

NO. A07-972

STATE OF MINNESOTA
IN COURT OF APPEALS

AUTO OWNERS INSURANCE CO.,

Respondent,

vs.

STAR WINDSHIELD, INC., AS INTENDED ASSIGNEE OF A&E
CONSTRUCTION SUPPLY, INC. ET AL.,

Appellant.

APPELLANTS' REPLY BRIEF

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INTRODUCTION

For more than half a century, Minnesota law has permitted the post-loss assignment of property damage insurance proceeds, even in the presence of a generally worded anti-assignment clause in the policy. This stance is in accord with the vast majority of other jurisdictions, as well as prominent treatise authorities. Nothing in Auto-Owners' brief refutes this history, including *Travertine v. Lexington-Silverwood*, which is both inapposite to the facts of this appeal and ineffective in silently reversing 50 years of precedent. Further, whether Auto-Owners waived its right to object to Star Windshield's assignments is a fact-laden question which the Minnesota legislature mandates must be resolved in no-fault arbitration, rather than by the courts. Therefore, the district court had no subject matter jurisdiction over this defense. The district court's decision and Auto-Owners' arguments in its support are in every respect out of step with well-established Minnesota law, and the decision should therefore be reversed.

ARGUMENT

1. The District Court's Opinion is Inconsistent with Longstanding Minnesota Law on Assignments.

Auto-Owners would very much like the opportunity to rewrite the district court's opinion. It would like that so much that it effectively does so in its brief. But no amount of wishful thinking can paper over the opinion's glaring inconsistency with Minnesota law on assignments; that inconsistency, set forth at length in Star Windshield's initial brief, mandates that the district court be reversed.

To briefly reiterate, the district court acknowledged long-standing Minnesota law that “an insured is completely free to assign their right to receive payment of insurance proceeds upon a successful claim to a third party after a loss has been fixed.” Order re: Summary Judgment, Appellant’s App. at 90 (citation omitted). That is what the insureds in this case did. After suffering their glass loss, for which Auto-Owners was strictly liable under the terms of its policy at the moment the damage occurred, the insureds assigned the proceeds of their policies to Star Windshield. Notwithstanding the Minnesota rule of assignability of post-loss proceeds, the district court held that Star Windshield did not have the power to enforce its assignments in arbitration, while at the same time recognizing that the assignments of proceeds were valid. *Id.* Therefore, under the court’s flawed reasoning, all Star Windshield received in payment of its work for Auto-Owners’ insureds were worthless pieces of paper, valid in some metaphysical sense but not enforceable in the real world.

Auto-Owners asserts that what the district court *really* meant was that the assignments were not valid in any sense whatsoever, and thus that Star Windshield does not have the right to any payment at all. Resp’t Br. at 7. It also asserts that Star Windshield is “demanding amounts beyond amounts due the insureds.” *Id.* This is wrong, and once again mischaracterizes the relationships between the parties. All Star Windshield seeks in this matter is what Auto-Owners already owes to its insureds under the terms of its policy. That amount is what the insureds assigned to Star Windshield, and that assignment is what Star Windshield now seeks to enforce in arbitration. Nothing

more, nothing less. To the extent there is a disagreement over that amount, that disagreement *must* be resolved in arbitration

If, as the district court held, the insureds assigned the proceeds of their claims to Star Windshield, it now has the same right to pursue those proceeds that the insureds had prior to assignment. As argued in Star Windshield's initial brief, it now stands in the shoes of the insureds, and for that reason alone, the district court should be reversed.

2. Under the Minnesota No-Fault Act, the District Court Did Not Have Subject Matter Jurisdiction Over the Issue of Waiver, Which May Only be Resolved by Factual Determinations.

Apropos of nothing, Auto-Owners asserts that this appeal does not revolve around a dispute over money, but rather over who has the "legal ability" to demand that money. Resp't Br. at 5. Not only is this incorrect, it borders on disingenuousness. The disagreement between the parties here is and has always been over whether or not Auto-Owners has paid the amount necessary to satisfy its obligations to its insureds—via their assignments to Star Windshield—under its policy. The record demonstrates that Auto-Owners has already paid a portion of what it owes—paid it, in fact, directly to Star Windshield. *See* Appellant's App. at 72. As argued in Star Windshield's initial brief, this payment constituted a waiver of the right to object to the assignments. Even if Auto-Owners wishes to argue that its direct payments did not constitute waiver, it must make that argument exclusively to the no-fault arbitrator, who is fully empowered by the No-Fault Act and Minnesota Supreme Court precedent interpreting the Act to hear and decide that issue.

A. Under Minnesota Law, No-Fault Arbitrators Have the Authority to Decide Questions of Both Fact and of Law, While Their Legal Conclusions are Subject to *De Novo* Review by the Courts.

In arguing that the district court had subject matter jurisdiction over Auto-Owners' defenses, Auto-Owners claims that the authority of no-fault arbitrators is sharply limited. This assertion oversimplifies the law regarding no-fault arbitration, and willfully ignores relevant Minnesota precedent, which holds that no-fault arbitrators decide questions both of fact and of law, subject however to different standards of review.

Auto-Owners cites *Weaver v. State Farm Insurance Co.*, 609 N.W.2d 878 (Minn. 2000) for the proposition that no-fault arbitrators are forbidden to draw legal conclusions. Resp't Br. at 4. In fact, *Weaver* supports the contrary conclusion: no-fault arbitrators can and frequently must draw legal conclusions, but these conclusions are reviewed by the district courts *de novo*. 609 N.W.2d at 884-85.

In *Weaver*, State Farm sought to vacate three arbitration awards on the theory that the no-fault arbitrators had exceeded their authority by drawing legal conclusions about the No-Fault Act and ruling that benefits were due even though policyholders had refused to undergo the independent medical examinations the insurer demanded. Guided by the fundamental policy goals of the No-Fault Act,¹ the court disagreed, holding:

State Farm's urged severance of legal and factual issues between court and arbitrator would interfere with the goal of speeding the administration of justice. As litigants dispute the obligations under the act, **it makes little sense to require them to shuttle back and forth between the arbitrator making factual determinations and the court deciding legal questions.**

¹ According to the Act itself, "to speed the administration of justice, to ease the burden of litigation on the courts of this state, and to create a system of small claims arbitration to decrease the expense of and to simplify litigation . . ." Minn. Stat. § 65B.42 (4) (2005).

Rather, the arbitrator can determine the facts and apply the law to those facts subject to de novo review by the district court.

609 N.W.2d at 884 (emphasis added). The court then upheld the arbitrators' interpretations of the No-Fault Act. *Id.* at 886; *see also Gilder v. Auto-Owners Ins. Co.*, 659 N.W.2d 804, 807 (Minn. Ct. App. 2003) (“[W]hen called upon to grant relief, an arbitrator need not refrain from deciding a question because it is a legal question. But an arbitrator’s decision on a legal question is subject to de novo review by the district court.”); *Alpine Glass, Inc. v. American Family Ins. Co.*, Report & Recommendation, No. 06-4213 (DSD/SRN), 2007 WL 1152982 at *5 (D. Minn. Mar. 12, 2007) (clarifying scope of arbitrator’s authority; R&R adopted in full by District Judge Doty at 2007 WL 1152982).

Under this more comprehensive picture of the no-fault arbitrator’s statutory sphere of authority, the true nature of the law in this area becomes clear. Where the resolution of a formally legal question depends on a determination of facts, the courts must defer to the no-fault arbitrator. If a party is dissatisfied with the arbitrator’s application of law to those facts, the courts may subsequently review the arbitrator’s legal conclusions *de novo* on a motion to vacate the award.

B. The Statutory Provision Auto-Owners Relies Upon to Defeat Waiver Does Not Require Direct Payment to Star Windshield; Moreover, Even if it Did, The Arbitrator Must Decide Whether Auto-Owners’ Payments to Star Windshield Constituted Waiver of Objection to the Assignment.

Resolution of the waiver issue in this case is precisely the kind of formally legal question requiring factual findings which belongs with the no-fault arbitrator, rather than

the court. Auto-Owners argues it only paid Star Windshield directly because Minn. Stat. § 72A.201 subdivision 4 required it. This statutory compliance, Auto-Owners asserts, renders the direct payments ineffective as a waiver, because the payments were not voluntary. Resp't Br. at 6-7. Unfortunately for Auto-Owners, not one word in that subdivision requires Auto-Owners to pay Star Windshield directly. Minn. Stat. § 72A.201 subd. 4 (2005). Not one word in that subdivision requires Auto-Owners to pay anyone anything at all—the closest the subdivision comes to requiring payment is in requiring the insurer to inform the insured or claimant of whether a claim is going to be denied or accepted.² This statute does absolutely nothing to help Auto-Owners evade Star Windshield's waiver arguments; as a matter of law, not to mention of logic and of common sense, Auto-Owners cannot rely on a statute to establish a duty that the statute doesn't even mention.

Even if some statutory requirement did require direct payment, the issue of waiver is rife with fact questions that belong with the no-fault arbitrator, rather than with the court. This situation emphatically demonstrates the perils of shuttling between court and arbitrator that so concerned the supreme court in *Weaver*.

² Insurers typically argue that it is not subdivision 4, but rather subdivision 6 of Minn. Stat. § 72A.201 which mandates direct payment to glass companies. *See* Minn. Stat. § 72A.201 subd. 6 (14) (prohibiting “failing to provide payment to the insured’s chosen vendor”). However, in the district court, Star Windshield presented unrefuted evidence that Auto-Owners paid Star Windshield directly even before subdivision 6 was amended to require direct payment in 2001. *See* Appellant’s App. at 68-72. Faced with this evidence, Auto-Owners elected to specifically reject reliance upon subdivision 6 in favor of subdivision 4. *See* Resp’t App. at A-4-5.

The dispute between the parties on this issue is one of fact, and contrary to Auto-Owners' assertions, the facts regarding waiver—unlike the underlying facts of the assignments themselves—are in dispute. Star Windshield argues that Auto-Owners waived any objection to the assignments by paying Star Windshield directly. Without any evidentiary basis at all—Auto-Owners presented no admissible evidence on this subject—Auto-Owners asserts that it paid Star Windshield directly merely because it was compelled to do so by statute. If that is sufficient to refute in any way the facts presented by Star Windshield, then the court is left with, at the very least, a fact dispute over why Auto-Owners paid who it did. Resolving this dispute would require a fact finder to determine whether Auto-Owners paid pursuant to the statute or pursuant to the assignment. A district court making such findings would absolutely, and therefore impermissibly, invade the province of the no-fault arbitrator, and tread into territory in which the courts, by statute, have no subject matter jurisdiction. *See* Minn. Stat. § 65B.525 (2005). These are precisely the type of factual questions that the legislature intended no-fault arbitrators to resolve, and re-routing them to the courts would not only violate the legislature's jurisdictional mandate, it would also create precisely the kind of “shuttling” between court and arbitrator that the *Weaver* court abhorred.

Whether or not Auto-Owners waived its right to object to the assignments by paying Star Windshield directly is a question of fact that must be presented to the no-fault arbitrator. Therefore, the district court erred in denying Star Windshield's motion to dismiss for lack of subject matter jurisdiction, and should be reversed.

3. Neither *Travertine* Nor *Physician's Neck* Suffice to Overrule Minnesota's More Than 50-Year History of Precedent Permitting Post-Loss Assignment of Property Damage Insurance Policy Proceeds.

Auto-Owners asserts that an unremarkable Minnesota Supreme Court contract law decision—*Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267 (Minn. 2004)—overrules, *sub silentio*, half a century of clear Minnesota precedent. That history—beginning with *Windey v. North Star Farmers Mutual Insurance Co.*, 43 N.W.2d 99 (Minn. 1954), continuing through *Reitzner v. State Farm Fire & Casualty Co.*, 510 N.W.2d 20 (Minn. Ct. App. 1993) and *In re Sangren*, 504 N.W.2d 786 (Minn. Ct. App. 1993), and culminating in *Illinois Farmers Insurance Co. v. Glass Service Co.*, 683 N.W.2d 792 (Minn. 2004) and the most recent case, *Glass Service Co. v. Illinois Farmers Insurance Co.*, No. A06-1074, 2007 WL 1815781 (Minn. Ct. App. June 26, 2007)³—and the policy rationales behind it are set forth in Star Windshield's initial brief, and need not be reiterated extensively.

A. The Pre-*Travertine* Cases Auto-Owners Cites in Support of its Arguments are Inapposite to the Facts of this Appeal.

Before discussing *Travertine* and its progeny, Auto-Owners cites two cases in support of the assertion that anti-assignment clauses in contracts are just as enforceable as any other contract term. Resp't Br. at 12-14. However, neither case is factually or legally applicable to this appeal.

Wilkie v. Becker, 268 Minn. 262, 128 N.W.2d 704 (Minn. 1964), does not bear significantly on the matter at hand. First, that case addresses claims arising out of a

³ This most recent Court of Appeals case affirmed the awards in the first three of eight consolidated arbitrations following the supreme court's ruling in *Illinois Farmers*.

bankruptcy, rather than an insurance contract, and the issue before the court was “whether a promise to apply the proceeds of specified property upon a particular debt gives a lien upon or right to such proceeds until so applied.” *Id.* at 264, 128 N.W.2d at 706. The court held such assignments valid, rendering Auto-Owners’ reliance upon dicta regarding anti-assignment provisions—in fact, merely quoting the court’s quotation of an Am. Jur. section stating black-letter law on assignments—ill-advised. *See id.* at 267-68, 128 N.W.2d at 707-08.

Further, even if the court were to accept *Wilkie* as applicable to this case, it actually undercuts Auto-Owners’ urged distinction between “fixed” and “unliquidated” assignments. The funds assigned by the bankrupt defendant in that case were to be drawn from the proceeds of a sale of land at auction, and as such were not in a fixed, liquidated form prior to the sale. *Id.* at 263, 128 N.W.2d at 705. Nevertheless, the court upheld the validity of the assignment, stating that while “[i]t is true that the sale proceeds from which the assignments were to be paid were not in existence at the time the assignments were made . . . the personal property to be sold to create the proceeds appears to have been in existence at that time . . . ,” and so the assignments were valid. *Id.* at 266, 128 N.W.2d at 707. Similarly, for each of the assignments at issue in this appeal, the damage (and thus the loss) and subsequent repair has already occurred, and so on the reasoning of the *Wilkie* court, Star Windshield’s assignments are valid.

Vetter v. Security Continental Insurance Co., 567 N.W.2d 516 (Minn. 1997) is similarly inapposite to the facts of the matter at hand. Auto-Owners is correct that the *Vetter* court stated black-letter contract law—in fact drawn from Williston on

Contracts—regarding assignability of rights. 567 N.W.2d at 521. However, the factual scenario in which the court applied these rules differs so greatly from the facts of this appeal that Auto-Owners’ preferred quotation has no application whatever. Put simply, the *Vetter* court was not evaluating the validity of an assignment, but rather of a purported novation of one insurance company for another. *Id.* The novation inquiry implicated an entirely different legal analysis from that called for in this case, and so Auto-Owners’ reliance upon it is misplaced. *Id.*

B. *Travertine* and *Physician’s Neck* Do Not Overrule 50 Years of Unbroken Minnesota Precedent.

Travertine Corp. v. Lexington-Silverwood, 683 N.W.2d 267 (Minn. 2004) is an utterly run-of-the-mill contract law case—hardly the vehicle in which one would expect the supreme court to overrule longstanding Minnesota precedents such as *Windey*. *Travertine* does not even address insurance contracts; the contract at issue was a management agreement, fully negotiated at arms-length by sophisticated parties. 683 N.W.2d at 269. The anti-assignment provision in that contract read:

This Agreement shall be binding on the parties and their respective personal representatives, successors and assigns; provided, however, that the rights and obligations of Berkey/Lennon shall not be assignable except that Berkey may assign to Lennon or Lennon assign to Berkey such rights and obligations.

Id. at 269-70. This is a specific, negotiated clause covering multiple eventualities in differing ways. It is in no way analogous to a single line of boilerplate text (“No interest in this policy may be assigned without our written consent.” Appellant’s App. at 15) inserted in an insurance contract of adhesion.

The *Travertine* court recognized that “[t]he primary purpose of clauses prohibiting the assignment of contract rights is to protect the contracting party from dealing with parties he has not chosen to do business with.” 683 N.W.2d at 271. Star Windshield set out its argument for why that policy goal is not operative in this case in its initial brief, but Auto-Owners’ attempt to rebut that argument merits a moment of attention. Auto-Owners asserts in essence that its risk increases when a customer assigns his or her proceeds to Star Windshield, because of the amount Star Windshield charges. *See Resp’t Br.* at 13-14. This replicates the same fallacy addressed above—that Star Windshield is somehow seeking more than what Auto-Owners owed its insured under the terms of its policy. Star Windshield seeks only what Auto-Owners was already obligated to pay. Nothing more, nothing less. The amount Auto-Owners owes under its own policy does not change depending on which shop its insureds patronize; that amount is set by the limit of liability portion of its policy. *See Glass Serv. Co. v. Illinois Farmers Ins. Co.*, No. A06-1074, 2007 WL 1815781 at *7-9 (Minn. Ct. App. June 26, 2007) (analyzing policy language, rather than statutory provision, to decide what determined the amount insurer owed).

Rather than in conflict, *Travertine* and *Windey* can be read in concert. Interpreting an insurance policy’s anti-assignment clause to limit assignment of the coverage of the policy rather than the post-loss proceeds owed under the policy completely satisfies *Travertine*’s purpose analysis. A bad driver should not be able to obtain insurance coverage by way of assignment without the consent of the insurance company; the insurer should not be required to underwrite a risk it has not agreed to assume. That is

precisely the situation that is intended to be covered by the anti-assignment clause in property damage insurance policies as noted by the treatise authorities cited in *Star Windshield's* initial brief and case law. *Gopher Oil Co. v. Amer. Nat. Bank*, 588 N.W.2d 756, 763 (Minn. Ct. App. 1999); *National Amer. Ins. Co. v. Jamison Agency, Inc.*, 501 F.2d 1125, 1128 (8th Cir. 1974) (“The object of policy provisions and legal rules which require consent of the insurer to any assignment of a fire insurance policy is ‘to prevent an increase of risk and hazard of loss by change of ownership without the knowledge of the insurer.’”); *see also Antal's Restaurant, Inc. v. Lumberman's Mut. Cas. Co.*, 680 A.2d 1386, 1388 (D.C. Ct. App. 1996) (noting that the “great weight of authority” distinguishes between assignments made before a loss and those made after a loss and that “[t]he reason for the distinction is that, whereas before the loss the insurer might be unwilling to underwrite a risk for a person of questionable ‘integrity and prudence,’ after loss ‘the delectus personae [is] no longer...material’ since ‘the insurer becomes absolutely a debtor to the assured for the amount of the actual loss....’”).

Similarly, the United States District Court for the Southern District of New York, in addressing post-loss assignments of insurance claims arising out of the World Trade Center collapse wrote on the application of an anti-assignment clause (“The insured’s rights and duties under this policy may not be transferred without the written consent of the Company”):

Under such provisions, any unauthorized assignment of a property insurance policy before a loss occurs is invalid....After a loss occurs, however, a party to an insurance contract may assign its right to accrued insurance proceeds to another party, even in the face of express policy language prohibiting assignments. ...

The rationale for distinguishing pre-loss assignments and post-loss assignments centers on the contrasting nature and extent of the risks imposed on insurers in each context. As the Court explained in *Beck-Brown Realty Co. v. Liberty Bell Ins. Co.*, 137 Misc. 263, 241 N.Y.S. 727 (Sup. Ct. Kings County 1930):

Before loss, the insurer is subjected to a risk, and it is this risk which the insurer may exempt from assignability except on its own consent. Upon loss, however, the risk disappears and nothing remains except the assured's right to payment – a mere chose in action which may be assigned within the limitations of any other chose in action.

SR International Business Ins. Co. v. World Trade Center Prop., LLC, 394 F. Supp. 2d 585, 593 (S.D.N.Y. 2005) (citations omitted). In other words, it is absolutely possible to read *Travertine* in conjunction with *Windey*, *Reitzner* and the other cases without stripping those cases of their vitality.

Further, a mere *three weeks* after the Minnesota Supreme Court decided *Travertine*, it noted in *Illinois Farmers Insurance Co. v. Glass Service Co.* that “it has long been our policy that insurance policies do [] not stand on the same footing as ordinary contracts.” 683 N.W.2d 792, 802 (Minn. 2004) (quoting *Clark v. Rochester Farmers' Mut. Fire Ins. Co.*, 161 Minn. 476, 479, 201 N.W. 930, 931-32 (Minn. 1925)) (internal quotation marks omitted). The difference between anti-assignment clauses in arms-length negotiated contracts and in insurance contracts lies in the differing allocation of risks, as laid out above. As Star Windshield has argued, *Illinois Farmers* strongly supports its position here. In that case, the supreme court ruled that Glass Service, which was the assignee of more than 5,700 auto glass claims of Farmers' insureds, was not only permitted to pursue its claims in no-fault arbitration, it was *required* to do so. *Id.* at 804.

Auto-Owners further asserts that in an unpublished opinion the court of appeals held that *Travertine* overruled, *sub silentio*, *Windey. Physician's Neck & Back Clinics, P.A. v. Allied Ins. Co.*, No. A05-1788, 2006 WL 2053142 (Minn. Ct. App. July 25, 2006). Based on *Travertine's* citation in a footnote to a decision of the Colorado Supreme Court involving insurance, the *Physician's Neck* court concluded that *Windey* was no longer good law in Minnesota. *Id.* at *4.

The strength of this line of reasoning has been called into question (see below), but even if the court accepts that the citation to the Colorado case—*Parrish Chiropractic Centers, P.C. v. Progressive Casualty Insurance Co.*, 874 P.2d 1049 (Colo. 1994)—extends the *Travertine* analysis into the insurance context, it only need extend it as far as the facts of *Parrish*, virtually the same as the facts in *Physician's Neck*. Both cases involved chiropractors attempting to initiate arbitration pursuant to assignments of proceeds from their customers. The cases are distinguishable in two material respects from the facts of this appeal. First, factually, in each case the assignments at issue were made before the loss was suffered—before the chiropractor did any work on the patient. *See Physician's Neck*, 2006 WL 2053142 at *1; *Parrish*, 874 P.2d at 1051. Whereas in this appeal, Star Windshield's customers had already suffered their loss—their windshields were already damaged at the time the assignment was made. The high degree of standardization in the auto glass industry and the formulaic nature of auto glass repair—the windshield is either replaced or it is not—militate for treatment different from that of medical practitioners, such as chiropractors. *See Illinois Farmers*, 683 N.W.2d at 797-98 (laying out the formulaic nature of glass repair and pricing).

Second, an entirely different set of policy concerns underlies claims for medical benefits from those underlying claims for property damage benefits. Health insurance policies garner an exception to the general preference for the assignability of post-loss proceeds. *See Keeton & Widiss, Insurance Law* § 4.1(c)(3)(i) (1988). If anything, *Physicians Neck* is only applicable in the context of medical benefits—a context which implicates the distinct policy concern of controlling health care costs.

Finally, the United States District Court for the District of Minnesota recently rejected the proposition that *Travertine* overruled *Windey* and its progeny. In *Alpine Glass, Inc. v. Illinois Farmers Insurance Co.*, No. 06-CV-1148 (PJS/RLE), 2006 WL 3486996 (D. Minn. Dec. 4, 2006), Magistrate Judge Noel rejected Farmers' argument that *Windey* was no longer good law: "Defendant's cited authorities do not persuade the court that the widely-embraced and long-established rule that proceeds of an insurance policy may be assigned regardless of the presence of an anti-assignment clause does not remain the law in Minnesota." Report & Recommendation at *13. Regarding the *Physician's Neck* argument, Judge Noel was "not persuaded by the analysis in the decision." *Id.* Upon Farmers' objection to the Report & Recommendation, District Judge Schiltz affirmed Judge Noel's conclusions, and characterized *Physician's Neck* as exemplifying "questionable reasoning." *Id.*⁴; *see also Alpine Glass, Inc. v. American Family Ins. Co.*, No. 06-4213 (DSD/SRN), 2007 WL 1152931 at *2 (D. Minn. Apr. 18, 2007) (rejecting insurer's argument that *Windey* is no longer good law).

⁴ Farmers has appealed Judge Schiltz's decision to the Eighth Circuit.

Even taken together, *Travertine* and *Physician's Neck* do not suffice to overrule Minnesota's unbroken 50-year line of precedent permitting the assignment of property damage insurance proceeds post-loss.

CONCLUSION

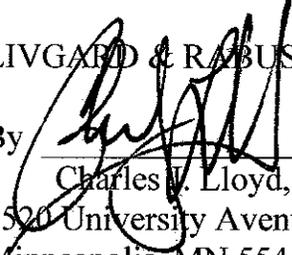
For all of Auto-Owners' protestations, this dispute is paradigmatic of the type the legislature intended to be resolved in arbitration under the No-Fault Act. The district court erred when it ruled that even though Star Windshield's assignments are valid, they are not enforceable in arbitration. The no-fault arbitrator has both authority and exclusive subject matter jurisdiction over Auto-Owners' defense that it did not waive objection to Star Windshield's assignments. *Travertine* does not overrule *Windey* and half a century of Minnesota precedent, and so Auto-Owners' anti-assignment clause does not bar Star Windshield's post-loss assignments of proceeds. For the foregoing reasons, and for the reasons articulated in Star Windshield's Appellant's Brief, the district court should be reversed and this matter referred to no-fault arbitration.

Dated: 20 July, 2007

Respectfully submitted,

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