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STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court Docket No 165537

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

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

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

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court Docket No 165538
Court of Appeals Case No. 358170
Lower Court: Macomb County Circuit Court
Lower Court Case No. 20-001710-NF
Lower Court Judge: Jennifer Faunce

Defendant-Appellant Progressive Michigan Insurance Company's Reply in Support of its Supplemental Brief

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Introduction

This Court granted oral argument on the application for leave to appeal, authorizing the following issue: whether a plaintiff has standing and is a real party in interest if, before filing a cause of action, it had assigned its rights to that cause of action to third parties but, after filing the cause of action, the third parties assign those rights back to it. See MCR 2.201(B)(1); MCL 600.2041. Defendant-Appellant Progressive asserts that a plaintiff neither has standing nor is the real party in interest when it assigned its rights to a cause of action before filing a cause of action—even if the third parties assign back those rights after the cause of action was filed.

At its root, Plaintiff's arguments ask this Court to completely disregard the real-party-in-interest doctrine. Plaintiff assigned away its rights to litigate this case, yet attempts to circumvent that by distracting this court with misapplication of numerous cases, statutes, and court rules. This does not change that the main issue in this case is: whether Plaintiff was the real party in interest at the time this action was initiated. The inarguable answer is: Plaintiff was not the real party in interest. Rather, the factoring companies were the real parties in interest because Plaintiff had assigned its rights to those companies. Consequently, this case has not been litigated by the real party in interest and Plaintiff never provided evidence that it had any authority to litigate on behalf of the factoring companies.

Additionally, Plaintiff appears to fall back on MCL 500.3112 to remedy the real-party-in-interest issue. But Plaintiff did not plead MCL 500.3112. This case was based solely on assignments—not the independent right under MCL 500.3112. (**Exhibit D to Defendant's Appendix**, Plaintiff's Complaint). An unpled statutory section should not save Plaintiff from its failure to have the right to litigate this action when it initiated this action. More, Plaintiff does not have a "claim" under MCL

500.3112. See *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 195; 895 NW2d 490 (2017).

The Court of Appeals erred when it reversed the trial court's order granting summary disposition to Progressive. Therefore, this Court should grant leave to appeal to resolve the jurisprudential conflict within the Court of Appeals and the error of law committed by the Court of Appeals in this case. A party must have standing and must be the real party in interest at the time a lawsuit is commenced. It is not sufficient to receive counter-assignments after the action is commenced.

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Argument

I. Plaintiff's arguments presented in its Supplemental Response Brief do not establish that it was the real-party-in-interest nor that it had standing at the time this action was initiated.

Plaintiff relies on joinder, the alleged minimal harm to Defendant, and MCL 500.3112 in an attempt to circumvent the real-party-in-interest doctrine. But none of these permit Plaintiff to flout the requirement that it needed to be the real party in interest at the time that it filed this action.

First, joinder is insufficient as it does nothing to change the rights of Plaintiff. And if the factoring companies must be joined for the action to continue, C-Spine would have no entitlement to remain in the lawsuit, or initiate the lawsuit, as it has no interest whatsoever. Second, Plaintiff argues that the only harm that Defendant is at risk of is double payment of benefits. But, even if that was true, that does not mean Plaintiff had a right to file this action against Defendant. Third, Plaintiff falls back on the independent cause of action elaborated in MCL 500.3112 to get around the real-party-in-interest doctrine. Yet, Plaintiff never pled MCL 500.3112 and Plaintiff admitted that it transferred rights to the accounts receivable to the factoring companies, which necessarily means that Plaintiff did not have a valid claim for PIP benefits under MCL 500.3112.

A. Plaintiff's arguments ask this Court to completely disregard the real-party in interest doctrine. Ultimately, it is mandatory that this cause of action be litigated by the real party in interest.

Again, Plaintiff relies on joinder, the risk of harm to Defendant, and MCL 500.3112 to mask that it was not the real party in interest at the time this action was commenced. But these arguments pose nothing more than distractions from the real issue in this case: that Plaintiff was not the real party in interest at the time it filed its Complaint.

As previously discussed in Defendant-Appellant's Supplemental Brief, joinder does not function to alter which party is the real party in interest. Said another way, joinder cannot be applied to retroactively transform Plaintiff into the real party in interest at the time it filed its Complaint. MCR

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2.205(A) states: "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." (emphasis added).

The plain language of MCR 2.205(A) does not change Plaintiff's rights. Nor have the required parties been joined to this action at any point during this litigation. Further, Plaintiff never argued below that MCR 2.205(A) should apply to protect it from dismissal for not being the real party in interest. Rather, the Court of Appeals brought this court rule up on its own as evidence that Defendant could be sufficiently protected from a second lawsuit by application of MCR 2.205(A).

This leads into Plaintiff's second argument—"Defendant's only legitimate interest at issue is avoiding duplicate payment for the same claims." (Plaintiff's Supplemental Response Brief, p 15). It is true that the real-party-in-interest doctrine is concerned with protecting against duplicate payment. But its main function is to ensure that the party with the actual right to the action initiates that action.

"An action must be prosecuted in the name of the real party in interest." MCR 2.201(B) (emphasis added). A party must show that it is the real party in interest to proceed with its cause of action. MCR 2.201(B) (emphasis added); MCL 600.2041. MCL 600.2041 also states that "[e]very action shall be prosecuted in the name of the real party in interest." (emphasis added). 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; emphasis added). The real party in interest doctrine is a "standing doctrine"

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that "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy." *Id.* (quotation marks and citation omitted).

Notably, the case law and court rules regarding the real-party-in-interest doctrine use the mandatory words "must" and "shall." *City of Bay City v Bay County Treasurer*, 292 Mich App 156; 807 NW2d 892 (2011) (interpreting the term "shall" to mean a mandatory, imperative directive); *Grabow v Macomb Twp*, 270 Mich App 222, 229; 714 NW2d 674 (2006), quoting *Browder v Int'l Fidelity Ins Co*, 413 Mich 603, 612; 321 NW2d 668 (1982) ("courts should give the ordinary and accepted meaning to the mandatory word 'shall' . . . unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole."); *Vyletel-Rivard v Rivard*, 286 Mich App 13, 25; 777 NW2d 722 (2009) ("The term 'must' indicates that something is mandatory."). Regardless of the argument that joinder can allegedly remedy "Defendant's only legitimate interest [of] avoiding duplicate payment for the same claims," this does not change that the real-party-in-interest doctrine is mandatory—it is mandatory that the real party in interest litigate the case. That has not occurred in this case.

More, the key timeframe for determining whether a party is the real party in interest or whether a party has standing is when the cause of action is initiated. And under Michigan precedent emphasizes that the importance of the real-party-in-interest and standing doctrines are to ensure that the party with the actual rights to an action vigorously litigates the action. *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 412; 875 NW2d 242 (2015); *Barclae*, 300 Mich App at 483; *Estate of Maki*, 318 Mich App at 539; *In re Beatrice Rottenberg Trust*, 300 Mich App at 356; *Lansing Sch Ed Ass'n* , 487 Mich at 355. And asserting the rights of a third party is not enough to establish the party as the real party in interest or as having standing to litigate the claim.

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Applying these standards here, C-Spine was neither the real-party-in-interest nor did it have standing to bring this action. It is insufficient for C-Spine to litigate on behalf of the factoring companies. See *Barclae*, 300 Mich App at 483 ("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.").

While standing and the real-party-in-interest doctrine are not identical doctrines, Michigan courts have acknowledged that the doctrines are, in some ways, intertwined. *In re Beatrice*, 300 Mich App at 355 ("the principle of statutory standing overlaps significantly with the real-party-in-interest rule").

C-Spine had no legal right to raise the claims in this action at the time the action was initiated because it transferred the right to PIP benefits to the factoring companies. As discussed in Section IB of this brief, C-Spine did not rely on MCL 500.3112, and instead relied on assignments. Yet before it filed its Complaint, it assigned away its right to all accounts receivable, which would necessarily include PIP benefits. And the alleged counter-assignments do not function to turn C-Spine into the real-party-in-interest at the time this action was commenced. C-Spine needed to have standing and needed to be the real-party-in-interest at the time it commenced this action. It did not do so. While the counter-assignments signed after this litigation commenced may have some meaning between C-Spine and the factoring companies, the counter-assignments do not have any legal impact on C-Spine's status at the time that this action was initiated—C-Spine was not the real party in interest when it filed its complaint.

B. MCL 500.3112 does not make Plaintiff a real party in interest—Plaintiff did not plead MCL 500.3112 and Plaintiff does not have a "claim" under MCL 500.3112.

Much of Plaintiff's argument relies on MCL 500.3112 supplying a backdoor to transform it into the real party in interest by providing an independent cause of action to providers. But this fails

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for two reasons. First, Plaintiff's Complaint never cites MCL 500.3112. (**Exhibit D to Defendant's Appendix**, Plaintiff's Complaint).

Second, Plaintiff does not have a "claim" under MCL 500.3112. MCL 500.3112 states in relevant part:

> Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his or her death, to or for the benefit of his or her dependents. A health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. [emphasis added.]

In *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 195; 895 NW2d 490 (2017), this Court held that a healthcare provider did not possess a statutory cause of action to recover PIP benefits from a no-fault insurer. During the course of that opinion, the Court addressed the definition of "claim" under MCL 500.3112, stating: "Therefore, to have a "claim" under the no-fault act, a provider must have a right to payment of PIP benefits from a no-fault insurer." *Covenant*, 500 Mich at 211 n 31 (emphasis added).

After *Covenan*t, the Legislature amended MCL 500.3112 to provide a direct cause of action for medical providers. Regardless, the definition of what constitutes a "claim" under MCL 500.3112 as defined in *Covenant* should still be applicable. There is nothing to suggest that this definition became obsolete upon amendment of the statute. The prior version of the statute stated in relevant part:

> Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his death, to or for the benefit of his dependents. Payment by an insurer in good faith of personal protection

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> insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. [emphasis added.]

According to the plain language, there is no change between the prior version and the current version that should change the definition of "claim" under MCL 500.3112—the original language still exists, but new language was added to that original language.

"The Michigan Legislature 'overruled' Covenant by amending MCL 500.3112 to give healthcare providers the right to file a direct claim or cause of action against an insurer for reimbursement for services provided to an injured person. See 2019 PA 21, effective June 11, 2019." *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App 21, 28 n 4; 944 NW2d 412 (2019). But the Michigan Legislature did not "overrule" the entire case—it merely overruled the portion that found providers did not have an independent cause of action. "[A]n overruled proposition in a case is no reason to ignore all other holdings in the case." *People v Carson*, 220 Mich App 662, 672; 560 NW2d 657 (1996); see also *Stein v Home-Owners Ins Co*, 303 Mich App 382, 389; 843 NW2d 780 (2013) (distinguishing between reversals in their entirety and reversals in part). Thus, "claim" as defined by this Court for purposes of MCL 500.3112 should still be applicable as the Legislature made no change that would indicate an intent to alter that portion of *Covenant*.

If the Legislature wanted MCL 500.3112 to define "claim" differently, it would have done so. "When the Legislature enacts laws, it is presumed to know the rules of statutory construction and therefore its use or omission of language is generally presumed to be intentional." *Carson City Hosp v Dep't of Community Health*, 253 Mich App 444, 447-48; 656 NW2d 366 (2002).

More, Michigan Courts have continued to apply portions of the *Covenant* case after the amendment to MCL 500.3112 came into effect—other principles from the case continue to guide Michigan courts. The Court of Appeals cited *Covenant* for the proposition that "[a]n insured may

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assign his or her right to past or presently due benefits to a healthcare provider. *Winfield v State Auto Prop & Cas Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued November 18, 2021 (Docket No 355681), p 4.

The Court of Appeals also followed *Covenant* specifically for the definition of "claim" in *Se Mich Surgical Hosp v Auto Club Ins Ass'n*, unpublished opinion per curiam of the Court of Appeals, issued July 2, 2023 (Docket No. 348626), p 3 ("Plaintiff argues that we should disregard *Covenant*'s discussion of MCL 500.3112 because it was done in context of deciding whether a healthcare provider had a statutory cause of action against a no-fault insurer, not deciding what constituted a 'claim' under MCL 500.3112. While true, we do not see that as a reason to ignore *Covenant*'s clear explanation for what constitutes a 'claim' under MCL 500.3112.")[1]

Plaintiff stated that it assigned its rights to the "Accounts Receivable" before this action was initiated. Plaintiff itself defined accounts receivable as: "a balance due from a debtor on a current account." (Plaintiff-Appellee's Supplemental Response Brief, p 17). This balance due would necessarily include PIP benefits. Thus, Plaintiff itself has indirectly admitted that it did not have a "claim" under the No-Fault Act—specifically MCL 500.3112—at the time that it initiated this action. As this Court explained in *Covenant*, to have a claim, the provider must have a right to payment of PIP benefits from a no-fault insurer. At the time this action was initiated, the factoring companies rather than Plaintiff would have had the right to payment of PIP benefits—if any at all were owed. Thus, when Plaintiff initiated this action it did not have a "claim" under MCL 500.3112 because it did not have a right to PIP benefits from a no-fault insurer—those rights were held by other parties.

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[1] Exhibit Z to Appendix Addendum, *Se Mich Surgical Hosp v Auto Club*.

The real party in interest doctrine "is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013) (citations omitted). It is clear based on Plaintiff's own admissions, that the legal right to PIP benefits, rested with the factoring companies at the time this action was initiated. Consequently, Plaintiff and the lower court's reliance on MCL 500.3112 cannot remedy that Plaintiff was not the real party in interest under the circumstances of this case.

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Conclusion and Relief Requested

The Court of Appeals erred when it determined that the counter-assignments and purchase agreement amendments permitted C-Spine to maintain its causes of action under MCL 500.3112. The Court of Appeals should have affirmed the trial court's order granting summary disposition to Progressive. C-Spine was not the real party in interest at the time it filed these actions, and, as a result, it lacked standing. By determining otherwise, the majority effectively undermined well-settled precedent regarding standing and created uncertainty for Michigan litigants in general, not just insurance carriers in the No-Fault context.

Plaintiff did not plead MCL 500.3112 and even if it had, it did not have a "claim" under MCL 500.3112 at the time it initiated this action. Thus, any reliance on MCL 500.3112 cannot save Plaintiff from the reality that it was not the real party in interest when this action was initiated. Plaintiff's arguments do not change the mandatory requirement that an action must be pursued by the real party in interest, and it was not the real party in interest when it initiated this action.

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

Respectfully submitted,

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I certify that Defendant-Appellant's Supplemental Reply Brief complies with the type-volume limitation set forth in MCR 7.212(B). I am relying on the word count of the word-processing system used to produce this document. This brief uses a 12-point proportional font (Times New Roman), and the word count for this brief is 3179.

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Certificate of Service

The undersigned states that she is an employee of Novara Tesija Catenacci McDonald & Baas, PLLC, and states that she served a copy of the foregoing document(s) with the Supreme Court using the Court's e-file and service option, which will send notification of such filing to the individuals listed on the Case Service List, on November 28, 2023.

/s/ Joanne Hickey
Joanne Hickey

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