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STATE OF MICHIGAN

IN THE SUPREME COURT

JAWAD A. SHAH, MD, PC, INTEGRATED HOSPITAL SPECIALISTS, PC, INSIGHT ANESTHESIA, PLLC, and STERLING ANESTHESIA, PLLC,
Plaintiffs-Appellees,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
Defendants-Appellant,

Supreme Court No. 157951
Court of Appeals No. 340370
Genesee CC No. 15-008218-NF

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MICHIGAN DEFENSE TRIAL COUNSEL'S MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE AND FOR EXTENSION OF TIME

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NOW COMES Amicus Curiae, Michigan Defense Trial Counsel (MDTC), by and through it attorneys at SCARFONE & GEEN, PC, and to this Court says:

1. The Michigan Defense Trial Counsel (MDTC) is a statewide attorney association that primarily focuses on civil-defense representation. MDTC was established in 1979 to enhance and promote the civil-defense bar, and it accomplishes that goal by facilitating dialogue among and advancing the knowledge and skills of civil-defense lawyers. MDTC appears before this Court as a representative for Michigan's civil-defense lawyers and their clients, a significant portion of which could be affected by the issues involved in this case.

2. This is a first-party no-fault case. The issue presented is whether anti-assignment provisions in no-fault policies are enforceable under Michigan law.

3. Though the parties' briefs address this issue, the MDTC's brief offers specific propositions regarding statutory construction (among others) that may simplify this Court's analysis and be of assistance when considering the far-reaching issue presented in this appeal. Further, the undersigned is on the ground level of medical provider litigation in Michigan and is currently defending well over 100 no-fault cases in the trial courts. This may further provide this court with a practical view of the impact of provider litigation in Michigan.

4. The MDTC's brief also discusses and highlights current issues within the no-fault system that will be impacted by this Court's decision in this case.

5. This Court's internal operating procedures state that, although the court rules do not set a firm deadline for amicus briefs submitted when a case is being argued on the application, "the Court recognizes the same due date as amicus briefs in calendar cases." This means that amicus briefs are due 21 days after the last supplemental brief is filed.

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6. While Plaintiffs' supplemental brief was due December 26, 2018 – which would have made Amicus Briefs due by January 16th, 2019 – Plaintiff filed its Supplemental Brief on December 22, 2018.

7. The MDTC respectfully requests a brief extension of the deadline due in part to the undersigned having over 100 no-fault cases pending in Michigan trial courts which were being litigated during the time briefs were being filed in this case – well over 50% of the cases the undersigned is litigating involve medical providers suing no-fault insurers based on assignments from the injured person.

WHEREFORE, Amicus Curiae, MICHIGAN DEFENSE TRIAL COUNSEL, pray that this Honorable Court grant leave for MICHIGAN DEFENSE TRIAL COUNSEL to participate as Amicus Curiae and to accept for filing the attached Brief Amicus Curiae.

Respectfully submitted,

/S/ John C.W. Hohmeier

By: _____

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January 16, 2019

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
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MICHIGAN DEFENSE TRIAL COUNSEL'S *AMICUS CURIAE* BRIEF

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Michigan Defense Trial Counsel (MDTC) is a statewide attorney association that primarily focuses on civil-defense representation. MDTC was established in 1979 to enhance and promote the civil-defense bar, and it accomplishes that goal by facilitating dialogue among and advancing the knowledge and skills of civil-defense lawyers. MDTC appears before this Court as a representative for Michigan's civil-defense lawyers and their clients, a significant portion of which could be affected by the issues involved in this case.[1]

ORDER APPEALED FROM AND JURISDICTIONAL STATEMENT

MDTC relies on both parties' Order Appealed From and Jurisdictional Statements in their briefs before this Court.

STATEMENT OF QUESTION PRESENTED

I. Whether the anti-assignment clause in the defendant's insurance policy precludes the defendant's insured from assigning his right to recover no-fault personal protection insurance benefits to the plaintiff healthcare provider?[2]

STATEMENT OF FACTS

MDTC relies on both parties' Statement of Facts sections in their briefs before this Court.

STANDARD OF REVIEW

MDTC also relies on both parties' Standard of Review sections in their briefs on appeal.

---

[1] After reasonable investigation, MDTC believes that (a) no MDTC member who voted either in favor or against preparation of this brief, and no attorney in the law firm or corporation of such a MDTC member, represents a party to this litigation; (b) no MDTC member who is a representative of any party to this litigation participated in the authorship of this brief; and (c) no one other than MDTC, or its members who authored this brief or their law firms or employers, made direct or indirect financial contribution to the preparation or submission of this brief.

[2] Taken verbatim from this Courts October 24, 2018 Order.

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INTRODUCTION TO THE ISSUE

In the wake of this Court's decision in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*[3] (concluding that medical providers do not have a statutory right to sue no-fault insurance carriers), Michigan trial courts have not seen any decrease in the number of lawsuits being filed by medical providers.[4] Contributing to the problem is another novel no-fault issue regarding providers: assignments.

In this case, the Court of Appeals relied almost exclusively on a 138-year-old decision (*Roger Williams*)[5] to invalidate State Farm's clear and unambiguous assignment clause "because such a prohibition of assignments violates Michigan Public policy[.]"[6] Doubling down on this idea without providing much explanation in support, Plaintiff argues that the same public policy considerations in *Roger Williams* are also at play in this case – how is this possible?

Even a cursory review of some of the major events that occurred during the 138 years since *Roger Williams* demonstrate significant impact on public policy in Michigan. Thus, it is to conclude that public policy considerations today are vastly different than the ones that were at play in 1880 when *Roger Williams* was decided. While the decision was decades before

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[3] 500 Mich 191, 195 (2017).

[4] The assertions in State Farm's brief that it is still defending "thousands" of medical provider cases is evidence enough but when considered alongside the fact there are hundreds of insurance carriers authorized to write no fault insurance policies in Michigan, the numbers are palpable. See https://www.michigan.gov/documents/cis_ofis_cert_3163_25526_7.pdf which has over 115 pages of insurance carriers listed and clearly identifies which insurers are "admitted" and required to comply with MCL 500.3163. **As of November 19, 2018, there are approximately 650 insurance carriers** (649 by this author's count) that have the designation "admitted insurer" which means they are **authorized by the State of Michigan to write no fault policies in Michigan**. This Court can take judicial notice of the public documents on this government website. MRE 201(b), (b)(2), (d); *Leroux v Secy of State*, 465 Mich 594, 613 (judicial notice of "official government data" permitted under MRE 201).

[5] *Roger Williams Ins Co v Carrington*, 43 Mich 252 (1880).

[6] *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182 (2018).

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automobiles were available to the public and nearly a century before Michigan enacted the No Fault Act, there were other major events that affected public policy as well:

1896: Charles King of Detroit is the first person to drive a gas-powered car (in North America).

1908: The first Model T is manufactured.

1920: The 19th Amendment is passed granting suffrage to women.

1930: The Great Depression.

1930: The Detroit-Windsor tunnel is open to automobiles.

1935: The UAW is organized in Detroit.

1941: Pearl Harbor, USA enters World War II, and Michigan automobile manufacturing plants are converted for production of war materials.

1945: Jackie Robinson is the first person of color to play professional baseball.

1956: Michigan enacts the Insurance Code.

1963: Michigan's new State Constitution is ratified….[7]

1835 - § 1 Political power. First. All political power is inherent in the people.[8]

1963 - § 1 Political power. Sec. 1. All political power is inherent in the people. Government is instituted for their equal benefit, security and protection.[9]

1964: The Civil Rights Act is enacted.

1969: Neil Armstrong becomes the first human to ever walk on the moon.

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[7] Just by comparing Section 1 of the two Constitutions reveals a radical shift in priority and policy.

[8] This is how Article 1, Section 1 of Michigan's Constitution read in 1835 and also read at the time of the *Roger Williams* decision.

[9] This is how Article 1, Section 1 read in 1963 when Michigan's new Constitution was ratified.

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1973: Michigan passes the No Fault Act.

2002: Jennifer Granholm becomes the first woman elected Governor of the State of Michigan.

2013: The City of Detroit files for bankruptcy which is considered the largest ever in the United States.

Can anyone look at this list of historical events, significant human achievements and catastrophes, major political shifts, and believe that public policy has not changed in Michigan for 138 years? At the time *Roger Williams* was decided, there was no such thing as women's rights, the commercial automobile had not been invented, there was no such thing as "auto insurance," and it was nearly 100 years before the Michigan legislature enacted the No Fault Act.

Generally speaking, this case is not just about assignments or assignment clauses in no-fault policies. It is about insurance, motor vehicles, business, contracts, economic policy, the No Fault Act itself, and above all else it is about a person's right to choose who to contract with for insurance. This includes the right to choose a specific auto policy written by one of the 650 insurance carriers authorized to write no-fault policies in Michigan.[10]

In this case, the injured person chose to deal with State Farm in obtaining a no-fault policy, and the policy contains an assignment provision. The assignment provision is clear and unambiguous (Plaintiff does not argue that it is ambiguous and the Court of Appeals openly

[10] See https://www.michigan.gov/documents/cis_ofis_cert_3163_25526_7.pdf which has over 115 pages of insurance carriers listed and clearly identifies which insurers are "admitted" and required to comply with MCL 500.3163. As of November 19, 2018, there are approximately 650 insurance carriers (649 by this author's count) that have the designation "admitted insurer" which means they are authorized by the State of Michigan to write no fault policies in Michigan. This Court can take judicial notice of the public documents on this government website. MRE 201(b), (b)(2), (d); *Leroux*, 465 Mich 594 at 613 (judicial notice of "official government data" permitted under MRE 201).

admits the provision is "perfectly clear"). Therefore, the only way that the assignment provision in State Farm's policy can be invalidated is if it violates the law or public policy.[11]

State Farm's assignment provision – which bars any assignment of benefits without State Farm's permission – was approved by the Commissioner of Insurance, does not violate public policy, and is not precluded by any provision of the No Fault Act. In fact, State Farm's assignment provision operates in seamless harmony with the No Fault Act as well as this Court's Jurisprudence. It certainly does not run afoul of Michigan's public policy. The assignment provision should be upheld.

[11] *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 372 (2012).

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ARGUMENT

Generally, everyone has the freedom to contract for whatever they like and "in most circumstances, it is beyond the authority of the courts to interfere with the parties' agreement."[12] No-fault insurance policies are like any other contract, which was recognized by this Supreme Court: "insurance policies are subject to the same contract construction principles that apply to any other species of contract."[13]

Because of the clear policy supporting the freedom of people to engage in commerce and contract with whoever they choose, there are very *narrow* circumstances in which courts may refuse to enforce an unambiguous contract or policy provision.[14] It is axiomatic that an unambiguous provision must be enforced as written unless it would violate law or public policy.[15] Not only is State Farm's assignment provision clear and unambiguous, it does not violate either the law or public policy.

I. STATE FARM'S ASSIGNMENT CLAUSE IS CLEAR AND UNAMBIGUOUS.

There should be little-to-no dispute that State Farm's assignment provision is clear and unambiguous. It reads in full: "No assignment of benefits or other transfer of rights is binding upon us unless approved by us." Even on appeal, Plaintiff does not argue that it is ambiguous. Furthermore, the Court of Appeals admitted that the provision is "perfectly clear." As a result, Plaintiff must prove that the provision violates the law or public policy – a task that it cannot do.

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[12] *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 62 (2003).
[13] *Rory v Cont'l Ins Co*, 473 Mich 457, 461 (2005).
[14] *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 372 (2012) (ruling that "the circumstances under which a contract provision can be said to violate law or public policy are likewise narrow.")
[15] *Id.*

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II. STATE FARM'S ASSIGNMENT CLAUSE DOES NOT VIOLATE PUBLIC POLICY.

After reviewing the lower court's opinion, as well as Plaintiff's arguments on appeal, it should be obvious that the 1880 case of *Roger Williams*[16] is the scaffolding that supports the proposition that State Farm's assignment clause violates public policy. But that house of cards quickly tumbles down when consideration is given to Michigan's current public policies and laws governing the issue presented in this case.

In *Roger Williams*, the Court found an assignment clause in a property insurance policy was invalid, stating:

> It is the absolute right of every person – secured in this state by statute[17] – to assign such claims, and such a right cannot be thus prevented. It cannot concern the debtor, and it is against public policy.[18]

As indicated in the preamble, there are 138 years of history and momentous events that changed the entire landscape of Michigan: people's abilities and rights, their political and economic ideology, their priorities in life and in family, and the options and possibilities that became available to Michiganders exploded. Plain and simple: we live in a different time.

Any reliance on *Roger Williams* is without merit for multiple reasons. For one, this Court already modified Michigan public policy in two seminal cases involving the No Fault Act and insurance policies: *Rory v Cont'l Ins Co*[19] and *DeFrain v State Farm Mut Auto Ins Co*.[20]

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[16] *Roger Williams*, *supra*.
[17] The decision does not reference the statute. On appeal, Plaintiff does not identify any statute or law that either explicitly allows assignments or prohibits assignment clauses.
[18] *Roger Williams*, 43 Mich at 255.
[19] *Supra*.
[20] *Supra*.

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State Farm's Application for Leave, as well as its Supplemental Brief, explains the impact of *Rory* and *Defrain* very well.[21]

That being said, there cannot be enough emphasis placed on the fact that the public policy concerns in *Roger Williams* have no bearing on the issues presented in this case. As noted by this Court in *DeFrain*:

> [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.' That a contract provision fails to comport with the personal predilections of the majority of the deciding tribunal about what is reasonable or fair does not make the provision violative of law or public policy. Judicial notions of reasonableness are not 'clearly rooted in the law' and are therefore not a valid basis for refusing to enforce an unambiguous contract provision.[22]

Prior to *Defrain*, the *Rory* Court also recognized that because the responsibility of evaluating and approving insurance policy provisions rests with the Commissioner of Insurance, the explicit 'public policy' of Michigan is that the reasonableness of insurance contracts is a matter for the executive, not judicial, branch of government.[23]

As set forth above, courts are required to enforce unambiguous insurance policy provisions unless it violates the law or public policy. Plaintiff in this case has identified no statute that precludes the assignment clause. And, pursuant to *DeFrain* and *Rory*, the public policy of Michigan is that the reasonableness of the assignment clause is a matter for the Commissioner of Insurance – not the courts.

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[21] The MDTC echoes State Farm's analysis of the all the insurance cases decided since *Roger Williams*.

[22] *Defrain*, 491 Mich at 372-73 (citations omitted; quoting *Rory*, 473 Mich at 472).

[23] *Rory*, 473 Mich at 476. *See also Auto Club Group Ins Co v Booth*, 289 Mich App 606 (2010) (rejecting public policy argument and noting "our Supreme Court has determined 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").

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In its Briefs, State Farm goes through an extremely thorough and correct analysis as to why the reasonableness and public policy considerations behind the assignment clause are best left to the Commissioner of Insurance. As a result, there is no need for the MDTC to double-down on that argument here (even though the MDTC agrees with State Farm's analysis). That being said, Michigan public policy is also dictated by the legislature. State Farm's assignment provision is further supported by review of the applicable law.

III. STATE FARM'S ASSIGNMENT CLAUSE DOES NOT VIOLATE MICHIGAN LAW.

Because public policy in Michigan is reflected in legislation, the No Fault Act is clearly implicated in this appeal. The No Fault Act itself "is the most recent expression of this state's public policy concerning motor vehicle liability insurance."[24] Where a policy provision like State Farm's assignment clause is not "explicitly prohibited" by the Act, then it does not violate public policy.[25]

Where a contract provision is "harmonious with the Legislature's no-fault insurance regime" it should be enforced as written.[26] A proper analysis of the legislative intent behind the No Fault Act, particularly MCL 500.3143 and other related provisions, as well as the attendant circumstances at the time the Act was promulgated, compels the conclusion in this case that State Farm's assignment clause operates in harmony with the No Fault Act and should be upheld.

a. The attendant circumstances and state of the Law in 1973 cannot be construed to support that the Legislature meant to increase litigation by allowing insureds to assign multiple claims for no-fault benefits.

MCL 500.3143 reads in full: "An agreement for assignment of a right to benefits payable in the future is void." Anyone who looks at MCL 500.3143 *et seq*. can agree that it does not

[24] *Citizens Ins Co of Am v Federated Mut Ins Co*, 448 Mich 225, 232 (1995).
[25] *Rory*, 473 Mich at 472.
[26] *Cruz v State Farm Mut Auto Ins*, 466 Mich 588, 598 (2002).

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explicitly permit any type of assignment.[27] So in order for MCL 500.3143 to be at all supportive of assignments, there must be a proper analysis of this part of the Statute along with other parts of the Act as well.

Three of the rules for statutory construction, which have not been followed by either Plaintiff or the Court of Appeals in this case, are:

1. Statutes are to be construed in the light of circumstances that existed at the time of enactment not with reference to later developments. Statutes are to be read in the light of attendant conditions and the state of the law existent at the time of their enactment. The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.[28]

2. To discern the Legislature's intent, statutory provisions are *not* to be read in isolation; rather, context matters, and thus statutory provisions are to be read as a whole. Words in a statute should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the act as a whole.[29]

3. It is a fundamental rule of statutory construction that departure from a literal construction is justified where such a construction would produce an absurd and unjust result and would be clearly inconsistent with the purposes and policies of the act in question.[30]

Plaintiff's argument that MCL 500.3143 supports assignments because it is rooted in the model act (UMVARA),[31] shortchanges the entire analysis and fails to acknowledge the attendant circumstances at the time the No Fault Act was legislated. Were injured persons assigning out injury claims and splitting one claim into multiple claims back in 1973? Were providers suing insurance carriers at an unprecedented rate or even at all back in 1973? Absolutely not.

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[27] Just like MCL 500.3112 does not permit direct causes of action by medical providers even though providers argued for over a decade that it did.

[28] *Cain v Waste Management, Inc*, 472 Mich 236, 258 (2005), *Davis v Beres*, 384 Mich 650, 653 (1971).

[29] *Robinson v City of Lansing*, 486 Mich 1, 15 (2010*; see also Crowe v City of Detroit*, 465 Mich 1, 6 (2001)(reasoning that a word or phrase is given meaning by its context or setting).

[30] *Salas v Clements*, 399 Mich 103, 109 (1976).

[31] Uniform Motor Vehicle Reparations Act.

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It is not controversial to say that medical provider litigation in Michigan is relatively new. In fact, prior to cases like *Munson Med Ctr v Auto Club Ins Ass'n*, *LaMothe v Auto Club Ins Ass'n*, *McGill v Auto Ass'n of Michigan*[32] in the 1990s, there is no record or case that deals with medical providers being involved in no-fault cases. In fact, it wasn't until seven (7) years after *Munson* in 2002 when provider litigation really began to become an issue in Michigan.[33]

In any event, the first Appellate Court decision regarding the No-Fault Statute was *Shavers v Attorney General* in 1978. The case dealt with a Constitutional challenge to the No-Fault Act, but it also highlighted the attendant circumstances that surrounded the Act's beginnings as well as the main purpose behind the Act.[34] In the first sentence of his opinion, Justice Williams described the purpose of the No-Fault Statute:

> The Michigan No-Fault Insurance Act, which became law in October 1, 1973, was offered as an innovative social and legal response to the long payment delays, inequitable payment structure, and ***high legal costs*** inherent in the tort (or "fault") liability system. . . . and the ***court system was overburdened***.[35]

The problems in the court system, however, were pointed out six years earlier in ***1972*** by Chief Justice Thomas Kavanagh in "The State of the Judiciary" presented by him to a joint session of the Michigan Legislature.[36] The following excerpts highlight the problems that existed in the judicial system at the very time the Legislature was analyzing, discussing, and debating what would become the Michigan No-Fault Statute. Justice Kavanagh's speech included references to:

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[32] 218 Mich App 375 (1996), 214 Mich App 577 (1995), and 207 Mich App 402 (1994).
[33] See *Lakeland Neurocare Centers v State Farm Mut. Auto. Ins*, 250 Mich App 35 (2002), *overruled by Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co,* 500 Mich 191 (2017).
[34] 402 Mich 554 (1978).
[35] *Id*. at 578-579 (Emphasis added)
[36] 51 Mich B J 156 (1972).

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- "court crisis"
- "crucial problems of the judicial system"
- "staggering backlog of civil cases"[in Wayne County Circuit Court]
- "critical court congestion in the metropolitan area"
- "too few judges available to keep the backlog from building up; with more people, with more problems; ***with more laws,*** under which citizens take their complaints to court; with more criminal cases adding to the congestion."[37]

Also in 1973, doctors and other healthcare providers could ***not*** – and were not – directly sue an insurer for various reasons, which included Michigan's restrictive third party beneficiary laws.[38] ***These are the attendant circumstances and the state of the law that existed when the No-Fault Statute was enacted*** and must be considered when determining the Legislative intent with respect to any section of the No-Fault Statute, including MCL 500.3143.

Somewhat key in understanding any provider issue in the no-fault arena, or any specific provision of the Act for that matter, is to consider the genesis of the Act: the Uniform Motor Vehicle Reparations Act (1972). Careful evaluation of the UMVARA when contrasted what is now encapsulated in the No Fault Act reveals that there is no way the legislature gave an injured person the right to assign any benefits – to the contrary, the Michigan Legislation specifically rejected allowing for this right.

b. The Model Act: the Uniform Motor Vehicle Accident Reparations Act (UMVARA).

Professors Robert Keeton and Jeffrey O'Connell studied auto accident reparations in the 1960s and determined the third-party tort system didn't work; that is, there were long delays before cases were resolved and the resolution was always a lump-sum payment. It was determined that a first-party system was preferred which did not consider fault and where

[37] *Id.*
[38] A thorough analysis of Third Party beneficiary law would outstrip the issues presented on Appeal in this case.

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allowable expenses related to an automobile accident could be paid as they were incurred. The efforts of Keeton and O'Connell led to the development of the UMVARA.

The Purpose of the Model Act provides:

> The Act creates a complex system of reparations for injuries and loss arising from motor vehicle accidents. To a large extent, though not completely, economic losses from vehicle accidents would be compensated without regard to fault through first-party insurance coverages and tort liability for those losses would be abolished.

With respect to benefits, the prefatory note from the UMVARA says:

> Basic reparation benefits are the minimum benefits which, with few exceptions, are provided without regard to fault for all ***persons injured*** and the ***dependent survivors of persons killed*** in motor vehicle accidents.

The 86 page Uniform Motor Vehicle Accident Reparations Act and Comments[39] was the model for the Michigan No-Fault Statute. On numerous occasions, Michigan Courts have cited the UMVARA in analyzing Michigan No-Fault issues, particularly this Supreme Court. Fairly recently, the Michigan Supreme Court again stated that the UMVARA was the model for the Michigan No-Fault Act.[40] The Supreme Court has extensively referenced UMVARA when *interpreting* the No-Fault Act.[41]

For example, the Court declared that the phrase "use of a motor vehicle as a motor vehicle" originated from the UMVARA, and this Court has said that the drafter's comments on that phrase were pertinent to the analysis of the issues presented in the case.[42] In 1994, the Court also said that the drafter's comments in the UMVARA were relevant to the Michigan No-Fault

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[39] A complete copy of the November 1, 1972 UMVARA is available upon request.
[40] *Grange Ins Co of Michigan v Lawrence*, 494 Mich 475 (2013).
[41] See e.g. *Johnson v Recca*, 492 Mich 169 (2012) (indicating that the term "replacement services" originated from the Uniform Motor Vehicle Accident Reparations Act).
[42] *Thornton v Allstate Ins Co*, 425 Mich 643, 657 (1996).

issue presented in that case.[43] This Court went as far as to say that the UMVARA is a model act and was clearly considered by the Legislature when the No-Fault Act was adopted.[44]

Even as far back as the 1980's, this Supreme Court declared the drafter's comments and the UMVARA itself are pertinent to the analysis of the No-Fault sections where the language of the Act is substantially similar to the language in the UMVARA.[45] The relative importance of the UMVARA is perhaps best seen in the following excerpt from *Miller v State Farm Mut Auto Ins Co*[46] which dealt with the issue of calculating survivor's loss benefits under Section 3108:

> In answering that question, our obligation is to discover and ***give effect to the Legislature's intention*** in enacting §3108 as best we can determine it from the language employed in §3108 ***and the no-fault act as a whole, and in light of such legislative history as is available.***[47]
>
> §3108 was derived from Senate Bill No. 782 of 1971 and the corresponding House Substitute for Senate Bill No. 782. It is apparent that the relevant provisions of those bills were based, in turn, upon provisions contained in the Motor Vehicle Basic Protection Insurance Act (MVBPIA) and the ***Uniform Motor Vehicle Accident Reparations Act (UMVARA)*** respectively.
>
> ***In view of the Legislature's obvious reliance upon the relevant sections of the model acts, it is evident that it was cognizant of, and in agreement with, the policies which underlie the model act's language***.[48]

A typical no-fault claim these days involves multiple providers: specialist, physical therapy and chiropractic clinics, MRI facilities, transportation companies, household services and attendant care providers, and the list can go on. So when the proper rules of statutory

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[43] *MacDonald v State Farm Mut Ins Co*, 419 Mich 146, 151 (1994).
[44] *Priesman v Meridian Mutual Ins Co*, 441 Mich 60, 66 (1992).
[45] *Manley v Detroit Auto Inter-Ins Exch*, 425 Mich 140, 164 (1986).
[46] 410 Mich 538 (1981).
[47] *Id*. at 556 (emphasis added).
[48] *Id*. at 557-559 (emphasis added).

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construction are followed, there can be no dispute that the Legislature never intended to add to courts' burden by increasing litigation through allowing assignments.

c. Following the proper rules of statutory construction leads to only one conclusion: MCL 500.3143 does not confer any right(s) on an injured person – it is an exclusionary provision.

To reiterate: MCL 500.3143 does not explicitly allow assignments. Plaintiff (along with every other provider filing thousands of lawsuits in Michigan) is trying to do to MCL 500.3143 what they did to MCL 500.3112 for years: read something into the language that simply is not there. MCL 500.3143 is completely silent as to assignments of past due or presently due benefits. In fact, Section 3143 is hostile to assignments as the only thing it says is that any assignment of future benefits is **void.**

Plaintiff is *perhaps* right to argue that reviewing Section 29 of UMVARA is paramount to discerning what MCL 500.3143 really means. That being said, Plaintiff's commentary on UMVARA draws a false conclusion and also short changes the importance that other sections of the Act and UMVARA play in properly analyzing this issue.

Contrary to Plaintiff's comments, Section 29 of UMVRA allowed assignment of nearly all types of benefits: it allowed assignments of certain future benefits *and* assignments of past benefits. MCL 500.3143, when compared to the UMVARA assignment provisions, makes it clearer that medical providers were not given any special rights (via assignments) by the Michigan Legislature when the No-Fault Act was enacted.

MCL 500.3143 bars assignment of future benefits while the UMVARA provision would have allowed a limited right to assign future benefits. Section 29 of the UMVARA reads in full:

Section 29 [Assignment of Benefits].

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> 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
>
> (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.

What Plaintiff calls in its brief "past or presently due benefits" is tantamount to incurred expenses or, as UMVARA indicates, benefits that have already been "provided." Section 29(2) of UMVARA clearly permitted the assignment of benefits that had already been "provided" to an injured person. However, **the Michigan legislature specifically rejected that language and declined to provide for the assignment of past or presently due benefits when it enacted MCL 500.3143**.

Contrary to Plaintiff's analysis, Michigan courts have repeatedly held that **the Legislature's failure to adopt the language contained in the UMVARA creates a presumption that the corresponding language was considered and rejected**.[49] Consequently, it must be presumed that the Legislature considered this UMVARA provision and **rejected the idea of giving any special rights to healthcare providers by way of assignment.**

The Legislature could have very easily put into MCL 500.3143 that assignment of benefits that had already been "provided" was permitted but the assignment of "future" benefits was prohibited, but it did not. Instead, the Legislature explicitly rejected the language in UMVARA that allowed any type of assignment. Why? Because further analysis of UMVARA

[49] *Husted v Auto-Owners Ins Co*, 459 Mich 500, 509-510 (1999). State Farm shares this sentiment in its brief as well.

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and the corresponding provisions of the **No Fault Act makes it clear that it is the insurance carrier who has the ability to choose who to pay**, not the injured person or the provider.

Section 23 of the UMVARA is relevant and provides in part:

> Allowable expense benefits ***may be paid*** by the reparation obligor ***directly*** to persons supplying products, services, or accommodations to a claimant.

In the drafters Comment section relating to this provision, the UMVARA provides as follows:

> The provision permitting direct payment to the suppliers of products, services, or accommodations is in addition to a provision, contained elsewhere (Section 29), permitting the claimant to assign his claim to the supplier. The direct payment authorized by this Section may be made whether or not an assignment has been executed.[50]

The UMVARA makes another reference to this payment method by an insurer in the Comment to another section of the Act:

> Section 23(a) permits an insurer to make direct payment to the suppliers even if no assignment of benefits has been executed.

This particular UMVARA section and comment are virtually identical to what is contained in MCL 500.3112. As this Court has repeatedly recognized: MCL 500.3112 is essentially for the protection and convenience of the insurer and allows the insurer, but does not require the insurer, to pay a provider directly (if it chooses) which is exactly the way the medical insurance industry worked on October 1, 1973 and continues to the present time.

Allowing a unilateral assignment by the injured person essentially nullifies MCL 500.3112 because it interferes with an insurance carrier's right to discharge its liability by paying either the injured person or the provider directly. In this Court's 1981 decision of *Miller v State*

[50] UMVARA references assignments many times more than the No Fault Act.

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Farm Mut Auto Ins Co, this Court was confronted with a somewhat novel issue (at the time) under the Michigan No-Fault Act. What is illuminating is the comment about MCL 500.3112:

> The [No-Fault] Act is designed to minimize administrative delays and factual disputes that would interfere with achievement of the goal of expeditious compensation of damages suffered in motor vehicle accidents. **These ends are served, for example, by the Act's provisions … for a 'safe' method of payment of benefits by insurers, MCL 500.3112**.[51]

Thirty years later, this Court again implicitly endorsed the insurer's right – not a medical provider's or injured person's right – under MCL 500.3112 to choose payees:

> No-fault benefits are "payable to or for benefit of an injured person . . . . " MCL 500.3112. In this case, through settlement, the benefits were paid to [the injured person]….[52]

This Court went on to say that the insurer's liability for no-fault benefits was extinguished by this settlement and payment to the injured person. This is exactly the type of "safe method of payment of benefits by insurers" referred to thirty years earlier in 1981 *Miller, supra*.

Even this Court's recent *Covenant* decision (in the first two pages), reemphasized the importance of MCL 500.3112 and how it undoubtedly gives an insurance carrier the right to choose who to pay.

> While this provision undoubtedly allows no-fault insurers to directly pay healthcare providers for the benefit of an injured person, its terms do not grant healthcare providers a statutory cause of action against insurers to recover the costs of providing products, services, and accommodations to an injured person. Rather, **MCL 500.3112 *permits* a no-fault insurer to discharge its liability to an injured person by paying a healthcare provider directly**, on the injured person's behalf.[53]

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[51] *Miller v State Farm Mut Auto Ins Co*, 410 Mich 538, 568 (1981).
[52] *Miller v Citizens Ins Co*, 490 Mich 905, 905 (2011).
[53] *Covenant Med Ctr, Inc*, 500 Mich at 195-96 (emphasis added).

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Given that MCL 500.3112 allows an insurance carrier (and not the injured person or the provider) to choose who to pay, State Farm's assignment clause contained in the policy works in perfect harmony with the No Fault Act because it gives the discretion to State Farm whether to consent to an assignment. Any interpretation that MCL 500.3143 allows an injured person to assign benefits at his or her own discretion will nullify MCL 500.3112 and the interpretive case law generated by this Court.

Plaintiff indicates on page 16 of its Corrected Answer that "a court cannot interpret language of a statute to create surplusage" which is true,[54] but Plaintiff does not abide by its own reference. MCL 500.3143 has to be "interpreted" in order to allows assignments of benefits,[55] but any interpretation that 3143 permits assignments without the carriers consent runs afoul of MCL 500.3112 as well as decades of this Court's jurisprudence on the issue. There are other problems with Plaintiff's logic as well.

d. Contrary to Plaintiff's position, proper application of the logical doctrine of* expressio unius est exclusion alterius *further illustrates that the Michigan Legislature rejected the idea of giving injured persons an unfettered right to assign benefits.

Of significant concern is Plaintiffs' unsupported argument that MCL 500.3143 "implicitly" allows assignments (of presently due or past due benefits) under the logical doctrine of *expressio unius est exclusion alterius* (the expression of one thing is the exclusion of

[54] *See also Luttrell v Dep't of Corr*, 421 Mich 93, 107 (1984) (ruling that "imperative to statutory construction is the "rule of legislative acquiescence and the rule of avoiding absurdity and unreasonableness leads to exactly the opposite result from which the offenders' rule would.").
[55] If MCL 500.3143 said that assignment of past or presently due benefits was permitted than there would be no real discussion on this issue.

another).[56] Not only is this a misunderstanding of how the doctrine operates, but it is an argument void of any pertinent analysis of MCL 500.3143 or the No Fault Act.

For one, the "*expression* of one thing is the *exclusion* of another" does not operate in reverse so that the "*exclusion* of one thing (i.e. future assignments) is the *expression* of another (i.e. allowing current assignments)" – that would be a logical fallacy. Nor does the doctrine mean that the "prohibition" of one thing is the "allowance" of another. Not only does such an interpretation make no sense, it turns the doctrine on its head to create a desired result.[57]

Expressio unius est exclusion alterius means that if the legislature had meant to include a particular subject within the domain of its legislation than it would have expressly mentioned it. That is why all levels of appellate courts in Michigan "have repeatedly held that the Legislature's failure to adopt language contained in the uniform act creates a presumption that the corresponding language was considered and rejected."[58]

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[56] Plaintiffs/Appellee's Corrected Answer to Defendant/Appellant State Farm's Application for Leave to Appeal, p 17. Indeed, Even the concurrence in the lower court improperly relied on this doctrine. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182 (Shapiro, J., concurring in part and dissenting in part).

> The no-fault act itself speaks to the issue of assignment. It provides, "An agreement for assignment of a right to benefits *payable in the future* is void." MCL 500.3143 (emphasis added). Notably, the Legislature elected not to void assignment of past-due benefits. By not including past-due benefits in this statutory prohibition, the Legislature, under the doctrine of *expressio unius est exclusio alterius*, made clear its intent to adhere to the fundamental principle that assignments of past-due benefits are effective and proper

[57] *See also Luttrell*, 421 Mich at 107 (1984) ("like all other such rules, it is a tool to ascertain the intent of the Legislature. It does not automatically lead to results. As we have seen, reference to the legislative history, the rule of legislative acquiescence and the rule of avoiding absurdity and unreasonableness leads to exactly the opposite result from which the offenders' rule would").

[58] *Husted v Dobbs*, 459 Mich 500, 509(1999) (citing *Michigan Mutual Ins v Carson City Texaco*, 421 Mich 144, 148 (1984) and *Bak v Citizens Ins Co*, 199 Mich App 730, 742 (1993).

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Take for example this Court's decision in *Bradley v Saranac Cmty Sch Bd of Educ*.[59] In *Bradley*, the appellants were public employees and argued that their personnel records were exempt from the mandatory disclosure requirements of the FOIA.[60] The Court ultimately found the appellants arguments unavailing, but the Court also supported its conclusion by properly using *expressio unius est exclusion alterius*.

This Court ultimately recognized that the Legislature explicitly provided for some records to be prohibited from disclosure (i.e. the personnel records of law enforcement) but that others were not (i.e. all public employees or public officials) when promulgating Michigan's FOIA. Because the Legislature made no mention of any records other than the records of law enforcement, the legislature specifically rejected including the other records.[61]

As this Court stated:

> Our conclusion that the plaintiffs' personnel records are not exempt under the FOIA is bolstered by the absence of any indications that the Legislature intended a different result. As the Court of Appeals noted below, the Legislature specifically exempted the personnel records of law enforcement agencies from disclosure. This Court recognizes the maxim expression unius est exclusion alterius; that the express mention in a statute of one thing implies the exclusion of other similar things.[28] Because the Legislature realized that the FOIA could require the disclosure of the personnel records of law enforcement personnel, ***the conclusion that the Legislature rejected the opportunity to extend this exemption to other public employees is inescapable***.
>
> This Court has recognized that the Michigan FOIA is patterned after the federal FOIA. Unlike the Michigan FOIA, the federal FOIA has a specific exemption for personnel records. ***Because the Legislature modeled its FOIA on the federal version, we must conclude that by not adopting the specific language of the federal privacy exemption the Legislature intended that the personnel records of non-law enforcement public employees be available to the public***.[62]

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[59] 455 Mich 285 (1997).
[60] *Id*. at 289.
[61] *Id*. at 298-99.
[62] *Id.* (emphasis added) *holding modified by Michigan Fed'n of Teachers & Sch Related Pers, AFT, AFL-CIO v Univ of Michigan*, 481 Mich 657 (2008).

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This type of logic employed by a previous panel of this Court is needed in this case. In applying such logic, there can be only one conclusion: in 1973 the legislature was aware of the UMVARA provisions that allowed certain assignments, but it nevertheless rejected the provision and rejected giving an unfettered right to injured people to assign no-fault benefits (without the knowledge and consent of the no-fault carrier).

Even in reaching its conclusion in *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*,[63] this Court was particularly persuaded not only by what the No Fault Act says, but also by what the No Fault Act does NOT say.

The Court reasoned as follows:

> A thorough ***review of the statutory no-fault scheme reveals no support for an independent action by a healthcare provider against a no-fault insurer***. In arguing that healthcare providers may directly sue no-fault insurers, plaintiff primarily relies on MCL 500.3112, which provides, in pertinent part, that "[p]ersonal protection insurance benefits are payable to or for the benefit of an injured person or, in the case of his death, to or for the benefit of his dependents." While this provision undoubtedly allows no-fault insurers to directly pay healthcare providers for the benefit of an injured person, its terms do not grant healthcare providers a statutory cause of action against insurers to recover the costs of providing products, services, and accommodations to an injured person. Rather, MCL 500.3112 permits a no-fault insurer to discharge its liability to an injured person by paying a healthcare provider directly, on the injured person's behalf. And further, ***no other provision of the no-fault act can reasonably be construed as bestowing on a healthcare provider a statutory right to directly sue no-fault insurers*** for recovery of no-fault benefits. We therefore hold that healthcare providers do not possess a statutory cause of action against no-fault insurers for recovery of personal protection insurance benefits under the no-fault act.[64]

It bears mentioning that this Court was also seriously concerned that the Court of Appeals in *Covenant* failed to properly analyze Section 3112 at all when reaching its conclusion. In fact,

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[63] 500 Mich at 195 (concluding that "healthcare providers do not possess a statutory cause of action against no-fault insurers for recovery of personal protection insurance benefits under the no-fault act").
[64] *Id*. at 195-196.

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"completely absent from the analysis in the Court of Appeals cases discussed . . . is a meaningful explanation of what language in the no-fault act creates a cause of action for healthcare providers against insurers."[65] Unfortunately, the same failure plagues this case as the Court of Appeals again failed to engage in any proper statutory analysis of the No Fault Act.[66]

IV. STATE FARM'S ASSIGNMENT CLAUSE IS CLEAR AND UNAMBIGUOUS, DOES NOT VIOLATE MICHIGAN LAW, AND DOES NOT VIOLATE PUBLIC POLICY; THEREFORE, THE ASSIGNMENT CLAUSE SHOULD BE UPHELD AND THE LOWER COURT SHOULD BE REVERSED.

When the No Fault Act is properly analyzed and the rules of statutory construction are followed, there can be no doubt that the assignment clause in State Farm's policy does not violate the law or public policy. In fact, consistent with modern day policy and legislation, this Court has already held that non-assignment clauses are enforceable provided that the contractual prohibition against assignment is clear and unambiguous – which State Farm's clearly is as well.[67] The Court should do the same in this case, reverse the lower court, and uphold State Farm's assignment clause.

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[65] *Id.* at 204; *see also id.* at 218:

> The Court of Appeals' opinion in this case is premised on the notion that an injured person's healthcare provider has an independent statutory right to bring an action against a no-fault insurer for payment of no-fault benefits. *This premise is unfounded and not supported by the text of the no-fault act*. A healthcare provider possesses no statutory cause of action under the no-fault act against a no-fault insurer for recovery of PIP benefits. Plaintiff therefore has no statutory entitlement to proceed with its action against defendant

[66] *See id.* at 202-04 (emphasis added).

> None of these cases decided whether healthcare providers possess a statutory cause of action against no-fault insurers. Despite this, subsequent panels of the Court of Appeals have, in published and unpublished cases alike, consistently relied on one or more of the cases just discussed as if they had decided the issue, ***generally failing to engage in any statutory analysis*** of their own to ground a healthcare provider's cause of action in the text of the no-fault act[.]

[67] *See Detroit Greyhound Employees Federal Credit Union v Aetna Life Ins Co*, 381 Mich 683, 689-690 (1969) ("[T]hose who would compose a contractual bar against alienation must use

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CONCLUSION AND RAMIFICATIONS OF RULING FOR STATE FARM

The logical implication of ruling for State Farm is paramount: the no-fault system will become sustainable again. Litigants who claim that provider litigation is about medical care or prompt reparation to accident victims are simply wrong: it is about money.[68] It is not a coincidence that the meteoric rise of provider litigation in Michigan tracked an increase in costs and burden on the courts as well as the insurance industry. What may not be known to this Court is that it has also tracked an increase in assessment for the Michigan Assigned Claims Plan (MACP).[69]

The MACP – as this Court likely well knows – was established in 1973 to provide assistance to people injured in an accident when there was no other insurance available.[70] In accordance with MCL 500.3171, the "[c]osts incurred in the administration of the Assigned Claims Plan shall be allocated fairly among insurers and self-insurers."[71] While any given no-fault insurer pays out different amounts of indemnity and has different operating costs when compared to other carriers, the MACP is probably the most consistent measure of the cost of the no-fault system and the best gauge to track any increases in cost.

The "Assessment" is what the MACP uses to track any additional costs and is basically a projection of what is needed to fund the plan the following year. As the MACP puts it, the Assessment "represents administrative expenses as well as investigation costs and legal fees not

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'The plainest words.'"); *accord Burkhardt v Bailey*, 260 Mich App 636, 653 (2004) (holding that assignments are invalid if "clearly restricted" by contract).

[68] MCL 500.3142 interest and MCL 500.3148 attorney fees – which are multiplied whenever an assignment is executed – are significant driving factors.

[69] See http://www.michacp.org/assessment.aspx

[70] i.e. when an individual has no insurance of his or her own, does not have a spouse with insurance, does not reside with a relative who has insurance, and occupied a vehicle with no identifiable insurance for the vehicle or the driver. See MCL 500.3114, MCL 500.3172; see also http://www.michacp.org/

[71] MCL 500.3171.

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paid by servicing insurers. This advance assessment is intended to provide adequate cash flow for the operations of the MACP until the subsequent assessment."[72] Here it is for the past decade:

Assessment Year 2018/Billing Year 2017 – $272,187,732.90
Assessment Year 2017/Billing Year 2016 – $265,603,477.62
Assessment Year 2016/Billing Year 2015 – $248,155,822.36
Assessment Year 2015/Billing Year 2014 – $238,737,085.65
Assessment Year 2014/Billing Year 2013 – $227,748,456
Assessment Year 2013/Billing Year 2012 – $226,756,696
Assessment Year 2012/Billing Year 2011 – $204,401,454.25
Assessment Year 2011/Billing Year 2010 – $172,733,186.02
Assessment Year 2010/Billing Year 2009 – $160,023,835.11
Assessment Year 2009/Billing Year 2008 – $148,455,608.20
Assessment Year 2008/Billing Year 2007 – $141,423,725.08[73]

What is the reason for the MACP assessment nearly *doubling* in a span of a decade? Is it because the number of auto accidents went up? No. According to the State of Michigan the number of motor vehicle accidents has actually decreased since 2007.[74] Is it because more people are getting injured in auto accident now than in 2007? No. The number of injury claims has gone down in the last decade as well.[75]

So what is the logical reason why the number of accidents has decreased, the number of injuries has decreased, but the actual cost to the no-fault system has increased (and in the case of the MACP essentially doubled)? Could it be the rising cost of healthcare? Maybe. But there can

[72] http://www.michacp.org/assessment.aspx
[73] http://www.michacp.org/assessment.aspx
[74] https://www.michigan.gov/documents/msp/DecadeGlanceFatals_382744_7.pdf. Also attached as Appendix A. This Court can take judicial notice of the public documents on this government website. MRE 201(b), (b)(2), (d); *Leroux*, 465 Mich 594 at 613 (judicial notice of "official government data" permitted under MRE 201).
[75] https://www.michigan.gov/documents/msp/DecadeGlanceFatals_382744_7.pdf. Also attached as Appendix A. This Court can take judicial notice of the public documents on this government website. MRE 201(b), (b)(2), (d); *Leroux*, 465 Mich 594 at 613 (judicial notice of "official government data" permitted under MRE 201).

be no dispute that the cost of litigating the multitude of provider cases has significantly increased over the past decade and has reached unprecedented proportions.[76]

Take a look, for example, at the four Appellees involved in this case. While Jawad A. Shah, MD, PC was incorporated in 2003,[77] the other three Appellees did not even exist until 2012, 2015, and 2016 respectively.[78] This means that three out of the four plaintiffs did not exist in 2007, were not treating patients in 2007, were not obtaining assignments in 2007, and were not filing lawsuits in 2007. So do we really have to ask why the cost of the no-fault system is increasing rapidly?

Now in 2019, State Farm (among every other carrier) is forced to defend against a multitude of different providers on the same claim – all of whom have separate claims for interest and attorney fees on top of the bills. About a decade earlier, State Farm would be dealing with either only their insured or, at most, Jawad A. Shah, MC, PC.[79] Nobody can honestly believe that the current trend of multiplication of claims and lawsuits is sustainable.

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[76] This is not a controversial statement. Anyone who doubts this statement is invited to the 15th district court in Ann Arbor on a Wednesday afternoon to verify it. For that matter, anyone can go to the 19th, 20th, or 31st district courts to see this fact as well – 90% of the motions and pretrial conferences (or the like) are cases involving medical providers suing no-fault carriers. But if you have only an hour or two to spare, go to Wayne County Circuit Court on any given Friday morning when it has motion call.

[77] Appendix B. See also https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=800979475&SEARCH_TYPE=1.
This Court can take judicial notice of the public documents on this government website. MRE 201(b), (b)(2), (d); *Leroux*, 465 Mich 594 at 613 (judicial notice of "official government data" permitted under MRE 201).

[78] Appendix B. See also https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?ID=800979475&SEARCH_TYPE=1.
This Court can take judicial notice of the public documents on this government website. MRE 201(b), (b)(2), (d); *Leroux*, 465 Mich 594 at 613 (judicial notice of "official government data" permitted under MRE 201).

[79] All four plaintiff providers have the same business address and same resident agent.

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This is not a sustainable practice by any means, and allowing an injured person to execute multiple assignments without the knowledge or consent of the carrier will produce extremely expensive if not disastrous results (as one could argue it already has). If this Court rules that an injured person has a right to assign benefits – regardless of what the insurance policy says – then the ruling would essentially nullify MCL 500.3112, overrule more than 35 years of its own jurisprudence, and sow the seed for the No Fault Acts demise.[80]

Taking a look back at some of the monumental events that have occurred in the 138 years since *Roger Williams*, it is a given that the public policy concerns in that case do not apply. Proper analysis of MCL 500.3143 and the No Fault Act by way of statutory construction hammers home the fact that the Legislature never intended to give injured persons the ability to assign claims without the knowledge and consent of the carrier.

State Farm's assignment clause was approved by the Commissioner of Insurance, it does not run afoul of public policy, and it clearly operates in seamless harmony with the No Fault Act and the jurisprudence generated by this Court. As a result, the Court of Appeals should be reversed in this case, and State Farm's assignment provision should be upheld. The natural consequence of such a ruling is obvious: the no-fault system will become sustainable again.

Respectfully submitted,

By: /S/ John C.W. Hohmeier

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January 16, 2019

[80] Anyone who looks at the Assessment of the MACP can agree that the actual "cost" of maintaining the no-fault system is out of control.

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APPENDIX A

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Michigan Traffic Crash Decade-At-A-Glance

Produced by the Traffic Crash Reporting Unit 517-241-1699

	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Total Crashes	314,921	312,172	297,023	298,699	289,061	273,891	284,049	282,075	290,978	316,057	324,174
Total Injuries	78,394	79,724	74,157	71,378	71,031	70,519	71,796	70,501	70,931	74,568	80,576
Total A Injuries	6,084	5,634	4,865	4,909	5,283	5,676	5,706	5,980	6,511	6,725	7,485
Total Fatalities	1,028	1,064	963	876	951	936	889	937	871	980	1,084
Fatal Crashes	937	980	893	806	881	870	834	868	806	915	987
Fatality Rate per 100m VMT**		1.1	1.0	0.9	1.0	1.0	0.9	1.0	0.9	1.0	1.0
Fatal Crash Rate per 100m VMT**		1.0	0.9	0.8	0.9	0.9	0.9	0.9	0.8	0.9	0.9
Fatality Restraint Use*	53.0%	52.3%	52.5%	50.7%	53.3%	50.3%	53.4%	51.6%	50.4%	49.7%	54.4%
Alc/Drug-Inv Fatal Crashes	421	378	346	291	316	314	297	329	328	357	349
% of Alc/Drug-Inv Fatal Crashes to total fatal crashes	44.9%	38.6%	38.7%	36.1%	35.9%	36.1%	35.6%	37.9%	40.7%	39.0%	35.4%
Alcohol/Drug-Inv Fatalities	470	412	384	319	354	342	319	357	351	379	381
% of Alc/Drug-Inv Fatalities to total fatalities	45.7%	38.7%	39.9%	36.4%	37.2%	36.5%	35.9%	38.1%	40.3%	38.7%	35.1%
Alcohol Inv Fatal Crashes	320	251	271	222	257	260	253	264	277	297	313
Alcohol Inv Fatalities	359	271	303	236	284	281	274	283	299	317	345
Drug Inv Fatal Crashes	221	213	159	131	142	119	119	137	113	130	90
Drug Inv Fatalities	246	236	179	150	165	135	127	153	119	140	98
OUIL Arrests *(all agencies)*	32,474	32,610	33,720	35,060	35,823	37,182	37,540	41,883	45,893	47,251	49,867
Regtd Vehicles *(Millions)*	8.48	8.38	8.26	8.19	8.11	8.05	8.09	8.06	8.11	8.38	8.33
MVMT *(Billions)***		99	98.1	98.1	95.1	94.3	94.8	97.6	95.9	100.9	104.6
Population *(Millions)*	9.96	9.93	9.92	9.9	9.88	9.87	9.88	9.97	10.00	10.07	10.09

Restraint Use by deceased occupants of motor vehicles equipped with safety belts.

*2013 - VMT, Fatality Rate, and Fatal Crash Rate were updated for all years, using the corresponding year's VMT. The current year VMT will be updated after July when it is published.

3/28/2018

APPENDIX B

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ID Number: 801943983 Request certificate New search

Summary for: STERLING ANESTHESIA, P.L.L.C.

The name of the DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY: STERLING ANESTHESIA, P.L.L.C.

Entity type: DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY

Identification Number: 801943983 **Old ID Number:** E8031Y

Date of Organization in Michigan: 03/04/2016

Term: Perpetual

The name and address of the Resident Agent:

Resident Agent Name: ALI MADHA

Street Address: 4800 S SAGINA ST STE 1821

Apt/Suite/Other:

City: FLINT State: MI Zip Code: 48507

Registered Office Mailing address:

P.O. Box or Street Address:

Apt/Suite/Other:

City: State: Zip Code:

Act Formed Under: 023-1993 Michigan Limited Liability Company Act

Managed By:

Members

View filings for this business entity:

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ANNUAL REPORT/ANNUAL STATEMENTS
CERTIFICATE OF CORRECTION
CERTIFICATE OF CHANGE OF REGISTERED OFFICE AND/OR RESIDENT AGENT
RESIGNATION OF RESIDENT AGENT
CERTIFICATE OF ASSUMED NAME

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Department of Licensing and Regulatory Affairs

ID Number: 801904215 Request certificate New search

Summary for: INSIGHT ANESTHESIA, P.L.L.C.

The name of the DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY: INSIGHT ANESTHESIA, P.L.L.C.

Entity type: DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANY

Identification Number: 801904215 **Old ID Number:** E6799A

Date of Organization in Michigan: 08/17/2015

Term: Perpetual

The name and address of the Resident Agent:

Resident Agent Name: ALI MADHA

Street Address: 4800 S SAGINAW ST STE 1840

Apt/Suite/Other:

City: FLINT State: MI Zip Code: 48507

Registered Office Mailing address:

P.O. Box or Street Address:

Apt/Suite/Other:

City: State: Zip Code:

Act Formed Under: 023-1993 Michigan Limited Liability Company Act

Managed By:

Members

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ID Number: 800985694 Request certificate New search

Summary for: INTEGRATED HOSPITAL SPECIALISTS P.C.

The name of the DOMESTIC PROFESSIONAL CORPORATION: INTEGRATED HOSPITAL SPECIALISTS P.C.

Entity type: DOMESTIC PROFESSIONAL CORPORATION

Identification Number: 800985694 **Old ID Number:** 04400G

Date of Incorporation in Michigan: 02/28/2012

Term: Perpetual

Most Recent Annual Report: 2018 **Most Recent Annual Report with Officers & Directors:** 2018

The name and address of the Resident Agent:

Resident Agent Name: ALI MADHA

Street Address: 4800 S SAGINAW ST

Apt/Suite/Other:

City: FLINT State: MI Zip Code: 48507

Registered Office Mailing address:

P.O. Box or Street Address:

Apt/Suite/Other:

City: State: Zip Code:

The Officers and Directors of the Corporation:

Title	Name	Address
PRESIDENT	JAWAD A. SHAH	4800 S SAGINAW ST. FLINT, MI 48507 USA
TREASURER	ALI MADHA	4800 S SAGINAW ST. FLINT, MI 48507 USA
SECRETARY	ATIF BAWAHAB	4800 S SAGINAW ST. FLINT, MI 48507 USA
DIRECTOR	JAWAD A. SHAH	4800 S. SAGINAW ST FLINT, MI 48507 USA

Act Formed Under: 284-1972 Business Corporation Act

Acts Subject To: 192-1962 Professional Service Corporation Act

Total Authorized Shares: 60,000

Written Consent

View filings for this business entity:

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ANNUAL REPORT/ANNUAL STATEMENTS
ARTICLES OF INCORPORATION
RESTATED ARTICLES OF INCORPORATION
CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION
CERTIFICATE OF ABANDONMENT OF AMENDMENT

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Department of Licensing and Regulatory Affairs

ID Number: 800979475 Request certificate New search

Summary for: JAWAD A. SHAH, M.D., P.C.

The name of the DOMESTIC PROFESSIONAL CORPORATION: JAWAD A. SHAH, M.D., P.C.

Entity type: DOMESTIC PROFESSIONAL CORPORATION

Identification Number: 800979475 **Old ID Number:** 51651C

Date of Incorporation in Michigan: 04/09/2003

Term: Perpetual

Most Recent Annual Report: 2018 **Most Recent Annual Report with Officers & Directors:** 2018

The name and address of the Resident Agent:

Resident Agent Name: ALI MADHA

Street Address: 4800 S. SAGINAW ST.

Apt/Suite/Other:

City: FLINT State: MI Zip Code: 48507

Registered Office Mailing address:

P.O. Box or Street Address:

Apt/Suite/Other:

City: State: Zip Code:

The Officers and Directors of the Corporation:

Title	Name	Address
PRESIDENT	JAWAD A. SHAH	4800 S. SAGINAW ST FLINT, MI 48507 USA
TREASURER	ALI MADHA	4800 S SAGINAW FLINT, MI 48507 USA
SECRETARY	ATIF BAWAHAB	4800 S SAGINAW FLINT, MI 48507 USA
DIRECTOR	JAWAD A. SHAH	4800 S SAGINAW FLINT, MI 48507 USA

Total Authorized Shares: 60,000

Written Consent

View Assumed Names for this Business Entity

View filings for this business entity:

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