

**IN THE SUPREME COURT OF OHIO**

PHILLIP LABOY, et al.,	:	Case No. 2014-0708
	:	
Plaintiffs-Appellees	:	
	:	On Appeal From the
v.	:	Cuyahoga County Court
	:	of Appeals, Eighth
	:	Appellate District,
GRANGE MUTUAL CASUALTY	:	Case No. 13-100116
COMPANY,	:	
	:	
Defendant-Appellant	:	

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**REPLY BRIEF OF APPELLANT GRANGE MUTUAL CASUALTY COMPANY**

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## INTRODUCTION

Bedrock Ohio law holds that no fact-finding is needed or permitted to determine the meaning of an unambiguous contract, that only parties in privity have rights and obligations under contracts, and that insurance policies must be read reasonably so that their performance is possible. Appellees concede that the insurance policy at issue is unambiguous but still contend, as the Court of Appeals erroneously held, that fact-finding is needed to determine its meaning. Appellees' theory does violence to centuries of settled contract law and should be rejected.

Appellees' novel claim is that Grange breached the insurance policy by paying their providers too much for their medical care, and ask this Court to hold that policy language stating that Grange will pay the lower of the reasonable cost or "any negotiated reduced rate accepted by a medical provider" for medical care requires Grange to "pay any reduced rate *accepted by its insured[s]' third-party health insurance provider \* \* \**" (Emphasis sic.) (Policy, Supp., pp. S-15-16; Appellees' Br., p. 11). But Appellees ignore a simple truth as to which no fact-finding is needed or permitted: Grange has no right to pay, and medical providers have no obligation to accept, rates that were agreed upon between those providers and Appellees' health insurer, Medical Mutual.

Appellees try to dodge this obvious truism with the serpentine argument that they have "access" to their health insurer's rates, that this "access" somehow arises from the mutuality of contracts, that Appellees can therefore "make available" to Grange the rates that Medical Mutual negotiated for itself with providers, and that Grange is therefore required under its insurance policy to pay those rates and somehow compel providers to accept them. (Appellees' Br., p. 2.) But the term "access" has no legal or contractual significance here and requires no fact-finding. Furthermore, the mutuality in contracts does not give Appellees license to import rights and obligations between two third-parties into the automobile insurance policy; nor does it permit, let

alone obligate, Grange to enforce agreements to which it is not a party.

Implicit in the policy language that Grange will pay the lesser of the reasonable cost or “any negotiated reduced rate accepted by a medical provider” is that Grange must have a contractual right to pay the “negotiated reduced rate” — the provider must have agreed to accept that rate *from Grange*. (Policy, Supp., pp. S-15–16.) Simply because Appellees purchased health insurance from Medical Mutual, or because Medical Mutual has rate agreements with some of the medical providers that treated Appellees, does not change this fundamental precept of contract law. That is the conclusion correctly reached by the Trial Court and is the only reasonable interpretation of the policy.

Appellees’ theory, that they can insert rights and obligations from agreements between Medical Mutual and medical providers into their automobile insurance policy with Grange, is contrary to well-settled principles of contract interpretation and privity and is unsupported by any evidence. As the Trial Court correctly held, Appellees’ claims are predicated on an “illogical and impossible construction of the [insurance] contract.” (Tr. Op., p. 5.) Moreover, Appellees never produced “any evidence showing that Grange had a contractual right to pay a reduced rate” negotiated between medical providers and Appellees’ health insurer. (*Id.*) Appellees should not be given still more opportunities to present evidence when they failed to do so not just once, but a second time after the Trial Court allowed them to take depositions following summary judgment briefing.

Appellees’ unique notions of contract interpretation, mutuality, and privity are contrary to fundamental Ohio law, as is the Eighth District’s decision to order fact-finding to interpret an unambiguous contract. This Court should reverse the Eighth District’s decision and reinstate and affirm the Trial Court’s entry of summary judgment in favor of Grange.

## RESPONSE TO APPELLEES' STATEMENT OF FACTS

Appellees' Statement of the Relevant Facts ignores the relevant and undisputed testimony that Grange does *not* have a contractual right to pay medical providers at rates negotiated between its insureds' health insurers and those providers. (*E.g.*, Miller Depo., pp. 115, 128, 130, 133, Supp., pp. S-54–57; *see also* Grange's Br., p. 5.) Indeed, when Appellees' medical bills were submitted to Grange, Medical Mutual's negotiated rates were not offered to Grange by Appellees' medical providers. As recognized by the Trial Court, Appellees "neither cited any evidence showing that Grange had a contractual right to pay [Medical Mutual's] rates, nor \* \* \* explained how Grange could force medical providers to accept rates that the medical providers negotiated with other entities than Grange." (Tr. Op., pp. 5–6.)

Ignoring the relevant facts, Appellees focus on the unremarkable fact that Grange is not *prohibited* from paying medical bills at rates other than those under the preferred provider network to which Grange is a party. (*See, e.g.*, Appellees' Br., pp. 4–8) (arguing that Grange does not have a policy against accepting negotiated rates, does not expressly limit itself to rates under its own preferred provider network, and is not prohibited from negotiating with medical providers). Yet, that Grange might not prohibit itself from paying other rates, if they were offered, does not mean that Grange has the right to pay those rates, or that providers would be obligated to accept them.

Appellees also cite testimony from Grange's representative showing, unsurprisingly, that *if* Grange were *offered* lower rates by providers, Grange would *possibly* accept the offer and pay those lower rates:

Q: *If* there is somebody you didn't have a contract with but they *offered* you a lower rate, is there any reason why Grange would not take advantage of paying the lower rate?

A: No.

Q: . . . [I]f a provider was able to provide a lower rate for your insured, Grange *would* take advantage of that, correct?

A: Possibly, uh-huh.

(Emphasis added.) (Miller Depo., pp. 161–62, Appellees’ Supp., pp. 70–71.) But this testimony hardly supports Appellees’ theory. If a lower rate was offered by a provider, and accepted by Grange, then Grange would be contractually entitled and the provider contractually bound to that rate. That did not happen here, however: nothing in the record even suggests that Medical Mutual’s negotiated rates were ever offered to Grange by any of Appellees’ medical providers.<sup>1</sup> Indeed, Appellees’ case is premised on the fact that their providers did not bill Grange at Medical Mutual’s lower rates; hence their argument that Grange “overpaid” those providers.

Appellees also misstate the record. Appellees claim, without citation, that Grange’s representative “admits that there is no reason Grange could not take advantage of paying lower rates from a provider, even if Grange did not have a contract with that provider.” (Appellees’ Br., p. 7.) Appellees do not cite to the record for this statement because the only evidence directly contradicts it, as Grange’s representative expressly rejected this precise premise repeatedly:

Q. And your insured has access to this lower rate. Okay? And if you could pay, “you” being Grange[,] can pay that lower rate through your insured’s relationship with their health provider, would Grange do that to benefit the insured?

\* \* \*

A: We don’t have access to that.

Q: If you had access through your insured, then you would have access, correct?

A: But we don’t, we don’t have the contract that the insured has with the health carrier.

(Miller Depo., pp. 131, 133.) Likewise, Grange never “refused” to pay the providers who treated Appellees at Medical Mutual’s rates, as Appellees claim. (*See* Appellees’ Br., p. 1.) On the

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<sup>1</sup> That there is no such evidence is not surprising, as the notion that medical providers would voluntarily offer to accept payments from Grange at lower rates that the providers had agreed to accept only from Medical Mutual is illogical and unrealistic.

contrary, there is no evidence that Grange was ever offered those rates, let alone that it refused to pay them. Indeed, the medical bills submitted to Grange by Appellees' medical providers prove that Medical Mutual's rates were not offered. (*See* Grange's 8/13/12 Br. in Supp. of Summ. J., Ex. F.)<sup>2</sup>

Appellees also state that Grange has "utilized discounts from providers that Grange did not have a contract with." (Appellees' Br., p. 8). But this misstates the actual testimony. Grange's representative testified only that Grange has *made payments to* medical providers with whom it does not have a contract; nothing about discounts was mentioned. (Miller Depo., pp. 198–99, Appellees' Supp., pp. 72–73.) Again, this is hardly surprising; Grange must pay its insureds' medical expenses, subject to the policy, regardless of Grange's contractual relationship, or lack thereof, with the medical provider chosen by the insured.

Perhaps most egregiously, Appellees assert that Medical Mutual's negotiated rates are "accessible to Grange" and support this with a purported citation to *Grange's* discovery responses. (Appellees' Br., p. 4.) But neither Grange's discovery responses nor any other evidence say any such thing – Appellees' reference is to their own discovery responses, which merely parrot their unsupported legal theory of "access." (*See* Appellees' Supp., pp. 38–49.)

None of the "facts" in Appellees' Brief bear upon the legal issues before this Court: the meaning of "any negotiated reduced rate accepted by a medical provider" in Section B(2) of the policy, the Appellate Court's decision to order fact-finding to interpret an unambiguous contract, and Appellees' repeated assertion that health insurers and automobile insurers are somehow in privity of contract simply because they share an insured. (*See* Appellees' 10/4/12 Br. in Opp. to

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<sup>2</sup> Appellees repeatedly contrast the higher rates available to Grange, and which are reflected in these bills, with the lower rates available to Medical Mutual. (*See, e.g.*, Appellees' 10/4/12 Br. in Opp. to Summ. J., p. 6).

Summ. J., pp. 14–15) (“When the insured has access to a lesser negotiated reduced rate through their own health insurer, then \* \* \* that lesser rate \* \* \* is available to Grange \* \* \*. [M]edical providers are obligated to accept those rates [from Grange] by entering into a contract with the health insurer \* \* \*.”)<sup>3</sup>

## ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

### **Proposition of Law No. I: An Insurer Does Not Breach An Obligation To Pay Negotiated Rates For Medical Care When It Has No Contractual Right To Pay Those Rates.**<sup>4</sup>

This appeal turns on interpretation of Section (B)(2) of the policy:

B. We will pay under Part B – Medical Payments Coverage, the lesser of:

1. reasonable expenses incurred by the insured for necessary medical and funeral services because of bodily injury; or
2. any negotiated reduced rate accepted by a medical provider.

(Policy, Supp., pp. S-15–16.) The Trial Court correctly found that the only reasonable construction of this passage refers to a “negotiated reduced rate” that Grange is contractually entitled to pay, and that the undisputed evidence showed that Grange did not have a contractual right to pay providers at rates negotiated by Appellees’ health care insurer. (Tr. Op., pp. 4–5.) A health insurer’s negotiated rates are not “available” to an automobile insurer simply because they both insure the same person. Grange did not breach the insurance contract by not paying

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<sup>3</sup> Appellees also argue that their purported “damages” arise from Grange’s subrogation payment from Appellees’ settlement with the tortfeasor. (Appellees’ Br., p. 9.) But this argument is irrelevant because it relates to whether Appellees suffered an injury-in-fact, a proposition of law that the Court did not accept. (See 7/23/14 Entry accepting appeal on Propositions of Law No. I and II only.) Moreover, Appellees point to no evidence, and there is none, explaining how Grange’s “overpayments” factored, if at all, into Appellees’ settlement negotiations with the tortfeasor. Appellees only focus on the end result, the zero-sum subrogation deduction from the settlement payment of the exact amount paid by Grange .

<sup>4</sup> Appellees’ rephrasing and discussion of “Proposition of Law No. I” does not refer to any Proposition of Law accepted by the Court and appears to have been taken from Appellees’ brief to the Court of Appeals. (Appellees’ Br., pp. 11–15.) Because that proposition of law is not before the Court, this section of Appellees’ brief should be stricken.

negotiated rates that it had no right to pay.

**I. Mutuality of Contracts Does Not Support, and in Fact Refutes, Appellees' Interpretation of the Policy.**

Appellees argue that under the principle of “mutuality,” Grange must pay providers at the lower rates available to Appellees’ health insurer, and that it was the intent under the policy that Grange would pay providers at Medical Mutual’s rates. (Appellees’ Br., p. 14.) Appellees never argued mutuality in the Trial Court or the Court of Appeals and, in any event, mutuality is a red herring that does not advance Appellees’ cause.

“Mutuality” is shorthand for “the concept that both parties to a contract must be bound or neither is bound. . . . [T]he more recent approach . . . treats mutuality of obligation as requiring only a quid pro quo – that is, consideration.” *Americare Healthcare Servs., Inc., v. Akabuaku*, 10th Dist. Franklin No. 10AP-777, 2010-Ohio-5631, ¶ 22; *see also SJA & Assocs., Inc., v. Gilder*, 8th Dist. Cuyahoga No. 80181, 2002-Ohio-3545, ¶ 24 (“Mutuality derives from the promises given by and between parties to a contract.”) Long ago this Court explained mutuality as follows:

Every contract consists of a request on one side, and an assent on the other. These are the terms of mutuality \* \* \*. “A contract,” says Pothier, “includes a concurrence of intention in two parties, one of whom promises something to the other, who on his part accepts such promise.” \* \* \*. “[I] can not” continues Pothier, “by the mere act of my own mind transfer to another a right in any goods, without a concurrent intention on his part to accept them, neither can I by any promise confer a right against any person until the person to whom the promise is made has, by his acceptance of it, concurred in the intention of acquiring such right.”

*Dayton, Watervleit Valley & Xenia Tpk. Co. v. Coy*, 13 Ohio St. 84, 92 (1861) (internal quotations and citations omitted). Thus, mutuality is just the exchange of consideration that binds the parties to a contract; it does not permit one party to import rights and responsibilities from one contract into another contract between different parties.

The Trial Court’s correct reading of the policy and entry of summary judgment in no way

vitiates the mutuality of Appellees under the policy. Appellees agreed to timely pay premiums. In exchange, Grange agreed to pay Appellees' medical expenses subject to the limits and terms of the policy, which is exactly what Grange did. No reasonable reading of the policy supports Appellees' argument that, in exchange for their premiums, Grange agreed to pay providers at rates those providers had agreed to accept from Medical Mutual (or someone else) and that Grange could not compel providers to accept.

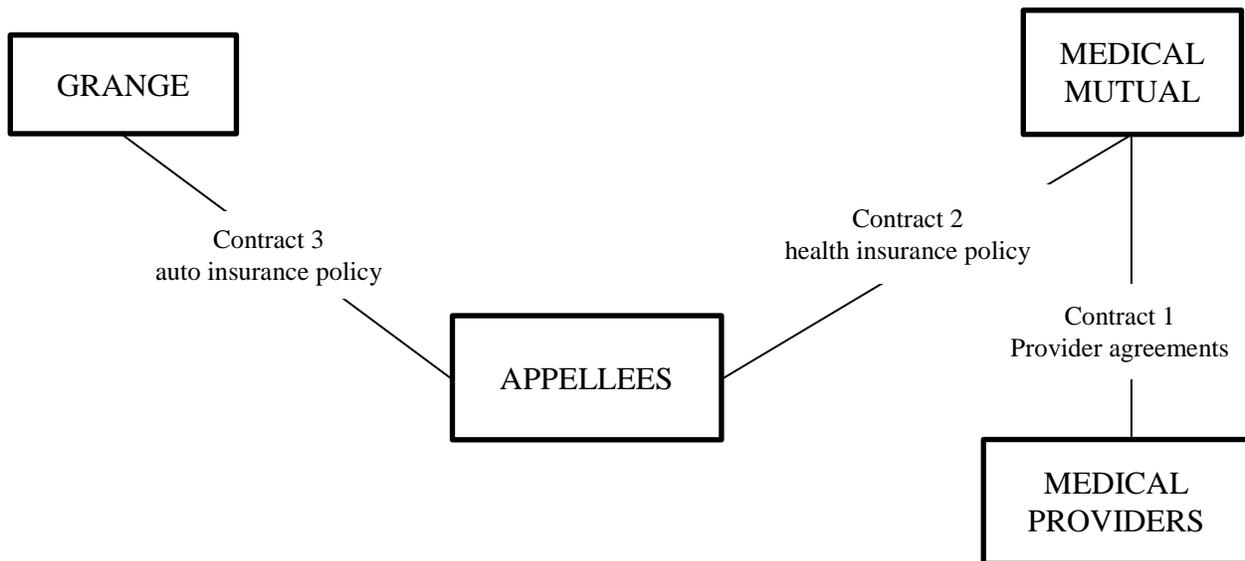
Conversely, the mutuality in Medical Mutual's agreements with providers creates rights only between those parties. Medical Mutual has the right to pay its agreed-upon rates to those providers, and those providers have the corresponding obligation to accept payment from Medical Mutual at those rates. Grange, however, has no rights under those agreements. Appellees have pointed to no law or evidence to the contrary.

## **II. Basic Privity of Contract Principles Defeat Appellees' Interpretation of the Policy.**

Appellees argue that Grange has "access" to Medical Mutual's rates with providers simply because Appellees are also insureds of Medical Mutual, and that this somehow entitles Grange to pay Medical Mutual's rates and obligates providers to accept them from Grange. Appellees never explain what "access" means, fail to cite anything suggesting that the word has any legal or contractual significance, and do not explain how it somehow squares with the obligations of the multiple contracts that Appellees conflate here.

Only one contract is at issue here, the policy between Appellees and Grange. However, Appellees' "access" theory blends three different contracts, between four different sets of parties, each of which creates rights and obligations only as to the parties to those agreements: (1) contracts between Medical Mutual and medical providers; (2) Appellees' contract with Medical Mutual; and (3) Appellees' contract with Grange. Contrary to all concepts of privity, Appellees ask this Court to disregard these separate contractual relationships, with rights spilling over from

one contract into another. Displayed visually these contracts are as follows:



As demonstrated by the chart above, no obligations link Grange and the medical providers with the providers’ agreements with Medical Mutual. But, contrary to all concepts of privity, Appellees ask this Court to disregard these separate contractual relationships and treat them as one big contract, with rights spilling over from one contract into another. Appellees’ incantation of the term mutuality does not erase the absence of privity that could enable Grange to “access” rates that medical providers agreed to with Medical Mutual, or obligate providers to accept those rate from Grange. As stated long ago in a definition of privity of contract: “[I]f A., B., and C. mutually contract, there is privity of contract between them; but if A. contract [sic] with B., and B. make an independent contract with C. on the same subject matter, there is no privity of contract between A. and C.” Mozley & Whiteley, *A Concise Law Dictionary*, at 326 (1876).

Rejecting this longstanding definition, Appellees in essence argue that “by the mere act of [their] own mind,” they can confer rights on Grange, and impose obligations on the medical providers, based on agreements those providers made with Medical Mutual, without “any concurrent intention” by Grange or the medical providers to create such rights or accept such

obligations as between them. *See Dayton, Watervilleit Valley & Xenia Tpk. Co.*, 13 Ohio St. at 92. But Appellees cannot confer upon Grange the rights that Medical Mutual negotiated for itself, or force providers to accept obligations to Grange merely because they agreed to those terms with Medical Mutual. No legal principle supports Appellees' theory that privity of contract among Grange, Medical Mutual, and Appellees' medical providers can be manufactured from the three separate contracts here.

### **III. Appellees' Interpretation of the Policy Is Illogical and Impractical.**

Not only is Appellees' argument legally unsound, it defies common sense. Appellees have never explained why Grange would choose not to pay providers at lower rates, or what incentive Grange could have to "overpay" its insureds' medical expenses. Grange does not "choose" not to pay at Medical Mutual's rates; it has no contractual right to pay them. Rather, Grange pays providers at rates that Grange is contractually entitled to under the preferred provider network to which both Grange and medical providers are parties.<sup>5</sup> Similarly, Appellees never explain why providers would permit Grange to impose on them rates that they agreed to accept only from Medical Mutual. Appellees' legal theory is "illogical and \* \* \* impossible." (Tr. Op., p. 5.)

Notably, Appellees do not address the logical consequences of their interpretation of the policy. (*See* Appellees' 10/4/12 Br. in Opp. to Summ. J., p. 13.) If "any negotiated reduced rate" does not refer to a rate that Grange has the contractual right to pay, then it has no limitation and means literally any rate in existence, whether negotiated between a provider in Cleveland

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<sup>5</sup> Appellees also do not address the Catch-22 presented by their theory and the *Wolfe* case, where under the same policy provision at issue here, the plaintiffs alleged that Grange paid *too little* for its insureds' medical expenses because insureds were balance billed by providers when Grange did not pay the full amount demanded by providers. *Wolfe v. Grange Indemn. Ins. Co.*, 137 Ohio St.3d 561, 2013-Ohio-5201, 2 N.E.3d 238. (*See also* Grange's Br., p. 12.)

and Medical Mutual, a provider in Biloxi, Mississippi and Medicaid, or a provider and an uninsured widow in Sarasota. Either “any” refers to rates that Grange has the contractual right to pay or it is unlimited, the latter of which all agree impermissibly renders performance impossible. The logical inconsistency in Appellees stating that “any” has no limits, but then arguing it is limited to rates negotiated by their health insurer, betrays their case.

Appellees also argue (without citation to evidence) that Section B(2) of the policy could not refer to Grange’s access to negotiated rates through Grange’s current provider network (PPO Midwest Ohio) through its contract with a medical review service, Review Works, because that policy language pre-dates Grange’s relationship with Review Works. (Appellees’ Br., p. 15.) However, prior to Review Works, Grange utilized a preferred provider network through a contract with another vendor, ADP. (Brode Depo., p. 59.) The Trial Court’s correct interpretation of the policy did not turn on the identity of the vendor and thus it does not matter that the vendor changed after the policy was drafted.

Furthermore, Appellees’ repeated claims that Grange “limits” its access to negotiated rates and “refused” to pay Medical Mutual’s rates are misstatements that lack any support in the record. (*See* Appellees’ Br., pp. 1, 14.) The only evidence is to the contrary – Grange simply does not have a contractual right to pay providers at rates those providers agreed to with Medical Mutual. (*E.g.*, Miller Depo., pp. 115, 128, Supp., p. S-54–55; Tr. Op., p. 5.) Appellees also belabor contract interpretation principles, but never articulate how these general principles support their legal theory. On the contrary, Appellees agree that the meaning of a contract should not render performance impossible, and that interpretation of an insurance policy is a question of law. (Appellees’ Br., p. 12.)

#### **IV. Appellees' Interpretation of the Policy Would Require Grange to Do the Impossible.**

Finally, Appellees' theory would place Grange in the untenable position of being contractually obligated to pay providers at rates that it has no ability to compel them to accept. Contract interpretations that make performance impossible must be rejected. *Capital City Cmty. Urban Redevelopment Corp. v. City of Columbus*, 10th Dist. Franklin No. 08AP-769, 2009-Ohio-6835, ¶ 31.

Moreover, Appellees' interpretation of the policy would require Grange to determine, each time a medical claim was made, if the injured insured has applicable health insurance; if that other insurer(s) has negotiated rates with providers; if so, what those rates are; and whether those rates are lower than any rates Grange might have contractual access to through its preferred provider network. Grange possesses almost none of this information. And even if that information were available, collecting and reviewing it would significantly lengthen and convolute the claims process to the detriment of insureds.<sup>6</sup>

There is no factual dispute to be resolved concerning interpretation of what Grange, Appellees, and the Court of Appeals all agree is unambiguous policy language. The only reasonable interpretation of Section B(2) of the policy — that Grange will pay “the lesser of 1. reasonable expenses \* \* \* or 2. any negotiated reduced rate accepted by a medical provider” —

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<sup>6</sup> Appellees also cite Ohio Adm. Code 3901-1-54(E)(1), mistakenly calling it “Ohio Statutory law,” to argue that Grange was obligated to re-disclose to them what the policy language plainly provides. (Appellees' Br., p. 5 fn. 3.) This claim fails for several reasons. First, it was not raised in the Trial Court. Second, the rule itself expressly states that “[n]othing in this rule shall be construed to create or imply a private cause of action for violation of this rule.” Indeed, the same arguments based on this rule were made by the plaintiff and properly disregarded by this Court in *Cullen v. State Farm Mut. Auto. Ins. Co.*, 137 Ohio St.3d 373, 2013-Ohio-4733, 999 N.E.2d 614. In any event, an insured has a duty to read the insurance policy and is charged with knowledge of its contents. *See, e.g., Hts. Driving School, Inc. v. Motorists Ins. Co.*, 8th Dist. Cuyahoga No. 81727, 2003-Ohio-1737, ¶ 38.

is that Grange promised to pay negotiated rates that it had the contractual right to pay. (Policy, Supp., pp. S-15–16.) This is the only interpretation consistent with established notions of privity and common sense. Grange did not commit itself to the impossible; it did not breach the policy by not paying lower negotiated rates that it had no right to pay. Appellees’ unsupported arguments to the contrary do not bear scrutiny.

**Proposition of Law No. II: When A Contract Is Unambiguous, It Is Error To Order Further Fact Finding About Its Meaning.**

Appellees agree that the policy is unambiguous and do not dispute that the Court of Appeals ordered fact-finding as to the meaning of that unambiguous contract: “The Eighth District Court of Appeals held that the language found in Section (B)(2) was plain and unambiguous. Laboy agrees.” (Appellees’ Br., p. 16.) But Ohio law is clear: such fact-finding is neither necessary nor permitted. Appellees’ argument under (misstated) Proposition of Law No. 2, devoid of a single reference to the record or citation to authority, offers no serious argument to the contrary.

“When the language of a written contract is clear, a court *may look no further* than the writing itself to find the intent of the parties.” (Emphasis added.) *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 129 Ohio St.3d 397, 2011-Ohio-2720, 953 N.E.2d 285, ¶ 37; *see also Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E.2d 684 (1995) (interpretation of an unambiguous contract is a matter of law); *Schraff & King Co., L.P.A. v. Casey*, 2012-Ohio-5829, 983 N.E.2d 882, ¶ 23 (11th Dist.) (“[T]he first step of contract construction is to determine whether the agreement is ambiguous. If the \* \* \* agreement is plain and unambiguous, *then no other steps of contract construction can be taken \* \* \**.”) (Emphasis added.) (Citation omitted.) The Eighth District’s conclusion that further fact-finding was needed to determine the meaning of the unambiguous policy is therefore plain error.

The policy language should be given its “plain and ordinary meaning *unless manifest absurdity results* or unless some other meaning is clearly intended from the face or overall contents of the instrument.” (Emphasis added.) *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 245–46, 374 N.E.2d 146 (1978). As the Trial Court correctly concluded, the phrase “any negotiated reduced rate accepted by a medical provider” in the policy “clearly and unambiguously implies a contracted rate negotiated between \* \* \* Grange” and entities that have agreed to accept those rates from Grange, such as the medical providers in the PPOM network. (Tr. Op., p. 5.) This interpretation is clear, definite, and consistent with the rest of the policy and common sense. It should have been adopted by the appellate court as a matter of law, and without ordering further fact-finding. See *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 11 (2003) (“As a matter of law, a contract is unambiguous if it can be given a definite legal meaning.”). Moreover, Appellees’ interpretation is based on “illogic[] and an impossible construction of the [insurance] contract.” (Tr. Op., p. 5.) The Trial Court’s reading of the policy is the only reasonable interpretation and should have been affirmed by the Eighth District as a matter of law. No other fact-finding was necessary or permissible.

Appellees offer three arguments to justify the Appellate Court’s decision to order fact-finding to interpret an unambiguous contract, none of which has merit. First, Appellees argue that the Eighth District did not order fact-finding to interpret the meaning of the policy, but only to determine “whether or not [Appellees] can make their discounted rate available to Grange.” (Appellees’ Br., p. 16.) This circular argument, however, is simply untrue. The Appellate Court’s Opinion itself states: “[T]he [trial] court should engage in *fact-finding to give the contract the most sensible and reasonable interpretation.*” (Emphasis added.) (App. Op., ¶ 7.)

The Eighth District explicitly and improperly ordered fact-finding to interpret an unambiguous contract.<sup>7</sup>

Second, Appellees argue that fact-finding is necessary to determine whether an insured can “make” a discounted rate that their health insurer has negotiated available to the insured’s automobile insurer. (Appellees’ Br., p. 16.) But this novel proposition – that “mutuality” somehow allows Appellees to make Medical Mutual’s agreed rates with providers available to Grange and anyone else they choose – is not an issue of fact, it is a matter of contract law and plainly wrong. As set forth *supra*, at 8–10, basic principles of privity dictate that Appellees cannot make rates negotiated between Medical Mutual and providers available to Grange, and medical providers cannot be made to accept payments from Grange at those rates absent a contractual obligation between those providers and Grange to accept payment at those rates.

Moreover, Appellees do not dispute the Trial Court’s finding that they “neither cited any evidence showing that Grange had a contractual right to pay [Medical Mutual’s] rates, nor \* \* \* explained how Grange could force medical providers to accept rates that the medical providers negotiated with other entities than Grange.” (Tr. Op., pp. 5–6.) The Court of Appeals mentioned in passing that there were genuine issues of fact. (App. Op., ¶ 9.) But, the Eighth District never identified any *evidence* presented by Appellees (or otherwise) that established those disputed facts, citing only an unsupported argument in Appellees’ trial court memorandum. (*Id.* ¶ 8.) Without evidence establishing these purported issues of fact, the Court of Appeals should have stopped there and interpreted the policy as a question of law.

Moreover, Appellees had the burden under Civ.R. 56(E) to submit evidence in support of

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<sup>7</sup> Given the language in the Court of Appeals’ decision, Appellees’ accusations that Grange is “misleading[.]” the Court on this issue are baseless. (*See* Appellees’ Br., pp. 3, 15.)

their theory in the Trial Court, but failed to do so despite ample opportunity. Indeed, over Grange's objection, additional discovery was permitted after summary judgment had already been fully briefed, to allow Appellees to depose witnesses and subpoena third parties. Despite this, Appellees could not muster any evidence to support their theory. (Grange Br., p. 4; Appellees' 12/3/12 Mtn. to Compel, Ex. A, p. 2.) Thus, even though no fact-finding is needed or permitted to interpret an unambiguous contract, Appellees already failed to develop and produce evidence in support of their theory. There is no reason to give Appellees a third bite at the apple.

Finally, Appellees argue that Grange has "an express duty under the policy of insurance to negotiate and pay any reduced rate accepted by its insured [sic] third-party health insurance provider." (Emphasis deleted.) (Appellees' Br., pp. 11, 16, Prop. of Law No. 2.) However, the policy expresses no such duty. Appellees' unsupported request that this Court impose duties on Grange beyond what the policy expressly requires has no basis in Ohio law. *See Wallace v. Balint*, 94 Ohio St.3d 182, 189, 761 N.E.2d 598 (2002). Moreover, Appellees conceded in the Trial Court that Grange does not have an affirmative obligation to negotiate *any* reduced rates. (Appellees' 10/4/12 Br. in Opp. to Summ. J., pp. 22–24.)

Appellees, Grange, and the Court of Appeals all agree that the policy is unambiguous. Given this, the Eighth District's decision ordering further fact-finding to interpret the policy was contrary to Ohio law and plain error.

## **CONCLUSION**

For all of the foregoing reasons, as well as those stated in its Merit Brief, Grange respectfully requests that this Court reverse the Appellate Court's decision and reinstate and affirm the Trial Court's grant of summary judgment in favor of Grange.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply Brief of Appellant was served upon the following by first class U. S. mail, postage prepaid, this 14<sup>th</sup> day of November, 2014:

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