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STATE OF MICHIGAN
IN THE SUPREME COURT

JAWAD A. SHAH, M.D., P.C.,
INTEGRATED HOSPITAL SPECIALISTS, P.C.,
INSIGHT ANESTHESIA, P.L.L.C., and
STERLING ANESTHESIA, P.L.L.C.,

Plaintiffs-Appellees,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court No. 157951

Court of Appeals No. 340370

Genesee County Circuit Court
No. 17-108637-NF

/

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BRIEF OF AMICUS CURIAE AUTO CLUB INSURANCE ASSOCIATION

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STATEMENT OF INTEREST

Amicus Curiae, AUTO CLUB INSURANCE ASSOCIATION ("ACIA"), is a reciprocal automobile inter-insurance exchange organized under MCL 500.7200 *et seq*, to sell motor vehicle insurance in Michigan. ACIA issues approximately 20% of the motor vehicle policies in this State, making it one of the largest single automobile insurers.

Like virtually all other no-fault insurers, ACIA's policy contains an anti-assignment provision. It is inserted to prevent the multiplicity of lawsuits which precipitated the provider-fueled litigation explosion of thousands of cases which prompted the appeals culminating in this Court's decision in *Covenant Medical Center, Inc v State Farm Mutual Automobile Ins Co*, 500 Mich 191; 895 NW2d 490 (2017).

Covenant held that the No-Fault Act confers no statutory right on providers to pursue a claim against a no-fault insurer. 500 Mich at 195. Nevertheless, continuing to operate under the apparent assumption that the No-Fault Act was enacted for their benefit, health care providers currently argue that public policy and the No-Fault Act forbid anti-assignment provisions in no-fault policies.

As a result, the provider-fueled litigation explosion has not abated. The Court of Appeals opinion in the instant case will assure that it never does. ACIA, as well as all other no-fault insurers, has an abiding interest in this Court's correcting that situation.

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STATEMENT OF QUESTIONS PRESENTED

I. IS PLAINTIFFS' DEFINITION OF PUBLIC POLICY DIRECTLY CONTRARY TO THE DECISIONS OF THIS COURT STRICTLY LIMITING THE CIRCUMSTANCES IN WHICH UNAMBIGUOUS CONTRACT LANGUAGE CAN BE ABROGATED?

Amicus Curiae, AUTO CLUB INSURANCE ASSOCIATION, contends the answer is, "Yes".

II. DOES THE *ROGER WILLIAMS* DECISION PROVIDE ANY VIABLE BASIS FOR INVALIDATING AN UNAMBIGUOUS PROVISION PROHIBITING THE ASSIGNMENT OF RIGHTS UNDER A NO-FAULT INSURANCE POLICY?

Amicus Curiae, AUTO CLUB INSURANCE ASSOCIATION, contends the answer is, "No".

III. HAS THE MICHIGAN LEGISLATURE EXPRESSED ITS HOSTILITY TO THE ASSIGNMENT OF NO-FAULT BENEFITS?

Amicus Curiae, AUTO CLUB INSURANCE ASSOCIATION, contends the answer is, "Yes".

INTRODUCTION

ACIA concurs in the worthy presentations of STATE FARM and INSURANCE ALLIANCE OF MICHIGAN. ACIA proffers this brief to focus this Court's attention on three of Plaintiffs' arguments which are fundamental to their position. The extent to which those arguments are directly contrary to basic tenets of Michigan law warrants special attention in light of their ramifications for the jurisprudence of this state, and the no-fault system in particular.

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I. PLAINTIFFS' DEFINITION OF PUBLIC POLICY IS DIRECTLY CONTRARY TO THE DECISIONS OF THIS COURT STRICTLY LIMITING THE CIRCUMSTANCES IN WHICH UNAMBIGUOUS CONTRACT LANGUAGE CAN BE ABROGATED.

The most basic premise of Plaintiffs' entire position is their definition of "public policy" as "what is just, right, reasonable, and equitable for society as a whole". As authority for that proposition, Plaintiffs cite a judicial decision and a law review article.

The cited case held that a contract which involved the use of public money for private purposes was contrary to public policy. *Skutt v City of Grand Rapids*, 275 Mich 258, 266; 266 NW 344 (1936). The law review article was an analysis of public policy expressed only in judicial decisions. McNeal, *Judicially Determined Public Policy: Is "The Unruly Horse" Loose in Michigan*, 13 TM Cooley L Rev 143 (1996).

The self-evident purpose of the definition proffered by Plaintiffs was to convey that this Court can choose not to enforce unambiguous contract language if it deems doing so to be "just, right, reasonable, and equitable". In other words, the Court can do whatever it deems best. Neither source cited by Plaintiffs warrants that conclusion.

In *Skutt*, this Court invalidated a contract as violating a public policy reasonably inferable from a constitutional provision cited in that opinion:

> "The credit of the state shall not be granted to, nor in aid of, any person, association or corporation, public or private."

Const 1908, art 8, §12, *cited at* 275 Mich at 266.

The law review article cited concludes with the following caution:

> "The unruly horse, *judicially determined public policy*, should 'be ridden with great care and discrimination'".

McNeal, *supra*, p 176 (emphasis in original), *quoting Ray v McDevitt*, 126 Mich 417, 423; 86 NW 543 (1901) (Grant, J, concurring). The complete quotation from *Ray* reads as follows:

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> "It was said in Richardson v. Mellish, 2 Bing. 229: 'It [public policy] is a very unruly horse, and once you get astride of it you never know where it may carry you. It may lead from sound law. **It is never urged at all but when other points fail**.' Such a horse must be ridden with great care and discrimination." (Emphasis added).

That quotation more closely tracks the current case law on public policy than Plaintiffs' "anything goes" formulation. That is particularly so when the Court is asked to abrogate an unambiguous provision in an otherwise perfectly legal contract.

One of the seminal cases in modern Michigan contract jurisprudence is *Rory v Continental Ins Co*, 473 Mich 457; 703 NW2d 23 (2005). In that case, the trial court and the Court of Appeals refused to enforce a one-year contractual limitations period applicable to the plaintiff's uninsured motorist claim. *Id.* at 462-63. This Court reversed in an opinion proclaiming that unambiguous contracts are to be enforced as written:

> "A fundamental tenet of our jurisprudence is that **unambiguous contracts are not open to judicial construction** and must be *enforced as written*. **Courts enforce contracts according to their unambiguous terms because doing so respects the freedom of individuals freely to arrange their affairs via contract**. This Court has previously noted that '"[t]he 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."'
>
> "When a court abrogates unambiguous contractual provisions based on its own independent assessment of 'reasonableness,' the court undermines the parties' freedom of contract."
>
> * * * *
>
> "Accordingly, we hold that an unambiguous contractual provision providing for a shortened period of limitations is to be enforced as written unless the provision would violate law or public policy. **A mere judicial assessment of 'reasonableness' is an invalid basis upon which to refuse to enforce contractual provisions**. Only recognized traditional contract defenses may be used to avoid the enforcement of the contract provision."

Id. at 468-69, 470 (footnotes omitted) (italics in original) (other emphasis added).

The Court then addressed whether the provision violated law or public policy. In doing so, it articulated the limited sources of public policy:

> "As noted by this Court, **the determination of Michigan's public policy** '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**.' In 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**.'"

Id. at 471 (emphasis added).

The Court cited a previous decision in which it made clear the limitations on a court's invoking public policy to invalidate contracts:

> "Instructive to the inquiry regarding when courts should refrain from enforcing a covenant on the basis of policy is *WR Grace & Co. v. Local Union 759*, 461 U.S. 757, 776 . . ., in which the United States Supreme Court said that **such a public policy must not only be 'explicit,' but that it also 'must be well defined and dominant** . . .' as the United States Supreme Court has further explained:
>
> > "'**Public policy is to be ascertained** by reference to the laws and legal precedents and **not from general considerations of supposed public interests. As the term "public policy" is vague, there must be found definite indications in the law of the sovereign to justify the invalidation of a contract as contrary to that policy**.'"

Terrien v Zwit, 467 Mich 56, 67-68 (2002) (emphasis added).

Those principles have been articulated in the specific context of a challenge to an anti-assignability provision in a contract to pay for health care:

> "'It is not the province of courts to emasculate the liberty of contract by enabling parties to escape their contractual obligations on the pretext of public policy **unless the preservation of the public welfare imperatively so demands**. . . . "**the power of courts to declare a contract void for being in contravention of sound public policy** is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, **should be exercised only in cases free from doubt**." . . .'"

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Obstetricians-Gynecologists, PC v Blue Cross Blue Shield of Nebraska, 219 Neb 199; 361 NW2d 550, 554 (1985) (emphasis added).

As will be demonstrated below, there is no basis in Michigan law for invalidating a contractual provision precluding the assignment of rights under an insurance policy.

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II. THE *ROGER WILLIAMS* DECISION PROVIDES NO VIABLE BASIS FOR INVALIDATING AN UNAMBIGUOUS PROVISION PROHIBITING THE ASSIGNMENT OF RIGHTS UNDER A NO-FAULT INSURANCE POLICY.

The sole authority cited by the Court of Appeals in the instant case was this Court's decision in *Roger Williams Ins Co v Carrington*, 43 Mich 252; 5 NW 303 (1880).[1] In that case, the insured premises were destroyed by fire. 43 Mich at 253. Thereafter, the insured assigned the policy to the defendant as security for a debt owed to him by the insured. *Id.* The policy contained a provision forfeiting the policy in the event of an assignment without the insurer's consent. *Id.* at 254.

This Court held that the relevant **statute** rendered the provision contrary to public policy:

> "The assignment having been made after the loss did not require consent of the company. **The provision** of the policy forfeiting for an assignment without the company's consent **is invalid, so far as it applies to the transfer of an accrued cause of action**. It is the absolute right of every person -- **secured in this state by statute** -- to assign such claims, and such a right cannot be thus prevented. It cannot concern the debtor, and it is against public policy."

Id. at 254 (emphasis added).

Because the *Roger Williams* court did not cite the statute purportedly giving an insured a statutory right to assign his claim for fire insurance proceeds, an investigation into the statutory catalogue from that period is necessary. Although the statutory catalogue shows that there was no statute from that period that gave an insured an unequivocal right to assign an accrued cause

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[1]In this case, the Court of Appeals also cited *Century Indemnity Co v Aero-Motive Co*, 318 F Supp 2d 530, 539 (WD Mich 2003), and *Action Auto Stores, Inc v United Capital Ins Co*, 845 F Supp 417, 422-23 (WD Mich 1993). However, those cases undertook no analysis of the continued viability of *Roger Williams*. They merely cited and followed it blindly, thereby perpetuating an erroneous holding. *Compare Covenant Medical Center, supra* at 203.

Plaintiffs also argue that the Michigan Uniform Commercial Code (UCC) forbids the restriction on the insured's right to assign his contractual rights. (Plaintiffs' Corrected Answer, p 20-23). Amicus Curiae IAM dispatches that argument, so it will not be discussed here.

of action, there was a statute that allowed the assignee of an accrued cause of action to file suit in his own name:

> "**<u>The assignee of any</u>** bond, note or **<u>other chose in action</u>**, not netogiable under existing laws, **<u>which has been</u>** or may be hereafter **<u>assigned, may sue</u>** and recover the same **<u>in his own name</u>**, upon such bond, note, or other chose in action; and the defendant in all such suits may set up and avail himself of any defense he may have, arising before due notice of such assignment, and which accrued prior to such an action, in the same manner and with the like effect as if the assignor had prosecuted the same in his own name."

MCL §5775 (1871) (emphasis added).[2] That statute was liberally construed. *Watertown Fire Ins Co v Grover & Baker Sewing Machine Co*, 41 Mich 131, 136-37; 1 NW 961 (1879).[3]

Having identified the statute upon which the *Roger Williams* court based its decision, it is necessary to track its legislative history to discover whether the statutory protection of the assignability of a chose of action remains in effect today. If not, the *Roger Williams* decision is not binding precedent on the issue under discussion.

A survey of the Michigan Compiled Laws Annotated tables -- which tracks statutes from old compilations that were carried over into new compilations -- shows that §5775 was originally enacted in 1863. A physical copy of the enactment as it existed in 1863 is included in Appendix A. The 1871 version was adopted verbatim from the original 1863 enactment. (Id.). A supplemental compilation from 1897 shows that §5775 was recompiled again word-for-word, into §10054 (1897). MCL §10054 (1897) (Appendix A).

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[2]Physical copies of each iteration of §5775 are attached sequentially as Appendix A.

[3]*Watertown* leaves no doubt but that the statute in question was §5775. In terms, the statute merely allows an assignee to sue in his own name. It says absolutely nothing about the ability to assign a bond, note, or chose of action in the first place. That being so, it is doubtful that *Willliams* would be decided the same way under current Michigan contract law. *See e.g., People v Holley*, 480 Mich 222, 229 n 14; 747 NW2d 856 (2008) (court may not add words to a statute); *Killeen v Dept of Transportation*, 432 Mich 1, 13; 438 NW2d 233 (1989) (same).

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The legislative history then shows that §10054 was merged into §12353 of the Revised Judicature Act of 1915, undergoing the first change in language since the statute's original enactment in 1863:

> "Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party expressly authorized by statute, may sue in his own name without joining with him the party for which benefit the action is brought."

Revised Judicature Act of 1915, §12353 (Appendix A). **There is no mention of assigning choses in action**.

If there is any doubt as to whether §12353 intentionally eliminated the reference to choses in action in §10054 Mich Comp Laws (1897), the comments to §12353 state:

> "C.L. '97, 10054, **superseded by this section**, expressly authorized the assignee of any chose in action, not negotiable under existing law, and which may be assigned to bring an action in his own name."

Revised Judicature Act of 1915, §12353, comment ASSIGNEE OF CHOSE IN ACTION (emphasis added).

In 1948, §12353 was recompiled verbatim into §612.2 under the 1948 Revised Judicature Act. (Appendix A). After this 1948 iteration, the 1961 Revised Judicature Act was enacted, recompiling §612.2 verbatim into the modern §600.2041:

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

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a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, may be brought in the name of the state or any such unit for whose benefit the contract was made; and

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

MCL 600.2041. Like the 1915 and 1948 versions, the 1961 version **contains no mention of chooses or things in action, or the right to assign the same**.

Plaintiffs recognize that the 1915 enactment eliminated the reference to assigned choses in action, but nevertheless argues that the content of §5775 was carried forward because subsequent enactments articulated the "real party in interest" rule. (Plaintiffs' Corrected Answer, p 38-40). However, that rule says nothing about the assignability of choses in action. Any supposed statutory protection of that right has not existed in Michigan for more than 100 years. Its elimination removed any basis for a supposed legislative public policy prohibiting anti-assignment provisions.

To summarize:

(1) The Michigan Legislature originally enacted the statute interpreted by the *Roger Williams* court in 1863;

(2) That statute was recompiled verbatim in 1871 as §5775 and in 1897 as §10054;

(3) **In 1915, the Michigan Legislature** expressly superseded the 1897 version of the statute relied upon by the *Roger Williams* court and **removed the language regarding the assignment of choses in action** with the 1915 Revised Judicature Act, §12353;

(4) **The current version of the statute** is the Revised Judicature Act of 1961, MCL 600.2041, and like the 1915 version and 1948 version, it **contains no mention of chooses or things in action, or the right to assign the same**.

Therefore, this Court's holding in *Roger Williams* was based on a statute that no longer exists, and has no modern equivalent. Thus, *Roger Williams* provides no statutory basis for an alleged public policy precluding enforcement of contractual anti-assignment provisions.

The discussion could well end here, because without *Roger Williams*, there is absolutely no legal underpinning for any "public policy" argument. However, ACIA will address the justification articulated by the *Shah* court (and others) for not enforcing anti-assignment provisions, i.e., the purported distinction between assigning contractual rights and assigning an "accrued cause of action". *Shah*, slip op at 6; *Action Auto Stores, Inc, supra* at 423.

First, the purported distinction is nothing more than linguistic legerdemain to mask judicial nullification of "unreasonable" contract language. The policy provisions under discussion preclude an assignment of rights under the policy. **If the assignee is not seeking to enforce a right under the policy, then it has no legal basis for its claim against the insurer**. Thus, the alleged distinction between the cause of action and an interest in the policy is illusory.

In *Conoco, Inc v Republic Ins Co*, 819 F2d 120 (5th Cir 1987), the court rejected such linguistic legerdemain in terms worthy of a textualist court:

> "**Appellee argues** in response **that its rights** as an assignee **arise not because Bonanza assigned a 'claim or demand**,' in contravention of the no-assignment clause, **but** here Bonanza **assigned 'proceeds' -- a horse of a different color**. **The distinction is specious**. An assignee stands in the boots of his assignor, and we have already held that Bonanza's boots do not entitle it to recover from appellant. Appellee cannot enlarge Bonanza's boots by putting the label 'proceeds' on its claim. **Words cannot change a plugged nickle into a silver dollar**."

Id. at 124 (emphasis added). *Accord Arm Properties Management Group v RSUI Indemnity Co*, 642 F Supp 2d 592, 609-11 (WD Tex 2009).

Second, the notion that Michigan courts do not enforce anti-assignment provisions to post-loss assignments is demonstrably false. In *Edwards v Concord Development Corp*,

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unpublished per curiam opinion of the Court of Appeals, rel'd 9/17/96 (No. 174487) (Appendix B)[4], Concord agreed to repair the plaintiff's fire-damaged home in return for an assignment of the fire insurance proceeds. The insurer paid the actual cash value of the repairs, but the mortgage company withheld a portion of the proceeds and applied them to the plaintiff's mortgage. Concord therefore did not complete the repairs. (Id., p 2).

The plaintiff sued Concord, the mortgage company, and the insurer. Concord filed, *inter alia*, a cross-claim against the insurer. The trial court granted summary disposition in favor of the plaintiff against Concord. The trial court also granted summary disposition in favor of the insurer on the cross-claim, on the ground that the assignment violated the policy's anti-assignment provision. (Id., p 2).

The Court of Appeals affirmed, holding in pertinent part as follows:

> "This Court has held that, as a general rule, contractual restrictions against assignability are strictly construed. . . . However, **there 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.'** Restatement Contracts 2d, §317(2)."

(Id., p 2-3)[5] (emphasis added). Thus, the Court of Appeals enforced the anti-assignment provision against a post-loss assignment.

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[4]The unpublished cases cited in the text are the only Michigan cases that the undersigned attorney could find which enforced anti-assignment provisions against post-loss assignments. MCR 7.215(C)(1).

[5]The *Edwards* panel distinguished *Roger Williams* on the ground that, unlike in that case, the plaintiff's insurer was not trying to avoid its contractual obligation. However, the point being made in the text is that Michigan case law recognizes no general prohibition against enforcing anti-assignment provisions to invalidate post-loss assignments.

In *Kreindler v Waldman*, unpublished per curiam opinion of the Court of Appeals, rel'd 4/4/06 (No. 265045) (Appendix C), Goldstone settled Kreindler's malpractice claim by assigning to Kreindler Goldstone's liability coverage claim against the latter's insurer. (Id., p 1 n 1). The Court of Appeals affirmed summary disposition in favor of the insurer, holding in pertinent part as follows:

> "In this case, plaintiff has no legally protected interest in defendant's policy, apart from whatever interest was assigned to him by Goldstone. Thus, plaintiff's standing, if any, arises by virtue of his agreement with Goldstone. **While prohibitions against assignments are disfavored, where a clause prohibiting assignments is clear and unambiguous, it must be enforced as written**. . . . **Here, defendant's policy expressly prohibited Goldstone's assignment of his 'claims and causes of action' under the policy**.[2] Thus, plaintiff has no interest under the policy and, therefore, has no standing to sue defendant."
>
> ---
>
> [2]Goldstone's 'claims and causes of action' if any, stem from his rights under the policy. Accordingly, **there is no meaningful distinction between an assignment of Goldstone's 'claims and causes of action,' and an assignment of Goldstone's 'interest' under the policy**. A contrary result would render nugatory the policy's prohibition against assignments."

(Id., p 3-4 & n 2) (emphasis added).

ACIA understands that the above-discussed decisions are unpublished and, therefore, not binding. MCR 7.215(J)(1). However, they demonstrate that there is no common law rule in Michigan against enforcing anti-assignment provisions to invalidate post-loss assignments, much less a public policy prohibition.

To summarize: *Roger Williams* held that a then-extant statute embodied a public policy that anti-assignment provisions were ineffective against post-loss assignment of choses in action. That statute no longer exists. The *Shah* court did not identify any other source for the alleged "public policy" against enforcing anti-assignment provisions to invalidate post-loss assignments. The assignment is, therefore, invalid.

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III. THE MICHIGAN LEGISLATURE HAS EXPRESSED ITS HOSTILITY TO THE ASSIGNMENT OF NO-FAULT BENEFITS.

Plaintiffs argue that MCL 500.3143 evinces a legislative intent to favor assignments of no-fault benefits. (Plaintiffs' Corrected Answer, p 15-20, 31). However, reasoned analysis of that provision in the context in which it was enacted demonstrates exactly the opposite.

The statute on which Plaintiffs rely reads as follows:

> "An agreement for assignment of a right to benefits payable in the future is void."

MCL 500.3143. Plaintiffs' argument should be rejected for two reasons. First, it overstates the holdings in the cases it cites. Second, it ignores the context in which §3143 was enacted, which demonstrates the Legislature's hostility to assignments, not its intent to endorse them.

As to the first point, in *DAIIE v Higginbothom*, 95 Mich App 213; 290 NW2d 414 (1980), the Court of Appeals invalidated a liability insurance exclusion for intentionally inflicted injuries, because it squarely violated MCL 500.3131, which requires liability coverage for "automobile liability retained by section 3135". The latter provision retained liability for "intentionally caused harm to persons". *Id.* at 221. In contrast, §3143 contains no such express legislative directive.

In *Cruz v State Farm Mutual Automobile Ins Co*, 466 Mich 588; 648 NW2d 591 (2002), this Court held that despite the fact that EUOs are not expressly sanctioned in the No-Fault Act, provisions requiring submission to EUOs as a method of ascertaining the fact and amount of loss **are permissible**. *Id.* at 598. Thus, *Cruz* cannot rationally be cited for the proposition that because the No-Fault Act does not expressly sanction a policy provision, it therefore may not be included in a no-fault policy.

As to the second point, Plaintiff's reasoning is that because the Legislature barred only assignments of future benefits, the negative implication is that it intended to prevent insurers from contractually barring assignment of entitlement to past benefits. That reasoning invokes what an authoritative treatise terms the "Negative-Implication Canon". Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson-West 2012), p 107. The canon is more familiarly known as "expressio unius est exclusio alterius" -- the expression of one thing implies the exclusion of others. *Id.*

The authors note:

> "Virtually all the authorities who discuss **the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context**."

Id. (emphasis added). The context in which §3143 was enacted evinces a legislative hostility to the assignment of no-fault benefits.

This Court has recognized that the No-Fault Act is patterned after the Uniform Motor Vehicle Accident Reparations Act (UMVARA). *E.g., Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 644; 513 NW2d 799 (1994); *Oullette v Kenealy*, 424 Mich 83, 86; 378 NW2d 470 (1985). This Court has also noted that where the Legislature adopted the language of that Model Act, it was in evident agreement with the policies underlying that language. *Oullette, supra* at 86; *Miller v State Farm Mutual Automobile Ins Co*, 410 Mich 538, 559; 302 NW2d 537 (1981).

In terms, UMVARA expressly allows the assignment of future benefits to providers:

> "An assignment of or agreement to assign any right to benefits under this Act for loss accruing in the future is unenforceable except as to benefits for:
>
> "(1) Work loss to secure payment of alimony, maintenance, or child support; or

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"(2) Allowable expense **to the extent the benefits are for the cost of products, services, or accommodations provided or to be provided by the assignee**."

UMVARA, §29 (emphasis added).

Rather than adopt the language in UMVARA, the Michigan Legislature expressly **rejected** allowing such blanket assignments to health care providers. MCL 500.3143. To infer from that rejection a legislative intent to protect assignments to providers is simply irrational. It cannot seriously be maintained that the Legislature intended to prevent insurers from prohibiting such assignments.

Moreover, it appears that the Michigan Legislature has endorsed anti-assignment provisions in fire insurance policies. In *McHugh v Manhattan Fire & Marine Ins Co*, 363 Mich 324; 109 NW2d 842 (1961), the plaintiff was the assignee of a fire insurance policy. *Id.* at 326. When the plaintiff filed a claim for a fire loss to the building, the insurer cancelled the policy and returned the unused premium to the original insureds. The plaintiff sued.

This Court framed the issue before it as follows:

> "Thus this case presents the question as to whether in an action in equity an assignee of a fire insurance policy has any recourse when, after notice of loss, the insurance company cancels the policy, tenders back the premiums and denies liability because the assignment was made without notice to the company and acceptance thereby as required by express language in the policy."

Id. at 327.

The Court's response was as follows:

> "[A]ppellant fails to cite one authority which supports the proposition that legal effect may be given an assignment made without the insurance company's knowledge or consent when the specific terms of then [the] insurance contract are to the contrary."

Id. at 328. The Court went on to note:

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> "Finally, we note that **the language of the assignment provision relied upon by the insurance company herein is an exact copy of the wording on the first page of the Michigan standard policy**, set forth in the Michigan Insurance Code of 1956 . . ., which all fire insurance companies are required to follow.
>
> "Whether or not this standard assignment clause grants an unfair windfall to fire insurance companies in some instances would appear to be subject to legislative consideration."

Id. at 329 (emphasis added).

McHugh involved a pre-loss assignment. However, nowhere in its opinion did this Court indicate that such a distinction was of any importance to the Legislature, which statutorily sanctioned the anti-assignment provision. No legislative hostility to anti-assignment provisions in insurance contracts can be gleaned from the case law.

In short, Plaintiffs' argument falls far short of the required showing of an explicit, well-defined, and definite indication that the Legislature intended to preclude insurers from barring the assignment of claims for payment under the policy. If anything, the context in which §3143 was enacted demonstrates legislative hostility to assignments of benefits.

Amicus Curiae, AUTO CLUB INSURANCE ASSOCIATION, submits that this Court should grant leave to appeal and reverse the Court of Appeals' decision in the instant case.

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