STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs/Appellees,

v

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant/Appellant.

Supreme Court Case No. 157951

Court of Appeals Case No. 340370

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

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STATE FARM'S BRIEF ADDRESSING THE NO-FAULT AMENDMENTS AND RESPONDING TO THE MHHA'S AMICUS BRIEF

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I. Introduction

The Legislature recently amended the No-Fault Act to provide a direct cause of action to healthcare providers against insurers. This change, however, applies prospectively only—to services provided after June 11, 2019. That means this Court's *Covenant* decision still applies in full force to every service provided on or before that date, and providers do not have a direct cause of action against insurers. In this case, then—as in hundreds of cases pending in the lower courts—whether providers may proceed against insurers under an assigned cause of action even where the insurance policy contains an anti-assignment clause remains a critically important issue. Even after no-fault reform, this Court's review here is well warranted.

The Court's review is also warranted because at the heart of this case is a fundamental principle of contract law that applies well beyond the no-fault context. Following the 1880 *Roger Williams* decision, the Court of Appeals here held that *all* anti-assignment provisions violate public policy if they limit post-loss assignment. Anti-assignment provisions are extremely common in all sorts of contracts all over the state, not just in no-fault policies. This Court's review is necessary to clarify whether *Roger Williams* remains good law or whether the Court's modern precedent makes clear that competent contracting parties may restrict assignment contractually.

On this point, the Michigan Health & Hospital Association (MHHA) submitted a thoughtful amicus brief analyzing the common-law roots of the *Roger Williams* decision. But, respectfully, the MHHA's conclusion from the common-law record is exactly backward. The *Roger Williams* decision was a stark *departure* from the common law, and stands on an island distant from the mainland common-law rule that parties are free to restrict assignment in their contracts. The U.S. Supreme Court recognized this rule in *Roger Williams*-era decisions, and it was thereafter enshrined in the Restatements of Contracts (First and Second) and cemented by

this Court in *Detroit Greyhound Employees v Aetna Life Ins*, 381 Mich 683, 689-90; 167 NW2d 274 (1969). Simply put, the longstanding common-law rule—and the rule in Michigan—is that parties are free to restrict assignment contractually. Freedom of contract includes freedom to choose who your contract is with. The MHHA—relying mostly on inapposite real-property cases and an incomplete survey of the common law—gets this wrong, as did the Court of Appeals. This Court should grant leave to appeal to clarify that *Roger Williams* is no longer good law or to overrule it once and for all. Even after the no-fault amendments, this case presents a tremendously important and foundational issue of contract law that is well worth the Court's attention.

II. The Recent Amendments to the No-Fault Act Do Not Apply in this Case or in Hundreds of Other Pending Cases Involving the Enforceability of an Anti-Assignment Provision

In *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 218; 895 NW2d 490 (2017), the Court held that healthcare providers do not have a direct cause of action against insurers for recovery of no-fault benefits. The cause of action instead belongs to the insured and the insured alone. See *id.*

The Legislature, however, recently amended MCL 500.3112 to give healthcare providers a cause of action. Specifically, Public Act No. 21 of 2019 amends MCL 500.3112 to give designated healthcare providers "a direct cause of action" against insurers "to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." (See Exhibit A.)

This new cause of action, however, applies only "to products, services, or accommodations provided after the effective date of this amendatory act"—June 11, 2019. (See Ex B; showing that the approved version of Public Act No. 21 was filed with the Secretary of State on June 11, 2019.) If the services were provided on or before June 11, then the *Covenant*

rule still applies: the provider does not have a direct cause of action. This is true even if the case has not been filed yet. If a provider filed suit in May 2020 to recover for services provided on or before June 11, 2019, the provider would not have a direct cause of action. And the provider would still have to overcome anti-assignment provisions like State Farm's Assignment Clause to proceed under an assignment-based cause of action.

The issues in this case are therefore still very relevant and jurisprudentially significant. The *Covenant* rule still applies in this case and in hundreds of other cases pending in this Court and in the lower courts. Indeed, State Farm has seven other cases pending in this Court alone where the Assignment Clause is at issue.[1] State Farm has two more cases pending in the Court of Appeals.[2] And State Farm has hundreds of provider cases pending in trial courts across the state. This is just for State Farm—as the Insurance Alliance of Michigan notes in its amicus brief, "this issue is by no means limited to State Farm" and affects "dozens if not hundreds of pending cases involving IAM's member insurers[.]" (See IAM Amicus Br at viii.)

In short, the recent no-fault amendments will ultimately close the universe of provider assignment-based claims. But it is still a vast universe. This case is still well worth the Court's review.

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[1] See *Back in Motion Chiropractic, DC, PLLC v. State Farm Mut Auto Ins Co*, No. 160019; *Hogan v State Farm Mut Auto Ins Co*, No. 160035; *Insight Inst of Neurosurgery and Neuroscience v State Farm Mut Auto Ins Co*, No. 158797; *Michigan Spine and Brain Surgeons PLLC v State Farm Mut Auto Ins Co*, No. 159702; *Omega Rehab Services, LLC State Farm Mut Auto Ins Co*, No. 159513; *Lucia Zamorano, MD, PLLC v State Farm Mut Auto Ins Co*, No. 159558; *Team Rehabilitation W2 v State Farm Mut Auto Ins Co*, No. 159718.

[2] See *American Anesthesia Assoc v State Farm Mut Auto Ins Co*, COA No. 342767; *Associated Surgical Ctr PLLC v State Farm Mut Auto Ins Co*, COA No. 340816.

III. The MHHA Misreads the Common Law: The *Roger Williams* Decision Was a Stark Departure from the Ingrained Common Law Rule that Parties May Restrict Assignment Contractually

This case also has implications well beyond the no-fault world. At its core, this case raises a fundamental issue of contract law: Can two competent contracting parties agree not to assign their contractual rights to other parties? As State Farm set forth at length in its supplemental brief, the answer is yes. Freedom of contract includes the freedom to choose with whom to contract.

The Court of Appeals, however, following this Court's 1880 decision in *Roger Williams Ins Co v Carrington*, 43 Mich 252; 5 NW2d 303 (1880), held that parties don't have that freedom of contract. The court held that anti-assignment provisions violate public policy as to post-loss assignment. The MHHA argues in its amicus brief that there was nothing remarkable about this holding because the *Roger Williams* decision fits in a long line of common-law decisions invalidating anti-assignment provisions: "The rule in *Roger Williams* was . . . deeply ingrained in common law before that decision," and "has remained so ever since." (MHHA Br at 17.)

The MHHA is wrong. A closer review of the common law reveals the exact opposite conclusion. The deeply ingrained common-law rule is that parties are free to restrict assignment contractually. And *that* rule has remained: It has been recognized repeatedly by the U.S. Supreme Court, the Restatement of Contracts, and this Court's controlling precedent. The *Roger Williams* decision is the outlier, clashing with all of these venerable authorities. The Court should take the opportunity in this case to clarify that *Roger Williams* is no longer good law or to overrule it altogether.

A. The "ancient common law" did not establish a public policy in favor of assignments; it outright *prohibited* assignments.

MHHA's error begins at the beginning. MHHA argues that "*Roger Williams* articulates a rule of public policy established under ancient common law[.]" (MHHA Br at 7.) But the ancient common law did not establish a rule of public policy favoring assignment. The ancient common law *prohibited* assignment altogether.

The U.S. Supreme Court surveyed this ancient common law in *Sprint Communications Co, LP v APCC Services, Inc*, 554 US 269 (2008). The Court explained that "[p]rior to the 17th century . . . with only limited exceptions, English courts refused to recognize assignments at all." *Id.* at 275. "Courts then strictly adhered to the rule that a 'chose in action'—an interest in property not immediately reducible to possession (which, over time, came to include a financial interest such as a debt, a legal claim for money, or a contractual right)—simply could not be transferred to another person by the strict rules of the ancient common law.'" *Id.* (quoting 2 W. Blackstone, Commentaries at 442; other citations omitted).

The MHHA is wrong to suggest, then, that the ancient common law somehow supported free assignability in the face of an anti-assignment clause. The ancient common law outright prohibited assignment even *without* an anti-assignment clause. Wherever the *Roger Williams* Court divined a "public policy" favoring an "absolute right" of assignment, 43 Mich at 252, it was not from the ancient common law. The public policy in the early days stood firmly against assignment under any circumstances.

B. Courts slowly began to recognize assignments as English commerce expanded.

The MHHA is right, though, that the common law evolved from there. The U.S. Supreme Court surveyed this evolution in the *Sprint* case. See 554 US at 275-77. The Court explained that, "[a]s the 17th century began . . . strict anti-assignment rules seemed inconsistent

with growing commercial needs. And as English commerce and trade expanded, courts began to liberalize the rules that prevented assignments of choses in action." *Id.* at 276 (citations omitted). Assignments were treated differently in courts of law and courts of equity, but "[t]he upshot is that by the time Blackstone published volume II of his Commentaries in 1766, he could dismiss the 'ancient common law' prohibition on assigning choses in action as a 'nicety . . . now disregarded.'" *Id.* at 277 (quoting 2 Blackstone, *supra*, at 442).

"Legal practice in the United States largely mirrored that in England." *Id.* As one leading court of the time put it:

> The subject of the assignment of choses in action has been often under the consideration of the courts in England as well as in the United States; and it seems clear, at this day, that the assignee is to be considered, in law as well as in equity, as the party beneficially interested, subject, indeed, to the legal claim of the debtor, but free from the claims of the assignor, his executors, or administrators.

Cutts v Perkins, 12 Mass 206, 211 (1815). Thus, in 1816 the U.S. Supreme Court recognized that American courts "now take notice of assignments of choses in action, and exert themselves to afford them every support and protection." See *Sprint*, 554 US at 278 (quoting *Welch v Mandeville*, 14 US 233, 236 (1816)). Reflecting this consensus, in the 19th century many states passed statutes "that permitted any 'real party in interest' to bring suit." *Id.* at 279 (citations omitted). Michigan's CL 1871, § 5775, discussed in State Farm's previous briefs, is one such example.

C. By the close of the 19th century, American courts broadly recognized that assignment could be precluded by contract. This consensus rule is reflected in the Restatement of Contracts.

MHHA's crucial error, though, is in treating this general policy allowing assignment as an absolute rule that assignment could never be precluded by contract. This was not the case at common law, and is not the case today. Both the common law and modern law hold that parties *may* restrict assignment contractually.

As the U.S. Supreme Court explained in 1890, "[a] contract to pay money may doubtless be assigned by the person to whom the money is payable, *if* there is nothing in the terms of the contract which manifests the intention of the parties to it that it shall not be assignable." *Bd of Com'rs of Delaware Cty v Diebold Safe & Lock Co*, 133 US 473, 488 (1890) (emphasis added). Indeed, by 1888 there was "no doubt" that this was the general rule in American courts. *Arkansas Valley Smelting Co v Belden Mining Co*, 127 US 379, 387 (1888). Courts across the country recognized that parties could validly restrict assignment by contract. See, e.g., *La Rue v Groezinger*, 84 Cal 281, 283-84; 24 P 42 (1890) ("[I]f the contract itself provides in terms that it is not transferable, it certainly cannot be transferred, although it otherwise might be so."); *Devlin v City of New York*, 63 NY 8, 17 (1875) ("Parties may, in terms, prohibit the assignment of any contract and declare that neither personal representatives nor assignees shall succeed to any rights in virtue of it, or be bound by its obligations.").

This consensus was recognized in the First Restatement of Contracts in 1932, which states the rule succinctly: "A right may be the subject of effective assignment unless . . . the assignment is prohibited by the contract creating the right." Restatement Contracts, 1st, § 151 (1932); see, e.g., *Concrete Form Co, for Use of Blairsville Sav & Tr. Co v W T Grange Const Co*, 320 Pa 205, 207-08; 181 A 589 (1935) (citing the Restatement and finding invalid an assignment of right to payment after the contract had been "substantially performed"; "The contract between defendant and the assignor prohibited an assignment by the latter without the consent of the former. A right may not be the subject of an effective assignment when the assignment is prohibited by the contract creating the right.").

The reason for this rule is straightforward. "[E]very one has a right to select and determine with whom he will contract, and cannot have another person thrust upon him without

his consent." *Arkansas Valley*, 127 US at 387. Thus, "[r]ights arising out of contract cannot be transferred if they are coupled with liabilities." *Id.* at 388 (citation omitted).[3]

This is the deeply ingrained common-law rule. There is no common-law public policy favoring an "absolute right" of assignment. See *Roger Williams*, 43 Mich 252. The common-law rule is the opposite: the right to assign is not absolute, and contracting parties are free to limit assignment contractually.

The MHHA's error is treating a general policy favoring assignability as an absolute right to assign. The MHHA is right that the common law evolved from the ancient days to allow and even generally favor free assignability of a chose in action. State Farm has no quarrel with MHHA's statement that, "[i]n their receipt of the common law, American states followed their English counterparts and adopted the principle that, generally, choses in action were freely assignable." (MHHA Br at 10.) But the key word there is "generally." An equally venerable common-law public policy evolved alongside that general principle upholding contracting parties' right to *restrict* assignment contractually. And on this question—the key question in this case—MHHA goes silent. It nowhere addresses the authority cited above establishing the well-ingrained common law rule allowing contracting parties to restrict assignment contractually.

[3] That is exactly the case here. As State Farm has explained, insureds have ongoing obligations under the no-fault insurance contract even after benefits have accrued. (See State Farm's Suppl Br at 31-32.) And because the insured's obligations, such as submitting to an independent medical exam, can be performed "by him alone," the assignment of "both his rights and his obligations" can be restricted by contract. See *Delaware Cty*, 133 US 473 at 488 (citing *Arkansas Valley*, 127 US at 387-88).

D. In *Detroit Greyhound*, this Court recognized that clear contractual provisions may validly restrict assignment. The Second Restatement of Contracts cites *Detroit Greyhound* in support of this rule.

State Farm has addressed at some length this Court's holding in *Detroit Greyhound Employees v Aetna Life Ins*, 381 Mich 683; 167 NW2d 274 (1969) that contractual anti-assignment provisions *are* enforceable so long as they use "[c]lear language" and "the plainest words." (See State Farm's Suppl Br at 27.) The MHHA does not even mention *Detroit Greyhound*, much less attempt to explain how the common law could dictate that a chose in action is always assignable when this Court has held the opposite.

Detroit Greyhound built on the foundation of 19th century cases that first recognized the validity of contractual limitations on assignments.[4] In *Arkansas Valley* (1888) and *Delaware County* (1890), the United States Supreme Court relied on, among other precedents, the New York Court of Appeals' 1875 decision in *Devlin*. See *Arkansas Valley*, 127 US at 390; *Delaware Cty*, 133 US at 494. Eight decades later, *Detroit Greyhound* relied for its holding primarily on two New York Court of Appeals cases that in turn relied on *Devlin*. See *Detroit Greyhound*, 381 Mich at 689-90 (citing *Allhusen v Caristo Const Corp*, 303 NY 446, 451; 103 NE2d 891 (1952) and *State Bank v Cent Mercantile Bank of New York*, 248 NY 428, 434; 162 NE 475 (1928)). Thus, there is a line of unbroken common-law precedent running from *Devlin* in 1875, through the U.S. Supreme Court's decisions in *Arkansas Valley* and *Delaware County* in 1888 and 1890, and later New York (and other state cases) such as *Allhusen* and *State Bank* in the early-to-mid-1900s, to this Court's decision in *Detroit Greyhound* in 1969. And that line of precedent teaches

[4] In contrast, *Roger Williams* does not cite a single case of any sort in its discussion of the assignment at issue. See 43 Mich at 254. Rather, the *Roger Williams* Court relied entirely on an unnamed statute. See *id.*

that "a contractual bar against alienation" is valid as long as it uses "[c]lear language" and "the plainest words." See *Detroit Greyhound*, 381 Mich at 689-90.

That line of common-law precedent does not end with *Detroit Greyhound*. The Second Restatement of Contracts was adopted in 1981. And the Second Restatement, like the First, expressly permits contractual restrictions on assignment: "A contractual right can be assigned unless . . . assignment is validly precluded by contract." Restatement Contracts, 2d, § 317(2); (see State Farm's Suppl Br at 27-28). Indeed, the Restatement *expressly* relies on *Detroit Greyhound* as one of several cases that support the rule that it is the intent of the parties as evidenced by the terms of their agreement—not a categorical rule—that determines the effect of a contractual restriction on assignments. See Restatement Contracts, 2d, § 322(2) & Reporter's Note to comment c. And when determining the intent of the parties, "a court must construe and apply unambiguous contract provisions as written." *Rory v Contl Ins Co*, 473 Mich 457, 461; 703 NW2d 23 (2005). So the First Restatement, the Second Restatement, and this Court's controlling precedent all agree: Contracting parties are free to limit assignment in their contracts.

E. Cases governing the alienability of real property are inapposite.

With no way around *Detroit Greyhound* or the Restatement, the MHHA points instead to a supposed "strong public policy against restraints on alienation." (See MHHA Br at 17-18.) But the authorities cited by the MHHA address attempts to limit the alienability of *real property*.[5] Real property is its own beast in the law, and the rules about when someone can restrict alienation of their house, for example, do not apply in other contexts like this one.

[5] See *Albro v Allen*, 434 Mich 271; 454 NW2d 85 (1990) (whether the nature of a joint tenancy prohibits conveyance of life estate by one joint tenant); *Braun v Klug*, 335 Mich 691; 57 NW2d 299 (1953) (whether deed restriction on future sales was valid); *Sloman v Cutler*, 258 Mich 372;
Continued on next page.

Rights to real property and rights to collect no-fault benefits or other general contract benefits are very different things. See *Mandlebaum v McDonell*, 29 Mich 78, 91 (1874) (explaining that freedom of contract faces more restrictions when the subject is "real estate" as opposed to "personal property and rights"). Real-property rights are perhaps the most ancient of all common-law rights, with the rule against restraints on the alienation of real property developing perhaps as early as the 13th century. See Restatement of Property, 2d, Don Trans, Div I, Part II, Intro Note (1983). And the rule against restraints on alienability of interests in real property arises either because free alienability is a defining characteristic of a fee estate or because alienability of property interests "is essential to the welfare of society." See *id.* Moreover, the rule against restraints on alienability is based on the premise that the holder of a fee simple has an "absolute" right to the subject property. See *Sloman v Cutler*, 258 Mich 372, 374; 242 NW 735 (1932).

The right to no-fault benefits, on the other hand, is a creature of statute (subject to contractual limitations) that did not exist in Michigan before the passage of the No-Fault Act in 1972. And unfettered alienability cannot be either a defining characteristic of that right or essential to the welfare of society because, among other reasons, the Legislature imposed restrictions on the right to assign no-fault benefits when it created them. See MCL 500.3143. Further, the typical insured in an assignment-clause case does not have an "absolute" right to benefits equivalent to a fee simple. Rather, issues such as causation, the necessity of the treatment, and the reasonableness of the provider's charges are still to be determined. And the insured must still cooperate with the insurer, submit to independent medical examinations, and

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242 NW 735 (1932) (whether anti-assignment provision in executory land contract was valid); *Mandlebaum v McDonell*, 29 Mich 78 (1874) (whether will provision limiting devisees' ability to sell devised estates was valid).

so forth. (See State Farm's Suppl Br at 31-32.) Thus, the real-property cases cited by the MHHA have nothing to say about whether assignments of the right to collect no-fault benefits—or other non-real-property benefits—may be validly limited by contract.

Moreover, even the alienability of interests in real property *can* be limited by contract. For example, in *Sloman* this Court examined a provision in an executory land contract barring assignments without the consent of the seller. See 258 Mich at 374. The Court concluded this was *valid*, explaining that "[w]hile the contract remains executory and the vendor has interest in preserving his security, the validity of the restriction as against the vendor is sustained by the great weight of authority, and in justice it ought to be sustained." *Id.* at 376; see *Moffit v Sederlund*, 145 Mich App 1, 12-14; 378 NW2d 491 (1985) (recognizing that, at most, Michigan law prohibits only "unreasonable" restraints on the alienation of real-property interests). Indeed, the common law as a whole recognizes that restraints on alienation are proper in appropriate circumstances. See Restatement of Property, 2d, Don Trans, Div I, Part II, Intro Note ("Restraints on alienation are frequently imposed in connection with sales of residential property, particularly those involving condominium and cooperative arrangements, and on the transfer of shares of corporate stock."). And here, as in *Sloman*, "the contract remains executory"—because the insured has ongoing obligations to State Farm—and State Farm "has interest in preserving" its rights by making sure its insured has an ongoing incentive to comply with those obligations. See 258 Mich at 376; (State Farm's Suppl Br at 31-32). Thus, even under the more restrictive rules governing real property, State Farm's Assignment Clause would still be enforced.

F. The Court should overrule *Roger Williams* because it clashes with the common law and modern precedent.

In sum, the MHHA is simply wrong to assert that "[t]he rule in *Roger Williams* was . . . deeply ingrained in common law before that decision," and "has remained so ever

since." (MHHA Br at 17.) In fact, the status of assignments under the common law has evolved over time. The "ancient" common law prohibited the assignment of a chose in action altogether. See *Sprint*, 554 US at 275. Then, between the 17th and mid-19th century, courts came to allow assignments. See *id.* at 276-77. This led to problems, however, because unfettered alienability could deprive one party of the benefit of its bargain—the right to deal exclusively with and receive performance exclusively from a specific counterparty. See *Delaware Cty*, 133 US at 488; *Arkansas Valley*, 127 US at 387-88. So American common law evolved further to recognize that assignments can be validly restricted by contract. See, e.g., *Arkansas Valley*, 127 at 387; *Devlin*, 63 NY at 17. This consensus view was recognized by the First Restatement of Contracts in 1932 (see Restatement Contracts, 1st, § 151), and this Court followed that consensus view in the *Detroit Greyhound* case in 1969. The Second Restatement of Contracts in 1981 then cited *Detroit Greyhound* in support of this rule. All of these venerable authorities now agree: Parties may restrict assignment contractually.

So what should the Court do about *Roger Williams*? As discussed in State Farm's briefing, there are several grounds to distinguish *Roger Williams*, including that it relied on an unnamed statute providing an "absolute right" to assign that no longer exists, and that the insurer there sought to void a policy rather than simply enforce the anti-assignment provision. So the Court could simply conclude that *Roger Williams* is inapplicable and apply its modern precedent to uphold the Assignment Clause here.

But to the extent *Roger Williams* still has any life or applicability in this case, this Court should just overrule it once and for all. As laid out above, the *Roger Williams* conclusion that parties have an "absolute right" to assign clashes with the common law. The well-ingrained common-law rule is that parties are free to restrict assignment contractually. This Court has

rightly cautioned that "*alteration* of the common law should be approached cautiously with the fullest consideration of public policy and should not occur through sudden departure from longstanding rules." *Price v High Pointe Oil Co*, 491 Mich 870; 809 NW2d 566 (2012) (emphasis added). But as shown above, it was the *Roger Williams* decision that "alter[ed]" and represented a "sudden departure" from the common law. Indeed, the contrary common-law rule ultimately grew around the *Roger Williams* decision and hardened with the adoption of the Restatement of Contracts, this Court's decision in *Detroit Greyhound*, and other modern precedent upholding freedom to contract. But *Roger Williams* remains, a growth entombed, that the Court of Appeals has attempted to resurrect.

This Court of course does not and should not overrule precedent lightly. *Roger Williams* has been on the books for over a century without being expressly overruled, but "[a]n ancient case can actually be less persuasive than a more recent precedent when the ancient case hasn't been consistently followed . . . or contradicts the logic of later cases." See Garner et al., *The Law of Judicial Precedent* (Thomson Reuters 2016), at p 177. "Hence no clear inference can be drawn from a case's ancient status alone. Instead, an analysis of the case's reasoning becomes necessary to ensure that time hasn't enfeebled its underlying rationale." *Id.* Moreover, "[c]ourts consider whether a particular precedential rule is supported by a single, isolated case or by a series of cases. Courts generally give less precedential weight to decisions that are isolated and haven't been followed (or acquiesced in) than to a line of precedent." *Id.* at p 397; see *Ford v Dilley*, 156 NW 513, 519 (Iowa 1916) ("It is significant, too, that in the 71 years since Hight's Case was decided it has never been referred to in this jurisdiction.") "Similarly, when related principles of law have so changed as to leave a particular precedent outdated, courts are more likely to be amendable to overruling a precedent. When a particular precedent stands alone or is

at odds with related legal doctrine, it's often a sign that the particular case was poorly reasoned or incorrect." *The Law of Judicial Precedent* at pp 397-98.

That is exactly the case with *Roger Williams*. The *Roger Williams* decision stands as an outlier in the history of common-law jurisprudence. It is poorly reasoned—to the extent it contains any reasoning at all—and nowhere explains *why* contracting parties should not be free to choose with whom they contract. There is no support in the law for the *Roger Williams* decision, and this Court should overrule it once and for all.

IV. Conclusion and Relief Requested

Even after the recent no-fault reform, this case remains jurisprudentially significant and tremendously important. The no-fault amendments do not affect this case or hundreds of others like it, nor do they affect the foundational principle of contract law at their core. State Farm therefore respectfully requests that the Court grant leave to appeal to reverse the Court of Appeals' decision invalidating the Assignment Clause.

Respectfully submitted,
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EXHIBIT 1

Act No. 21
Public Acts of 2019
Approved by the Governor
May 30, 2019
Filed with the Secretary of State
June 11, 2019
EFFECTIVE DATE: June 11, 2019

STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2019

Introduced by Senators Nesbitt, Theis, LaSata, Horn, McBroom, Barrett, Lauwers and VanderWall

ENROLLED SENATE BILL No. 1

AN ACT to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 150, 224, 1244, 2038, 2040, 2069, 2105, 2106, 2108, 2111, 2118, 2120, 2151, 3009, 3101, 3101a, 3104, 3107, 3109a, 3111, 3112, 3113, 3114, 3115, 3135, 3142, 3145, 3148, 3151, 3157, 3163, 3172, 3173a, 3174, 3175, and 3177 (MCL 500.150, 500.224, 500.1244, 500.2038, 500.2040, 500.2069, 500.2105, 500.2106, 500.2108, 500.2111, 500.2118, 500.2120, 500.2151, 500.3009, 500.3101, 500.3101a, 500.3104, 500.3107, 500.3109a, 500.3111, 500.3112, 500.3113, 500.3114, 500.3115, 500.3135, 500.3142, 500.3145, 500.3148, 500.3151, 500.3157, 500.3163, 500.3172, 500.3173a, 500.3174, 500.3175, and 500.3177), section 150 as amended by 1992 PA 182, section 224 as amended by 2007 PA 187, section 1244 as amended by 2001 PA 228, section 2069 as amended by 1989 PA 306, section 2108 as amended by 2015 PA 141, section 2111 as amended by 2012 PA 441, sections 2118 and 2120 as amended by 2007 PA 35, section 2151 as added by 2012 PA 165, sections 3009 and 3113 as amended by 2016 PA 346, section 3101 as amended by 2017 PA 140, section 3101a as amended by 2018 PA 510, section 3104 as amended by 2002

(4) The amount of a premium reduction under subsection (1) must appear in a conspicuous manner in the declarations for the policy, and be expressed as a dollar amount or a percentage.

Sec. 3111. Personal protection insurance benefits are payable for accidental bodily injury suffered in an accident occurring out of this state, if the accident occurs within the United States, its territories and possessions, or Canada, and the person whose injury is the basis of the claim was at the time of the accident a named insured under a personal protection insurance policy, the spouse of a named insured, a relative of either domiciled in the same household, or an occupant of a vehicle involved in the accident, if the occupant was a resident of this state or if the owner or registrant of the vehicle was insured under a personal protection insurance policy or provided security approved by the secretary of state under section 3101(4).

Sec. 3112. Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his or her death, to or for the benefit of his or her dependents. A health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled to the benefits, the insurer, the claimant, or any other interested person may apply to the circuit court for an appropriate order. The court may designate the payees and make an equitable apportionment, taking into account the relationship of the payees to the injured person and other factors as the court considers appropriate. In the absence of a court order directing otherwise the insurer may pay:

(a) To the dependents of the injured person, the personal protection insurance benefits accrued before his or her death without appointment of an administrator or executor.

(b) To the surviving spouse, the personal protection insurance benefits due any dependent children living with the spouse.

Sec. 3113. A person is not entitled to be paid personal protection insurance benefits for accidental bodily injury if at the time of the accident any of the following circumstances existed:

(a) The person was willingly operating or willingly using a motor vehicle or motorcycle that was taken unlawfully, and the person knew or should have known that the motor vehicle or motorcycle was taken unlawfully.

(b) The person was the owner or registrant of a motor vehicle or motorcycle involved in the accident with respect to which the security required by section 3101 or 3103 was not in effect.

(c) The person was not a resident of this state, unless the person owned a motor vehicle that was registered and insured in this state.

(d) The person was operating a motor vehicle or motorcycle as to which he or she was named as an excluded operator as allowed under section 3009(2).

(e) The person was the owner or operator of a motor vehicle for which coverage was excluded under a policy exclusion authorized under section 3017.

Sec. 3114. (1) Except as provided in subsections (2), (3), and (5), a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. A personal injury insurance policy described in section 3103(2) applies to accidental bodily injury to the person named in the policy, the person's spouse, and a relative of either domiciled in the same household, if the injury arises from a motorcycle accident. If personal protection insurance benefits or personal injury benefits described in section 3103(2) are payable to or for the benefit of an injured person under his or her own policy and would also be payable under the policy of his or her spouse, relative, or relative's spouse, the injured person's insurer shall pay all of the benefits up to the coverage level applicable under section 3107c to the injured person's policy, and is not entitled to recoupment from the other insurer.

(2) A person who suffers accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers shall receive the personal protection insurance benefits to which the person is entitled from the insurer of the motor vehicle. This subsection does not apply to a passenger in any of the following, unless the passenger is not entitled to personal protection insurance benefits under any other policy:

(a) A school bus, as defined by the department of education, providing transportation not prohibited by law.

(b) A bus operated by a common carrier of passengers certified by the department of transportation.

(c) A bus operating under a government sponsored transportation program.

(d) A bus operated by or providing service to a nonprofit organization.

(b) Collect and maintain claims of criminal and fraudulent activities in the insurance industry.

(c) Investigate claims of criminal and fraudulent activity in the insurance market that, if true, would constitute a violation of applicable state or federal law, including, but not limited to, the Michigan penal code, 1931 PA 328, MCL 750.1 to 750.568, and this act.

(d) Maintain records of criminal investigations.

(e) Share records of its investigations with other criminal justice agencies.

(f) Review information from other criminal justice agencies to assist in the enforcement and investigation of all matters under the authority of the director.

(g) Conduct outreach and coordination efforts with local, state, and federal law enforcement and regulatory agencies to promote investigation and prosecution of criminal and fraudulent activities in the insurance market.

Sec. 6302. (1) A document, material, or information related to an investigation of the anti-fraud unit is confidential by law and privileged, is not subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action. However, the director may use the documents, materials, or information in the furtherance of any supervisory activity or legal action brought as part of the director's duties.

(2) The director, or any person that received documents, materials, or information while acting on behalf of the anti-fraud unit, is not permitted and may not be required to testify in any private civil action concerning any confidential documents, materials, or information described in subsection (1).

(3) To assist in the performance of the anti-fraud unit's duties, the director may do any of the following:

(a) Share documents, materials, or information, including the confidential and privileged documents, materials, or information that is subject to subsection (1), with any of the following:

(*i*) Other state, federal, and international regulatory agencies.

(*ii*) Other state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.

(*iii*) Any other person as the director considers necessary to discharge the anti-fraud unit's duties under section 6301 or other applicable law.

(b) Receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from any of the following:

(*i*) Other state, federal, and international regulatory agencies.

(*ii*) Other state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information.

(*iii*) Any other person as the director considers necessary to discharge his or her duties under this act or any other applicable act.

(c) Enter into agreements governing the sharing and use of information that are consistent with this section.

(4) The director shall maintain as confidential and privileged any documents, materials, or information received under subsection (3)(b) with notice or the understanding that the documents, materials, or information is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(5) The disclosure of any documents, materials, or information to the director, or the sharing of documents, materials, or information under subsection (3), is not a waiver of, and must not be construed as a waiver of, any privilege applicable to or claim of confidentiality in those documents, materials, or information.

Sec. 6303. (1) Beginning July 1 of the year after the effective date of the amendatory act that added this section, the anti-fraud unit shall prepare and publish an annual report to the legislature on the anti-fraud unit's efforts to prevent automobile insurance fraud.

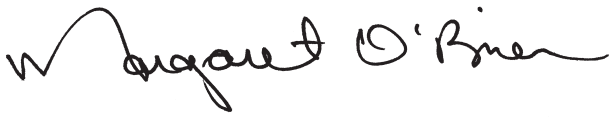
(2) The anti-fraud unit shall submit the annual report to the legislature required by this section to the standing committees of the senate and house of representatives with primary jurisdiction over insurance issues and the director.

Sec. 6304. This chapter does not limit the power of the anti-fraud unit to conduct activities under Executive Order No. 2018-9 with respect to the financial services industry or markets.

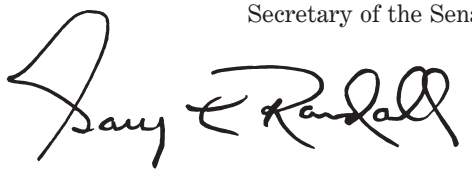
Enacting section 1. Section 3112 of the insurance code of 1956, 1956 PA 218, MCL 500.3112, as amended by this amendatory act, applies to products, services, or accommodations provided after the effective date of this amendatory act.

Enacting section 2. Section 3135 of the insurance code of 1956, 1956 PA 218, MCL 500.3135, as amended by this amendatory act, is intended to codify and give full effect to the opinion of the Michigan supreme court in *McCormick v Carrier*, 487 Mich 180 (2010).

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

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Governor

EXHIBIT 2

No. 60

STATE OF MICHIGAN

Journal of the Senate

100th Legislature

REGULAR SESSION OF 2019

Senate Chamber, Lansing, Wednesday, June 12, 2019.

10:00 a.m.

The Senate was called to order by the President pro tempore, Senator Aric Nesbitt.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Alexander—present
Ananich—present
Barrett—present
Bayer—present
Bizon—present
Brinks—present
Bullock—present
Bumstead—present
Chang—excused
Daley—present
Geiss—present
Hertel—present
Hollier—present
Horn—present
Irwin—present
Johnson—present
LaSata—present
Lauwers—present
Lucido—present
MacDonald—present
MacGregor—present
McBroom—present
McCann—present
McMorrow—present
Moss—present
Nesbitt—present
Outman—present
Polehanki—present
Runestad—present
Santana—present
Schmidt—present
Shirkey—present
Stamas—present
Theis—present
VanderWall—excused
Victory—present
Wojno—present
Zorn—present

Senator Sean McCann of the 20th District offered the following invocation:

We have gathered on this day in service and in trust, and to be mindful of the people we serve: people of varied religious traditions, cultures, and political persuasions; people who serve one another in the many institutions and industries of this state.

Let us give thanks for the people of Michigan – our brothers and sisters in life. Let us keep in mind our calling: to be dedicated to the highest ideals of equity and justice, of freedom and liberty; exemplars of the leadership skills which would make Michigan a model of peace, compassion, sustainable living, and of shared prosperity. Let us build trust by always seeking to live in right relations with ourselves, with others, and with life.

May commitment to the common good be strong within us and among us. May wisdom be our guide. May we be excellent stewards of the many gifts and resources of our state as we conduct the business before us.

The President pro tempore, Senator Nesbitt, led the members of the Senate in recital of the *Pledge of Allegiance*.

Motions and Communications

Senator MacGregor moved that Senator VanderWall be excused from today's session.

The motion prevailed.

Senator McMorrow moved that Senators Ananich and Hollier be temporarily excused from today's session.

The motion prevailed.

The following communication was received:

Office of Senator Stephanie Chang

June 11, 2019

Per Senate Rule 1.110(c) I am requesting that my name be added as a co-sponsor to Senate Bill 365 which was introduced on June 11, 2019 by Senator McCann and was referred to the Senate Committee on Environmental Quality.

Sincerely,
Senator Stephanie Chang
District 1

The communication was referred to the Secretary for record.

The following communication was received:

Office of Senator Wayne A. Schmidt

June 11, 2019

I am writing to ask my name be added as a co-sponsor to Senate Bill 364.

If you have any questions, please feel free to contact my office at 517-373-2413.

Sincerely,
Wayne A. Schmidt
State Senate
37th District

The communication was referred to the Secretary for record.

Messages from the Governor

The following message from the Governor was received:

Date: May 30, 2019
Time: 10:23 a.m.

To the President of the Senate:

Sir—I have this day approved and signed

Enrolled Senate Bill No. 1 (Public Act No. 21), being

An act to amend 1956 PA 218, entitled "An act to revise, consolidate, and classify the laws relating to the insurance and surety business; to regulate the incorporation or formation of domestic insurance and surety companies and associations and the admission of foreign and alien companies and associations; to provide their rights, powers, and immunities and to prescribe the conditions on which companies and associations organized, existing, or authorized under

this act may exercise their powers; to provide the rights, powers, and immunities and to prescribe the conditions on which other persons, firms, corporations, associations, risk retention groups, and purchasing groups engaged in an insurance or surety business may exercise their powers; to provide for the imposition of a privilege fee on domestic insurance companies and associations and the state accident fund; to provide for the imposition of a tax on the business of foreign and alien companies and associations; to provide for the imposition of a tax on risk retention groups and purchasing groups; to provide for the imposition of a tax on the business of surplus line agents; to provide for the imposition of regulatory fees on certain insurers; to provide for assessment fees on certain health maintenance organizations; to modify tort liability arising out of certain accidents; to provide for limited actions with respect to that modified tort liability and to prescribe certain procedures for maintaining those actions; to require security for losses arising out of certain accidents; to provide for the continued availability and affordability of automobile insurance and homeowners insurance in this state and to facilitate the purchase of that insurance by all residents of this state at fair and reasonable rates; to provide for certain reporting with respect to insurance and with respect to certain claims against uninsured or self-insured persons; to prescribe duties for certain state departments and officers with respect to that reporting; to provide for certain assessments; to establish and continue certain state insurance funds; to modify and clarify the status, rights, powers, duties, and operations of the nonprofit malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act," by amending sections 150, 224, 1244, 2038, 2040, 2069, 2105, 2106, 2108, 2111, 2118, 2120, 2151, 3009, 3101, 3101a, 3104, 3107, 3109a, 3111, 3112, 3113, 3114, 3115, 3135, 3142, 3145, 3148, 3151, 3157, 3163, 3172, 3173a, 3174, 3175, and 3177 (MCL 500.150, 500.224, 500.1244, 500.2038, 500.2040, 500.2069, 500.2105, 500.2106, 500.2108, 500.2111, 500.2118, 500.2120, 500.2151, 500.3009, 500.3101, 500.3101a, 500.3104, 500.3107, 500.3109a, 500.3111, 500.3112, 500.3113, 500.3114, 500.3115, 500.3135, 500.3142, 500.3145, 500.3148, 500.3151, 500.3157, 500.3163, 500.3172, 500.3173a, 500.3174, 500.3175, and 500.3177), section 150 as amended by 1992 PA 182, section 224 as amended by 2007 PA 187, section 1244 as amended by 2001 PA 228, section 2069 as amended by 1989 PA 306, section 2108 as amended by 2015 PA 141, section 2111 as amended by 2012 PA 441, sections 2118 and 2120 as amended by 2007 PA 35, section 2151 as added by 2012 PA 165, sections 3009 and 3113 as amended by 2016 PA 346, section 3101 as amended by 2017 PA 140, section 3101a as amended by 2018 PA 510, section 3104 as amended by 2002 PA 662, section 3107 as amended by 2012 PA 542, section 3109a as amended by 2012 PA 454, section 3114 as amended by 2016 PA 347, section 3135 as amended by 2012 PA 158, section 3163 as amended by 2002 PA 697, sections 3172, 3173a, 3174, and 3175 as amended by 2012 PA 204, and section 3177 as amended by 1984 PA 426, and by adding sections 261, 271, 2013a, 2111f, 2116b, 2162, 3107c, 3107d, 3107e, 3157a, and 3157b and chapters 31A and 63.

(Filed with the Secretary of State on June 11, 2019, at 3:22 p.m.)

Respectfully,
Gretchen Whitmer
Governor

Senator MacGregor moved that rule 3.902 be suspended to allow the guests of Senator Daley admittance to the Senate floor, including the center aisle.

The motion prevailed, a majority of the members serving voting therefor.

Senator MacGregor moved that rule 3.901 be suspended to allow filming and photographs to be taken from the Senate Gallery.

The motion prevailed, a majority of the members serving voting therefor.

Recess

Senator MacGregor moved that the Senate recess subject to the call of the Chair.

The motion prevailed, the time being 10:05 a.m.