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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHIGAN SPINE AND BRAIN SURGEONS,  
PLLC,

Plaintiff-Appellant,

v

ESURANCE PROPERTY AND CASUALTY  
INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED  
October 28, 2021

No. 355581  
Oakland Circuit Court  
LC No. 2020-179099-NF

Before: SHAPIRO, P.J., and BORRELLO and O'BRIEN, JJ.

SHAPIRO, P.J. (*concurring*).

I concur fully in the majority opinion. I write separately to note that regardless of the insured's fraud regarding attendant care, plaintiff surgical group is entitled to payment for its services as it was an innocent third party. See *Bazzi v Sentinel Ins Co*, 502 Mich 390, 410-411; 919 NW2d 20 (2018). There has been no evidence or argument below that the surgery was not necessary in light of the injuries suffered in the auto accident. Nor does Esurance present any evidence that the surgical group was aware of, let alone complicit in, any fraud by the insured. To rule otherwise would result in a substantial windfall to the insurer and deprive the surgical group, which has acted in good faith and taken no wrongful action, of its fees.

/s/ Douglas B. Shapiro