STATE OF MICHIGAN
IN THE SUPREME COURT

JAWAD A. SHAH, M.D., PC, INTEGRATED HOSPITAL SPECIALISTS, PC, INSIGHT ANESTHESIA, PLLC, and STERLING ANESTHESIA, PLLC,

Plaintiffs/Appellees,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Appellant.

Supreme Court Case No. _____

Court of Appeals Case No. 340370

Genesee County Circuit Court
Case No. 17-108637-NF

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STATE FARM'S APPLICATION FOR LEAVE TO APPEAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

JUDGMENT APPEALED FROM

Defendant-Appellant State Farm Mutual Automobile Insurance Company seeks leave to appeal the Court of Appeals' May 8, 2018 decision, which reversed the trial court's September 11, 2017 order granting summary disposition to State Farm. (App 6 at 073a; App 9 at 090a.)

QUESTIONS PRESENTED FOR REVIEW

State Farm's standard Michigan no-fault auto-insurance policy clearly and unambiguously precludes any assignment of benefits or transfer of rights without State Farm's approval. The Court of Appeals, however, invalidated this Assignment Clause on public-policy grounds, based on this Court's decision in *Roger Williams Ins Co v Carrington*, 43 Mich 252; 5 NW2d 303 (1880).

State Farm seeks this Court's review of the following issues:

1. Under this Court's controlling modern precedent, was the Court of Appeals required to apply the Assignment Clause as written, rather than strike it on public-policy grounds?

The circuit court answered yes and enforced the Assignment Clause as written.
The Court of Appeals answered no and struck it.
State Farm answers yes.
Plaintiffs answer no.

2. If *Roger Williams* has not already been superseded by the past century of controlling law from this Court, should the Court expressly overrule it or limit its application outside the no-fault context?

The circuit court held that *Roger Williams* did not control.
The Court of Appeals stated that "if the continued validity of *Roger Williams* is to be called into question, it will have to be by our Supreme Court."
State Farm answers yes.
Plaintiffs presumably answer no.

INTRODUCTION AND REASONS FOR GRANTING LEAVE TO APPEAL

The Court of Appeals invalidated on public-policy grounds a clear and unambiguous provision of State Farm's automobile no-fault policy. This decision is contrary to fundamental principles of contract law and to this Court's controlling precedent. Due to the system-wide effects of this decision—it invalidates a provision in over 1.1 *million* no-fault policies throughout the state and affects hundreds of cases pending in the lower courts—State Farm urges the Court to grant leave to appeal and reverse.

The Court held last year in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191; 895 NW2d 490 (2017) that healthcare providers do not have standing to bring claims against insurers for recovery of benefits under the No-Fault Act. Following that decision, many healthcare providers, including Plaintiffs here, sought to proceed against insurers under assignments of rights from the named insureds. State Farm's no-fault policy, however, plainly precludes any such assignment: "No assignment of benefits or other transfer of rights is binding upon us unless approved by us." (See App 4 at 055a, General Terms ¶ 9, Assignment, the "Assignment Clause.") The trial court agreed with State Farm that this provision barred Plaintiffs' proposed assignment-based claims, and thus granted summary disposition to State Farm under *Covenant* and denied Plaintiffs' request to amend their complaint to proceed under an assignment theory.

The Court of Appeals reversed. The court, in an opinion signed by Judges Borrello and Tukel (with Judge Shapiro writing separately but concurring in the decision to invalidate the Assignment Clause), acknowledged that the Assignment Clause was "perfectly clear." (App 9 at 097a.) The court further acknowledged that this Court had "previously recognized the enforceability of anti-assignment clauses that are clear and unambiguous." (*Id.*, citing *Detroit*

Greyhound Employees v Aetna Life Ins, 381 Mich 683, 689-90; 167 NW2d 274 (1969).) But the court nonetheless invalidated the Assignment Clause. The court reasoned that a prohibition of post-loss assignment—that is, assignment of an accrued cause of action—"violates Michigan public policy that is part of our common law[.]" (App 9 at 098a.) The Court of Appeals relied entirely on a decision from two centuries ago in support of this supposed common-law "public policy" prohibition. In *Roger Williams Ins Co v Carrington*, 43 Mich 252; 5 NW2d 303 (1880), this Court held that a nineteenth-century statute (which was not identified in the opinion) secured an "absolute right" to assign a cause of action post-loss because a post-loss assignment "cannot concern the debtor," and thus restricting post-loss assignment contractually is "against public policy." *Id.* at 254. Thus, held the Court of Appeals here, State Farm's Assignment Clause is "against Michigan public policy as stated by our Supreme Court one hundred and thirty-eight years ago in *Roger Williams*." (App 9 at 098a.)

But to say *Roger Williams* is no longer good law is an understatement. A lot has changed in the last century-plus of Michigan contract law. In fact, not one Michigan court had followed *Roger Williams*' public-policy holding in a published decision in the 138 years since. The unidentified statute securing an "absolute right" to assign undisputedly no longer exists, so the very predicate for the *Roger Williams* decision is long gone. This Court in *Detroit Greyhound* rejected the notion that parties have an absolute right to assign, holding that contractual anti-assignment provisions *are* enforceable so long as they use "[c]lear language" and "the plainest words." 381 Mich at 689-90. And this Court has repeatedly made clear in recent decisions that courts must enforce plain and unambiguous contract provisions as written and cannot strike them based on their own views of public policy or what should or shouldn't "concern" one contracting party or the other. See *Rory v Continental Ins Co*, 473 Mich 457, 476; 703 NW2d 23 (2005)

("reiterat[ing] that the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties"). This Court in fact expressly held in *Rory* that this general rule applies with special force to insurance policies because those contracts are vetted and approved by a separate branch of government—the executive, through its Commissioner of Insurance. Thus "the explicit 'public policy' of Michigan is that the reasonableness of insurance contracts is a matter for the executive, not judicial, branch of government." *Id.* at 476. So when, as here, the Commissioner has "approved the policy form at issue," "courts have a very limited scope of review[.]" *Id.* at 475, 491. Specifically, courts may review only an appropriately styled action brought under the deferential standards of the Administrative Procedures Act. *Id.* at 491. But when, as here, the plaintiff has not "challenged in the appropriate forum that [the Commissioner's] action was an abuse of discretion," the courts must enforce the terms of the policy as written and as approved by the Commissioner. *Id.*

Roger Williams is therefore a shucked shell of a decision. The statute underpinning it no longer exists; this Court in *Detroit Greyhound* rejected the idea of an absolute right to assign; and the Court in *Rory* held that public-policy determinations for no-fault policies are the domain of an entirely separate branch of government. State Farm therefore submits that *Roger Williams* is no longer good law and that the Court of Appeals erred by relying on it instead of this Court's modern precedent. To the extent *Roger Williams* has any continuing life, State Farm asks the Court to make clear that the decision has no application in the no-fault context, or to expressly overrule it. *Roger Williams* was decided a century before the No-Fault Act was passed, a century before the Legislature put the Commissioner of Insurance in charge of policing the contents of insurance policies, and decades before even the production of the first commercial automobile.

Roger Williams' century-old policy pronouncements cannot and do not represent the public policy of the State of Michigan in 2018, particularly when it comes to the enforceability of clear and unambiguous provisions of no-fault automobile insurance policies.

To the Court of Appeals' credit, it all but invited this Court to review *Roger Williams*: "if the continued validity of *Roger Williams* is to be called into question, it will have to be by our Supreme Court." (App 9 at 099a.) State Farm submits that overruling *Roger Williams* is appropriate here. Notably absent from *Roger Williams* is any explanation of *why* the Court thought that post-loss anti-assignment clauses violated Michigan public policy. Why should a court care if two competent contracting parties agree that they only want to deal with each other going forward and therefore agree to limit assignment? Under *Roger Williams*' absolute prohibition, even if limiting post-loss assignment were one party's greatest concern in the world—even if she paid an additional $1 million consideration for an anti-assignment clause—the courts would strike the clause because it shouldn't "concern" her. See *Roger Williams*, 43 Mich at 254. Simply put, *Roger Williams*' antiquated view of contract law does not square with this Court's modern precedent and should be overruled once and for all.

In the end, this case "involves a legal principle of major significance to the state's jurisprudence," and the Court of Appeals' decision "is clearly erroneous and will cause material injustice" and "conflicts with a Supreme Court decision or another decision of the Court of Appeals." MCR 7.305(B)(3), (5)(a)-(b). The stakes of this case are significant and wide-reaching. State Farm has issued more than 1.1 million active no-fault policies that include the Assignment Clause, in reliance on the Commissioner's approval of the policy as reasonable and conforming with the law. In the thirteen months since this Court decided *Covenant*, State Farm has defended or continues to defend over a *thousand* cases in the trial courts in which the validity

of the Assignment Clause is an issue. State Farm is also a party to nine other cases pending in the Court of Appeals that raise the same issue. This is just for State Farm; other insurers have similar anti-assignment provisions in their standard no-fault policies. Every one of these clear and unambiguous policies was rewritten by the Court of Appeals below, thereby affecting many hundreds—or even thousands—of cases in the lower courts. State Farm submits that the significant and far-reaching issues in this case well warrant this Court's review. State Farm therefore respectfully asks this Court to grant this application for leave to appeal to reverse the Court of Appeals' decision to invalidate the Assignment Clause.

MATERIAL PROCEEDINGS AND FACTS

I. The Assignment Clause in State Farm's No-Fault Policy

This case arises from an automobile insurance policy that State Farm issued to George Hensley. (App 4 at 020a, 058a the "Policy.") The Policy unambiguously prohibits the assignment of benefits or other transfer of rights without State Farm's approval: "No assignment of benefits or other transfer of rights is binding upon us unless approved by us." (*Id.* at 055a.)

Plaintiffs are healthcare providers seeking payment of $82,070 for services they rendered to Mr. Hensley for treatment of injuries that he allegedly sustained in a November 30, 2014 automobile accident.

II. The Trial Court Grants Summary Disposition to State Farm Under *Covenant* and Holds that Plaintiffs' Claims Under the Purported Assignments Are Futile Because of the Assignment Clause.

Plaintiffs filed this action against State Farm in the Genesee County Circuit Court on February 24, 2017, asserting a claim for personal insurance protection ("PIP") benefits under the No-Fault Act. (See App 1 at 002a.) On July 11, 2017, State Farm filed a motion for summary disposition on the ground that Plaintiffs' claims were barred by this Court's decision in *Covenant*.

Plaintiffs did not argue in response that their claims were somehow still valid under *Covenant*, nor did they argue that *Covenant* did not apply retroactively. Plaintiffs in fact conceded the "seemingly retroactive holding of *Covenant*." (App 3 at 018a, Pls' Mot for Leave to Amend, ¶ 8.) Instead, Plaintiffs attached to their response brief purported July 11, 2017 assignments of rights from Mr. Hensley to Jawad A Shah MD PC, Integrated Hospital Specialists PC, Insight Radiologists PC, and Precision Surgical Associates, providing that "Assignor has incurred charges for services provided by Assignee for which the rights, privileges and remedies for payment are hereby assigned." (E.g., App 2 at 011a.)[1] Plaintiffs asked the trial court to grant them leave to amend their complaint to assert claims based on the assignments. Plaintiffs also filed a motion for leave to amend asking for the same relief.

Because the Policy unambiguously prohibits the assignment of benefits or other transfer of rights without State Farm's approval, State Farm argued in reply that Plaintiffs' supposed assignments were barred by the Assignment Clause and that Plaintiffs' request to amend should be denied as futile. State Farm also argued that the proposed amendment would be futile because Plaintiffs' claims were barred by the "one-year-back" rule of MCL 500.3145(1), since their claims for payment arose more than one year prior to the purported assignments and Mr. Hensley could not assign claims he no longer had.

On September 11, 2017, the trial court held a hearing on the motions and agreed with both of State Farm's positions. The court reasoned that the assignments were invalid under the Assignment Clause and that any claims brought based on the assignments would also be barred by the one-year-back rule. (See App 5 at 068a.) The trial court issued an order the same day

[1] Neither Insight Radiologists PC nor Precision Surgical Associates is a party to this case, and Plaintiffs did not attach any purported assignments relating to Plaintiffs Insight Anesthesia, PLLC or Sterling Anesthesia, PLLC. (See App 2 at 011a-014a.)

granting State Farm's motion for summary disposition and dismissing the case. (See App 6 at 073a-074a.) Plaintiffs thereafter appealed of right.

III. The Court of Appeals Reverses and Invalidates the Assignment Clause on Public-Policy Grounds.

The Court of Appeals (Borrello, J., joined by Tukel, J., with Shapiro, J. concurring in part) issued a published opinion reversing and remanding on May 8, 2018. The court recognized that "[u]nder general contract law, rights can be assigned unless the assignment is clearly restricted." (App 9 at 097a, quoting *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004).) The court also recognized that "[t]he appellate courts of Michigan have previously recognized the enforceability of anti-assignment clauses that are clear and unambiguous." (*Id.*, citing *Detroit Greyhound*, 381 Mich at 689-90.) And the court recognized that "because the anti-assignment clause is unambiguous, it must be enforced unless it violates the law or public policy." (*Id.*, citing *Rory*, 473 Mich at 468-69.)

The Court of Appeals nonetheless concluded that the Assignment Clause was unenforceable "to prohibit an assignment of an accrued cause of action after the loss has occurred [as] against Michigan public policy as stated by our Supreme Court one hundred and thirty-eight years ago in *Roger Williams*." (App 9 at 098a.) The Court of Appeals stated that there has been "no indication that *Roger Williams* or its holding relating to anti-assignment clauses has been clearly overruled or superseded," and that "if the continued validity of *Roger Williams* is to be called into question, it will have to be by our Supreme Court." (*Id.*) The Court of Appeals therefore concluded that "the trial court's decision was based on a misapplication of

the law" and that "the trial court necessarily abused its discretion in denying plaintiffs the opportunity to serve its [sic] supplemental pleading." (*Id.* at 103a.)[2]

On the one-year-back issue, the Court of Appeals concluded that Plaintiffs' claims for any portion of the loss incurred more than one year before the assignments were executed were barred by the one-year-back rule. (*Id.* at 101a.) Because the one-year-back rule did not bar all of Plaintiffs' claims (there were about $4,000 of charges within the year preceding the assignments), the court remanded for further proceedings consistent with its opinion. (*Id.* at 103a-104a.)[3]

Judge Shapiro wrote a separate opinion concurring with the majority's conclusion that the Assignment Clause violates public policy. (App 10 at 106a.) Judge Shapiro dissented from the majority's conclusion that the one-year-back rule runs from the date of the assignments rather than the date the complaint was filed. (*Id.*) Judge Shapiro also believed that the court should

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[2] The trial court's order states that summary disposition was granted pursuant to MCR 2.116(C)(8). The Court of Appeals, however, applied MCR 2.116(C)(10) on the grounds that the trial court considered both the Policy and the assignments, but neither "were attached to or referred to in a *pleading*." (App 9 at 101a, citing MCR 2.110(A).) This conclusion overlooks the fact that the Policy was referenced in the complaint, (App 1 at 003a-004a, ¶¶ 6-7), and is the written instrument on which Plaintiffs' claim is based; thus, it is "part of the pleading for all purposes." See MCR 2.113(F)(2). The Court of Appeals was correct, however, that the assignments were not attached to or referred to in a pleading, since Plaintiffs never actually submitted a proposed amended complaint.

[3] State Farm does not seek review of this portion of the Court of Appeals' decision. The Court of Appeals also held that Plaintiffs waived a variety of other arguments by not raising them in the trial court, including arguments that *Covenant* is not retroactive, that the Assignment Clause is ambiguous, that there are factual questions about whether the Policy was in force at the time of the accident, that another state's law applies, that State Farm lacks standing to challenge the assignments, that the Assignment Clause conflicts with the No-Fault Act, and that the Assignment Clause is unenforceable under the Uniform Commercial Code. (See App 9 at 093a-095a, 097a n 8, 099a.) State Farm likewise does not seek review of the Court of Appeals' holding that Plaintiffs waived all of these issues.

have addressed the *Covenant* retroactivity issue, even though Plaintiffs had conceded the issue below and even though a controlling Court of Appeals decision had already decided it. (See *id.*)

State Farm now seeks leave to appeal. State Farm's application is limited to the Court of Appeals' decision to invalidate the Assignment Clause on public-policy grounds.[4]

STANDARD OF REVIEW

This Court may grant an application for leave to appeal a Court of Appeals decision if, as relevant here, the case "involves a legal principle of major significance to the state's jurisprudence," if the Court of Appeals' decision "is clearly erroneous and will cause material injustice," or if "the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals." MCR 7.305(B)(3), (5)(a)-(b).

This Court reviews de novo the grant or denial of summary disposition, the proper interpretation of a contract, and whether a contractual provision violates public policy. *Rory*, 403 Mich at 464; *Terrien v Zwit*, 467 Mich 56, 61; 648 NW2d 602 (2002). The Court reviews a trial court's denial of a request to amend only for an abuse of discretion. *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

ARGUMENT

I. SUMMARY OF THE ARGUMENT

The Assignment Clause in State Farm's policy clearly and unambiguously bars any assignment or transfer of rights without State Farm's approval: "No assignment of benefits or other transfer of rights is binding upon us unless approved by us." (App 4 at 055a.) The Court

[4] Because Plaintiffs conceded below the "seemingly retroactive holding of *Covenant*," (App 3 at 018a, ¶ 8), the retroactivity issues presented on leave to this Court in *W A Foote Mem Hosp v Mich Assigned Claims Plan*, No. 156622, COA No. 333360, are not at issue here. For all of the reasons stated in State Farm's Court of Appeals brief, the *Foote* court was correct that *Covenant* applies retroactively. (See App 8 at 084a-087a.)

of Appeals acknowledged that "the language of this provision is perfectly clear." (App 9 at 097a.) The Court of Appeals nonetheless invalidated the Assignment Clause "because such a prohibition of assignment violates Michigan public policy[.]" (*Id.* at 098a.) With the stroke of a pen, the Court of Appeals crossed out a clear and unambiguous contract provision that appears in over 1.1 million no-fault policies in this state.

This Court has repeatedly warned the lower courts not to do this. The courts do not "serve as an ombudsman, rewriting contracts and statutes in the name of 'public policy' whenever it appears that the plain terms of the text work some perceived inequity." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 202; 747 NW2d 811 (2008). "[T]his approach replaces the rule of law by the rule of men, which is the very peril we believe that courts are expected to stand against." *Id.* Simply put, "the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations[.]" *Rory*, 473 Mich at 461. Only in "highly unusual" and "narrow," well-defined circumstances may a court substitute its judgment for the contracting parties' and declare a contract provision contrary to public policy. See *id.* at 469; *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 372; 817 NW2d 504 (2012). For no-fault policies, "narrow" becomes nearly non-existent. This is because the Legislature has delegated the task of vetting and approving the terms of insurance policies—including no-fault policies—to the Commissioner of Insurance, an executive-branch official. "Accordingly, the explicit 'public policy' of Michigan is that the reasonableness of insurance contracts is a matter for the executive, not judicial, branch of government." *Rory*, 473 Mich at 476. In other words, when it comes to no-fault policies, public-policy determinations are up to the Commissioner, not the courts.

The Court of Appeals therefore erred by striking State Farm's Assignment Clause on public-policy grounds. The court ignored *Rory*'s controlling holding on this point and did not mention the Commissioner of Insurance *anywhere* in its opinion. Instead, the court relied entirely on the *Roger Williams* decision for its conclusion that anti-assignment clauses that restrict post-loss assignments violate Michigan public policy. But *Roger Williams* does not control here. The *Roger Williams* public-policy holding was based on a nineteenth century statute securing an "absolute right" to assign a cause of action, and it is undisputed that there is no such statute on the books today. In fact, this Court has since held that parties do *not* have an absolute right to assign and that contractual anti-assignment clauses are enforceable as long as they use "[c]lear language." *Detroit Greyhound*, 381 Mich at 689-90. Moreover, *Roger Williams* was not a no-fault case, since the No-Fault Act came almost a century later. And this Court expressly held in *Rory* that, "in the specific arena of insurance contracts," public-policy determinations are the province of the Commissioner of Insurance, not the courts. 473 Mich at 491. The Commissioner here approved State Farm's policy containing the Assignment Clause as conforming with the requirements of the No-Fault Act, and it was not up to the Court of Appeals to second-guess that determination.[5]

State Farm therefore asks this Court to grant leave to appeal to reverse the Court of Appeals' decision invalidating the Assignment Clause. State Farm submits that the best view of

[5] In a footnote in *Covenant*, the Court noted in dicta that its opinion was "not intended to alter an insured's ability to assign his or her right to past or presently due benefits to a healthcare provider." 500 Mich at 217 n 40. This footnote, however, was not a license for healthcare providers to proceed against no-fault insurers under assignments without regard to whether those assignments are permitted under Michigan law. Rather, the *Covenant* footnote presumes the insured has the right to assign his or her rights to benefits in the first place and does not address a situation where that right is validly precluded or limited by contract. See *id*. That is the situation here.

the law is that *Roger Williams* has already been superseded by a century of subsequent decisions from this Court and by the No-Fault Act. But to the extent *Roger Williams* has not already been displaced by subsequent law, State Farm asks the Court to either overrule it expressly or make clear that its public-policy holding has no application in the no-fault context. At stake is the fate of over a million no-fault policies in this state and hundreds of cases pending in the lower courts. State Farm submits that the important issues in this case well warrant this Court's review.

II. THE COURT OF APPEALS' DECISION TO INVALIDATE THE ASSIGNMENT CLAUSE IN STATE FARM'S NO-FAULT POLICY ON PUBLIC-POLICY GROUNDS IS CONTRARY TO THIS COURT'S CONTROLLING PRECEDENT

A. This Court's modern precedent uniformly requires that unambiguous terms in insurance policies be enforced as written.

Under this Court's controlling precedent, the Court of Appeals was required to enforce as written a clear and unambiguous provision of a no-fault policy. This Court held in *Rory* that "insurance policies are subject to the same contract construction principles that apply to any other species of contract." 473 Mich at 462. This means that insurance contracts, just like any other contract, are subject to the "fundamental tenet of our jurisprudence" that "unambiguous contracts are not open to judicial construction and must be *enforced as written*." *Id.* at 468. "Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract." *Id.* This principle is "ancient and irrefutable," "draws strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens," and is, in short, "an unmistakable and ineradicable part of the legal fabric of our society." *Id.* at 470, quoting *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 60; 664 NW2d 776 (2003).

As the Court recognized in *Rory*, lurking beneath the argument that courts should refuse to enforce some provisions of insurance policies is the idea that insurance policies are "adhesion contracts," where the terms are presented to the insured on a "take-it-or-leave-it" basis. 473 Mich at 477. In other words, parties and courts often base these public-policy arguments on the "assumption that 'adhesion contracts' are subject to a greater level of judicial scrutiny than other contracts—and, indeed, that so-called adhesion contracts need not be enforced if the court views them as unfair." *Id.* Plaintiffs made that argument to the Court of Appeals, asserting that the Assignment Clause was unenforceable because the Policy "smacks of an adhesion contract." (App 7 at 079a-080a.) And Judge Shapiro, at least, was overtly sympathetic to that argument. (See App 10 at 110a n 1.)

But this Court expressly rejected that notion in *Rory*. After surveying decades of Michigan law—"a confused jumble of ignored precedent, silently acquiesced to plurality opinions, and dicta, all of which, with little scrutiny, have been piled on each other to establish authority"—the Court rejected the idea that so-called "adhesion" (or "unilateral" or "executory") contracts are any sort of special species of contract subject to special interpretive rules. 473 Mich at 488-89, quoting *Wilkie*, 469 Mich at 60. That is because "[a]n 'adhesion contract' is simply that: a *contract*." 473 Mich at 477. "It must be enforced according to its plain terms unless one of the traditional contract defenses applies." *Id.* "[I]t is of no legal relevance that a contract is or is not described as 'adhesive.'" *Id.* at 489. "In either case, the contract is to be enforced according to its plain language." *Id.* Thus, "[r]egardless of whether a contract is adhesive, a court may not revise or void the unambiguous language of the agreement to achieve a result that it views as fairer or more reasonable." *Id.*

Consistent with these principles, the Court in *Rory* enforced as written a contractual limitations period that barred the plaintiffs' claims and rejected the plaintiffs' argument that this provision should be stricken or ignored because it was unreasonable or violated public policy. *Id.* The plaintiffs there did "not argue that [the insured was] fraudulently induced to sign [his] agreement with defendant, that [he] entered into the contract under duress, or that any other traditional contract defense applies." *Id.* at 490. The Court therefore held that "irrespective of whether [the] contract is labeled 'adhesive,'" the Court had to "enforce the plain language of that agreement." *Id.*

The Court affirmed this holding and these bedrock principles of contract interpretation in *DeFrain*. There, the Court reaffirmed that an insurance policy is construed "in the same manner as any other species of contract, giving its terms their 'ordinary and plain meaning if such would be apparent to a reader of the instrument.'" 491 Mich at 367, quoting *Wilkie*, 469 Mich at 60. The Court therefore "h[e]ld that an unambiguous notice-of-claim provision setting forth a specified period within which notice must be provided is enforceable without a showing that the failure to comply with the provision prejudiced the insurer." *Id.* at 362. The Court reasoned that "[i]n reading a prejudice requirement into the notice provision where none existed, the Court of Appeals disregarded controlling authority laid down by the Court and frustrated the parties' right to contract freely." *Id.* at 368.

In short, this Court's unmistakable command to the lower courts is that clear and unambiguous terms of insurance policies must be enforced as written.

B. For insurance policies governed by the No-Fault Act, the Legislature instructs that determinations of public policy are the domain of the Commissioner of Insurance, not the courts.

The controlling holding from *Rory* and *DeFrain* is that, "[c]onsistent with our prior jurisprudence, unambiguous contracts, including insurance policies, are to be enforced as written

unless a contractual provision violates law or public policy." *Rory*, 473 Mich at 491. And "[t]he circumstances under which a contract provision can be said to violate law or public policy are likewise narrow." *DeFrain*, 491 Mich at 372. Only in a "highly unusual circumstance" does a contract provision violate public policy. *Rory*, 473 Mich at 469. "The public policy of Michigan is *not* merely the equivalent of the personal preferences of a majority of this Court; rather, such a policy must ultimately be clearly rooted in the law." *Terrien*, 467 Mich at 67. Thus, "[i]n identifying the boundaries of public policy . . . the focus of the judiciary must ultimately be upon the policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law." *Id.* at 66-67. This is the *only* "means of ascertaining what constitutes our public policy." *Id.* at 67.[6]

There is no Michigan statute addressing a party's right to limit assignment by contract. There is no statute providing an absolute right to assignment, nor is there any Michigan statute that prevents parties from contractually restricting assignment of an insurance policy or benefits after a loss has incurred. There is no statute providing that anti-assignment clauses are impermissible as to post-loss assignments. The No-Fault Act makes no mention of post-loss assignments. In fact, even though the Legislature saw fit to preclude "assignment of a right to benefits payable in the future" (MCL 500.3143)—meaning that, even in the *absence* of an anti-assignment clause, these sorts of assignments are never permissible—the Act is silent about

[6] See also *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 582-83; 702 NW2d 539 (2005) ("Statutory—or contractual—language must be enforced according to its plain meaning, and cannot be judicially revised or amended to harmonize with the prevailing policy whims of members of this Court. The *Lewis* [*v DAIIE*, 426 Mich 93; 393 NW2d 167 (1986)] majority impermissibly legislated from the bench in allowing its own perception concerning the lack of 'sophistication' possessed by no-fault claimants, as well as its speculation that the average claimant expects payment without the necessity for litigation, to supersede the plainly expressed legislative intent that recovery of PIP benefits be limited to losses incurred within the year prior to the filing of the lawsuit.").

assignment of past benefits. The No-Fault Act does not automatically invalidate such assignments, nor does it address an insurer's right to restrict them through contract language. See *id.* And where the relevant statute does not prohibit a particular contractual provision in an insurance policy, it is not against public policy to include the provision. Indeed, the Court held in *Rory* that a contractual limitations period that was more restrictive than the No-Fault Act's limitations period did not violate public policy in part because "there is no Michigan statute explicitly prohibiting contractual provisions that reduce the limitations period in uninsured motorist policies." 473 Mich at 473. See also *Citizens Ins Co of Am v Federated Mut Ins Co*, 448 Mich 225, 232; 531 NW2d 138 (1995) ("The no-fault act . . . is the most recent expression of this state's public policy concerning motor vehicle liability insurance.").

The Legislature, however, has not been completely inert as to the arbiter of public-policy decisions under the No-Fault Act. "[T]he Legislature *has* provided a mechanism to ensure the reasonableness of insurance policies issued in the state of Michigan," by "enact[ing] a statute that permits insurance contract provisions to be evaluated and rejected on the basis of 'reasonableness.'" *Rory*, 473 Mich at 461, 474. But the Legislature "has explicitly assigned this task to the Commissioner of the Office of Financial and Insurance Services (Commissioner) rather than the judiciary." *Id.* at 461. That is why the Court expressly held in *Rory* that "the explicit 'public policy' of Michigan is that the reasonableness of insurance contracts is a matter for the executive, not judicial, branch of government." *Id.* at 476.

Specifically, the Legislature in MCL 500.2236 provided that insurance policies in Michigan (including no-fault policies) are subject to an extensive review and approval process by the Commissioner of Insurance. Under MCL 500.2236, "an insurer shall not deliver or issue for delivery in this state a basic insurance policy form . . . unless a copy of the form is filed with

the department and approved by the director as conforming with the requirements of this act and not inconsistent with the law." MCL 500.2236(1). A proposed insurance policy form is subject to rigorous review and must meet certain standards to ensure that consumers understand the policy provisions they are agreeing to. The requirements are so detailed and specific, for example, that "[t]he director shall not approve a form . . . if the form fails to obtain" a basic "readability score," which is calculated based on the "number of words and sentences" and "total number of syllables" in the policy. MCL 500.2236(3)(b). The policy form must also contain, for example, "[t]opical captions," an "identification of exclusions," and a table of contents. MCL 500.2236(3)(e).

The statute expressly empowers the Commissioner of Insurance to reject any policy form that does not meet the statute's rigorous formal and substantive requirements. Specifically, "the director may, on a case-by-case review, disapprove, withdraw approval, or prohibit the issuance, advertising, or delivery of a form . . . if the form *violates this act*, *contains inconsistent, ambiguous, or misleading clauses*, or *contains exceptions and conditions that unreasonably or deceptively affect the risk* purported to be assumed in the general coverage of the policy." MCL 500.2236(5) (emphasis added). If the Commissioner disapproves or prohibits the issuance of a policy for any of these reasons, the insurer may not issue or use its policy in Michigan without facing strict civil penalties and enforcement by the Attorney General. MCL 500.2236(7).

When the Commissioner has "approved the policy form at issue," "*courts have a very limited scope of review* concerning the decisions made by the Commissioner." *Rory*, 473 Mich at 475, 491 (emphasis added). In particular, "an aggrieved person may seek judicial review of an 'order, decision, finding, ruling, opinion, rule, action, or inaction' of the Commissioner as provided by the Administrative Procedures Act, MCL 24.201 *et seq.*" *Id.* at 475, citing MCL

500.244(1). But where the plaintiff has not "challenged in the appropriate forum that this action was an abuse of discretion," the courts must enforce the terms of the policy as written and as approved by the Commissioner. 473 Mich at 491.

C. The insurance policy form containing the Assignment Clause was approved by the Commissioner of Insurance as "conforming with the requirements" of the No-Fault Act and "not inconsistent with the law," so the Court of Appeals erred by invalidating it on public-policy grounds.

It is undisputed here that "[t]he Commissioner has allowed the [State Farm] insurance policy form to be issued and used in Michigan." See *Rory*, 473 Mich at 462. The applicable policy form was submitted to the Commissioner for review on January 28, 2010, and was "APPROVED" with a disposition date of June 3, 2010.[7] By approving the policy form under MCL 500.2236, the Commissioner approved the Policy "as conforming with the requirements" of the insurance act and "not inconsistent with the law," and confirmed that the Policy does not contain *any* provision (including the Assignment Clause) that "violates this act, contains inconsistent, ambiguous, or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy." MCL 500.2236(1).

As in *Rory*, Plaintiffs here have not "challenged the decision of the Commissioner to allow issuance of the [] policy, much less shown that the Commissioner's decision was arbitrary,

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[7] See https://filingaccess.serff.com/sfa/home/MI (http://www.michigan.gov/difs/0,5269,7-303-13047_34537-265512--,00.html), searching for AV-26040, which shows that Form 9822B was "APPROVED" in full with a disposition date of June 3, 2010. This Court can take judicial notice of the public documents on this government site. See MRE 201(b), (b)(2), (d) ("[A]t any stage of the proceeding," a "court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."); *LeRoux v Secy of State*, 465 Mich 594, 613; 640 NW2d 849 (2002) (judicial notice of "official government data" permitted under MRE 201); *In re Application of Ind Mich Power Co*, 275 Mich App 369, 371; 738 NW2d 289 (2007) (taking judicial notice of statements on the Department of Energy's website).

capricious, or a clear abuse of discretion" under the Administrative Procedures Act. See 473 Mich at 476. Thus, under this Court's controlling decisions in *Rory* and *DeFrain*, the Court of Appeals was required to enforce the Assignment Clause as written. The court was not permitted to invalidate the Assignment Clause on public-policy grounds because the "explicit public policy of Michigan" is that these public-policy determinations are made by the executive branch through its Commissioner of Insurance. Nor was the Court of Appeals "free to invade the jurisdiction of the Commissioner and determine de novo whether [the] policy was reasonable." *Rory*, 473 Mich at 476. The Policy—including the Policy's Assignment Clause—"must be enforced according to its plain terms." See *id.* at 477.

The Court of Appeals brushed *Rory* aside on the ground that *Rory* involved only a judicial assessment of "reasonableness" rather than public policy. (See App 9 at 098a: "Defendant's arguments appear to incorrectly conflate the concept of 'reasonableness' with 'public policy.'") But this is not a correct reading of *Rory*. The *Rory* opinion is *all about* public policy. The opinion contains the words "public policy" fourteen times. The Court of Appeals itself includes two quotations from *Rory* that contain the words "public policy," so the Court of Appeals could not have missed these repeated references. (See *id.* at 097a.) It is true enough that the lower courts in *Rory* used the word "unreasonable" (and "unfair") in invalidating the contractual provision at issue, and that is why this Court targeted that word in its opinion. See *Rory*, 473 Mich at 463. But the holding of *Rory* would be nearly meaningless if the lower courts could evade its effect by choosing the words "public policy" rather than "unreasonable" or "unfair." The Court of Appeals' reasoning (in a published decision) therefore guts *Rory*.

Fairly read, *Rory* holds that *all* unambiguous provisions of an insurance policy vetted and approved by the Commissioner of Insurance must be enforced as written. This is because the

Commissioner reviews no-fault policies for far more than just reasonableness. See *Rory*, 473 Mich at 475 & n 33. The Commissioner must determine, for example, that a policy does not contain any "misleading clauses" or provisions that "deceptively affect the risk purported to be assumed" by the insurer. MCL 500.2236(5). More broadly, the Commissioner is charged with deciding whether the policy "conform[s] with the requirements" of the No-Fault Act and is "not inconsistent with the law." MCL 500.2236(1). And because public policy must be "clearly rooted in the law," a no-fault policy that violates public policy is, by definition, not consistent with Michigan law. See *Rory*, 473 Mich at 471 (citation omitted). Thus, the Commissioner is necessarily charged with determining whether a no-fault policy violates public policy. See *DeFrain*, 491 Mich at 373-74 (rejecting the plaintiff's public-policy challenge because the Commissioner had approved the policy at issue). And "[t]he decision to approve, disapprove, or withdraw an insurance policy form is within the sound discretion of the Commissioner." *Rory*, 473 Mich at 475. Thus, the courts "have a very limited scope of review concerning the decisions made by the Commissioner." *Id.* Once a policy has been approved, the only proper way to challenge that decision in the courts is "as provided by the Administrative Procedures Act"—something Plaintiffs have not done. *Id.*

Courts may not, under the controlling holdings of *Rory* and *DeFrain*, strike on public-policy grounds a provision in an insurance contract that has been approved by the Commissioner of Insurance. The Court of Appeals erred by failing to follow this controlling law.

D. The Court of Appeals erred by following *Roger Williams* rather than this Court's modern precedent.

To recap, the controlling law regarding the enforceability of no-fault policies is very straightforward: Courts must enforce unambiguous policy terms as written unless they violate public policy. And determinations of public policy for no-fault policies are the domain of the

Commissioner of Insurance, not the courts. So when the Commissioner of Insurance has approved an insurance policy form, the courts may not strike any of its provisions on public-policy grounds. The Court of Appeals should have followed this Court's controlling precedent and applied the plain language of the Assignment Clause as written.

The Court of Appeals ignored this controlling precedent and relied instead on *Roger Williams*. *Roger Williams* involved a fire-insurance policy covering the insured's "livery stable stock." See 43 Mich at 253. "After the property insured was burned up," the policy was assigned to another party, who sought to collect from the insurer. See *id.* The policy, however, contained a provision "forfeiting [the policy] for an assignment without the company's consent[.]" *Id.* at 254. The insurer therefore "repudiated any liability on the ground that no such policy was in force." *Id.* at 253. The Court held that the anti-assignment provision was "invalid, so far as it applies to the transfer of an accrued cause of action" because a post-loss assignment "cannot concern the debtor," and restricting such assignments "is against public policy." *Id.* The Court's only explanation for that holding was that, under a nineteenth-century statute (which was not identified in the opinion), contracting parties had an "absolute right . . . to assign such claims" so "such a right cannot be thus prevented" by contract. *Id*.

But *Roger Williams* has been superseded by a century of law and does not control here. The decision was expressly based on a statute securing an "absolute right" of assignment. See *id.* The Court did not cite the statute in question or otherwise explain which statute it was relying on. See *id.* Neither Plaintiffs nor the Court of Appeals have identified the statute. In fact, State Farm has reviewed this Court's archival file for the *Roger Williams* case, retrieved from the State of Michigan Law Library, and neither the parties' briefs nor the lower court record identify the statute in question either. (See App 11 at 116a-168a.) At any rate, it is

undisputed that there is no statute securing an "absolute right" to assign a cause of action on the books today. Thus, the very predicate for the *Roger Williams* decision no longer exists. Yet the Court of Appeals did not even acknowledge this fact, anywhere in its opinion.

It might have been the case in 1880 that statutory law secured an absolute right to assign a cause of action, and thus that a contractual limitation on assignment violated Michigan public policy at the time. But *without* a similar statutory prohibition in effect today, there was no basis for the Court of Appeals to conclude that State Farm's Assignment Clause violates public policy in 2018. The Court of Appeals stated that a prohibition on post-loss assignment "violates Michigan public policy that is part of our common law as set forth by our Supreme Court." (App 9 at 098a.) But *Roger Williams* relies solely on an unidentified statute; it does not hold that Michigan common law gives insureds a right to assign benefits. Thus, contrary to the Court of Appeals' assertion, *Roger Williams* does not "set forth" the common law. Indeed, the Court of Appeals opinion itself shows that "'[u]nder the general contract law'"—that is, the common law—contract rights "'can be assigned unless the assignment is clearly restricted.'" (App 9 at 097a; quoting *Burkhardt*, 260 Mich App at 653.) Thus, the Court of Appeals erroneously transformed the statutory right at issue in *Roger Williams* into a common-law right, without actually identifying any Michigan common law. This distinction is significant because "[i]n ascertaining the parameters of our public policy, we must look to policies that, in fact, have been adopted by the public through our various legal processes, and are reflected in our state and federal constitutions, our statutes, and the common law." *Rory*, 473 Mich at 471. And without either a statutory or common-law (or constitutional) basis, the Court of Appeals' public-policy

conclusion was erroneous. See *Terrien*, 467 Mich at 67 ("[Public] policy must ultimately be clearly rooted in the law.").[8]

Roger Williams has also been superseded by a century of controlling decisions from this Court. *Roger Williams* held that contractual restrictions on post-loss assignments were *never* enforceable because parties supposedly had an "absolute" statutory right to assign. See 43 Mich at 254. But this Court has since held that parties do *not* have an absolute right to assign. See *Detroit Greyhound*, 381 Mich at 689-90. Rather, anti-assignment clauses *are* enforceable, so long as they use "[c]lear language" and "the plainest words" precluding assignment. *Id.* Thus, this Court has already made clear that *Roger Williams* is no longer good law.

The Court's *Detroit Greyhound* decision brought Michigan law in line with the Restatement (Second) of Contracts, which expressly permits contractual bars on assignment: "A contractual right can be assigned unless . . . assignment is validly precluded by contract." Restatement Contracts, 2d, § 317(2). The Court of Appeals thereafter adhered to this view as well. See *Burkhardt*, 260 Mich App at 653 ("Under general contract law, rights can be assigned unless the assignment is clearly restricted."). And the Court of Appeals has expressly upheld anti-assignment clauses, even as to post-loss assignments. See *Kreindler v Waldman*, No. 265045, 2006 WL 859447, at *2 (Mich App, Apr 4, 2006) (explaining that "where a clause

[8] "The Court of Appeals is bound to follow decisions by this Court except where those decisions have *clearly* been overruled or superseded." *Associated Builders & Contractors v City of Lansing*, 499 Mich 177, 191; 880 NW2d 765 (2016) (emphasis in original). This Court has instructed, however, that when a statute "has [been] entirely repealed," "lower courts have the power to make decisions without being bound by prior cases that were decided under the now-repudiated previous positive law." *Id.* at 191 n 32. That is exactly what the Court of Appeals should have done in this case. See also *Covenant*, 500 Mich at 204 ("The panel gleaned this notion [that healthcare providers possess a direct cause of action] not from the text of the no-fault act, but from previous decisions of the Court of Appeals that are likewise devoid of the statutory analysis necessary to support that premise. . . .").

prohibiting assignments is clear and unambiguous, it must be enforced as written"); *Edwards v Concord Dev Corp*, No. 174487, 1996 WL 33358104, at *1 (Mich App, Sept 17, 1996) ("[T]here is no prohibition against requiring consent to effectuate an assignment. The general presumption then is that a contractual right may be assigned, but conversely that assignment may also be precluded by agreement: 'A contractual right can be assigned unless . . . assignment is validly precluded by contract.'" (quoting Restatement Contracts, 2d, § 317(2); internal citations omitted)).[9]

In addition, and as set forth in detail above, it is no longer the case that courts can strike at their whim or rewrite or limit contract provisions that they deem unreasonable or contrary to "public policy." Instead, as the Court has held over and over in cases like *Rory* and *DeFrain*, courts must enforce contracts as written, especially insurance contracts that have been approved by the Commissioner of Insurance. (See the discussion above in Sections II(A) and (B).) *Rory* and *DeFrain* set forth the controlling law on whether a court may strike on public-policy grounds a provision in an insurance policy that has been approved by the Commissioner; *Roger Williams* does not.

Moreover, modern precedent provides "considerable public policy regarding the freedom of contract that affirmatively supports the enforcement" of the Assignment Clause here. See *Terrien*, 467 Mich at 72-73. This Court has repeatedly noted that respecting the freedom of

[9] State Farm cites these unpublished cases as examples of the proper application of this Court's precedent. See MCR 7.215(C); (App 13 at 187a; App 14 at 191a). In the Court of Appeals, Plaintiffs incorrectly characterized *Kreindler* as involving a "pre-loss assignment to an ineligible attorney, who misrepresented the status of his coverage as continuous." (App 7 at 077-078a.) One plaintiff in *Kreindler*, Goldstone, "acted as an insurance agent" for the other plaintiff, Kreindler, "and allegedly failed to properly advise and maintain a disability insurance policy for plaintiff Kreindler's business. [Goldstone and Kriendler] entered into a settlement agreement that assigned Goldstone's claims against defendant insurance company to plaintiff Kreindler." *Kreindler*, 2006 WL 859447 at *1 n 1. *Kreindler* therefore involved a *post*-loss assignment.

contract is one of the strongest and most fundamental public policies in our law. See *id.* (citing caselaw recognizing the "fundamental policy of freedom of contract"). As the Court explained in *Rory* (and *Wilkie* before it), these principles are "ancient and irrefutable," "draw[] strength from common-law roots and can be seen in our fundamental charter, the United States Constitution, where government is forbidden from impairing the contracts of citizens," and are, in short, "an *unmistakable and ineradicable part of the legal fabric of our society*." 473 Mich at 470, quoting *Wilkie*, 469 Mich at 60 (emphasis added). *Roger Williams*, on the other hand, was based on a statute that no longer exists and has not been followed by a single Michigan court in a published decision in the 138 years since it came out.[10] The Court of Appeals erred when it rejected the clear public policy of freedom of contract in favor of the defunct and unarticulated "public policy" recognized in *Roger Williams*.

Finally, whatever common-law public policy that may have existed when *Roger Williams* was decided in 1880 has long since been superseded by the adoption of the Insurance Code and the No-Fault Act. "The no-fault act . . . is the most recent expression of this state's public policy concerning motor vehicle liability insurance." *Citizens Ins*, 448 Mich at 232; see also *Clevenger v Allstate Ins Co*, 443 Mich 646, 661; 505 NW2d 553 (1993) ("[T]he no-fault statutory

[10] The Court of Appeals cited two federal district court cases, *Century Indemnity Co v Aero-Motive Co*, 318 F Supp 2d 530 (WD Mich, 2003), and *Action Auto Store v United Capitol Ins Co*, 845 F Supp 417 (WD Mich, 1993), for the proposition that *Roger Williams* is still good law. (See App 9 at 097a-098a.) But those opinions carry no precedential weight, they both predate *Rory*, and neither even acknowledges this Court's holding in *Detroit Greyhound*. Moreover, in *Action Auto*, the anti-assignment clause was ambiguous, 845 F Supp at 423, which is not the case here. Meanwhile, *Century Indemnity*'s discussion of *Roger Williams* is mere dicta because the court ultimately found that the assignments at issue had been made before any claims had accrued. See 318 F Supp 2d at 540; see also *Century Indem Co v Aero-Motive Co*, No. 1:02-CV-108, 2004 WL 5642427, at *2-*5 (WD Mich, March 12, 2004) (denying reconsideration and further explaining that *Roger Williams*, which dealt with a first-party casualty insurance policy, was inapplicable to the third-party liability insurance policies at issue).

provisions at issue have superseded our previous common law."). The No-Fault Act does *not* prohibit an insurer from limiting assignment by contract. If the Legislature wished to include such a prohibition, it could do so. But the courts certainly should not read a public-policy prohibition into the *absence* of a prohibition in the actual text of the law.

Only public policy that is "clearly rooted in the law" and "reflected in our state and federal constitutions, our statutes, and the common law" can be used to displace an unambiguous contract provision. *Terrien*, 467 Mich at 67. But the Court of Appeals did not identify a constitutional, statutory, or common-law bar on assignment. Nor could it have, because, as the Court of Appeals itself recognized, under Michigan contract law (i.e., the common law), anti-assignment clauses that are clear and unambiguous are enforceable. (See App 9 at 097a.) In other words, there is no common-law bar on anti-assignment provisions under modern law. Nor is there a statutory or constitutional bar. The Court of Appeals therefore erred by striking State Farm's Assignment Clause as against public policy. *Terrien*, 467 Mich at 67.

III. TO THE EXTENT ROGER WILLIAMS HAS NOT ALREADY BEEN DISPLACED BY SUBSEQUENT LAW, THIS COURT SHOULD LIMIT ITS APPLICATION OUTSIDE THE NO-FAULT CONTEXT OR EXPRESSLY OVERRULE IT

State Farm submits that the best view is that *Roger Williams* has already been displaced by a century of subsequent law. The decision was based on a statute that no longer exists, and it has been superseded by a century of decisions from this Court holding that unambiguous contract provisions must be enforced as written, including anti-assignment provisions. But to the extent the case has any continued life, the Court should either make clear that it does not apply in the no-fault context or overrule it altogether.

A. This Court should hold that *Roger Williams* does not apply in no-fault cases.

The reasoning underpinning the *Roger Williams* decision does not apply in the context of no-fault insurance policies. Simply put, the public-policy considerations in play in *Roger Williams* were vastly different than the ones in a no-fault case. Thus, even if this Court were to conclude that the case reflects a valid public policy against post-loss assignments in *some* contexts, the Court should limit the holding to the specific context that was before the Court in *Roger Williams*.

First, *Roger Williams* should not apply to insurance policies involving ongoing losses. The loss in *Roger Williams* was a fire loss, and thus there were no questions about ongoing losses—the loss was the damage to the building and loss of the livery stock. An assignment of insurance proceeds relating to fire damage therefore neither placed an additional burden on the insurer—who merely had to change the name on the check it wrote—nor altered the risk the insurer had agreed to bear. Thus it was at least rational for the *Roger Williams* Court to conclude that a post-loss assignment "cannot concern the debtor." 43 Mich at 254. In contrast here, persons sustaining injuries in an automobile accident often seek treatment from numerous medical providers over an extended period of time: they might go first to the emergency room, then to a specialist, then to a surgeon, then to physical therapy. If State Farm's insureds are permitted to assign their rights under the policy to all of these providers in piecemeal fashion without State Farm's consent, then State Farm could be forced to defend itself in countless costly lawsuits in various courts brought by dozens of providers—a risk that State Farm never agreed to when it issued the policies. "A court must not hold an insurance company liable for a risk that it did not assume." *Henderson v State Farm Fire & Cas Co.*, 460 Mich 348, 354; 596 NW2d 190 (1999). Yet disregarding the Assignment Clause would do just that: It would force State Farm to undertake the risk and expense of being sued by multiple entities under the Policy when it only

contractually agreed to suits by its insureds, thereby increasing State Farm's litigation costs and the overall cost of the Policy to State Farm. The trial court rightly rejected that regime by enforcing the Assignment Clause as written.

Second, *Roger Williams* should not apply when one of the contracting parties has ongoing obligations under the contract. No-fault claimants—including State Farm's insured here—have such ongoing obligations. Mr. Hensley, for example, has ongoing obligations under the Policy that are critical to State Farm's ability to review and consider claims. For example, under the Policy, Mr. Hensley must:

- Authorize State Farm to obtain medical records, medical bills, employment information, and "any other information [State Farm] deem[s] necessary to substantiate the claim."
- Submit to an independent medical examination and/or provide a statement under oath.
- Cooperate with State Farm and, when asked, assist State Farm in securing and giving evidence.
- Provide State Farm all details of the injury, treatment, and other information as soon as reasonably possible.

(App 4 at 052a-055a.) If Mr. Hensley is the one who has to bring a lawsuit against State Farm for PIP benefits relating to services provided by Plaintiffs, then he will have every incentive to comply with his obligations under the Policy. After all, it will be his right to payment—not Plaintiffs'—at issue in the case. But if Mr. Hensley is permitted to disregard the Assignment Clause and avoid involvement in the lawsuit as a party, he will have considerably less incentive to comply with his obligations. He will, in effect, have no skin in the game. And if State Farm's

insureds have no incentive to comply with their ongoing contractual obligations, State Farm's ability to mount a defense against providers' claims will be compromised.[11]

Third, public policy considerations weigh in *favor* of—not against—enforcing assignment clauses in the no-fault context. Courts have recognized that anti-assignment provisions in no-fault policies have *salutary* effects on the no-fault system as a whole because they keep costs down and simplify litigation proceedings. See *Coalition for Quality Health Care v New Jersey Dept of Banking & Ins*, 348 NJ Super 272, 317; 791 A2d 1085 (App Div, 2002) ("Policy forms which require an insurer's written consent, or allow insurers to accept assignments 'at their option,' can help an insurer reduce costs by eliminating fraud and the propensity for overutilization of services."); *Parrish Chiropractic Ctrs, PC v Progressive Cas*

[11] Judge Shapiro cited *In re Jackson*, 311 BR 195 (Bankr WD Mich, 2004), and *Wonsey v Life Ins Co of North America*, 32 F Supp 2d 939 (ED Mich, 1998), for the proposition that there is a "modern trend" against enforcing contractual limitations on post-loss assignments, because "once a party performs its obligations . . . the contract is no longer executory," so "the contract may be assigned without the other party's consent, even if the contract contains a non-assignment clause." (App 10 at 107a-109a, quoting *In re Jackson*, 311 BR at 201.) But this argument misses the point—as explained above, Hensley has numerous continuing obligations to State Farm. Moreover, even if Hensley had fulfilled all his obligations to State Farm, the Sixth Circuit rejected *Wonsey*'s "modern trend" analysis in *Riley v Hewlett-Packard Co*, 36 F Appx 194, 199 (CA 6, 2002). First, the Sixth Circuit explained that *Wonsey* was based on a case holding only that agreements were to be interpreted to allow an assignment of rights *unless a different intention was manifested*—and the parties in *Riley*, just like the parties here, had "unambiguously manifested a different intent" by agreeing to an anti-assignment clause. *Id.* Second, the anti-assignment clause in *Wonsey* "was set in place to protect a minor from wasting his assets," whereas the non-assignment language in *Riley* "was for the protection of HP." *Id.* The Sixth Circuit therefore concluded that "*Wonsey* should not be read to hold that a non-assignment clause entered into for the benefit of a party may not be enforced by that party. *Wonsey* holds the direct opposite." *Id.* The same reasoning applies here: the Assignment Clause manifests an intent that an assignment of rights not be permitted and was entered into for State Farm's benefit—to protect it from, among other things, having to defend against multiple suits brought by various plaintiffs in various courts. *Wonsey* therefore does not apply. *In re Jackson*, meanwhile, relied on *Wonsey* for its "modern trend" analysis, but completely overlooked the Sixth Circuit's rejection of that reading of *Wonsey* in *Riley*. See *In re Jackson*, 311 BR at 201. Thus, like *Wonsey*, *In re Jackson* has no bearing here.

Ins Co, 874 P2d 1049, 1053-54 (Colo, 1994) (citing cases from a range of jurisdictions and concluding that "non-assignment clauses are valuable tools in persuading health care providers to keep their health care costs down") (quotation marks omitted).[12]

As courts have noted, when dealing with no-fault insurance policies, "the public policy in favor of the freedom of contract, and the corollary right of the insurer to deal only with the party with whom it contracted, outweigh the general policy favoring the free alienability of choses in action." *Parrish Chiropractic*, 874 P2d at 1054 (citing multiple cases). Concluding otherwise would force insurers to deal with parties with whom they had not contracted, *id.*—including providers an insurer may know often perform medically unnecessary services or charge excessive rates, see *Coalition for Quality Health Care*, 348 NJ Super at 317—violating the basic tenet and public policy of freedom of contract, *Parrish Chiropractic*, 874 P2d at 1054. It further would lead to "lack of cooperation" from insureds as insurers attempt to investigate the validity of the assigned claims. See *Coalition for Quality Health Care*, 348 NJ Super at 318. "By permitting the insurer to consent to an assignment, when justified, the insurer is able to contain costs." *Id.* at 316 (citation omitted). Enforcing assignment clauses "does not cause any forfeiture of benefits, either to the insured or his medical providers. Rather, it serves as a cost-controlling measure whereby insurance premiums are stabilized and hopefully reduced by eliminating unnecessary court proceedings, arbitrations and fraud." *Id.* at 316-17.[13]

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[12] Following the Colorado Supreme Court's decision in *Parrish Chiropractic*, the Colorado legislature revised the state's no-fault statute such that policies must now allow an insured to assign "payments due" to the healthcare provider providing services to the insured. See Colo Rev Stat Ann 10-4-634(1). Which is simply further proof that public policy debates should be resolved through the democratic process, not by courts striking unambiguous contract provisions.

[13] Further, "the validity of anti-assignment clauses in group health care contracts has been upheld almost uniformly in the courts of other states," because the policy of keeping costs down overrides the general policy favoring free alienability. See *Somerset Orthopedic Assoc, PA v*

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Declining to apply *Roger Williams* in no-fault cases is therefore consistent with the No-Fault Act's stated goal of providing affordable insurance to consumers. See, e.g., *Tebo v Havlik*, 418 Mich 350, 366; 343 NW2d 181 (1984) ("Through comprehensive action, the Legislature sought to accomplish the goal of providing an equitable and prompt method of redressing injuries in a way which made the mandatory insurance coverage affordable to all motorists."); *Griffith ex rel Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 539; 697 NW2d 895 (2005) ("Plaintiff's interpretation of M.C.L. § 500.3107(1)(a) stretches the language of the act too far and, incidentally, would largely obliterate cost containment for this mandatory coverage. We have always been cognizant of this potential problem when interpreting the no-fault act, and we are no less so today.").

Finally, the public policy considerations at issue in *Roger Williams* do not apply where, as here, the insurer is not attempting to avoid its obligations under the policy. In *Roger Williams*, the insurer, "after the loss, repudiated *any liability* on the ground that no such policy was in force." See 43 Mich at 253 (emphasis added). That is not the case here, where State Farm is not claiming that the Policy was voided by the assignments: State Farm remains obligated *to its insured* for any benefits due under the Policy.[14] This distinction is why the Court of Appeals correctly refused to apply *Roger Williams* to a post-loss assignment in *Edwards*:

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Horizon Blue Cross & Blue Shield of NJ, 345 NJ Super 410, 417-18; 785 A2d 457 (App Div, 2001) (collecting cases); *Obstetricians-Gynecologists, PC v Blue Cross & Blue Shield of Neb*, 219 Neb 199, 207; 361 NW2d 550 (1985) (noting that the "nonassignment clause is a valuable tool" because it helps "keep[] health care costs down," allowing an insurer to pass[] that savings on to its subscribers"); *Parrish Chiropractic Ctrs, PC v Rocky Mountain Hosp & Med Servs Co*, 754 P2d 1180, 1182 (Colo Ct App, 1988) ("[T]he courts found that such non-assignment clauses in [a group health care plan] are valuable tools in persuading health providers to keep their health care costs down.").

[14] Judge Shapiro incorrectly suggested that enforcing the Assignment Clause here will "deprive insureds [of] the benefits they paid for . . . ." (App 10 at 111a.) That is not true. Enforcing the
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> Although plaintiff cites *Roger Williams Ins Co v. Carrington*, to support its contention that non-assignment clauses are invalid, that case is distinguishable from the present case. In *Roger Williams*, the insurance company was attempting to avoid payment of its contract, whereas here, Hastings did not attempt to avoid its obligation under the contract; rather Hastings paid the full amount owed under the contract to plaintiffs. Thus, the provision requiring Hastings' written consent to assignment by plaintiffs was valid and, since Hastings did not give its written consent to plaintiffs' assignment of insurance proceeds to Concord, that assignment was not binding on Hastings.

Edwards, 1996 WL 33358104, at *2 (internal citations omitted). Like the insurance company in *Edwards*, State Farm is not claiming that the Policy was voided by the assignments.[15] *Roger Williams* should not apply in such instances.

In sum, there is no sound reason for applying *Roger Williams* to no-fault insurance cases. The policy considerations that gave rise to the holding in *Roger Williams* are simply inapplicable in no-fault cases. Disregarding anti-assignment clauses in no-fault policies would incentivize insureds to disregard their contractual obligations, result in increased piecemeal litigation, and—contrary to the stated aims of the No-Fault Act—ultimately increase the cost of no-fault insurance policies. The Court should therefore decline to apply *Roger Williams* in the no-fault context.

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Assignment Clause will not result in any forfeiture, and the Assignment Clause has no bearing on an insured's entitlement to benefits under the No-Fault Act. Nor does "[t]his conclusion mean that a healthcare provider is without recourse; a provider that furnishes healthcare services to a person for injuries sustained in a motor vehicle accident may seek payment *from the injured person* for the provider's reasonable charges." See *Covenant*, 500 Mich at 217 (emphasis added). And that is precisely what Plaintiffs must do here.

[15] This alone was an adequate basis for refusing to apply *Roger Williams* in this case, and the Court of Appeals erred when it concluded otherwise. See *DeFrain*, 491 Mich at 375 (criticizing the Court of Appeals panel in that case for "fail[ing] . . . to recognize the critical ways in which" a prior Supreme Court case "[wa]s distinguishable").

B. The Court should expressly overrule *Roger Williams.*

Finally, if the Court concludes that *Roger Williams* has not been superseded and that its holding would be applicable in no-fault cases, the Court should overturn *Roger Williams*. The *Roger Williams* public-policy holding is, to put it bluntly, a relic of a bygone era of contract interpretation. The *Roger Williams* Court offered no explanation for *why* a contractual prohibition of post-loss assignment, of all things, should violate Michigan public policy, other than to say post-loss assignment "cannot concern the debtor." 43 Mich at 254. But what if it *does* concern the debtor? What if, as is the case here, an anti-assignment provision is indeed important to one of the contracting parties because it protects the party from runaway litigation costs that affect its ability to provide affordable insurance to its customers? As this Court has repeatedly made clear, courts simply should not be in the business of deciding what's best for competent contracting parties and rewriting their contracts accordingly.

State Farm acknowledges that this Court does not and should not overrule precedent lightly. "[U]nder the doctrine of stare decisis, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed." *City of Coldwater v Consumers Energy Co*, 500 Mich 158, 161; 895 NW2d 154 (2017) (citation omitted). "However, stare decisis is not to be applied mechanically." *Id.* (citation omitted). "Instead, [the Court] should review whether the decision defies practical workability, whether reliance interests would work an undue hardship were the decision to be overruled, and whether changes in the law or facts no longer justify the decision." *Id.* (citation omitted).

All of these factors favor overruling *Roger Williams*. As set forth in detail above, "changes in the law . . . no longer justify the decision." See *id.* (citation omitted); *Associated Builders*, 499 Mich at 190 n 30 ("While the first inquiry in considering whether to overrule a prior decision . . . is generally whether that prior decision was wrongly decided, in cases such as

this where the legal landscape has changed dramatically, it adds little to the inquiry to determine whether the prior decision was correctly decided under obsolete law." (quotation marks and citation omitted)). *Associated Builders* is illustrative on this point. There, the Court overruled *Attorney General ex rel Lennane v Detroit*, 225 Mich 631; 196 NW 391 (1923), which held that, under the 1908 Constitution, municipalities could only exercise powers expressly granted to them. See *Associated Builders*, 499 Mich at 184-85. The Court expressed doubt about *Lennane*'s "scant analysis," but found it unnecessary to determine whether *Lennane* had been correctly decided because the law underpinning the decision had changed. See *id.* at 183, 187 ("*Lennane*'s conception of municipal power may or may not have been well-grounded in Michigan's 1908 Constitution and the legal landscape of the time, but it is certainly incongruent with the state of our law as reflected in our current Constitution."). In particular, the language in the 1908 Constitution on which the *Lennane* Court relied for its narrow view of municipal authority had been replaced by the more expansive grants in sections 22 and 34 of Article 7 of the 1963 Constitution. See *id.* at 184-86. Thus, the Court reasoned, "if *Lennane*'s holding was ever on firm constitutional ground, it no longer had sound footing after the people ratified the 1963 Constitution." *Id.* at 190.

The same analysis applies here, albeit because of changes to statutory law rather than the constitution. *Roger Williams* relied on an unidentified statute to conclude that "it is against public policy" to restrict post-loss assignments. 43 Mich at 254. But there is no record of the statute in question, and *Roger Williams* provides no explanation for how the statute provided an "absolute right" to assign a post-loss cause of action. See *id.*; see also *Associated Builders*, 499 Mich at 187 (criticizing *Lennane*'s "scant analysis" of the 1908 Constitution). *Roger Williams*' statement of public policy "may or may not have been well-grounded in . . . the legal landscape

of the time." See *id.* at 183. But whatever statute the Court was relying on in 1880 no longer exists, and there simply is no contemporary statute that provides an absolute right to assign a post-loss cause of action. See discussion above in Section II(D); see also *Detroit Greyhound*, 381 Mich at 689-90 (holding that anti-assignment clauses are enforceable, so long as they use "[c]lear language" and "the plainest words" precluding assignment).

Roger Williams is therefore "incongruent with the state of our law" today. See *Associated Builders*, 499 Mich at 183. As laid out in detail above, *Roger Williams* is incompatible with this Court's conclusion that, under the Insurance Code, the Commissioner of Insurance is responsible for policing the contents of no-fault policies. See *Rory*, 473 Mich at 491; *Citizens Ins*, 448 Mich at 232; *Clevenger*, 443 Mich at 661. Thus, "if [*Roger Williams*'] holding was ever on firm [statutory] ground, it no longer ha[s] sound footing." See *Associated Builders*, 499 Mich at 189; see also *Devillers*, 473 Mich at 585 ("*Lewis* does not reflect a simple 'misunderstanding' of the statute at issue; the *Lewis* decision demonstrates an act of judicial *defiance* in which this Court substituted its own judgment concerning 'fairness' for the plainly expressed will of the Legislature. Such an act of judicial usurpation of the legislative function should not be permitted to stand."). Thus *Roger Williams* is incongruent with existing law and should be overruled. See *Covenant*, 500 Mich at 201 ("Correcting erroneous interpretations of statutes furthers the rule of law by conforming the caselaw of this state to the language of the law as enacted by the representatives of the people.").

Roger Williams is also not "workable." A precedent is not workable when it creates uncertainty and is "unsound in principle." *Coldwater*, 500 Mich at 161-62. *Roger Williams* is deficient on both counts. With no modern statutory basis to support the *Roger Williams* rule—and with this Court's modern insurance jurisprudence against it—resurrecting the *Roger*

Williams rule would necessarily mean reverting to the rejected idea that "the personal predilections of the majority of the deciding tribunal about what is reasonable" may determine the enforceability of a contractual provision. See *DeFrain*, 491 Mich at 372-73. The lower courts could then side-step *Rory* simply by couching their decisions in "public policy" rather than "reasonableness" terms, thereby giving them free rein to strike insurance-policy terms at their whim. That is exactly what the Court of Appeals did here. This is not at all workable.

Reliance interests also strongly favor overturning *Roger Williams*. State Farm has issued over a million policies containing the Assignment Clause in reliance on the courts applying the terms of the policy as written and as approved by the Commissioner of Insurance. State Farm's reliance interests therefore loom large. See *Covenant*, 500 Mich at 201 ("[I]t is imperative that this Court aim to conform our caselaw to the text of the applicable statutes to ensure that those to whom the law applies may look to those statutes for a clear understanding of the law."). In contrast, reliance on *Roger Williams* has been nearly non-existent in the past 138 years. The *Roger Williams* rule has not "become so embedded, so accepted, so fundamental, to everyone's expectations that to change it would produce not just readjustments, but practical real-world dislocations." See *Robinson v City of Detroit*, 462 Mich 439, 466; 613 NW2d 307 (2000). Before *Covenant*, there was no need for medical providers such as Plaintiffs to obtain assignments in order to bring no-fault suits against insurers (since the courts had permitted them to proceed directly against insurers), so *Roger Williams* was irrelevant to the expectations of actors in the no-fault sphere. *Roger Williams* had never even been cited in a no-fault case—let alone relied upon by a provider to secure payment from an insurer—until providers began relying on assignments just thirteen months ago, after *Covenant*. State Farm's insureds did not rely on *Roger Williams* either. See *Devillers*, 473 Mich at 585 ("[I]t is highly likely that the

average no-fault claimant who has profited from *Lewis* was quite unaware of this decision, and simply received a windfall in being permitted to collect benefits that the statute proclaims are nonrecoverable."). The Court "need not, and indeed *should* not, slavishly adhere to the doctrine of stare decisis where no legitimate reliance interest is affected." *Id.*

Nor is *Roger Williams* embedded in "everyone's expectations," *Robinson*, 462 Mich at 466, because, whatever the practice was in 1880, it has long been the role of the Commissioner of Insurance—not the courts—to determine the provisions that may be included in insurance policies. See *Rory*, 473 Mich at 475-76; MCL 500.2236(1). In other words, what is actually "so embedded, so accepted, so fundamental, to everyone's expectations" in this arena is reliance on the Commissioner's decisions. See *Robinson*, 462 Mich at 466. State Farm issued more than *1.1 million* active no-fault policies that include the Assignment Clause in reliance on the Commissioner's approval of the policy as reasonable and conforming with the law. And that says nothing of the other insurers that may have similar anti-assignment provisions in their standard no-fault policies. By resurrecting an all-but-forgotten 138-year-old fire-insurance case and applying it to modern no-fault law, the Court of Appeals upset legitimate reliance interests. This Court should overrule *Roger Williams* to correct that imbalance.

IV. WHY GRANTING LEAVE TO APPEAL IS SO IMPORTANT IN THIS CASE

The Court may grant an application for leave to appeal a Court of Appeals decision if the case "involves a legal principle of major significance to the state's jurisprudence," if the Court of Appeals' decision "is clearly erroneous and will cause material injustice," or if "the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals." MCR 7.305(B)(3), (5)(a)-(b). This case qualifies under all three tests.

First, whether public policy prohibits anti-assignment clauses in no-fault policies is a matter of "major significance to the state's jurisprudence." MCR 7.305(B)(3). As the Court is

no doubt well aware, "Michigan is one of the most litigious . . . no-fault states." Robert E. Logeman, *Michigan No-Fault Automobile Cases* § 1.3 (ICLE 3d ed 2002).[16] In fact, in 2016, the most recent year for which statistics are available, 9,621 no-fault cases were opened or reopened in the circuit courts. (State Court Administrative Office, 2016 Court Caseload Report, App 12 at 173a, see "NF" column).[17] Meanwhile, State Farm alone has over 1.1 million active no-fault policies containing the Assignment Clause. In the aftermath of *Covenant*, State Farm is defending, or has defended, over a thousand cases in the trial courts in which the validity of the Assignment Clause is or was an issue. And State Farm is already a party to nine other cases in the Court of Appeals that raise the same issue, with many more no doubt to come.[18] If the Court of Appeals' decision stands, it will affect all of these cases.

Further, the question of what circumstances justify a court striking a contractual provision from an insurance policy is an important one. As the Court has made clear, all three branches of government have a role to play in this area. See *Rory*, 473 Mich at 475. But a court's role is limited. See *id.* If Michigan courts are to begin striking unambiguous provisions from no-fault contracts that have been approved by the Commissioner of Insurance on the basis

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[16] Available at http://www.icle.org/modules/books/chapter.aspx?lib=negligence&book=2002556210&chapter=1 (last updated June 1, 2018).

[17] Available at http://courts.mi.gov/education/stats/Caseload/reports/statewide.pdf (last visited June 2, 2018). The district courts also hear numerous no-fault cases, but they are not tracked separately from other general civil cases.

[18] See *Insight Inst of Neurosurgery & Neuroscience v State Farm Mut Auto Ins Co*, COA No. 340702; *Associated Surgical Ctr PLLC v State Farm Mut Auto Ins Co*, COA No. 340816; *Lucia Zamorano MD PLC v State Farm Mut Auto Ins Co*, COA No. 341327; *Michigan Spine & Brain Surgeons v State Farm Mut Auto Ins Co*, COA No. 341407; *Back in Motion Chiropractic, DC, PLLC v State Farm Mut Auto Ins Co*, COA No. 341886; *Omega Rehab Services, LLC v State Farm Mut Auto Ins Co*, COA No. 342067; *American Anesthesia Assoc, LLC v State Farm Mut Auto Ins Co*, COA No. 342767; *Team Rehab, W2 v State Farm Mut Auto Ins Co*, COA No. 343005; *Hogan v Mominee-Burke*, COA No. 343654.

of public policy, it should be because this Court says so. Not because of the way the Court of Appeals interpreted a few sentences in a 138-year-old fire-insurance case that relied on a statute that unquestionably no longer exists. See *Roger Williams*, 43 Mich at 254.

Second, the Court of Appeals' decision "is clearly erroneous and will cause material injustice," and it "conflicts with [several] Supreme Court decision[s]." MCR 7.305(B)(5)(a), (b). As explained in detail above, the rule in *Roger Williams* was based on a statute that no longer exists. And whatever strength remained to *Roger Williams* after its predicate statute disappeared, it was necessarily superseded when this Court held that anti-assignment clauses *are* enforceable, so long as they use "[c]lear language" and "the plainest words" precluding assignment. *Detroit Greyhound*, 381 Mich at 689-90. Moreover, the Court of Appeals' application of *Roger Williams* ignores *DeFrain*, *Rory*, *Wilkie*, and all of the other modern cases in which this Court has made it abundantly clear that unambiguous provisions in insurance policies are to be enforced as written.

This error is not harmless. "Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract." *Rory*, 473 Mich at 468. Thus, "the general rule of contracts is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts." *Id.* (quotation marks and citation omitted; brackets removed). State Farm, like any other contracting party, is entitled to the benefit of its bargain—in this case, to avoid assignments made without its consent, so that it does not have to relitigate the same basic questions over and over, in different courts, with its insureds and each of their various providers. The injustice in the decision below is compounded because State Farm relied on the Commissioner of Insurance's determination that its standard policy comports with

Michigan law, and has issued it to more than 1.1 million active policyholders. And if past is prologue, the Court of Appeals' decision will lead to a multiplicity of provider lawsuits arising from each treatment a State Farm insured may seek—lawsuits that are not authorized by the No-Fault Act, and which can and should be brought by the insured, the only party with an actual right to no-fault benefits. See *Covenant*, 500 Mich at 217-18.

In sum, Michigan's no-fault jurisprudence should not be dictated by a fire-insurance case that was decided before the first commercial automobile traveled Michigan's roads and that was based on a statute that no longer exists. If *Roger Williams* has not already been superseded by the last century of controlling law, then this Court should expressly overrule it.

CONCLUSION AND RELIEF REQUESTED

State Farm respectfully requests that this Court grant leave to appeal to reverse the Court of Appeals decision invalidating the Assignment Clause. State Farm asks the Court to confirm that the Assignment Clause in State Farm's standard no-fault auto insurance policy, approved by the Commissioner of Insurance, is valid and enforceable. State Farm submits that the Court can do so without overruling *Roger Williams* because that decision has already been superseded by a century of controlling law. But to the extent *Roger Williams* has any continuing vitality, State Farm asks the Court to limit its application outside the no-fault context, or to overrule it once and for all.

Respectfully submitted,

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