPREME COURT

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff/Appellee,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant

_____/

Supreme Court No. 165537
Court of Appeals No. 358170
Macomb Circuit No. 20-001710-NF

**Consolidated With:**

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellee,

and

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

_____/

Supreme Court No. 165538
Court of appeals No. 358171
Macomb Circuit No. 20-000386-NF

**INSURANCE ALLIANCE OF MICHIGAN'S *AMICUS CURAIE* BRIEF IN SUPPORT OF DEFENDANT/APPELLANT PROGRESSIVE MICHIGAN INSURANCE COMPANY'S APPLICATION FOR LEAVE TO APPEAL WORD COUNT STATEMENT PURSUANT TO MCR 7.212(B)(2) AND (B)(3)**

Insurance Alliance of Michigan hereby certifies that its *Amicus Curaie* Brief in Opposition of Plaintiff/Appellant Progressive Michigan Insurance Company's Application for Leave to Appeal contains 5,469 countable words pursuant to MCR 7.212(B)(2) and(B)(3).

**WILLINGHAM & COTÉ, P.C.**
Attorneys for *Amicus Curiae* Insurance Alliance of Michigan

Dated: October 22, 2024

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