2021–2022 INSURANCE SURVEY ARTICLE

MOHEEB H. MURRAY,[†] LENA M. GONZALEZ,[‡] MAHDE Y. ABDALLAH,[†‡] MONICA S. BATSFORD,[‡‡] & ZAKARY A. DRABCZYK[‡‡†]

[†] Member, Bush Seyferth PLLC. B.A., 1997, *with high distinction*, University of Michigan Ross School of Business; J.D., 2001, *cum laude*, University of Michigan Law School.

[‡] Associate, Bush Seyferth PLLC. B.A., 2012, Michigan State University; J.D., 2016, *cum laude*, Wayne State University Law School.

[†‡] Associate, Bush Seyferth PLLC. B.A., 2012, *with distinction*, University of Michigan-Dearborn; J.D., 2015, *Order of the Coif*, Wayne State University Law School.

[‡‡] Associate, Bush Seyferth PLLC. B.A.S., 2006, Eastern Michigan University; J.D., 2018, *cum laude*, Wayne State University Law School.

[‡‡†] Associate, Bush Seyferth PLLC. B.A., 2017, *cum laude*, Grand Valley State University; J.D., 2020, *summa cum laude*, Wayne State University Law School.

I. INTRODUCTION

The economy is often likened to an engine, experiencing rough starts, slowdowns, and—more recently—running red hot.[1] If the economy is like an engine, then insurance is like motor oil, allowing all components of the economy to interface smoothly and safely with one another. In more concrete terms, insurance offers businesses and consumers a sense of certainty about their liabilities and peace of mind in case of injury or downturn.[2] This is especially true in Michigan, home to the nation's best-known automotive manufacturers,[3] and—until recently—the only state in the country to require drivers to carry unlimited personal-injury-protection ("PIP") coverage.[4]

This Article examines recent developments in three of the most crucial areas of Michigan insurance law: post-suit assignments, the scope of the reimbursable care, and policy rescission. While this Article does not (and cannot) address every development in the *Survey* period, the issues discussed here have the potential to significantly impact businesses and consumers alike.

II. PITFALLS OF POST-SUIT ASSIGNMENT: RELEASE AND RES JUDICATA

A. Background

In today's no-fault landscape, patients frequently assign their right to claim PIP benefits to the medical provider treating them.[5] But providers and patients often misunderstand these assignments.[6] Contrary to what

1. *See, e.g.*, Will Daniel, *The 2022 Economy Is Like a 4-Engine Airplane with Only One that Works—and Most Experts Want to Turn It Off, Top Economist Says*, FORTUNE (Aug. 27, 2023, 6:30 AM), https://fortune.com/2022/08/27/economy-four-engine-plane-inflation-employment-personal-consumption-william-spriggs/ [https://perma.cc/4GPW-8TXF].

2. *See, e.g.*, Brian Beers, *Life Insurance: Putting a Premium on Peace of Mind*, INVESTOPEDIA (Mar. 23, 2022), https://www.investopedia.com/articles/pf/05/012405.asp#:~:text=Life%20insurance%20can%20offer%20peace,term%20or%20permanent%20life%20insurance [https://perma.cc/53DM-SGL4].

3. *See* Eric D. Lawrence, *The Numbers Don't Lie: Michigan's Still the Auto Industry Leader*, DETROIT FREE PRESS (Mar. 26, 2019, 6:00 AM), https://www.freep.com/story/money/cars/2019/03/26/michigan-remains-auto-industry-leader/3268108002/ [https://perma.cc/SQ3A-AWY2].

4. *See* Wayne J. Miller, *No-Fault Insurance*, 61 WAYNE L. REV. 577, 578, 580 (2016) (discussing Michigan's no-fault insurance law before the recent legislative amendments).

5. *See, e.g.*, Mecosta Cnty. Med. Ctr. v. Metro. Grp. Prop. & Cas. Ins. Co., 509 Mich. 276, 279, 983 N.W.2d 401, 404 (2022); *see also* Physiatry & Rehab Assocs. v. State Farm Mut. Auto Ins. Co., No. 350826, 2021 WL 1236126, *1 (Mich. Ct. App. Apr. 1, 2021).

6. *See* discussion *infra* Section II. C.–D.

some may believe, an assignment does not always guarantee the assignee full control over the assigned claims.[7] For example, many assignments occur *before* the patient sues her no-fault insurer.[8] In these cases, the assigned claims are unaffected by the patient's (the assignor's) subsequent action.[9] In other cases, however, the assignment occurs *after* the patient sues.[10] When that happens, the assignor retains some control over the assigned claims, provided that those claims were being litigated at the time of assignment.[11] As a result, in at least some cases, an assignor's subsequent acts may preclude her assignee from prevailing on a defense of release or res judicata.[12] Over the past year, Michigan's appellate courts have weighed in on post-suit assignments in the no-fault arena and in doing so, have raised several salient issues.[13]

B. Primer on Assignments

Contract law allows parties to assign various rights to one another in exchange for a payment, promise, or other consideration.[14] When an assignment occurs, the "assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses."[15] Among the rights that may be assigned is the right to collect PIP benefits—a right that is frequently assigned to medical providers.[16] Therefore, upon assignment, a medical provider stands in the shoes of the assigning patient and possesses whatever rights (and legal weaknesses) the patient would have in her own suit for PIP benefits.[17]

C. Patients May Settle and Release Assigned Claims if the Claims Were Already Part of the Patient's PIP-Benefit Lawsuit at the Time of Assignment

Often, a patient will settle and release an assigned claim before the provider takes any action. In these situations, the provider may be barred

---

7. *Id.*
8. *See Mecosta*, 509 Mich. at 279, 983 N.W.2d at 404.
9. *See id.* at 283, 983 N.W.2d at 406.
10. *See Physiatry & Rehab Assocs.*, 2021 WL 1236126 at *1.
11. *See id.* at *2.
12. *See id.*
13. *See* discussion *infra* Sections II.C.
14. Burkhardt v. Bailey, 260 Mich. App. 636, 652, 680 N.W.2d 453, 462 (2004).
15. *Id.*
16. Covenant Med. Ctr., Inc. v. State Farm Mut. Auto. Ins. Co., 500 Mich. 191, 217, 895 N.W.2d 490, 505 (Ct. App. 2017).
17. Pro. Rehab. Assocs. v. State Farm Mut. Auto. Ins. Co., 228 Mich. App. 167, 177, 577 N.W.2d 909, 915 (1998).

from recovery by way of the assignor's release. This proved to be the case in *Physiatry & Rehab Associates v. State Farm Mutual Auto Insurance Company*.[18] In *Physiatry*, the court held that claims assigned to a provider were barred by a patient's release executed after the assignment, because the patient did not assign those claims until *after* she sued her no-fault insurer for PIP benefits.[19]

To fully understand the court's decision, it is necessary to understand the timeline of the assignment. On November 17, 2017, the patient filed suit for "*all* no-fault claims . . . and unpaid benefits" against her insurer on November 17, 2017.[20] One year later, on November 5, 2018, the patient assigned her PIP-benefit rights to her medical provider, so that the provider could "recover payment for past and present services" rendered for her accident-related injuries.[21] The provider knew about the patient's lawsuit against the insurer, and on February 25, 2019, it provided notice to the insurer of the assignment through its own lawsuit.[22] Two days later, on February 27, 2019, the patient and the insurer settled their lawsuit, and the patient released all PIP claims and benefits through March 1, 2019—a period that included the claims assigned to the provider.[23] The action between the patient and insurer was subsequently dismissed on April 22, 2019.[24] In summary, the case turned on three dates:

Event	**Date**
Patient sues insurer on subject claims	November 17, 2017
Patient assigns subject claims to provider	November 5, 2018
Patient releases insurer	February 27, 2019

In considering the patient's ability to release the claim she had already assigned, the court cited a longstanding principle from the Michigan Supreme Court: "[W]hen an assignment of claims occurs after a lawsuit is filed—the subject of which concerns those assigned claims—the assignor may settle or release those claims, precluding any further recovery by the assignee."[25] This principle is conditioned on the assignee acquiescing to the assignor's proceedings—that is, permitting the suit to go on in the

18. Physiatry & Rehab Assocs. v. State Farm Mut. Auto Ins. Co., No. 350826, 2021 WL 1236126, *1 (Mich. Ct. App. Apr. 1, 2021).

19. *Id.* at *3.

20. *Id.* at *1 (emphasis added).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at *2 (citing Peters v. Gallagher, 37 Mich. 407, 411–12 (1877) and Sayre v. Detroit, G. H. & M. R. Co., 171 N.W. 502 (Mich. 1919)).

assignor's name.[26] The court thus held that the provider "was bound under the terms of the settlement [the patient] agreed to, which explicitly covered all other claims for PIP benefits," because (1) the assignment occurred after the patient's lawsuit was filed and (2) the provider acquiesced to the insurer's proceedings on the claims by not intervening in the lawsuit.[27]

In short, whether an assignor's full release binds the assignee turns on three questions: (1) whether the assigned claim was part of the assignor's lawsuit, (2) whether the assignment occurred after the assignor filed suit, (3) and whether the assignee acquiesced to the claim proceeding in the assignor's lawsuit.[28]

The primary takeaway from *Physiatry* should be a lesson for all providers: To protect an assigned claim already embroiled in litigation, the provider must fully step into the shoes of the assignor and intervene in the lawsuit.[29] The assignment of a claim that is involved in a lawsuit does *not* automatically remove that claim from the lawsuit, and the failure to intervene may leave the provider having to seek recovery directly from the patient, or perhaps, empty handed.[30]

D. Res Judicata May Also Bar an Assignee from Recovery

In the same context, but under the defense of res judicata, an assignee's claim can be precluded by a judgment against the assignor.[31] If the assignment occurs after the judgment is rendered, the judgment is binding on the assignee.[32] A judgment may also bind an assignee if the assignment occurred after the lawsuit commenced, and the assignee

---

26. *Id.* at *2 (citing *Peters*, 37 Mich. at 411–12).

27. *Id.* at *2–3. The court in Physiatry & Rehab Associates v. Alhalemi, 333 Mich. App. 87, 958 N.W.2d 626 (2020), reached a similar conclusion. In *Alhalemi*, the provider rendered medical services to defendant's insured and received an assignment of benefits on March 22, 2018. *Id*. at 88, 958 N.W.2d at 627. Before the assignment, the insured sued the insurer for payment of all PIP benefits. *Id*. The insured ultimately settled his claims on June 6, 2018, and released the insurer from all past, present, and future obligations to pay no-fault benefits. *Id*. at 89, 958 N.W.2d at 627. The court concluded that the release was binding on the plaintiff provider and dismissed the claims against the insurer. *Id*. at 89, 958 N.W.2d at 628. Notably, the court did not require that the provider have acquiesced to the insured's proceedings on the claims. Rather, to mandate the dismissal of the claims against the insurer, it required only an appropriate release covering the subject claim assigned to the provider. *Id.* at 91, 958 N.W.2d at 629.

28. *Physiatry & Rehab Assocs.*, 2021 WL 1236126 at *1–3.

29. *Id.*

30. *Id.*

31. *See* Mecosta Cnty. Med. Ctr. v. Metro. Grp. Prop. & Cas. Ins. Co., 509 Mich. 276, 279, 983 N.W.2d 401, 405–06 (2022).

32. *See id.*

acquiesced to the assignor proceeding with the claim.[33] Conversely, an assignee is protected if the assignment occurred *before* suit was commenced on that claim.[34]

This was recently made clear in *Mecosta County Medical Center v. Metropolitan Group Property & Casualty Insurance Company*.[35] There, a patient assigned his right to seek PIP benefits from his insurer to his medical provider.[36] After the assignment, the patient filed his *own* suit for PIP benefits, which eventually failed because he did not properly insure his vehicle.[37] Later, in the provider's lawsuit—filed while the patient's suit was still pending—the insurers argued that the judgment against the patient was res judicata and thus, barred the provider's action.[38]

The primary issue before the Michigan Supreme Court was whether the provider and the patient were "privies" with respect to the judgment entered against the patient.[39] In considering that question, the court recognized that:

> Generally, a relationship based on an assignment of rights is deemed to be one of privity. . . . But the mere succession of rights to the same property or interest does not, by itself, give rise to privity with regard to subsequent actions by and against the assignor. . . . *[T]he assignee succeeds to those rights subject to any earlier adjudication involving the assignor that defined those rights. When the litigation involving the assignor occurs after the assignment, the rights could not yet have been affected by the litigation at the time they were transferred to the assignee.*[40]

The court therefore held that "a judgment entered *after* the assignment does not bind the assignee because the assignee is not in privity with the assignor with respect to that judgment."[41] The provider was thus not bound by the judgment rendered against the patient.[42]

---

33. *See id.*
34. *See id.*
35. *Id.*
36. *Id.* at 279, 983 N.W.2d at 404.
37. *Id.*
38. *Id.* at 281, 983 N.W.2d at 405.
39. *See id.* at 282, 983 N.W.2d at 405 ("Res judicata bars a second action on the same claim if (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.") (citations omitted).
40. *Id.* at 284, 983 N.W.2d at 406 (emphasis added).
41. *Id.* at 285, 983 N.W.2d at 407 (emphasis added).
42. *Id.* at 290, 983 N.W.2d at 410.

Following *Mecosta*, the U.S. Court of Appeals for the Sixth Circuit, in *Massengale v. State Farm Mutual Auto Insurance Company*, addressed whether *Mecosta* "endorse[d] a bright-line rule that post-assignment judgments rendered against an assignor bind the assignee where the assignment occurred during the assignor's suit."[43] The Sixth Circuit interpreted *Mecosta* as emphasizing that "the seminal event is . . . whether the judgment against the assignor predated the assignment." [44] The Michigan Court of Appeals has made similar rulings.[45]

Yet, the Sixth Circuit also noted that "*Mecosta* had no occasion to consider issues unique to assignments made during the assignor's suit" and that "*Mecosta* cited several authorities that focus on whether the assignment occurred before 'the institution of' the assignor's suit."[46] The Sixth Circuit therefore made clear that while it is unwilling to adopt the "bright-line rule" noted above, it will not "displace longstanding principles of Michigan law" holding that assignments made during the litigation but before judgment "give rise to privity" for res judicata purposes.[47] *Physiatry*, discussed above, is one of those cases, and was referenced by *Massengale*.[48] Under this body of law, a judgment on the assignor is binding on an assignee for post-lawsuit assignments "where an assignee 'acquiesces in' the assignor's ongoing litigation over the assigned rights 'and permits the suit to go on' after the assignment."[49] This is because the assignee chooses not to protect itself and treats the assignor as his representative.[50] Under this reasoning, the judgment entered against the patient bound the provider in *Physiatry* on res judicata grounds.[51]

The longstanding principles discussed above require providers and insurers to be diligent. Providers need to inquire with their patients about the status of their lawsuits, and should act promptly to protect their assigned rights, even if the provider received the assignment just after rendering the services. Similarly, while defending against a lawsuit or

---

43. Massengale v. State Farm Mut. Auto. Ins. Co., No. 21-1430, 2022 WL 3585640, at *3 (6th Cir. Aug. 22, 2022).

44. *Id. Massengale* also holds that while an assignee may be bound by an assignor's conduct, there is no rule that binds an assignor by the subsequent acts of its assignee. *Id.*

45. *See* Enhance Ctr. for Interventional Spine & Sports v. Auto-Owners Ins. Co., No. 354517, 2021 WL 5232284 (Mich. Ct. App. Nov. 9, 2021); *see also* Michigan Spine & Brain Surgeons, PLLC v. Esurance Prop. & Cas. Ins. Co., No. 355581, 2021 WL 5027968 (Mich. Ct. App. Oct. 28, 2021), *appeal denied*, 979 N.W.2d 824 (Mich. 2022).

46. *Massengale*, 2022 WL 3585640 at *4.

47. *See id.*

48. Physiatry & Rehab Assocs. v. State Farm Mut. Auto Ins. Co., No. 350826, 2021 WL 1236126 (Mich. Ct. App. Apr. 1, 2021).

49. *Massengale*, 2022 WL 3585640 at *4.

50. *Id.*

51. *Physiatry & Rehab Assocs.*, 2021 WL 1236126 at *3.

before paying PIP benefits, insurers should consider providing notice of a patient's lawsuit to the patient's providers and investigate whether a provider's assigned claim is precluded by the patient's prior release or judgment. For both sides, timing is of the essence.

III. THE LEGAL SIGNIFICANCE OF "LAWFULLY RENDERED"

A. Background

It is well-established that accident-related care is compensable by insurance only if it was lawfully rendered and reasonably necessary for the insured's care, recovery, and rehabilitation.[52] While the latter requirement ("reasonably necessary") is hotly and frequently litigated, the former requirement ("lawfully rendered") was front and center in multiple cases this year, including *Skwierc v. Whisnant*,[53] *Precise MRI of Michigan, LLC v. State Auto Insurance Company*,[54] and *Grady v. Wambach.*[55]

B. The Scope of Michigan's No-Fault Statute Does Not Necessarily Dictate Whether Chiropractic Treatment Is "Lawfully Rendered"

Skwierc v. Whisnant arose out of a 2018 automobile accident where the plaintiff received chiropractic treatment.[56] The chiropractor sent the plaintiff to Premier MRI, an affiliate of Michigan Head and Spine Institute (MHSI), where he underwent magnetic resonance imaging (MRI) of his lumbar spine.[57] MHSI argued it was entitled to reimbursement for allowable expenses because the statute that defined chiropractic care included the ability to use diagnostic tools and analytical instruments, including MRIs.[58] The trial court, however, ruled that MHSI's

52. *See* Measel v. Auto Club. Grp. Ins. Co., 314 Mich. App. 320, 327, 886 N.W.2d 193, 197 (2016); *see also* MICH. COMP. LAWS § 500.3107(1)(a) (providing generally that subject to certain exceptions and limitations, PIP benefits are payable for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation"); MICH. COMP. LAWS § 500.3157(1) (generally permitting a "physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by personal protection insurance" to "charge a reasonable amount for the treatment").

53. Skwierc v. Whisnant, 339 Mich. App. 393, 984 N.W.2d 495 (2021).

54. Precise MRI of Michigan, LLC v. State Auto Ins. Co., 340 Mich. App. 270 (2022).

55. Grady v. Wambach, 339 Mich. App. 325, 984 N.W.2d 463 (2021), *appeal granted*, 972 N.W.2d 244 (Mich. 2022).

56. *Skwierc*, 339 Mich. App. 393, 984 N.W.2d 495.

57. *Id.* at 397, 984 N.W.2d at 498.

58. *Id.* at 398, 984 N.W.2d at 498.

chiropractor unlawfully engaged in the unauthorized practice of medicine when ordering the MRI.[59]

The Court of Appeals reversed. The court's analysis turned on *Hofmann v. Auto Club Insurance Association*,[60] which recognized that, in Michigan, the parameters of chiropractic care have been set by politicians, not medical professionals; accordingly, the scope is subject to judicial interpretation.[61] That scope is defined by Michigan's No-Fault Act, which states that a chiropractic service is not reimbursable if it was rendered before July 2, 2021, unless it was included in the definition of "practice of chiropractic" under section 16401 of the Health Code as of January 1, 2009.[62]

The *Skwierc* court also relied on the *Measel* framework, which requires the court to first consider whether the services at issue were "lawfully rendered."[63] "If so, then the services are within PIP coverage under MCL 500.3107, and the next question is whether each of the services was a practice of chiropractic service for purposes of MCL 500.3107b(b)."[64] The court criticized the trial court for not beginning with the threshold question (whether the MRI was unlawful) and "instead skipp[ing] straight to the question whether the . . . MRI was within the scope of chiropractic practice."[65] The trial court erred, the *Skwierc* court explained, because even if the MRI was not within the "practice of chiropractic," as defined in section 500.3107b(b), that would not necessarily mean that the MRI was unlawful. Relying on *Hofmann*, the court clarified:

> To be sure, only treatment lawfully rendered, including being in compliance with licensing requirements, is subject to payment as a no-fault benefit. It does not follow, however, that an activity is not lawfully rendered, and therefore not subject to payment as a no-fault benefit, merely because it is excluded from the statutory scope.[66]

The court then explained that the purpose of the licensing statute is not to prohibit acts excluded from the definition of chiropractic practice but to

---

59. *Id.* at 399, 984 N.W.2d at 498.
60. Hofmann v. Auto Club Ins. Ass'n, 211 Mich. App. 55, 535 N.W.2d 529 (1995).
61. *Skwierc*, 339 Mich. App. at 399, 984 N.W.2d at 499.
62. MICH. COMP. LAWS § 500.3170b; MICH. COMP. LAWS § 333.16401.
63. *Skwierc*, 339 Mich. App. at 400, 984 N.W.2d at 499 (internal quotations omitted).
64. *Id.*
65. *Id.*
66. *Id.* (quoting Hoffman v. Auto Club Ins. Ass'n, 211 Mich. App. 55, 64–65, 535 N.W.2d 529, 536 (1995)).

prohibit acts *within* the definition from being conducted without a license.[67] And because analysis of the spine *is* within the scope of chiropractic practice, the court held that the MRI was "lawfully rendered" treatment.[68]

The *Precise MRI* court largely adopted *Skwierc*'s analysis with one notable exception. After addressing the lawfulness of an MRI, but before determining whether the MRI at issue came within the definition of "practice of chiropractic," *Precise MRI* addressed one intermediary step necessitated by *Hoffman*: whether the use of the MRI is barred by statute.[69] The *Hofmann* court concluded that the statute "does not prohibit the use of an analytical instrument or adjustment apparatus if the instrument *either* (1) meets nationally recognized standards *or* (2) has been approved by the Board of Chiropractic."[70] The *Precise MRI* court thus turned to a document from the Michigan Association of Chiropractors, showing that by at least May 2010, the Board had included MRIs on the approved list of non-invasive imaging "tests."[71] The court noted that while the statute referred to the "practice of chiropractic," as defined on January 1, 2009, "[n]owhere in the definition of 'practice of chiropractic' as of January 1, 2009 d[id] it require an analytical instrument be approved by the Board by *a specific date*."[72] Accordingly, the court found that it did not matter whether the MRI was approved as of January 1, 2009; all that mattered was that the MRI *was* approved. What's more, the *Precise MRI* court assigned no significance to the Board's inclusion of MRIs under the "Tests" subheading.[73] "[T]o hold inclusion of MRIs under the 'Tests' subheading as dispositive of whether MRIs are reimbursable," the court reasoned, "would inappropriately exalt form over substance."[74]

Taken together, *Skwierc* and *Precise MRI* reflect the Court of Appeals' willingness to interpret the no-fault (and corresponding) statutes broadly, especially when defining the scope of reimbursable care.

---

67. *Skwierc*, 339 Mich. App. at 403, 984 N.W.2d at 500.
68. *Id.* at 406, 984 N.W.2d at 502.
69. Precise MRI of Michigan, LLC v. State Auto Ins. Co., 340 Mich. App. 270, 280–81 (2022) (citing MICH. COMP. LAWS § 338.12001).
70. *Id.* at 281 (quoting *Hofmann*, 535 N.W.2d at 538).
71. *Id.*
72. *Id.* at 293–84 (emphasis added).
73. *Id.*
74. *Id.*

C. Insurers Lack Standing to Challenge a Provider's Corporate Formation

Grady v. Wambach stemmed from treatment provided by plaintiff Mercyland Health Services, PLLC, which is owned by Dr. Mohammed Abraham. Dr. Abraham was not licensed to practice medicine in Michigan during the time that treatment was provided to the patient, Davina Grady.[75] Because Mercyland was not properly formed under Michigan law (due to Dr. Abraham's lack of licensing), Ms. Grady's no-fault insurer refused to pay her benefits on the basis that Mercyland's services were not lawfully rendered.[76] The insurer sought, and obtained, summary disposition on the same basis.[77]

The Court of Appeals reversed, finding that the insurer lacked standing to challenge Mercyland's formation under the Michigan Limited Liability Company Act.[78] The court relied on the Michigan Supreme Court's decision in *Miller v. Allstate*,[79] which similarly analyzed whether insurance companies have standing to challenge corporations under the Business Corporations Act (BCA).[80] The Supreme Court in *Miller* highlighted a provision in the BCA stating that "[t]he corporate existence shall begin on the effective date of the articles of incorporation" and that "[f]iling is conclusive evidence that . . . the corporation has been formed under [the BCA], except in an action or special proceeding by the attorney general."[81] This language, the *Miller* court held, limited any challenges to incorporation to the Attorney General alone.[82] Following *Miller*'s lead, the *Grady* court gave the identical provision in the MLLCA the same effect: the insurer could not challenge Mercyland's formation, because that power belonged solely to the Attorney General.[83]

Some might see *Grady* as closing the loop on *Miller*'s discussion of insurer challenges. But the Michigan Supreme Court seems intent on having the last say. In April 2022, the Michigan Supreme Court granted the *Grady* insurer's application for leave to appeal to address whether an insurance company has standing to challenge whether the members and managers of a healthcare provider incorporated as a PLLC are properly

75. Grady v. Wambach, 339 Mich. App. 325, 328, 984 N.W.2d 463, 465 (2021), *appeal granted*, 509 Mich. 937, 972 N.W.2d 244 (2022).
76. *Id.* at 327, 984 N.W.2d at 464–65.
77. *Id.*
78. *Id.*
79. Miller v. Allstate Ins. Co., 481 Mich. 601, 751 N.W.2d 463 (2008).
80. *Grady*, 339 Mich. App. at 330–31, 984 N.W.2d at 466–67.
81. *Miller*, 481 Mich. at 610, 751 N.W.2d at 469.
82. *Id.* at 611, 751 N.W.2d at 469.
83. *Grady*, 339 Mich. App. at 331, 984 N.W.2d at 467.

licensed in this state.[84] Yet until the Michigan Supreme Court weighs in, insurers might, in some circumstances, be on the hook for treatment that is not, in the plain meaning of the phrase, "lawfully rendered."

IV. THE LIMITS OF RESCISSION

A. Background

Another issue that earned much legal attention in 2022 was auto-policy rescission by insurers based on fraudulent inducement. As opposed to cancellation of a policy, recission effectively voids the contract, leaving the parties as if the contract never existed in the first place. This difference is important as cancellation applies to a policy only prospectively.[85]

Rescinding a policy after a car accident, however, raises important questions about fairness to those involved in the accident. In 2022, Michigan saw further refinement of questions regarding rescission, innocent third parties, and recission's effect on subsequent claims of negligence against the insurer.

B. Rescission and Third-Party Claims

Traditionally, under the "innocent third party rule," an insurer is prohibited from rescinding a policy because of a material misrepresentation where there is a claim involving an innocent third party.[86] However, the Michigan Supreme Court in *Titan Insurance Company v. Hyten*[87] and *Bazzi v. Sentinel Insurance Company*,[88] abrogated the innocent-third-party rule, holding it was not an absolute right.[89] Instead, *Bazzi* clarified that entitlement to rescission is a question for the court to determine on a case-by-case basis considering fundamental fairness. "Because a claim to rescind a transaction is equitable in nature, it is not strictly a matter of right but is granted only in the sound discretion of the court."[90] *Bazzi* further held that "[w]hen a plaintiff is seeking

84. *See* Grady v. Wambach, 509 Mich. 937, 972 N.W.2d 244 (Mich. 2022).

85. *See* Bazzi v. Sentinel Ins. Co., 502 Mich. 390, 409, 919 N.W.2d 20, 29 (2018) ("Rescission abrogates a contract and restores the parties to the relative positions that they would have occupied if the contract had never been made.").

86. *Id.* at 401, 919 N.W.2d at 25 ("In the past, Michigan courts have held that the right to rescind ceases to exist once there is a claim involving an innocent third party because public policy requires that an insurer be estopped from asserting rescission when a third party has been injured.") (internal citations omitted).

87. Titan Ins. Co. v. Hyten, 491 Mich. 547, 817 N.W.2d 562 (2012).

88. *Bazzi*, 502 Mich. 390, 919 N.W.2d 20.

89. *Id.*

90. *Id.* at 409, 919 N.W.2d at 29–30.

rescission, the trial court must balance the equities to determine whether the plaintiff is entitled to the relief he or she seeks. In other words, while the innocent-third-party rule no longer bars insurers from seeking rescission for fraud, insurers are not categorically entitled to rescission."[91] *Bazzi* thereby set the standard that the court was to "balance the equities to determine whether the plaintiff is entitled to the relief" sought:[92]

> For example, rescission should not be granted in cases where the result thus obtained would be unjust or inequitable, or where the circumstances of the challenged transaction make rescission infeasible. Moreover, when two equally innocent parties are affected, the court is required, in the exercise of [its] equitable powers, to determine which blameless party should assume the loss[.][93]

The court's decision in *University of Michigan Regents v. Michigan Automobile Insurance Placement Facility* continued to clarify the trial court's role in balancing the equities for relief. [94] In *Regents*, a healthcare provider with an assignment of rights from its patient sued to recover no-fault benefits after the auto insurer had rescinded its policy.[95] The provider sued the automobile insurer, Falls Lake, and the Michigan Automobile Insurance Placement Facility (MAIPF). Both defendants filed motions for summary disposition.[96] Falls Lake argued that the automobile insurance policy was rescinded for material misrepresentations.[97] MAIPF argued that equities must be balanced between Falls Lake and the plaintiff and that therefore Falls Lake should retain liability.[98] The trial court granted Falls Lake's motion but denied MAIPF's motion.[99] The trial court held that Falls Lake had rescinded the policy and the insured ratified the recission by accepting Falls Lake's check returning the policy premium.[100]

---

91. Pioneer State Mut. Ins. Co. v. Wright, 331 Mich. App. 396, 952 N.W.2d 586 (2020).

92. *Bazzi*, 502 Mich. at 410, 919 N.W.2d at 30.

93. *Id.* at 410–11, 919 N.W.2d at 30.

94. Univ. of Mich. Regents v. Mich. Auto. Ins. Placement Facility, 340 Mich. App. 196, 986 N.W.2d 152 (2022).

95. *Id.* at 198, 986 N.W.2d at 153.

96. *Id.*

97. *Id.* at 198–99 (explaining the policy was rescinded by the auto insurer after the insured made two material misrepresentations in his insurance application: "(1) failing to disclose two residents of Pierson's household over the age of 14 and (2) failing to disclose a second vehicle owned by Pierson.").

98. *Id.* at 200, 986 N.W.2d at 154.

99. *Id.*

100. *Id.*

As a result, MAIPF, but not Falls Lake, was obligated to pay the insured's medical bills.[101]

MAIPF appealed, arguing for reversal based on *Bazzi's* requirement that trial courts "balance the equities between a defrauded insurer and an innocent third party before extending the mutual rescission of a no-fault insurance policy to an innocent third party."[102] In response, Falls Lake argued that *Bazzi* was distinguishable.[103] Falls Lake noted that in *Bazzi*, "the insurers sought rescission of no-fault insurance contract by grant of the trial court," while in its case, "the rescission was accomplished by mutuality of action, i.e., by return and acceptance of the premium."[104] Falls Lake argued this was a legally distinct remedy from the equitable rescission in *Bazzi*.[105]

The Court of Appeals agreed with MAIPF and vacated the trial court's opinion.[106] The Court of Appeals, while acknowledging the distinction between an equitable and legal remedy, held that the trial court was still "required to balance the equities between a defrauded insurer and an innocent third party before extending the mutual rescission of a no-fault insurance policy to an innocent third party."[107] The reason was that legal rescission and equitable rescission had the same "legal underpinnings," so "logic dictate[d] that the same" balancing of the equities would control both remedies.[108] In remanding the case, the Court of Appeals made clear that *Bazzi* required the trial court to look at the balance of what was fair when determining coverage priorities for innocent third parties regardless of whether the remedy sought was legal or equitable in nature.[109]

---

101. *Id.*
102. *Id.* at 201, 986 N.W.2d at 154.
103. *Id.* at 203, 986 N.W.2d at 156.
104. *Id.*
105. *Id.*
106. *Id.* at 206, 986 N.W.2d at 157.
107. *Id.*
108. *Id.* at 205, 986 N.W.2d at 157.
109. *Id*. at 202–03, 986 N.W.2d at 156 (citing Pioneer State Mut. Ins. Co. v. Wright, 331 Mich. App. 396, 411 952 N.W.2d 586 (2020)). The *Regents* court applied the following factors: (1) the extent to which the insurer could have uncovered the subject matter of the fraud before the innocent third party was injured; (2) the relationship between the fraudulent insured and the innocent third party to determine if the third party had some knowledge of the fraud; (3) the nature of the innocent third party's conduct, whether reckless or negligent, in the injury-causing event; (4) the availability of an alternate avenue for recovery if the insurance policy is not enforced; and (5) a determination of whether policy enforcement only serves to relieve the fraudulent insured of what would otherwise be the fraudulent insured's personal liability to the innocent third party. *Id.*

C. A Valid Rescission Does Not Bar a Subsequent Negligence Claim Against the Insurer

Holman v. Farm Bureau General Insurance Company of Michigan[110] arose out of the post-accident rescission of an auto policy. Lawrence Holman purchased a used vehicle and contacted Farm Bureau Insurance agent Jonathan Heinzman to obtain a policy.[111] Agent Heinzman filled out the application based on information Mr. Holman provided—except for one crucial detail.[112] Although the application required proof of current insurance, Mr. Heinzman completed the application with a "bogus" policy number and then faxed a temporary certificate of insurance to Mr. Holman.[113] Mr. Heinzman only *then* asked Mr. Holman to send him proof of current insurance.[114] Mr. Holman responded with a certificate that had expired two years earlier, explaining that it was the only certificate he possessed.[115] In the end, Mr. Heinzman submitted the application to Farm Bureau *without* proof of current insurance.[116] A few weeks later, Farm Bureau sent Mr. Holman a letter that his application could not be approved because it was incomplete.[117]

After receiving the temporary certificate of insurance but before Mr. Holman claimed he received notice of rejection, Mr. Holman was involved in a motor-vehicle crash that left him hospitalized for several weeks.[118] He eventually filed a PIP-benefit action against Farm Bureau (*Holman I*), claiming that he did not receive notice of Farm Bureau's rejection until after the accident.[119] The trial court granted summary disposition to Farm Bureau, and the Court of Appeals affirmed.[120] Mr. Holman did not have coverage, the Court of Appeals explained, because (1) the temporary certificate of insurance had expired, (2) no notice of cancellation was required on the temporary insurance certificate, and (3) Farm Bureau could rescind Mr. Holman's policy based on his misrepresentation that he had not recently driven an uninsured vehicle.[121]

---

110. Holman v. Farm Bureau Gen. Ins. Co. of Michigan, No. 357473, 2022 WL 3129797, at *1 (Mich. Ct. App. Aug. 4, 2022) (marked for publication).
111. *Id.*
112. *Id.*
113. *Id.* at *4.
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*
119. *Id.* at *1–2; Holman v. Mossa-Basha, No. 338210, 2018 WL 6252049, at *2 (Mich. Ct. App. Nov. 29, 2018).
120. *Id.* at *1.
121. *Id.*

Following that decision, Mr. Holman again sued Farm Bureau (*Holman II*), claiming that it was vicariously liable for Mr. Heinzman's negligence in providing false information on the application.[122] During discovery, Mr. Heinzman and Mr. Holman offered competing testimony regarding who provided the incorrect prior policy information.[123] Ultimately, the trial court barred Mr. Holman's claim under the doctrine of collateral estoppel. In its view, *Holman I* had conclusively decided that Mr. Holman was responsible for the misrepresentations, and as a result, "[he] could not establish that any negligent conduct by Heinzman caused [his] damages."[124]

On appeal, Mr. Holman argued that *Holman I* "did not decide whether [he] or Heinzman [had] made the misrepresentations" but only that "[he] [had] *ratified* any misrepresentations by signing the application."[125] The Court of Appeals agreed and reversed the trial court's decision. The court noted that as a contracting party, Mr. Holman "had a duty to read the contract and know what he signed."[126] So even if Mr. Holman provided truthful information to Mr. Heinzman, he nonetheless affirmed a material misrepresentation when he signed the application.[127] And for purposes of contract law, that was enough to entitle Farm Bureau to rescission. But as the Court of Appeals explained, "*Holman I* did not actually and necessarily decide whether [Mr. Holman] or Heinzman made the misrepresentations" because the distinction was "meaningless."[128] Therefore, *Holman I* did not reach the questions related to the negligence action in *Holman II*.

The Court of Appeals also rejected Farm Bureau's causation argument. In addition to arguing collateral estoppel, Farm Bureau argued that Mr. Holman's ratification broke the causal link between Mr. Heinzman's misrepresentation and Mr. Holman's injuries.[129] Yet according to the Court of Appeals, the principles underlying rescission and ratification in a contract case, such as *Holman I*, are largely irrelevant to the question of causation in a negligence case.[130] In a negligence case, a plaintiff's failure to read a contract, though certainly evidence of the plaintiff's negligence, is not dispositive of the *other party's* negligence, nor of proximate cause generally.[131] As a result, notwithstanding Mr.

122. *Id.* at *2.
123. *Id.*
124. *Id.* at *3.
125. *Id.* at *4 (emphasis added).
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.* at *4.
131. *Id.* at *5.

Holman's apparent failure to read the application, a reasonable jury could find that Mr. Heinzman's contribution of false information proximately caused the insurance denial.[132]

Despite all of its complexity, *Holman II* leaves readers with a simple takeaway: a valid rescission does not necessarily preclude a subsequent tort-law action against the insurer. As for just how far the Court of Appeals is willing to extend that rule, only the future will tell.

V. CONCLUSION

On a fundamental level, insurance exists so that businesses and consumers can enjoy some degree of certainty. Yet as this Article demonstrates, insurance law is everchanging, and what seems certain today might not seem so tomorrow. For the reasons discussed above, those looking to remain certain of where they stand should carefully consider the recent developments in post-suit assignments, the scope of reimbursable care, and policy rescission.

132. *Id.*