A SURVEY OF MICHIGAN ASSIGNMENT LAW AS IT RELATES TO NO-FAULT INSURANCE CONTRACTS: POST-*COVENANT*

RAMY I. HIJAZI[†]

I. INTRODUCTION

Michigan's no-fault statute has one of the broadest and most liberal medical expense provisions of any no-fault statute in the United States.[1] Section 500.3107(1)(a) of Michigan's statute states that an allowable medical expense consists "of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery or rehabilitation."[2] These allowable

† Associate, Hewson & Van Hellemont, P.C. B.A., 2014, with distinction, University of Michigan-Dearbon; J.D., 2018, *cum laude*, Wayne State University Law School.

1. *Allowable Expense Benefits: Scope of the Benefits*, SINAS DRAMIS LAW FIRM, https://autonofaultlaw.com/michigan-no-fault/pip-benefits/medical-benefits/ (last visited Feb. 9, 2019).

2. MICH. COMP. LAWS ANN. § 500.3107(1)(a) (West 2018).

expenses are payable for life and without any dollar limitation.[3] Likewise, these services often include, but are not limited to, medical expenses, attendant care, nursing care, physical rehabilitation, vocational rehabilitation, and medical transportation mileage.[4] For decades, courts interpreted the statute to give these providers a direct cause of action against the insurer for unpaid or underpaid bills.[5] A cause of action in Michigan has generally been "defined as the fact or combination of facts giving rise to or entitling a party to sustain an action."[6] Such suits generally occur after an insurance company determines that an expense was either not an allowable medical expense because the victim no longer required treatment, the charges were not reasonable, or the service provided was not medically necessary.[7]

On May 25, 2017, the Michigan Supreme Court decided *Covenant Medical Center, Inc., v. State Farm Mutual Automobile Insurance Company*.[8] In the case, Covenant Medical Center brought suit against State Farm Mutual Automobile Insurance Company ("State Farm") to recover payment under Michigan's no-fault act.[9] State Farm moved for summary disposition, claiming that the Covenant Medical Center had no statutory cause of action against it.[10] The circuit court granted State Farm's motion.[11] On appeal, the Michigan Supreme Court held that "a review of the plain language of the no-fault act reveals no support . . . that a healthcare provider possesses a statutory cause of action against a no-fault insurer."[12] However, the court clearly expressed in *Covenant* that the "conclusion today is not intended to alter an insured's ability to assign his or her right to past or presently due benefits to a healthcare provider."[13] This Note explores current Michigan law regarding assignments and attempts to comprehend the nature of what one is

3. Steven M. Gursten, *Back to the bad old days for Michigan's car accident victims?*, MICH. AUTO LAW AUTO ACCIDENT ATTORNEYS (Nov. 1, 2011), https://www.michiganautolaw.com/blog/2011/11/01/nofault-reform-problems/.

4. *Allowable Expense Benefits*, *supra* note 1.

5. *See* JC Reindl, *People tapping Michigan's no-fault car insurance may be on hook for medical bills*, DET. FREE PRESS (June 5, 2017), https://www.freep.com/story/money/2017/06/06/people-tapping-michigans-no-fault-system-may-take-hit-health-bills/363690001/.

6. Multiplex Concrete Mach. Co. v. Saxer, 310 Mich. 243, 253, 17 N.W.2d 169, 172 (1945) (quoting Otto v. Village of Highland Park, 204 Mich. 74, 80, 169 N.W. 904, 906 (1918)).

7. *See* Reindl, *supra* note 5.

8. 500 Mich. 191, 895 N.W.2d 490 (2017).

9. *Id.* at 196–97, 895 N.W.2d at 493–94.

10. *Id.* at 197, 895 N.W.2d at 494.

11. *Id.*

12. *Id.* at 217, 895 N.W.2d at 504–05.

13. *Id.* at 217 n.40, 895 N.W.2d at 505 n.40.

assigning, the rights of the assignor and assignee after an executed assignment, the effect of an anti-assignment clause in a no-fault insurance contract, whether assigning a personal protection insurance benefit is a partial or full assignment of the cause of action, and whether anti-assignment clauses offend the purposes of the no-fault statue.

II. BACKGROUND

No-fault automobile insurance is a development in the common law tort liability system that governs the way motor vehicle accident victims are compensated.[14] Prior to Michigan's enactment of § 500.3101, only non-negligent auto accident victims were compensated for their injuries, leaving victims who were at fault and who sustained injuries uncompensated.[15] Further, the common law tort system "denied benefits to a high percentage of motor vehicle accident victims" and under such a system, "minor injuries were overcompensated, serious injuries were undercompensated, long payment delays were commonplace, the court system was overburdened, and those with low income and little education suffered discrimination."[16]

As a result of the shortfalls of the common law tort liability system, the Michigan Legislature adopted the Michigan No-Fault Automobile Insurance Act in 1972, which went into effect on October 1, 1973.[17] "The act created a compulsory insurance program under which insureds may recover directly from their insurers, without regard to fault, for qualifying economic losses arising from motor vehicle incidents."[18] Michigan's legislature intended to accomplish something that the common law tort system lacked.[19] The goal of the no-fault system is "to provide individuals injured in motor vehicle accidents assured, adequate and prompt reparation for certain economic losses at the lowest cost to the individual and the system."[20]

The underlying claim for no-fault benefits has many different understood names. Statutorily speaking, these benefits are referred to as personal protection insurance benefits.[21] However, many court opinions

14. GEORGE T. SINAS & WAYNE J. MILLER, MOTOR VEHICLE NO-FAULT LAW IN MICHIGAN—REVISED 3 (2015).

15. *Id.* at 3–4.

16. Shavers v. Kelley, 402 Mich. 554, 579, 267 N.W.2d 72, 77 (1978).

17. Gursten, *supra* note 3.

18. McCormick v. Carrier, 487 Mich. 180, 189, 795 N.W.2d 517, 523 (2010).

19. *See* Reindl, *supra* note 5.

20. Gooden v. Transamerica Ins. Corp. of Am., 166 Mich. App. 793, 800, 420 N.W.2d 877, 880 (1988).

21. MICH. COMP. LAWS ANN. § 500.3101 (West 2018).

have colloquially changed the term personal protection insurance benefits to PIP benefits, no-fault benefits, first-party benefits, and economic losses. [22] There are four types of no-fault personal protection insurance benefits under the Michigan No-Fault Act: "(1) allowable medical expenses; (2) wage loss benefits; (3) replacement service expenses; and (4) survivor's loss benefits." [23] For the purposes of this Note, I will only explore the effect of an assignment of an allowable medical expense benefit.[24]

As stated above, MCLA § 500.3107(1)(a) of Michigan's No-Fault Act states that an allowable medical expense consists of "all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation."[25] Any allowable medical expense is payable for life and, in most instances, without a dollar limitation.[26] In some circumstances, an insurer will determine that some or all of the medical expenses incurred are not allowable medical expenses.[27] This scenario frequently results in a lawsuit between the insurer and the insured.[28] Customarily, a lawsuit is filed in one of two ways: the insured brings a breach of contract claim against their insurer,[29] or the insured's medical provider brings a breach of contract claim on behalf of the insured for services it provided after the motor vehicle accident.[30] Despite this common practice, the Michigan Supreme Court recently ruled in *Covenant* that healthcare providers do not have a statutory right to directly bring an action against a no-fault insurer for unpaid bills.[31] However, the court held that healthcare providers may directly bring an action against a no-

22. *See* SINAS & MILLER, *supra* note 14, at 5.

23. *See id.*

24. *See infra* Section III.

25. MICH. COMP. LAWS ANN. § 500.3107(1)(a) (West 2018).

26. MICH. COMP. LAWS ANN. § 500.3107 (West 2018).

27. John Rosenfeld, *7 Things Insurance Companies Don't Want You to Know*, ROSENFELD INJURY LAWYERS LLC (Mar. 19, 2015), https://www.rosenfeldinjurylawyers.com/news/7-things-insurance-companies-dont-want-you-to-know/ (explaining why insurance companies "go to every effort possible to deny claims or settle for less money than claims are worth").

28. *See id.*

29. *See, e.g.*, Cruz v. State Farm Mut. Auto. Ins. Co., 466 Mich. 588, 590, 648 N.W.2d 591, 592 (2002) (showing that an insured person sued the insurance company directly for breach of contract).

30. *See, e.g.*, Covenant Med. Ctr., Inc. v. State Farm Mut. Auto. Ins. Co., 500 Mich. 191, 196, 895 N.W.2d 490, 5493 (2017) (showing that the insured's health care provider sued the insured's insurance company).

31. *Id.* at 218, 895 N.W.2d at 505.

fault insurer based on a validly executed assignment of a patient's right to sue.[32]

A. Defining an Assignment and the Nature of the Assigned Property Right

Assignment of some right or interest is not a concept exclusive to insurance law. "An assignment is defined as a transfer or making over to another the whole of any property, real or personal, in possession or in action, or any estate or right therein."[33] Where a patient executes an assignment of their right to sue an insurer for unpaid bills, a patient is executing an assignment of their cause of action against the insurer. This cause of action is a property right often called a "chose in action."[34]

B. The Elements Necessary for a Valid Assignment

"To [create] a valid assignment there must be a perfected transaction between the parties which is intended to vest in the assignee a present right in the thing assigned."[35] Further, Michigan's version of the statute of frauds requires that "[a]n assignment of things in action be in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise . . . ."[36] "Thus, under Michigan law, a written instrument, even if poorly drafted, creates an assignment if it clearly reflects the intent of the assignor to presently transfer" his property, in possession or in action, to the assignee.[37]

Under general contract law, consideration is necessary to make an agreement legally binding, thus it would appear that it may also be required to create a legally binding assignment.[38] However, the Michigan

32. *Id.* at 217 n.40, 895 N.W.2d at 505 n.40.

33. Weston v. Dowty, 163 Mich. App. 238, 242, 414 N.W.2d 165, 166 (1987) (citing BLACK'S LAW DICTIONARY 153 (4th ed. 1951)); *see also* State Treasurer v. Abbott, 468 Mich. 143, 150, 660 N.W.2d 714, 719 n.8. (2003) ("Black's Law Dictionary (6th ed.) defines assignment as: The act of transferring *to another* all or part of one's property, interest, or rights. A transfer or making over *to another* of the whole of any property, real or personal, in possession or in action, or of any estate or right therein.") (internal citations omitted).

34. *See* City of Holland v. Fillmore Twp., 363 Mich. 38, 43, 108 N.W.2d 840, 842 (1961).

35. *Weston*, 163 Mich. App. at 242, 414 N.W.2d at 168.

36. MICH. COMP. LAWS ANN. § 566.132 (West 2018).

37. Burkhardt v. Bailey, 260 Mich. App. 636, 654, 680 N.W.2d 453, 463 (2004) (quoting Hovey v. Grand Trunk W. R. Co., 135 Mich. 147, 149, 97 N.W. 398, 399 (1903)).

38. *See generally* JOHN E. MURRAY, JR. & TIMOTHY MURRAY, CORBIN ON CONTRACTS DESK EDITION § 5.01 (2017).

Supreme Court has held that consideration is not required to create a legally binding assignment.[39] Even if a court was to examine whether consideration was established in a provider suit, consideration is likely present when an insured makes an assignment to a medical service provider after the provider has rendered services because the insured assigns their rights in exchange for the provider no longer holding them liable for their medical expenses.[40] Nevertheless, in light of *Hickman v. Chaney*, where the court stated that consideration was not necessary to create a valid assignment, courts will likely never have to resolve an issue of adequate consideration.[41]

Practically speaking, an assignment can be transferred partially or in full. When assigned in full, the property interest is transferred in its entirety, meaning that the assignor will no longer be part of the transaction after the property is assigned.[42] The assignment relieves the insurer of any obligation due for the benefit of the assignor.[43] On the other hand, when one partially assigns their property interest, the assignor does not transfer their property interest in its entirety. Instead, the assignor subdivides their property interest and, therefore, does not discharge all of the insurer's obligations to the assignor.[44]

As outlined in *Schwartz v. Tuchman*, Michigan law "permits the transfer of an *entire cause* of action from one person to another, because in such case the only inconvenience is the substitution of one creditor for another."[45] When making this determination, the *Schwartz* court was concerned by the possibility that the property could be "divided and subdivided indefinitely" and the resulting burden placed on the other party.[46] Therefore, a valid and effective assignment of one's chose in action must be an assignment of one's entire property interest.[47] It is

39. Hickman v. Chaney, 155 Mich. 217, 225, 118 N.W. 993, 996 (1908) ("As to consideration, the assignor had a right to assign without consideration if he chose to do so, and the defendants in this cause have no right to raise the question.").

40. *See* 17 RICHARD A. LORD, A TREATISE ON THE LAW OF CONTRACTS BY SAMUEL WILLISTON § 49:119 (4th ed. 2015) ("Except where a novation occurs, an assignee of an insurance policy does not sue in his or her own right, but makes only a derivative claim, standing in the shoes of the assignor.") (internal citations omitted).

41. *Hickman*, 155 Mich. at 225, 118 N.W. at 996.

42. *See generally Burkhardt*, 260 Mich. App. 636, 680 N.W.2d 453.

43. *See id.*

44. *See* Schwartz v. Tuchman, 232 Mich. 345, 349, 205 N.W. 140, 141 (1925) ("[I]f assigned in fragments, the debtor has to deal with a plurality of creditors.").

45. *Id.* (emphasis added).

46. *Id.*

47. *Id.*

important to note that the court in *Schwartz* expressed an exception to the rule against partial assignments.[48] The court held that:

> A partial assignment of a chose in action is enforceable in *equity*, although the debtor has not given his assent, provided that all the parties in interest are before the court so that the rights of each in the fund may be determined in one suit and settled in one decree . . . . In a court of equity . . . the objections to a partial assignment of a demand which are formidable in a court of law disappear.[49]

Regardless of this exception, § 600.8315 of Michigan's Revised Judicature Act strips district courts of jurisdiction for actions that "are historically equitable in nature."[50]

C. When Rights Can Be Assigned

"Under general contract law, rights can be assigned unless the assignment is clearly restricted."[51] "[I]nsurance policies are subject to the same contract construction principles that apply to any other species of contract."[52] However, § 500.3143 of Michigan's No-Fault Act prohibits an "assignment of a right to benefits payable in the future,"[53] and MCLA § 500.3145, often called the one-year-back rule,[54] provides that a claimant cannot "recover benefits for any portion of the loss incurred more than [one] year before the date on which the [suit was initiated].[55] Therefore, for an allowable medical expense assignment to be valid, healthcare providers should perform the service(s) to the insured before an assignment is executed because an assignment is only valid if it assigns a past or presently due benefit.[56] In addition, the suit must have been initiated by the assignee within one year of the incurrence of the

48. *Id.*

49. *Id.* (emphasis added) (internal citations omitted).

50. MICH. COMP. LAWS ANN. § 600.8315 (West 2018).

51. Burkhardt v. Bailey, 260 Mich. App. 636, 653, 680 N.W.2d 453, 462 (2004).

52. Rory v. Cont'l Ins. Co., 473 Mich. 457, 461, 703 N.W.2d 23, 26 (2005).

53. MICH. COMP. LAWS ANN. § 500.3143 (West 2018).

54. *Court of Appeals Holds Anti-Assignment Clauses Unenforceable, but Healthcare Providers Can Only Recover Benefits One-Year-Back from Date of Assignment*, COLLINS EINHORN FARRELL PC (May 9, 2018), https://ceflawyers.com/2018/05/09/court-of-appeals-holds-anti-assignment-clauses-unenforceable-but-healthcare-providers-can-only-recover-benefits-one-year-back-from-date-of-assignment/.

55. MICH. COMP. LAWS ANN. § 500.3145 (West 2018).

56. *See id.*

chose in action to recover a medical expense.[57] Because MCLA § 500.3143 prohibits an assignment of a right to benefits in the future,[58] healthcare providers and patients have to be careful about the wording and timing of their assignment agreements. If the court determines that the assignor and the assignee entered into an agreement to assign benefits for the future, it will be considered an invalid assignment.

The Michigan Court of Appeals interpreted an assignment agreement in *Professional Rehabilitation Associates v. State Farm Mutual Automobile Insurance Company*,[59] which was somewhat ambiguous as to whether it was assigning future, past, or currently due benefits.[60] The assignment clause provided that:

> [A]ll of Clifford Lay's rights to be reimbursed or to have counseling services expenses paid by State Farm Mutual Automobile Insurance Company and any other insurer or self-insurer for services provided by Professional Rehabilitation Associates in connection with injuries to Clifford Lay arising out of an automobile accident.[61]

The court held that "[t]o the extent that the assignment [clause was] assigning future benefits, that *part* of the assignment is void."[62] However, when an assignment agreement is severable into different parts, an assignment agreement will still be enforced even with the failure of certain provisions if that is what the parties intended.[63] It is therefore important for healthcare providers to ensure that they are obtaining assignments at a time where benefits are either past or presently due. To do otherwise may result in a court later invalidating a healthcare provider's assignment, which may result in the dismissal of the case. If the case is dismissed, a healthcare provider can always go back to the insured and request a new assignment, this time curing the assignment agreement by confining it to past or presently due benefits. However, by the time the assignment is cured, some or perhaps all of the healthcare services provided by the healthcare provider may fall outside

57. *See id.*

58. MICH. COMP LAWS ANN. § 500.3143 (West 2018) ("An agreement for assignment of a right to benefits payable in the future is void.").

59. 228 Mich. App. 167, 577 N.W.2d 909 (1998).

60. *Id.* at 173, 577 N.W.2d at 913.

61. *Id.*

62. *Id.* (emphasis added).

63. *Id.* at 173–74, 577 N.W.2d at 913.

the one-year-back rule codified in MCLA § 500.3145.[64] The result: a suit barred by the passage of time.[65]

When determining the time and date of a given assignment, common law generally rejects any fractionating of the day, to assure ease of the application of time.[66] In *Warren v. Slade*, the court held:

> The effect is to render the day a sort of indivisible point; so that any act done in the compass of it is no more referable to any one, than to any other portion of it, but the act and the day are co-extensive; and therefore the act cannot properly be said to be passed until the day is passed.[67]

This common law rule would seem to forbid courts from considering the hour that the assignment was given when it determines the rights of the parties and instead suggest that courts will focus on the day that an assignment was given when determining those rights.[68] However, the court in *Griffin v. Forrest* noted that although fractioning of the day is generally prohibited, "[t]here are cases where it cannot be avoided; as, for example, where two or more chattel mortgages upon the same property are filed on the same day; but these cases are exceptional."[69] That exception would likely not be considered in a typical assignment of no-fault benefits unless timing of the day was a central issue in determining a substantial property right.

D. When Rights Cannot Be Assigned

Finally, because insurance policies are treated as "any other species of contracts,"[70] an insurer is generally free to prohibit assignments. In interpreting insurance contract assignments, courts often make a distinction between an assignment of the coverage and an assignment of the actual proceeds arising out of benefits under the contract.[71] Often, an insurer will prohibit assignments in order to protect themselves from

64. MICH. COMP. LAWS ANN. § 500.3145 (West 2018).

65. *See id.*

66. *See* Warren v. Slade, 23 Mich. 1, 3 (1871) ("Our law rejects fractions of a day more generally than the civil law does.") (internal quotations omitted).

67. *Id.* (internal quotations omitted).

68. *See id.*

69. 49 Mich. 309, 312, 13 N.W. 603, 604 (1882).

70. Rory v. Cont'l Ins. Co., 473 Mich. 457, 461, 703 N.W.2d 23, 26 (2005).

71. *See* 19.2 PROPERTY INSURANCE, LIABILITY INSURANCE, AND LIFE INSURANCE, LAW FOR ENTREPRENEURS, https://saylordotorg.github.io/text_law-for-entrepreneurs/s22-02-property-insurance-liability-i.html (last visited Mar. 9, 2018).

increased liability.[72] It is critical for the insurer to identify who it is insuring, as this implicates the likelihood of a loss and a claim under the policy.[73] If the insured could freely assign his policy coverage, the insurer's risk could increase without its consent or knowledge.[74] However, post-loss, if an insured no longer has any obligations left in the contract, the insurer's risk will likely not be increased by a change in the insured's identity when assigning proceeds of an insurance contract.[75] That is why Michigan courts have generally identified two relevant time periods, pre-loss and post-loss, when determining the validity of an anti-assignment clause.[76] Michigan courts agree that an insurer can prohibit pre-loss policy assignments, but cannot prohibit post-loss chose in action assignments because the insured no longer has any obligations left in the contract.[77] This view is also consistent with the leading treatise.[78] The Michigan Supreme Court addressed this issue in *Roger Williams Insurance Co. v. Carrington* and found that "[i]t is the absolute right of every person—secured in this state by statute—to assign such claims, and such a right cannot be thus prevented."[79] It is important to note that the statute mentioned in the opinion was not cited to, and remains a

---

72. *See* Robert Redfearn, Jr., *Post-Loss Assignments of Claims Under Insurance Policies*, INS. J. (July 18, 2011), https://www.insurancejournal.com/magazines/mag-legalbeat/2011/07/18/206569.htm.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *See, e.g.*, Roger Williams Ins. Co. v. Carrington, 43 Mich. 252, 254, 5 N.W. 303, 304 (1880); Century Indem. Co. v. Aero-Motive Co., 318 F. Supp. 2d 530, 539 (W.D. Mich. 2003). In both cases, the court distinguished pre-loss from post-loss assignments in an insurance contract and found that, where the insured no longer has any post-loss obligations, their property interest is freely assignable. *See id.*

78. *See* LORD, *supra* note 40, § 49:126 ("Anti-assignment clauses in insurance policies are strictly enforced against attempted transfers of the policy itself before a loss has occurred, because this type of assignment involves a transfer of the contractual relationship and, in most cases, would materially increase the risk to the insurer. Policy provisions that require the company's consent for an assignment of rights are generally enforceable only before a loss occurs, however. As a general principle, a clause restricting assignment does not in any way limit the policyholder's power to make an assignment of the rights under the policy—consisting of the right to receive the proceeds of the policy—after a loss has occurred. *The reasoning here is that once a loss occurs, an assignment of the policyholder's rights regarding that loss in no way materially increases the risk to the insurer. After a loss occurs, the indemnity policy is no longer an executory contract of insurance. It is now a vested claim against the insurer and can be freely assigned or sold like any other chose in action or piece of property.*") (emphasis added) (internal citations omitted).

79. *Roger Williams*, 43 Mich. at 254, 5 N.W. at 304.

mystery.[80] It is also important to note that the court made their decision based on a fire insurance policy.[81] In May 2018, the Michigan Court of Appeals held that an anti-assignment clause in a no-fault insurance contract is unenforceable because it is against public policy.[82] The case is currently on appeal and awaiting arguments before the Michigan Supreme Court.[83]

E. The Effect an Assignment has on the Assignor and Assignee

Once a valid assignment for past or presently due benefits is executed, "[a]n assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses."[84] This assignment has the effect of transferring the chose in action from the assignor to the assignee. Therefore, as to this chose in action, the assignor no longer possesses a legal right against the insurer. In addition, because consideration was given for this assignment, it is generally irrevocable by the insured.[85]

How a court defines the insured's property right is important to characterize whether an assignment is full or partial.[86] A court could interpret that the insured has a separate property right each time the insured becomes liable for the cost of a medical service or expense, a court may interpret that each PIP benefit as a whole, such as the collection of all allowable medical expenses, is a separate property right, or a court may interpret that the entire no-fault claim is a single property right. If a court determines that an insured does possess a separate right and therefore a separate chose in action to each allowable medical expense as he or she becomes liable for its costs, any argument that the

80. After *Roger Williams*, the Michigan Supreme Court clarified the standards governing insurance policy interpretation. *See* Rory v. Cont'l Ins. Co., 473 Mich. 457, 461, 703 N.W.2d 23, 26 (2005) ("[I]nsurance policies are subject to the same contract construction principles that apply to any other species of contract."); *see also* DeFrain v. State Farm Mut. Auto Ins. Co., 491 Mich. 359, 367, 817 N.W.2d 504, 509 (2012) ("We construe an insurance policy in the same manner as any other species of contract, giving its terms their ordinary and plain meaning if such would be apparent to a reader of the instrument.") (internal quotations and citations omitted).

81. *Roger Williams*, 43 Mich. at 253, 5 N.W. at 303.

82. Jawad A. Shah, M.D., PC v. State Farm Mut. Auto. Ins. Co., 324 Mich. App. 182, 920 N.W.2d 148, 159 (2018), *appeal docketed*, No. 159751 (Mich. Oct. 24, 2018).

83. *Id.*

84. Burkhardt v. Bailey, 260 Mich. App. 636, 653, 680 N.W.2d 453, 462 (2004).

85. *See* JOHN EDWARD MURRAY, JR., MURRAY ON CONTRACTS § 293, at 598 (rev. ed. 1974) (noting that an assignment is irrevocable when there is consideration).

86. *See* Dayton v. Fargo, 45 Mich. 153, 154, 7 N.W. 758, 759 (1881) ("The general doctrine both at law and in equity has always been that nothing is assignable that does not directly or indirectly involve a right of property.").

assignment is an unenforceable partial assignment because other PIP claims exist outside of the assignment will fail.[87] Alternatively, if the court defines the entire no-fault claim or the entire allowable medical expense PIP benefit as one single property right, then the court will likely determine that unless the insured assigns his entire no-fault claim or allowable medical expense PIP benefit against the insurer, an assignment is invalid as being partially assigned.[88] If an insured does perhaps assign his entire cause of action against the insurer, and then realizes that it was not his intention to do so, the court may find the assignment irrevocable if both parties do not agree on the revocability because such assignment was given in exchange for the release of payment from the patient, something the court would likely consider adequate consideration.[89] The analysis section of this note will attempt to apply assignment related law that is or could be applied to an insured's assignment of benefits under a no-fault contract.[90]

III. ANALYSIS

The Michigan Supreme Court in *Covenant* held that "[a] healthcare provider possesses no statutory cause of action under the no-fault act against a no-fault insurer for recovery of [no-fault] benefits."[91] By overturning decades of case law stating that a healthcare provider possesses a statutory cause of action under the no-fault act,[92] the court struck against the inefficiencies and inadequacies of piecemeal and fragmented litigation[93] common in no-fault cases while keeping current Michigan assignment law undisturbed.[94]

---

87. *See* LORD, *supra* note 40 ("Except where a novation occurs, an assignee of an insurance policy does not sue in his or her own right, but makes only a derivative claim, standing in the shoes of the assignor.") (internal citations omitted).

88. *See* Schwartz v. Tuchman, 232 Mich. 345, 349, 205 N.W. 140, 141 (1925) ("[I]f assigned in fragments, the debtor has to deal with a plurality of creditors.").

89. *See* MURRAY, *supra* note 85 (noting that an assignment is irrevocable when there is consideration).

90. *See infra* section III.

91. Covenant Med. Ctr., Inc. v. State Farm Mut. Auto. Ins. Co., 500 Mich. 191, 218, 895 N.W.2d 490, 505 (2017).

92. *Id.* at 227, 895 N.W.2d at 505.

93. The Michigan Supreme Court has explicitly discouraged multiplicity of lawsuits in different courts and venues. *See, e.g.,* Worth v. Wagner, 255 Mich. 433, 435, 238 N.W. 175, 176 (1931) (noting "the long-established policy of the state to discourage multiplicity of suits and to require all damages from a wrong to be assessed by the same jury and in the same action").

94. The *Covenant* court mentioned in footnote 40 that its holding "is not intended to alter an insured's ability to assign his or her right to past or presently due benefits to a healthcare provider." *Id.* at 227 n.40, 895 N.W.2d at 510 n.40; *see also* Schwartz v.

Pursuant to a healthcare provider's statutory case of action prior to *Covenant*, insurers were often subjected to a multiplicity of lawsuits in different courts and venues.[95] For example, allowing piecemeal and fragmented litigation could result in a scenario where the insured could pursue their benefits under wage loss or attendant care in the Oakland County Circuit Court, a first responder who transported the insured to the hospital could pursue the insured's ambulance service in the Forty-Fourth District Court, and a hospital where the insured was treated could pursue the insured's medical expenses in the Nineteenth District Court.[96] I believe the majority in *Covenant* meant that a healthcare provider possesses no direct statutory cause of action against an insurer, but, an insured is free to assign, subject to contractual restrictions prohibiting assignments, their *entire* cause of action in accordance with well-established Michigan assignment law. It is therefore appropriate to analyze the aforementioned cases in the scope of no-fault insurance contracts.

A. Contractually Prohibited Assignments- Interpreting Anti-Assignment Clauses in Insurance Contracts

Some Michigan no-fault insurance companies have added language to their no-fault policies that expressly limits or prohibits an insured's ability to assign his or her benefits under their no-fault contract.[97] For example, State Farm's policies contain a clause that expressly provides: "[n]o assignment of benefits or other transfer of rights is binding upon us unless approved by *us*."[98] The courts in *Rory v. Continental Insurance*

Tuchman, 232 Mich. 345, 349, 205 N.W. 140, 141 (1925) ("[I]f assigned in fragments, the debtor has to deal with a plurality of creditors. If his liability can be legally divided at all without his consent, it can be divided and subdivided indefinitely. He would have the risk of ascertaining the relative shares and rights of the substituted creditors. He would have, instead of a single contract, a number of contracts to perform.").

95. This is an observation from the author's personal experience as an insurance defense associate.

96. This is an author-created example illustrating the injustice of piecemeal and fragmented ligation. Multiplicity of lawsuits in a no-fault medical expense PIP benefit lawsuit often occurs because the insured seeks medical care from different providers who are subjected to a different jurisdiction than the insured.

97. State Farm Mutual Automobile Insurance Company and Auto Club Insurance Association are two Michigan no-fault insurance companies that have assignment restriction language within their policies. *See, e.g.*, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CAR POLICY BOOKLET, POLICY FORM 9822B (2009), at 36; AUTO CLUB INSURANCE ASSOCIATION, CAR INSURANCE POLICY-MICHIGAN, EDITION 1-10 (2010), at 16.

98. *Id.* at 36.

Company[99] and *DeFrain v. State Farm Mutual Automobile Insurance Company*[100] explained how to interpret a provision in an insurance contract. In *Rory*, the court held that "insurance policies are subject to the same contract construction principles that apply to any other species of contract. The court held that courts should not give special consideration to the interpretation of an insurance contract.[101] Therefore, it would follow that a prohibition of an assignment in an automobile lease should be interpreted in the same way as a prohibition of an assignment in a no-fault insurance contract.[102] In *DeFrain,* the court held that a provision in an insurance contract must be enforced as written unless it would violate law or public policy.[103] The *DeFrain* court also stated "[a] mere judicial assessment of 'reasonableness' is an invalid basis upon which to refuse to enforce contractual provisions."[104] *Rory* also recognized that, because the responsibility of evaluating and approving insurance policy rests with the Commissioner of Insurance, the explicit "public policy" of Michigan is that the reasonableness of insurance contracts is solely a matter for the executive branch of government.[105]

Because insurance contracts are subject to the same contract construction principles as any other species of contracts,[106] it is appropriate to analyze how courts interpret anti-assignment clauses in general. The Michigan Supreme Court has held that anti-assignment clauses are enforceable provided that contractual prohibitions against assignments are clear and unambiguous.[107] The anti-assignment clause found in a State Farm no-fault insurance contract, for example, states that "[n]o assignment of benefits or other transfer of rights" is valid without

---

99. 473 Mich. 457, 703 N.W.2d 23 (2005).

100. 491 Mich. 359, 817 N.W.2d 504 (2012).

101. *Id.*

102. *See id.*

103. *DeFrain*, 491 Mich. at 371, 817 N.W.2d at 512 (citing *Rory*, 473 Mich. at 470, 703 N.W.2d at 31).

104. *Id.*

105. Rory v. Cont'l Ins. Co., 473 Mich. 457, 476, 703 N.W.2d 23, 35 (2005); *see also* Auto Club Group Ins. Co. v. Booth, 289 Mich. App. 606, 615, 797 N.W.2d 695, 699 (2010) (rejecting public policy argument and noting "our Supreme Court has determined that 'the explicit public policy' of Michigan is that the reasonableness of insurance contracts is a matter for the executive, not judicial, branch of government").

106. *Id.* at 461, 703 N.W.2d at 26.

107. *See* Detroit Greyhound Emps. Fed. Credit Union v. Aetna Life Ins. Co., 381 Mich. 683, 689, 167 N.W.2d 274, 277 (1969) ("'[T]hose who would compose a contractual bar against alienist must use '[t]he plainest words.'"); *accord* Burkhardt v. Bailey, 260 Mich. App. 636, 680 N.W.2d 453 (2004) (holding that assignments are invalid if clearly restricted by contract).

State Farm's consent.[108] The court will likely hold that the word "no" is unambiguous and permits no other interpretation. The court will also likely hold that "benefits" unambiguously encompasses all benefits available under the policy, including the medical expenses that a healthcare provider seeks to recover. Any logical interpretation of a no-fault contract would not permit a healthcare provider to pick and choose which provisions of the policy to enforce by making a claim for medical expenses under the portion providing for payment of no-fault benefits while simultaneously ignoring the clause that prohibits the insured from assigning those benefits. No matter how unreasonable a restriction of an assignment may be, the *DeFrain* court has made it clear that there should be no judicial assessment of reasonableness of anti-assignment clauses.[109] Instead, *Rory* held that we must rely on the Commissioner of Insurance's assessment of reasonableness.[110] In Michigan, the Insurance Licensing Section, Office of Insurance Evaluation, and Office of Insurance and Forms are responsible for licensing, examining, investigating, and supervising insurance companies.[111] To date, these offices have not made an assessment of reasonableness of anti-assignment clauses in no-fault insurance contracts. However, if these offices made an assessment of the reasonableness of anti-assignment clauses in no-fault contracts, they will likely factor the insured's post-loss ongoing obligations[112] and the dynamic nature of an injury and its corresponding treatment. Taking these factors into consideration, the office will likely find that an anti-assignment clause restricting both pre and post loss assignments will serve a real purpose. That purpose: ensuring that the insured continues his or her ongoing obligations[113] so the insurer can properly determine the extent of its liability under the contract.

B. A Freely Assignable Post-Loss Chose in Action—Roger Williams Judicial Assessment of an Insurance Contract's Anti-Assignment Clause

Although the Michigan Supreme Court has determined "that 'the explicit public policy' of Michigan is that the reasonableness of

108. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CAR POLICY BOOKLET, POLICY FORM 9822B (2009), at 36.

109. DeFrain v. State Farm Mut. Auto Ins. Co., 491 Mich. 359, 372–73, 817 N.W.2d 504, 512 (2012).

110. *Rory*, 473 Mich. App. at 461, 703 N.W.2d at 26.

111. *Insurance*, DEP'T OF INS. & FIN. SERVS., https://www.michigan.gov/difs/0,5269,7-303-13047_13049---,00.html (last visited Apr 2, 2018).

112. *See infra* notes 142–47 and accompanying text.

113. *Id.*

insurance contracts is a matter for the executive, not judicial, branch of government,"[114] it is important to understand the rationale of why other jurisdictions have restricted the ability of an insurer to prohibit post-loss assignments. In a 2017 case decided by the New Jersey Supreme Court,[115] the court indicated that the purpose of an anti-assignment clause is "to protect the insurer from increased liability," which could occur if an insured could assign a policy before a loss occurred.[116] The identity of the insured is critical to the insurer, which implicates the likelihood of a loss and a claim under the policy.[117] If the insured could assign a policy to someone else, the insurer's risk could increase without its consent.[118] To illustrate these points, let us assume an accident free driver purchases a no-fault insurance policy. Although there are other factors an insurance company considers, an accident free history will likely result in a favorable insurance premium rate.[119] If an insurer was free to assign their policy, they may assign a favorable rate to a riskier driver, perhaps one with an extensive accident history. This would subject the insurer to more risk than it had accounted for in the insurer's calculation of a specific premium.[120] However, according to the New Jersey Supreme Court, "after the events giving rise to the insurer's liability have occurred, the insurer's risk cannot be increased by a change in the insured's identity."[121] Therefore, in post-loss assignments, the court held that "the rights of the insured to freely assign their claims" take precedence over any concern for the insurer.[122]

When assignments are contractually restricted, a healthcare provider will likely argue that the insurer's anti-assignment clause should be

---

114. Auto Club Group Ins. Co. v. Booth, 289 Mich. App. 606, 615, 797 N.W.2d 695, 700 (2010) (citing Rory v. Cont'l Ins. Co., 473 Mich. 457, 476, 703 N.W.2d 23, 34–35 (2005)).

115. Givaudan Fragrances Corp. v. Aetna Cas. & Sur. Co., 151 A.3d 576 (N.J. 2017).

116. *Id.* at 591.

117. *Id.* at 586 (citing Elat, Inc. v. Aetna Cas. & Sur. Co., 654 A.2d 503, 505–06 (N.J. 1995)).

118. *Id.* at 583 (citing Givaudan Fragrances Corp. v. Aetna Cas. & Sur. Co., 120 A.3d 959, 965 (N.J. Super. Ct. App. Div. 2015)).

119. Chad Livengood & Mike Wikinson, *How Michigan's auto insurance premiums became the nation's highest*, BRIDGE, http://www.bridgemi.com/public-sector/how-michigans-auto-insurance-premiums-became-nations-highest (last visited Mar. 9, 2018) (listing factors insurance companies consider when determining an insurance premium including ZIP code, where insurance companies use claims data from prior years based on collision property damage and personal injuries to set rates; distance of daily commute; gender; age; education level; and credit score).

120. *See supra* notes 66–69 and accompanying text.

121. Givaudan Fragrances Corp. v. Aetna Cas. & Sur. Co., 151 A.3d 576, 591 (N.J. 2017).

122. *Id.* at 590.

disregarded pursuant to the national standard as outlined by the New Jersey Supreme Court[123] and identified in the holding in *Roger Williams* where the court held "[i]t is an absolute right of every person—secured in this state by statute—to assign such claims, and such a right cannot be thus prevented."[124] However, the rationale behind *Roger Williams* is that an assignment in a property insurance contract should not be restricted when the insured party *has fully performed his or her obligations under the policy*.[125] The court believed this result was justified because there could be no potential prejudice to the insurer from the assignment *when the insured completed all of his or her obligations under the contract.*[126] Although the Court in *Roger Williams* did not reference any post-loss ongoing obligations, a fair reading of the case leads to a conclusion that, if any existed, the insured completed those post-loss obligations before the assignment was given.[127]

Approximately one-hundred years after *Roger Williams*, in *Edwards v. Concord Development Corporation*,[128] a plaintiff sought to make a claim against an insurer under an assignment of rights to benefits arising under a fire policy.[129] The policy in question contained similar language to a typical no-fault insurance anti-assignment clause; it stated that an "assignment of this policy will not be valid unless we give our written consent."[130] The fire loss insurer never consented to the assignment on which plaintiff's claim was based.[131] The court confirmed that the assignment was "precluded by agreement,"[132] and held that the contract was breached and that "there is no prohibition against requiring consent to effectuate an assignment."[133] While the court did not specifically reference the policy in question in the opinion,[134] it likely enforced this assignment clause based on the insurer's legitimate concerns that the

123. *Id.* at 593.

124. Roger Williams Ins. Co. v. Carrington, 43 Mich. 252, 254, 5 N.W. 303, 304 (1880).

125. *Id.*

126. *Id.*

127. *See id.*

128. No. 174487, 1996 Mich. App. LEXIS 1807, at *1 (Mich. Ct. App. Sept. 17, 1996) (per curiam).

129. *Id.*

130. *Id.* at *3.

131. *Id.* at *5–6.

132. *Id.* at *4 (citing RESTATEMENT (SECOND) OF CONTRACTS: ASSIGNMENT OF A RIGHT § 317(2) (AM. LAW INST. 1981)).

133. *Id.* at *3 (citing Hy King Assocs. v. Veratech Mfg. Indus., 826 F. Supp. 231, 238–39 (E.D. Mich. 1993)).

134. *See* Edwards v. Concord Dev. Corp., No. 174487, 1996 Mich. App. LEXIS 1807, at *3 (Mich. Ct. App. Sept. 17, 1996) (per curiam).

insured would likely not fulfill their ongoing obligations if they assigned their rights to receive benefits.[135]

Reliance on *Roger Williams* in a no-fault insurance contract is more troublesome than reliance on the rationale of *Roger Williams* in a property insurance contract where the insured completed all of their post-loss obligations.[136] In no-fault insurance contracts, the insured party has ongoing duties under their policy that exist throughout the entirety of the claim.[137] Some of those duties include submitting to an examination and/or providing a statement under oath,[138] cooperating with the insurance company and, when asked, assisting the insurer in securing and giving evidence,[139] providing the insurance company with all details of the injury, treatment and other information as soon as reasonably possible,[140] submitting to an independent medical examination,[141] and authorizing the insurance company to obtain medical records, medical bills, employment information, and any other information the insurance company deems necessary to substantiate a claim.[142] These ongoing post-loss obligations are the direct consequence of the dynamic or ever changing nature of bodily harm. These post-loss obligations are unlike those post-loss obligations found in a property insurance contract where the insured suffers a static or fixed harm. The result: post-loss anti-assignment clauses in a no-fault insurance contract will serve an important purpose. That purpose is to ensure that the insured fulfills those ongoing contractual obligations to safeguard the insurers right in determining the validity of the claims and the extent of its liability under the contract.

C. Is Each Benefit Considered its Own Chose in Action?

In assigning a PIP benefit, a healthcare provider will likely argue that each PIP benefit on its own ought to be considered a distinct property right. A healthcare provider will then maintain that it received a full

---

135. Although this analysis relies on *Edwards v. Concord Development Corp.*, it is important to note that, pursuant to MCR 7.215, unpublished decisions are not considered precedential authority under Michigan law. *See* MICH. CT. R. 7.215(C).

136. *See, e.g.*, Roger Williams Ins. Co. v. Carrington, 43 Mich. 252, 254, 5 N.W. 303, 304 (1880); Edwards v. Concord Dev. Corp., No. 174487, 1996 Mich. App. LEXIS 1807 (Mich. Ct. App. Sept. 17, 1996) (per curiam).

137. *See* STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CAR POLICY BOOKLET, POLICY FORM 9822B (2009).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

assignment because it was assigned an entire property right.[143] Further, a provider will assert that a no-fault insurance contract is divisible and, therefore, a separate, full (*not* partial), chose in action or property right accrues for each individual PIP benefit.[144]

There are several problems with this line of reasoning. First, when determining whether a contractual provision is divisible, the intent of the parties is the primary consideration.[145] If the provisions are "interdependent and the parties would not have entered into one in the absence of the other, the contract will be regarded . . . as entire and not divisible."[146] There is little room to argue that a no-fault insurance contract, such as State Farm's, is entered into in parts and that parties intended each provision or section to constitute separate contracts.[147] Most provisions in the no-fault insurance contract are interdependent.[148] The omission of one provision will either weaken the rest or give the other provisions purposes that are different than those the insurer intended.[149] A logical reading of a typical no-fault insurance contract will reveal that each clause is to be read within the context of the entire scheme of clauses.[150]

Second, a court attempting to define the bounds of the insured's property right with regard to no-fault benefits will likely have to weigh its placement of such a boundary on the number of benefits within a no-fault contract,[151] the different burdens of proof associated with proving entitlement to those benefits,[152] and MCR 2.203(A), known as the 'rule

143. This is an argument that the author suspects healthcare providers are likely to make. If a healthcare provider can convince the court that its assignment is a full assignment, the court will not consider it as splitting a cause of action, a practice forbidden in Michigan. *See* Clements v. Constantine, 344 Mich. 446, 73 N.W.2d 889 (1955).

144. In making that argument, the medical provider may rely on Anair v. Mut. Life Ins. Co. of N.Y., 42 A.2d 423, 426 (V.T. 1945) ("An entire contract may be divisible into parts so that a right of action accrues for a breach of each part."). *See generally* Arnone v. Chrysler Corp., 6 Mich. App. 224, 227, 148 N.W.2d 902, 905 (1967).

145. Prof'l Rehab. Assoc. v. State Farm Mut. Auto. Ins. Co., 228 Mich. App. 167, 577 N.W.2d 909, 913 (1998).

146. Am. Fed'n of State, Cty., & Mun. Employees v. Detroit, 267 Mich. App. 255, 262, 704 N.W.2d 712, 716 (2005) (internal citation omitted).

147. *See generally* STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, CAR POLICY BOOKLET, POLICY FORM 9822B (2009).

148. *See id.*

149. *Id.*

150. *See, e.g., id.*

151. *See* SINAS & MILLER, *supra* note 14, at 5; *supra* text accompanying note 14.

152. The Michigan Model Civil Jury Instructions have varying burdens of proof among different no-fault benefits. *Compare* M. Civ. JI 36.05, *with* 36.06, *and* 36.15.

against splitting causes of actions.[153] Splitting a cause of action is litigating separate suits by alleging "various claims of the pleader against the opposing party arising out of the same transaction or occurrence."[154] MCR 2.203(A) requires a party to join all claims against the opposing party at the time of serving the pleading "if it arises out of the same transaction or occurrence that is the subject matter of the action."[155] MCR 2.203(A) prevents defendants from being harassed by a multiplicity of suits based on the same underlying facts.[156] Certainly, acknowledging that each allowable medical expense bill on its own creates a new property right and, therefore, a new assignable chose in action would subject the insurer to a multiplicity of suits based on the same underlying facts.[157] If a court were to interpret an individual PIP benefit—such as the collection of all allowable medical expenses—as a distinct property right and, therefore, an assignable chose in action, it would reduce the risk of the insurer facing a multiplicity of suits based on the same underlying facts. On the other hand, if the court were to interpret the entire no-fault claim as only a single property right and, therefore, one whole assignable chose in action, the insurer would not face a multiplicity of suits because the insured can only assign his or her entire no-fault claim. Therefore, in the spirit of MCR 2.203(A)'s "rule against splitting causes of action,"[158] and the Michigan Supreme Court's holding in *Worth v. Wagner*,[159] a court is likely to consider all PIP benefits as a single indivisible bundle of rights. This interpretation would relieve the insurer of any obligation due for the benefit of the assignor, a condition courts usually recognize as important to determine whether a partial for full assignment of a property right was given.[160]

D. Anti-Assignment Clauses Contradicting the No-Fault Act?

In light of the purpose and public policy goals behind the no-fault act,[161] it is important to analyze whether anti-assignment clauses conflict

153. *See, e.g.*, Hughes v. Med. Ancillary Servs., Inc., 88 Mich. App. 395, 277 N.W.2d 335 (1979) (discussing GCR 1963, 2013.1, the rule on which MCR 2.203(A) was based).

154. Lorencz v. Ford Motor Co., 187 Mich. App. 63, 74, 466 N.W.2d 346, 351 (1991), *rev'd on other grounds*, 439 Mich. 370 (1992).

155. MICH. CT. R. 2.203(A).

156. *See generally* Chantem—Trenary Land Co. v. Swigart, 245 Mich. 430, 222 N.W. 749 (1929).

157. *See supra* note 96 and accompanying text.

158. *Hughes*, 88 Mich. App. at 398, 277 N.W.2d at 336; MICH. CT. R. 2.203(A).

159. 255 Mich. 433, 435, 238 N.W. 175, 176 (1931).

160. *See generally* Burkhardt v. Bailey, 260 Mich. App. 636, 680 N.W.2d 453 (2004).

161. *See* Reindl, *supra* note 5. *See generally* SINAS & MILLER, *supra* note 14, at 5 ("Prior to the enactment of no-fault insurance in Michigan in 1973, our system of motor

with the no-fault act..[162] *Cruz v. State Farm Mutual Auto Insurance Company* is commonly the main case used to argue that a contract clause conflicts with a statute.[163] In *Cruz*, the court held that a provision in a statutorily-mandated insurance policy that contradicts statutory language is unenforceable.[164] Therefore, a no-fault insurance "policy must be interpreted in harmony with statutory requirements when possible."[165] One clause in the no-fault act that mentions enforceability of assignments is § 500.3143, which prohibits assignments for benefits payable in the future.[166] Interestingly, the no-fault act is silent as to all other types of assignments.[167] A logical reading of § 500.3143 suggests that certain classes of assignments are void while all others are not restricted.[168]

The act's silence alone, however, does not legislatively void anti-assignment clauses.[169] Instead, it simply indicates that one specific class of assignments is prohibited.[170] According to *People v. Moreno*,[171] to modify the common law, the legislature "must do so by speaking in 'no uncertain terms'" in adherence with "the traditional rules concerning

---

vehicle accident reparations was governed by the common law of tort liability. Recovery for damages from motor vehicle accidents depended on processing and often litigating claims in tort. In the late 1960's and the early 1970's, this system came under criticism for several reasons. Some of those reasons include: (1) the tort system only compensated non-negligent auto accident victims and does nothing for those victims who sustain auto accident injuries as a result of their own negligence, . . . (2) the tort system is too slow in compensating victims, primarily because it is an adversarial system, frequently requiring litigation and resulting in long delays associated with utilizing courts to resolve disputes; (3) the tort system results in the over compensation of minor injuries and the under compensation of catastrophic injuries; and (4) the tort system is not cost effective, in that much of its resources are consumed litigating cases rather than paying victims in the form of increased benefits and reduced premiums.").

162. After all, if the legislature is not satisfied with the judiciary's findings regarding this issue, the legislature can amend the no-fault act and invalidate anti-assignment clauses in no-fault insurance contracts. *See* Leon Friedman, *Overruling the Court,* THE AM. PROSPECT (Dec. 2001), http://prospect.org/article/overruling-court. (last visited Feb 12, 2018) ("Congress has shown its dissatisfaction with Supreme Court interpretations of laws it passes—by amending or re-enacting the legislation to clarify its original intent and overrule a contrary Court construction.").

163. *See* Cruz v. State Farm Mut. Auto. Ins. Co., 466 Mich. 588, 648 N.W.2d 591 (2002).

164. *Id.* at 590, 648 N.W.2d at 592.

165. Auto-Owners Ins. Co. v. Martin, 248 Mich. App. 427, 434 773 N.W.2d 29, 33 (2009).

166. MICH. COMP. LAWS ANN. § 500.3143 (West 2018). ("An agreement for assignment of a right to benefits payable in the future is void.").

167. *See generally* MICH. COMP. LAWS ANN. § 500.3101 (West 2018).

168. *See generally* MICH. COMP. LAWS ANN. § 500.3143 (West 2018).

169. *Id.*

170. *Id.*

171. 491 Mich. 38, 41, 814 N.W.2d 624, 625 (2012).

abrogation of common law."[172] As articulated in *Moreno*, "this Court has held that 'statutes in derogation of the common law must be strictly construed' and shall 'not be extended by implication to abrogate established rules of common law.'"[173] Thus, the validity of anti-assignment clauses in insurance policies is governed by the common law of contracts.[174] Therefore, a reasonable interpretation of the language in MCLA § 500.3143,[175] in light of *Moreno*,[176] would indicate that that § 500.3143 does not change, alter, or abrogate the common law of assignments and contracts.[177]

IV. CONCLUSION

It is undisputed that the Michigan Supreme Court's decision in *Covenant* is a controversial decision.[178] A lobbying group of medical providers, patient advocates, and plaintiffs lawyers called the decision a nightmare for the injured automobile victims.[179] Without provider suits, one can foresee a decrease in the price of insurance premiums which would be a welcoming change in one of the costliest states to insure a vehicle. Instead, the issues discussed in this note have resulted in expensive litigation between medical providers and insurance companies and made any decrease in the price of insurance premiums before this area of law is settled unlikely. Given the push to repeal the No-Fault Insurance Act, it is possible that the Michigan Supreme Court may not ever have to address some of the issues identified in this note if the legislature takes action.[180] Although it is uncontested that *Covenant* upends decades of common practice provider suits, the Michigan Supreme Court likely did not intend to alter existing Michigan assignment law through the case. Should the Michigan Supreme Court

172. *Id.*
173. *Id.* at 46, 814 N.W.2d at 627–28.
174. *See supra* notes 144–156 and accompanying text.
175. MICH. COMP. LAWS ANN. § 500.3143 (West 2018).
176. 491 Mich. at 46, 814 N.W.2d at 625.
177. *Id.* at 46, 814 N.W.2d at 627–28.
178. *See* REINDL, *supra* note 5.
179. *Id.*
180. Recent efforts to repeal the Michigan No-Fault Act have been tremendous but largely unsuccessful. *See* JC Reindl, *Here's what Mike Duggan's up against in court fight against no-fault*, DET. FREE PRESS (Feb. 6, 2019), https://www.freep.com/story /money/business/2019/02/06/mike-duggan-no-fault-insurance/2776794002/; *Lawmakers debate repealing Michigan's no-fault auto insurance system*, WXYZ DETROIT (Feb. 7, 2018), https://www.wxyz.com/news/lawmakers-debate-repealing-michigans-no-fault-auto-insurance-system.

rule on this issue, the Court will likely rule that assignments of no-fault insurance benefits are freely assignable, unless restricted by contract. Further, in the event an assignment of benefits is not restricted by contract, the Michigan Supreme Court, in avoiding piece meal litigation, will likely define the insured's property right under the contract as one indivisible bundle of benefits, allowing the insured to assign only their *entire* cause of action to constitute a full assignment.