

NO. A07-972

State of Minnesota
In Court of Appeals

AUTO-OWNERS INSURANCE CO.,

Respondent,

vs.

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

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE ISSUES

- 1. Whether the District Court had subject matter jurisdiction over the validity of the nonassignment clause and the existence of waiver as preliminary questions of law.**

The District Court held that it is the appropriate forum to resolve certain preliminary issues related to the insurance arbitration process.

Apposite Authorities:

Illinois Farmers Ins. Co. v. Glass Serv. Co., 683 N.W.2d 792 (Minn. 2004)

Minn. Stat. § 65B.525

Minn. Stat. § 572.09

- 2. Whether the District Court erred in holding that although an insured may assign his or her insurance proceeds upon a successful claim of a fixed loss, the insured may not assign the right to litigate or arbitrate a determination of the amount of the loss.**

The District Court held that an assignment of proceeds after the loss has been fixed does not give the assignee the right to enforce terms of an insurance contract to which it was not a party.

Apposite Authorities:

Windey v. North Star Farmers Mut. Ins. Co., 43 N.W.2d 99 (Minn. 1950)

Reitzner v. State Farm Fire and Cas. Co., Inc., 510 N.W.2d 20 (Minn. Ct. App. 1993)

Travertine Corp. v. Lexington-Silverwood, 683 N.W.2d 267 (Minn. 2004)

STATEMENT OF THE CASE

On October 19, 2006, Auto-Owners filed an Amended Complaint for Declaratory Judgment in Blue Earth County District Court, Honorable Norbert P. Smith presiding. (Appellant's App. 1-4). Auto-Owners sought a declaration from the District Court that the nonassignability clause in its automobile insurance policy is valid and enforceable. (Appellant's App. 3). Auto-Owners also sought an injunction in order to prevent several scheduled arbitrations from proceeding. (Appellant's App. 43). Star Windshield opposed the action and moved the District Court to dismiss the case. (Appellant's App. 45). On November 6, 2006, the District Court granted Auto-Owners' request for a temporary restraining order. (Order re: Temporary Restraining Order, Nov. 6, 2006, A-1). On December 15, 2006, the District Court held that it had jurisdiction to rule on the matter. (Appellant's App. 73). On March 15, 2007, the District Court held that the nonassignment clause was valid, and that Star Windshield had not been assigned the right to litigate or arbitrate the terms of the policy. (Appellant's App. 88). The District Court granted Auto-Owners' motion for summary judgment. *Id.* Star Windshield filed its Notice of Appeal on May 15, 2007. (Appellant's App. 91).

STATEMENT OF THE FACTS

In this case, Auto-Owners' insureds had their damaged auto glass repaired by Star Windshield. (Appellant's App. 2). Upon completion of the work, Auto-Owners paid on the claims to Star Windshield as it is required to do under Minn. Stat. § 72A.201. The

statute requires payment based on a competitive price that is fair and reasonable within the local industry at large. *Id.* Although Auto-Owners based the amount it paid on the results of a cost survey that included price quotes from three other auto glass installers, Star Windshield disputed the amounts it received from Auto-Owners for the insureds' claims. (Appellant's Br. 4). Star Windshield filed multiple claims in arbitration to recover the difference in payment alleging that it had received assignments from the insureds to pursue claims on their behalf. *Id.*

Auto-Owners filed its declaratory action objecting to the claimed assignments because its policies with its insureds expressly prohibit such assignments. (Appellant's App. 2). Star Windshield asserted that Auto-Owners' nonassignment clause was meaningless in this context and that Auto-Owners waived its opportunity to object to the clause when it paid the claim according to statute. (Appellant's App. 57-58). Star Windshield then argued that the District Court should hear neither issue, and that both matters should be heard in arbitration. (Appellant's App. 58-59). Auto-Owners argued that resolving the validity of the nonassignment clause was a legal question for the court. (Plaintiff's Reply Memo. of Law in Support of Subject Matter Juris., A-3). Auto-Owners further argued that whether it waived its right to contest the assignments was also a legal issue for the court to resolve because there are no disputed facts surrounding the entire waiver issue. (Plaintiff's Memo. of Law in Support of Subject Matter Juris., A-7). The District Court exercised jurisdiction over both matters and granted Auto-Owners' Motion for Summary Judgment. (Appellant's App. 88).

ARGUMENT

1. **The District Court did not err when it held that it had subject matter jurisdiction over the validity of the nonassignment clause and the existence of waiver as preliminary questions of law.**
 - A. **Because the disputed issue does not concern the amount of an insurance claim, it is not subject to binding arbitration.**

Standard of Review.

In the area of automobile reparation, “arbitrators are limited to deciding questions of fact, leaving the interpretation of law to the courts.” *Weaver v. State Farm Ins. Co’s.*, 609 N.W.2d 878, 882 (Minn. 2000).

Star Windshield alleges in the opening sentence of its argument that Auto-Owners is afraid of arbitration. (Appellant’s Br. 5). However, regardless of what Star Windshield hypothesizes about Auto-Owners’ fears, its bold and erroneous allegation is entirely irrelevant (and incorrect) in the present case because the disputed issue is not one mandated to arbitration. *See* Minn. Stat. § 65B.525, Subd. 1 (providing for arbitration of all claims of \$10,000 or less for no-fault benefits or comprehensive or collision damage coverage).

Star Windshield insists that the ruling in *Illinois Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792 (Minn. 2004), means that it should prevail here. In that case, the Minnesota Supreme Court discussed Minnesota’s no-fault arbitration statute in the context of deciding whether an insurance company had waived its right to demand arbitration. *Id.* at 800. The Supreme Court found that because the arbitration statute limits the courts’ jurisdiction to determine comprehensive benefit claims, the insurer

could not waive its right to demand arbitration. *Id.* The Supreme Court recognized that its findings as to waiver were simply based upon black-letter law. *Id.* (citing *Duininck Bros & Gilchrist v. Brandondale Chaska Corp.*, 248 N.W.2d 743, 744 (Minn. 1976)). The Supreme Court's statement was "[] to the extent that this dispute is governed by the mandatory arbitration provision of the No-Fault Act, the doctrine of waiver does not apply." *Id.* (*emphasis added*). This simply means that *if* the appropriate jurisdiction was in arbitration, the insurer could not have waived it simply by filing an action in District Court.

Arbitration is not the appropriate jurisdiction for the issue in this case. The dispute between the parties is not over the simple payment or non-payment of money for the claims of Auto-Owners' insureds. The disputed issue is whether Star Windshield has the legal ability to demand that money on behalf of Auto-Owners' insureds. It does not. Therefore, the District Court did not err when it denied Star Windshield's motion to dismiss for lack of subject matter jurisdiction.

B. The existence of waiver is a question of law because the facts constituting an alleged waiver are not in dispute.

Star Windshield next claims that Auto-Owners' entire claim is subject to challenge based on waiver. It claims that although it is possible for the trial court to conclude the nonassignment clause is valid, it may still have standing because of Auto-Owners' waiver. (Appellant's Reply Memo. Concerning Lack of Subject Matter Juris., A-21). While Auto-Owners agrees that the trial court could conclude the clause is valid, it disputes that its actions amount to waiver.

Star Windshield then claims that the existence of waiver is a question of fact, and that therefore it “fall[s] squarely within the authority of the no-fault arbitrator.” (Appellant’s Br. 8). Star Windshield erroneously cites *Illinois Farmers* for this assertion. However, nothing in that case indicates that the Supreme Court made such a holding, and Star Windshield provides no quotation from the case establishing its allegation. *Id.*

As Auto-Owners has always contended, there are no disputed facts over the actions it took when it paid Star Windshield: Auto-Owners issued policies with nonassignment clauses; Auto-Owners’ insureds signed documents purporting to assign their rights under the insurance policies to Star Windshield; Star Windshield repaired glass on the insureds’ vehicles; Star Windshield sent the bill directly to Auto-Owners; and Auto-Owners mailed what it determined to be a competitive, fair, and reasonable payment to Star Windshield. Given those undisputed facts, the question of waiver becomes one of law that the trial court should decide and did. Additionally, Minn. Stat. § 572.09(b) grants trial courts the authority to stay arbitration proceedings where there is no agreement to arbitrate. Nothing in the “No Fault” Act gives a no-fault arbitrator the ability to decide legal issues.

C. Auto-Owners did not waive its objection to the assignments when it acted pursuant to Minnesota law.

Auto-Owners did not act in complete conformance with the assignments as alleged by Star Windshield. (Appellant’s App. 16). Auto-Owners paid the portions of its insureds’ claims that it is required to pay under Minn. Stat. § 72A.201, Subd. 4. Under the plain language of that statute, Auto-Owners must determine its liability to its insured within 30 days and inform the insured of the same. Because Auto-Owners did not

dispute that it was liable for certain amounts, the statute requires that those amounts be paid. In order to comply with the statute, Auto-Owners must pay the claims of its insureds. Auto-Owners could hardly hope to justify withholding such undisputed payment amounts solely to protect its own ability to assert the validity of its nonassignment clause.

Because Auto-Owners acted pursuant to statute when it paid the claims of its insureds, its actions were not voluntarily taken. *See, e.g. Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 304 (Minn. 1990) (waiver is the “voluntary and intentional relinquishment or abandonment of a known right.” *Id.*). Because it did not act voluntarily, as is required to find waiver, Auto-Owners did not waive its ability to assert the nonassignment clause.

2. The District Court did not err in holding that although an insured may assign his or her insurance proceeds upon a successful claim of a fixed loss, the insured may not assign the right to litigate or arbitrate a determination of the amount of the loss.

A. Even if Star Windshield received assignments of proceeds from the insureds, it did not receive the right to insert itself into the insurance contract by demanding amounts beyond amounts due the insureds.

Contrary to Star Windshield’s assertion, the District Court did not hold that the policyholders’ assignments to Star Windshield were valid. (Appellant’s Br. 9). The District Court held that “[a]t best, all Star Windshield received from the named insured was an assignment of proceeds.” (Order re: Summ. Judgment at 3; A-18).

Star Windshield cites a string of cases in support of its argument that proceeds of an insurance policy may be assigned post-loss notwithstanding the presence of a

nonassignment clause in the policy. (Appellant's Br. 9). As described briefly below, Star Windshield's interpretation of the cases is flawed by both its broad analysis and its reliance on dicta.

Star Windshield relies on a statement of dicta in *Windey v. North Star Farmers Mut. Ins. Co.*, 43 N.W.2d 99 (Minn. 1950), as support for its position. In *Windey*, the Minnesota Supreme Court heard an action to recover on a tornado policy by an assignee of the insured. *Id.* The policy at issue had a provision that voided it if the policy was assigned without the consent of the insurer. *Id.* at 100. The dispute arose over the fact that prior to the loss the insured vendors in a contract for deed agreed to apply any insurance proceeds to the unpaid purchase price. *Id.* at 101. After the loss occurred, the insured assigned to the vendee the money due under the policy. *Id.* The insurer then sought to avoid payment under the policy by asserting that the agreement in the contract for deed constituted an assignment of a policy interest thereby voiding the entire policy. *Id.* at 100. The Supreme Court held that the agreement in the contract for deed was not an assignment of a policy interest because it gave the vendee no rights against the insurer, but only against the vendor so far as concerned the application of the proceeds. *Id.* at 101-02. This distinction is crucial and important. Here, Star Windshield is stating that it has gained the right to proceed against the insurer.

The Supreme Court further stated in dicta that assigning the money due as a result of the loss did not constitute an assignment of the policy, "but only of a claim or right of action on the policy." *Id.* at 102. Star Windshield relies heavily on this dicta statement. However, not only is the statement dictum, but the very facts creating the context within

which the court made the statement is clearly distinguishable from the facts present here. The insurer in *Windey* argued that because of the assignment it no longer had any duty to pay under the policy. *Id.* at 100 (*emphasis added*). The Supreme Court refused to absolve the insurer of its duty to pay. *Id.* at 102. In this case, Auto-Owners has not disputed its duty to pay the claims of its insureds.

Star Windshield also cites *Britamco Underwriters, Inc. v. A & A Liquors of St. Cloud*, 649 N.W.2d 867 (Minn. Ct. App. 2002), as support for its argument that proceeds of an insurance policy may always be assigned regardless of a nonassignment clause (Appellant's Br. 9). However, the policy in that case apparently did not have a nonassignment clause. This is a crucial distinction that Star Windshield fails to distinguish. In *Britamco*, a bar assigned its rights under a liquor liability policy to an injured patron. *Id.* at 870. The insurer argued that the patron lacked standing because he had no contractual privity with the insured and because of alleged defects in his court pleadings. *Id.* The insurer did not even raise the issue of whether or not its policy contained a nonassignment clause. *Id.* The Court of Appeals upheld the assignment, finding that the patron had contractual privity with the insurer because he was a valid assignee of the bar's rights under the policy. *Id.* Thus, the Court of Appeals never discussed the point argued by Star Windshield – that it received an assignment of the insureds' rights despite the fact that Auto-Owners had expressly prohibited such an assignment. While *Britamco* certainly discusses the black-letter law on assignment, it does nothing to advance Star Windshield's argument on this appeal dealing with the validity of a nonassignment clause.

Next, Star Windshield cites *In re the Estate of Sangren*, 504 N.W.2d 786, (Minn. Ct. App. 1993). However, in *Sangren*, the Court of Appeals actually held that the insurer had waived its right to object to the assignment. *Id.* at 790. The Appellate Court went on to add in dicta, “[f]urther, this was not really an assignment of the policy. Rather, it was an assignment of the proceeds of the policy.” *Id.* Additionally, like the insurers in *Windey* and *Britamco*, the insurer in *Sangren* was disputing its obligation to pay anything at all under the policy. *Id.* at 787.

The facts in the cases cited by Star Windshield are simply not analogous to the facts present here for several reasons; most consistently because unlike the insurers in all of those cases, Auto-Owners has never disputed its obligation to pay the lawful claims of its insureds. The courts in the cases discussed above did not even reach the question of whether an assignment of proceeds that were neither fixed nor disputed gives the assignee the right to litigate or arbitrate the amount of the proceeds. The *Britamco* Court did not even discuss a nonassignment clause. The cases, therefore, are inapposite to Star Windshield’s argument that, as a third-party vendor in an insurance contract, it should be allowed to litigate the amount of money Auto-Owners’ insureds receive after a loss has occurred.

- B. Star Windshield has no policy rights under the insurance contract and, therefore, has no right to litigate or arbitrate amounts due under the policy because the policy expressly prohibits assignment of policy rights absent the insurer’s consent.**

Star Windshield argues that a nonassignment provision in an insurance contract is meaningless in Minnesota. This argument is flawed as there is no Minnesota statute or

case that permits an assignment of rights under an insurance contract where the insurer has expressly prohibited such an assignment. For example, contrary to Star Windshield's interpretation, *Reitzner v. State Farm Fire and Cas. Co., Inc.*, 510 N.W.2d 20 (Minn. Ct. App. 1993), does not stand for the proposition that it has standing in this case as assignee of the insured's policy rights. In *Reitzner*, the vendee to a contract for deed set fire to the insured property and went to prison. *Id.* at 22-23. Subsequently, both the vendee and the vendor assigned their rights with regard to the fire loss to Reitzner. *Id.* at 23. When Reitzner attempted to collect the insurance money, the insurer argued that because the assignments violated the terms of the policy they were void, and that, as a result, Reitzner had no standing to bring suit. *Id.* at 26.

In holding that the assignment was valid, the Court of Appeals emphasized that “[Reitzner] did not receive a pure assignment of the policy, but rather, received an assignment of the proceeds due under the policy should the claim be successful.” *Id.* (*emphasis added*). The Court of Appeals' unremarkable statement that, “[a]n assignment of insurance monies due on a successful claim does not require the insurance company's written consent” provides no support for Star Windshield's assertion that such proceeds may be assigned without the consent of the insurer regardless of the presence of a nonassignment clause. (Appellant's Br. 9). The assignment at issue in *Reitzner* was basically a promise to pay over the insurance proceeds if there were any. *Reitzner*, 510 N.W.2d at 26 (*emphasis added*). An assignment of such a fixed loss is entirely different from the kind of assignment claimed here by Star Windshield. The amounts claimed by Star Windshield are not fixed because they are subject to being a “competitive price that

is fair and reasonable with the local industry at large.” Minn. Stat. § 72A.201, Subd. 6 (14). Because the claims represent unliquidated amounts, Star Windshield does not have the right to arbitrate those amounts with Auto-Owners. As reviewed in the following section, case law supports a distinction between fixed-loss and unliquidated claims.

C. Case Law

Case law for over 50 years has supported the validity of nonassignment clauses. In *Wilkie v. Becker*, 128 N.W.2d 704 (Minn. 1964), a bankrupt debtor assigned amounts payable out of proceeds from a subsequent sale of his property to his relatives. *Id.* at 705. The trustee in bankruptcy claimed the assignments were invalid and that it was entitled to the funds for the benefit of all the debtor’s creditors. *Id.* The District Court held that the assignments to the relatives were valid as assignments prior in time to those of the trustee. *Id.* at 706. The Minnesota Supreme Court, finding no indication of fraud, affirmed while recognizing that “[a] contract to pay money may be assigned by the person to whom the money is payable, unless there is something in the terms of the contract manifesting the intention of the parties that it shall not be assigned.” *Id.* at 707 (*emphasis added*). Here, the policy between Auto-Owners and its insureds exemplifies the required manifestation of intent by stating, “*No interest in this policy may be assigned without our written consent.*” (Appellant’s App. 15). The right to litigate or arbitrate disputed amounts due on a claim is “an interest” in the policy. It is not the same as simply agreeing to hand over insurance money received for a claim after the money has been received. Auto-Owners did not give its consent for the assignments; therefore, the assignments are not valid.

In *Vetter v. Security Continental Ins. Co.*, 567 N.W.2d 516 (Minn. 1997), one insurance company conveyed its rights in several annuity contracts to another insurance company. *Id.* at 518-19. The issue before the Minnesota Supreme Court was whether the initial insurer had sufficiently notified the contract holders that its liability to pay had shifted to the second company. *Id.* at 520-21. In its analysis, the Supreme Court recognized that insurance policies should generally be treated like contracts and that general principles of contract law should apply. *Id.* at 521. The Supreme Court stated the following as a general rule:

In the absence of a contractual provision to the contrary, an obligor on a contract may assign all beneficial rights to another, or may delegate his or her duty to perform under the contract to another, without the consent of the obligee.

Id. (emphasis added).

Despite this general rule, Star Windshield accuses Auto-Owners of “blind application of contract principals” in its citation to the rule. (Appellant’s App. 80). It contends that insurance policies are different from ordinary contracts, apparently suggesting that language in insurance policies should be somewhat more loosely construed. *Id.* Auto-Owners recognizes that there are differing opinions as to what an assignment really means in the context of an insurance policy. However, as Star Windshield points out, the rationale oft suggested for permitting an assignment of policy proceeds is that there is no additional risk to the insurer. (Appellant’s App. 79. 5-6).

The supportive rationale is not present in the case of the attempted assignment by Auto-Owners’ insureds to Star Windshield. When an Auto-Owners’ insured has a glass

claim, the risk Auto-Owners has taken is that it has to pay the amount required by statute. This is the risk it bargained for when it sold the policy. However, when that same insured happens to call Star Windshield for glass repair, Auto-Owners' risk suddenly increases as it is forced into arbitration and sued for amounts greater than required by statute – greater than those amounts it bargained for. Thus, while it is true that an insurer generally faces no greater risk in an assignment of claimed sums due, here the claimed assignments act to increase the amount Auto-Owners must pay on every glass claim handled by Star Windshield. The insured for that matter likely neither knows nor cares what Star Windshield is charging to repair the windshield, and it is certainly doubtful that the insured chose Star simply because it charges twice as much as its competitors charge to replace windshields. The risk that Auto-Owners would be forced to pay more than required is nonexistent absent the assignment to Star Windshield.

A recent Minnesota Supreme Court case supports the validity of nonassignment clauses. In *Travertine Corp. v. Lexington-Silverwood*, 683 N.W.2d 267 (Minn. 2004), the Supreme 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.” *Id.* at 271. In *Travertine*, one of the parties to the real estate development partnership “Travertine” attempted to assign rights due him by Travertine under a management contract. *Id.* at 269-270. When the assignee sued to enforce the assignment, Travertine argued that a nonassignment clause in the contract prohibited the assignment. *Id.* at 271. The operative portion of the nonassignment clause stated that “*the rights and obligation of [the parties] shall not be assignable.*”

The assignee urged the Court to adopt the Restatements view -- requiring more specific language to attach meaning to a nonassignment clause. However, the Supreme Court refused and instead cited its own precedent that does “not require that the parties use specific terms to preclude assignment. . .” *Id.* at 272. Because the contract contained a nonassignment clause, and because no special language was required to give the clause meaning, the Supreme Court held it was a valid and enforceable term of the agreement. *Id.* at 274. Thus, the purported assignment was void. *Id.*

The nonassignment clause in Auto-Owners’ policies simply states that, “*no interest in this policy may be assigned without our written consent.*” (Appellant’s App. 15). Under *Travertine*, this simple sentence is more than sufficient to give meaning to the parties’ intent. Because the language is clear and unambiguous, the Court should enforce the provision and not “modify, or limit its effect by a strained construction.” *Travertine*, 683 N.W.2d at 271.

The Court of Appeals, as recently as July 25, 2006, reiterated the rule that “[a]n insurance policy is a contract, and unless there are statutory provisions to the contrary, general principles of contract law apply.” *Physicians Neck & Back Clinics (PNBC), P.A. v. Allied Insurance Co.*, LEXIS 804, at *4 (Minn. Ct. App., July 25, 2006) (A-33). In *PNBC*, the insured accident victim assigned her insurance benefits payable to her treating clinic. *Id.* at *2. The District Court held that the nonassignment provision in the insurer’s policy was enforceable, and further that the insured’s signature was not an assignment because there was no indication that she intended to assign her rights. *Id.* at *3. The Court of Appeals found no intent because the assignment execution actually

came from the insured's signature on a private insurance information form. *Id.* at *2. The Court found that the document lacked a manifestation of the insured's intent to transfer her rights. *Id.* The Court of Appeals held that "the plain-language analysis applied by the *Travertine* court" governed its decision. *Id.* at **11-12. The Court of Appeals affirmed the District Court and held that the nonassignment provision was enforceable. *Id.* The Court of Appeals did not reach the issue of whether the insured had manifested her intent to transfer her rights.

PNBC is instructive for its sound application of the Minnesota Supreme Court's reasoning in *Travertine*. The *PNBC* Court held that the nonassignment provision was enforceable for three reasons. First, it concluded that the plain language of the contract prohibited the assignment. Second, it held that in *Travertine*, the Supreme Court endorsed the idea that the plain language of the contract must be used in determining the intent of the contracting parties. Third, the Court held that the citations used by the *Travertine* Court to support its decision made it clear that the Supreme Court approved the general proposition that nonassignment provisions should be upheld.

In *Liberty Mutual Ins. Co. v. American Family Mutual Ins. Co.*, 463 N.W.2d 750 (Minn. 1990), an insured assigned his right and interest in uninsured and underinsured coverages to a different insurer. *Id.* at 753. The District Court held that the insured had attempted to assign a personal injury claim, which is prohibited in Minnesota. *Id.* The Minnesota Supreme Court disagreed and found that the assignment was not unlawful. *Id.* at 755. Nonetheless, the Supreme Court held that the assignment "violat[e]d the policy

provision prohibiting assignment of the insured's rights pursuant to the policy absent the insurer's consent." *Id.* at 755-56.

The policy in *Liberty Mutual*, as in Auto-Owners' policy, clearly prohibited assignment absent the insurer's consent. The attempted assignment was of the right to pursue in litigation or arbitration undetermined amounts. The Minnesota Supreme Court clearly agreed that such rights cannot be assigned where there is a nonassignment policy provision. *Id.* This is exactly the situation now before the Court – Star Windshield wants to claim the right to pursue an undetermined amount notwithstanding the explicit nonassignment language in the policy. That it cannot do without Auto-Owners' consent.

The above cases show that the nonassignment provisions in its policies are valid and enforceable. Because the insurance policy expressly prohibits such assignments, Star Windshield has no legal right to seek a determination of the amounts Auto-Owners must pay its insureds.

CONCLUSION

A determination of the validity of the nonassignment provisions in Auto-Owners' automobile insurance contracts requires an interpretation of statute and the several state cases discussing the law in this area. Because deciding legal issues is a matter for the courts, the District Court did not err when it exercised its jurisdiction, applied the law, and decided the case.

No Minnesota authority permits an assignment of insurance policy rights where the insurer has prohibited the assignment. Therefore, the District Court did not err when

it held that Auto-Owners' insureds had not given a valid assignment of their policy rights to Star Windshield. With no valid assignment, Star Windshield did not "step into the shoes" of Auto-Owners' insureds. As a result, the District Court did not err when it held that Star Windshield does not have the right to seek a determination of the amounts Auto-Owners must pay its insureds.

For the reasons set out above, Auto-Owners respectfully requests that the Court affirm the District Court's judgment.

Dated this 11th day of July, 2007.

Respectfully submitted,

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