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Chapter 24

Parties

by *Michael S. Greco, Ryan M. Tosi, and Christopher J. Valente**

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I. INTRODUCTION

§ 24:1 Scope

This chapter discusses the rules, statutes, and procedures governing which individuals or entities may bring suit in their own name; the capacity of an individual or entity to sue or be sued; the right of a disinterested stakeholder to resolve, in one proceeding, multiple, competing claims to a single liability; the ability of a nonparty to intervene and participate in pending litigation; and the substitution of parties in the event of death, incompetency or the transfer of interest occurring during the course of pending litigation. Of primary concern are Rule 17 of the Federal Rules of Civil Procedure, establishing the real party in interest¹ and capacity² requirements; Rule 22 and the Federal Interpleader Act, 28 U.S.C.A. § 1335, establishing the requirements for interpleader;³ Rule 24, establishing the requirements for intervention;⁴ and Rule 25, establishing the requirements for substitution of parties.⁵ Similar to the rules of joinder, which are addressed in Chapter 18, “Joinder, Severance, and Consolidation” (§§ 18:1 et seq.), the purpose of the rules, statutes, and procedures discussed in this chapter is to avoid multiplicity of suits by facilitating the resolution of all pending controversies among interested parties in one proceeding. As such, the rules, statutes, and procedures discussed in this chapter are of critical importance not only to the parties interested in the resolution of a particular lawsuit but also to the efficient administration of the entire litigation process.

II. PRACTICAL CONSIDERATIONS

§ 24:2 Real party in interest

Rule 17(a) of the Federal Rules of Civil Procedure requires that every action be brought in the name of the party possessing the

[Section 24:1]

¹See §§ 24:7 to 24:23.

²See §§ 24:24 to 24:36.

³See §§ 24:37 to 24:48.

⁴See §§ 24:49 to 24:64.

⁵See §§ 24:64 to 24:79.

substantive right to relief.¹ Rule 17(a) expressly authorizes executors, administrators, and other named representatives to sue in their own name without joinder of the party for whose benefit the action is brought. The rule serves as an important, albeit perhaps unnecessary, reminder that no party can bring suit unless the suit is brought in the name of the person possessing the right to relief under the substantive law at issue. Strategically, this means that a defendant may insist upon having an action maintained by a plaintiff against which it can assert the res judicata principles of finality of judgment when the litigation is carried through to a judgment on the merits.²

In practice, Fed. R. Civ. P. 17(a) is most commonly invoked in the context of assignments and subrogation. It is settled that the assignee of a right of action is a real party in interest, and that an assignor who has assigned its entire claim is not. Where, however, there is a partial assignment, both the assignor and assignee are real parties in interest. In such a situation, a defendant is faced with the threat of a split judgment and should move to compel the joinder of both the assignor and assignee as plaintiffs.

A similar situation is presented when an insurer pays its insured's loss and thus is subrogated to the insured's right against some third party. Where the insurer has paid the entire loss, it is the real party in interest and must sue in its own name. The insured, which no longer has any interest in any potential recovery, cannot bring suit in its own name. If the insurer has paid only part of the loss, both the insured and insurer remain real parties in interest and a defendant faced with such a scenario should move to join both parties as plaintiffs in order to avoid multiplicity of suits.

Procedurally, a defendant seeking to challenge the plaintiff's standing as a real party in interest should file a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) (lack of subject matter jurisdiction), Fed. R. Civ. P. 12(b)(6) (failure to state a claim), or Fed. R. Civ. P. 12(b)(7) (failure to name an indispensable party). While such a motion may be filed during trial or, in the case of a motion asserting lack of subject matter jurisdiction, on appeal, it is advisable to file the motion as early in the litigation as possible to avoid any potential waiver of the defense. A plaintiff faced with such a motion must show that it possesses the legal right under the applicable law or that the defendant waived its objection to the plaintiff's real party in interest status. Since one of the

[Section 24:2]

¹See § 24:7.

²See Chapter 22, "Claim and Issue Preclusion" (§§ 22:1 et seq.).

purposes of Fed. R. Civ. P. 17 is to avoid the forfeiture of meritorious claims, courts are particularly wary of allowing dismissal where the defendant's delay in raising the real party in interest challenge would prejudice the real party in interest, e.g., where, as a result of a mistake as to real party status, the applicable limitations period has expired. Moreover, the plaintiff is entitled to a "reasonable time" within which to cure any defect by joining, substituting, or obtaining ratification from the real party in interest before the action may be dismissed.

§ 24:3 Capacity to sue and be sued

Rule 17(b) sets forth the procedure to determine the legal capacity of individuals and business entities, such as corporations, partnerships, and limited liability companies, to sue and be sued.¹ An important procedural distinction exists between the concept of a "real party in interest," which is governed by Fed. R. Civ. P. 17(a),² and the "capacity to sue and be sued," which is governed by Fed. R. Civ. P. 17(b). While a party may be the real party in interest, it may nevertheless lack capacity to sue, as for example when a party becomes mentally incompetent.³ The converse is also true. A party may possess the capacity to sue, but it may not be the real party in interest, as for example when a corporation has assigned all of its interest in a claim to another party. The distinction is significant because Fed. R. Civ. P. 9(a)(2) generally requires a specific denial if a defendant seeks to challenge a plaintiff's capacity to sue. A plaintiff, by contrast, generally has the burden of establishing its substantive right to recovery when its real party in interest status is challenged.

Where an individual is deemed to lack the capacity to sue or be sued due to infancy or incompetency, Fed. R. Civ. P. 17(c)(1) provides that a representative, such as a guardian, conservator, or other fiduciary, may sue and defend on the individual's behalf.⁴ Fed. R. Civ. P. 17(c)(2) also permits a "next friend" to sue on behalf of an infant or incompetent person without being appointed by the court. In practice, such "next friends" are typically parents or relatives, who will not usually have interests adverse to those of the infant or incompetent person and who can pursue the action without the necessity of the appointment of a guardian ad litem. Nevertheless, when a case pursued by a next friend is settled, it is advisable for the defendant to request that the court

[Section 24:3]

¹See §§ 24:24 to 24:36.

²See §§ 24:2, 24:7 to 24:23.

³See § 24:24.

⁴See § 24:26.

approve the settlement. Although court approval is not required by Rule 17, it may help deter any later challenge to the settlement claiming that it was not in the best interests of the infant or incompetent person. In those situations, where parents or relatives have interests that may conflict with those of the infant or incompetent person, the opposing party is well advised to seek appointment of a guardian ad litem by the court.

When defending an infant or incompetent person who does not have a representative, the appointment of a guardian ad litem should be sought as soon as possible after service of the complaint and summons. In contrast to actions brought by a “next friend,” prior court approval generally is required before a “next friend” may defend an action on behalf of an infant or incompetent person. In all instances, court approval of a proposed settlement with a minor or incompetent person is advisable to avoid later challenge.

§ 24:4 Interpleader

Interpleader allows a party facing conflicting claims to the same liability to avoid satisfying the wrong claim, and incurring multiple adverse judgments in different courts, by providing a mechanism by which all of the claims may be resolved in a single proceeding.¹ In practice, interpleader commonly arises when two or more persons have adverse interests in the proceeds of a life insurance policy. Rather than paying any one claimant, the insurance company may require all the claimants to litigate the merits of their claims in a single proceeding. Interpleader also arises where, for instance, a defendant is exposed to double liability on claims asserted by a plaintiff and a co-defendant. Under those circumstances, interpleader allows the defendant to interplead the plaintiff by counterclaim and the co-defendant by crossclaim, thereby avoiding the threat of double liability and affording the defendant important strategic options. For instance, a secondary beneficiary may bring suit against an insurer and the principal beneficiary, alleging that the insurer’s payment to the principal beneficiary was or would be improper, e.g., because the principal beneficiary was suspected of murdering the insured. The insurer may defend by bringing claims for interpleader against the multiple claimants to the fund.

Where the party seeking interpleader is truly an innocent stakeholder with respect to the disputed fund (such as where the interpleader acknowledges that the fund is due and owing to at least one of the claimants), it is entitled to be discharged of full

[Section 24:4]

¹See §§ 24:37 to 24:48.

responsibility regarding the disputed fund once those funds are paid into the court's registry.² In addition, the court, in its discretion, may award an innocent stakeholder its reasonable attorneys' fees and costs incurred in connection with the interpleader action. Increasingly, however, courts have declined to award attorneys' fees and costs to insurance companies that are in the business of distributing proceeds from insurance policies. In the absence of such an award, there may be less of an impetus for insurance companies to initiate an interpleader action in smaller cases (smaller, that is, in terms of the number of potential claimants and relative value of the claims) since, as a practical matter, it may be more cost efficient for the insurer to simply wait to defend an action brought by one of the claimants. Where, however, there is a large class of potential claimants seeking recovery from a single fund (e.g., the proceeds of an insurance policy), as for instance in the product liability or environmental tort arena, interpleader continues to provide an orderly and efficient mechanism for resolving competing claims in one proceeding.

§ 24:5 Intervention

Intervention is the mechanism by which persons claiming an interest in a pending action, who were not originally included in the action, may seek to participate in the action.¹ Fed. R. Civ. P. 24(a) provides for intervention as of right.² To intervene as of right, the person must qualify as a real party in interest within the meaning of Fed. R. Civ. P. 17,³ or as a person required for just adjudication within the meaning of Fed. R. Civ. P. 19.⁴ Fed. R. Civ. P. 24(b) also provides for permissive intervention where a person otherwise eligible for permissive joinder under Fed. R. Civ. P. 20(a) may seek to join in an action after it has commenced.⁵

Prior to moving for intervention, careful consideration must be given to determining whether the movant's interest in the pending litigation is compelling enough to risk being bound by an adverse judgment. Once a motion to intervene is allowed, the intervenor generally has the right to fully participate in the litigation in the same manner and to the same extent as the original parties. As a participant in the litigation, the intervenor may be

²See §§ 24:41, 24:43.

[Section 24:5]

¹See §§ 24:49 to 24:64.

²See § 24:50.

³See § 24:7.

⁴See Chapter 18, "Joinder, Severance, and Consolidation" (§§ 18:1 et seq.) (discussing Fed. R. Civ. P. 19).

⁵See § 24:55.

bound by the *res judicata* effect of a potentially adverse judgment that it otherwise might have avoided by remaining on the sidelines.

Further, as a practical matter, careful consideration must also be given to the posture of the pending litigation, the goals and interests of the existing parties to the litigation and their counsel, and the likelihood of bringing successful claims independent of the pending litigation. Indeed, while the cost of a second action could be higher than intervention in the pending litigation, the question is, will that cost outweigh any possible loss of control that might affect your party's interest in the pending litigation?

The intervenor also generally should be prepared to assume an active role in the conduct of the litigation by staking out its position on the issues that are of interest to it. If the risk of being bound by *res judicata* or collateral estoppel is likely or even a possibility, a very serious analysis should be made of the party with which you would be aligned and of its counsel's competency.

An application to intervene should be timely made and accompanied by a copy of the proposed pleading in intervention (e.g., complaint or answer). When a motion to intervene is filed long after the action was commenced, it may be opposed as being untimely and the party seeking intervention should be prepared to demonstrate that no unreasonable prejudice or delay will result from allowance of intervention.

§ 24:6 Substitution of parties

Substitution most often occurs where a party (either a plaintiff or a defendant) dies after commencement of an action and the action survives in favor of (or against) a decedent's estate. In these instances, Fed. R. Civ. P. 25(a)(1) controls the process by which the real party in interest is substituted for the decedent.¹ Although the rule does not set any time limit as to when a suggestion of death must be made, it allows any party, not just the decedent's representative, to enter a suggestion of death on the record. Once the suggestion of death is properly entered, a motion to substitute the decedent's representative must be made within 90 days or the cause of action will be dismissed as to the deceased party.² The 90-day time limit may present difficulties to the decedent's representative because appointment procedures for qualified representatives often take substantially longer to complete. However, the decedent's representative may obtain ad-

[Section 24:6]

¹See §§ 24:65 to 24:79.

²See §§ 24:67, 24:69.

ditional time for substitution by filing a motion pursuant to Fed. R. Civ. P. 6(b).

Even assuming that additional time remains, substitution may be denied where it would be otherwise unfair or inequitable to allow substitution. Substitution may be denied, for example, where the settlement and distribution of the decedent's estate was near completion at the time that the motion for substitution was made and substitution would postpone final settlement and distribution or require the process to start anew. Ultimately, the safest course for a decedent's representative is not to wait for a suggestion of death to be filed but to move for substitution as soon as the fact of death becomes known.

III. REAL PARTY IN INTEREST

§ 24:7 Requirements of Fed. R. Civ. P. 17(a)

Fed. R. Civ. P. 17(a) provides that “[a]n action must be prosecuted in the name of the real party in interest.” The rule does not purport to identify the “real party in interest” in any particular case; instead, that issue is resolved by reference to substantive statutory and common law. The provisions of Fed. R. Civ. P. 17(a) are, therefore, purely procedural. Unlike capacity to sue or be sued, which is discussed at Sections 24:24 to 24:36, the requirement of bringing suit in the name of the real party in interest applies only to plaintiffs, not to defendants.¹

§ 24:8 Protection from multiple suits

The purpose of Fed. R. Civ. P. 17 is to ensure that the person who brings a claim is entitled to enforce the claim.¹ Thus, the rule protects a defendant that is subject to liability in a pending

[Section 24:7]

¹See *Rawoof v. Texor Petroleum Co., Inc.*, 521 F.3d 750, 756 (7th Cir. 2008) (Fed. R. Civ. P. 17(a) is “concerned only with whether an action can be maintained in the plaintiff’s name”); *Salazar v. Allstate Texas Lloyd’s, Inc.*, 455 F.3d 571, 573, 65 Fed. R. Serv. 3d 991 (5th Cir. 2006) (“[b]y its terms, . . . rule 17(a) applies only to plaintiffs”); *Habliston v. FINRA Dispute Resolution, Inc.*, 251 F. Supp. 3d 240, 247 (D.D.C. 2017) (in the context of Rule 17, “the phrase ‘real party in interest’ refers to the plaintiff in an action, not a defendant”).

[Section 24:8]

¹See *Cortlandt Street Recovery Corp. v. Hellas Telecommunications, S.a.r.l.*, 790 F.3d 411, 420, 91 Fed. R. Serv. 3d 1657 (2d Cir. 2015) (“The real party in interest principle embodied in Rule 17 ensures that only ‘a person who possesses the right to enforce [a] claim and who has a significant interest in the litigation’ can bring the claim.” (quoting *Stichting Ter Behartiging Van de Belangen Van Oudaandeelhouders In Het Kapitaal Van Saybolt International B.V. v. Schreiber*, 407 F.3d 34, 48 n.7 (2d Cir. 2005), certified question accepted, 5 N.Y.3d 730, 799 N.Y.S.2d 769, 832 N.E.2d 1185 (2005), certified question

action from being called upon to defend a subsequent suit initiated by the true claimant.² Accordingly, the rule ensures that a defendant will be called upon to defend only once and that any action taken to judgment will have its proper effect as *res judicata*.³

§ 24:9 Party must possess substantive right

Courts uniformly identify the real party in interest as the person holding the substantive right that is sought to be enforced in the subject litigation.¹ Thus, to determine the plaintiff's status as the real party in interest, courts will review the substantive

withdrawn, 421 F.3d 124 (2d Cir. 2005))). See also §§ 24:9 to 24:12.

²See *RK Co. v. See*, 622 F.3d 846, 850, 77 Fed. R. Serv. 3d 747 (7th Cir. 2010) (“the purpose of this procedural rule is to protect the defendant against a subsequent action by the party actually entitled to recover”); *F.D.I.C. v. Graham*, 2010 WL 5157108, at *3 (S.D. Ohio 2010) (“Rule 17(a) is designed ‘to protect individuals from harassment of suits by persons who do not have the power to make final and binding decisions concerning prosecution, compromise and settlement’”).

³See *In re Signal Intern., LLC*, 579 F.3d 478, 487, 2009 A.M.C. 2177 (5th Cir. 2009) (“The purpose of this requirement ‘is to assure a defendant that a judgment will be final and that *res judicata* will protect it from having to twice defend an action, once against an ultimate beneficiary of a right and then against the actual holder of the substantive right.’” (quoting *Farrell Const. Co. v. Jefferson Parish, La.*, 896 F.2d 136, 142, 16 Fed. R. Serv. 3d 545 (5th Cir. 1990))); *Woods Hole Oceanographic Institution v. ATS Specialized, Inc.*, 2020 WL 8458864, at *2 (D. Mass. 2020), report and recommendation adopted, 514 F. Supp. 3d 364 (D. Mass. 2021) (“The basic purpose of Rule 17(a)’s insistence that every action be prosecuted in the name of the real party in interest is to protect a defendant from facing a subsequent similar action brought by one not a party to the present proceeding and to ensure that any action taken to judgment will have its proper effect as *res judicata*.” (quoting *Prevor-Mayorsohn Caribbean, Inc. v. Puerto Rico Marine Management, Inc.*, 620 F.2d 1, 4, 1982 A.M.C. 1359, 29 Fed. R. Serv. 2d 767 (1st Cir. 1980))); *BAC Home Loans Servicing, LP v. Texas Realty Holdings, LLC*, 901 F. Supp. 2d 884, 907–08 (S.D. Tex. 2012) (“The purpose of requiring that the real party in interest prosecute a claim is to ensure that judgments will be protected by *res judicata* from claims by the party actually entitled to recover.” (citing *Gogolin & Stelter v. Karn’s Auto Imports, Inc.*, 886 F.2d 100, 102, 15 Fed. R. Serv. 3d 317 (5th Cir. 1989))); *Suda v. Weiler Corp.*, 250 F.R.D. 437, 440 (D.N.D. 2008) (Rule 17(a) “serves ‘to protect the defendant against a subsequent action by the party actually entitled to relief, and to ensure that the judgment will have a proper *res judicata* effect’” (quoting *Intown Properties Management, Inc. v. Wheaton Van Lines, Inc.*, 271 F.3d 164, 170, 51 Fed. R. Serv. 3d 1302 (4th Cir. 2001))).

[Section 24:9]

¹*U.S. ex rel. Eisenstein v. City of New York*, New York, 556 U.S. 928, 934–35, 129 S. Ct. 2230, 173 L. Ed. 2d 1255, 73 Fed. R. Serv. 3d 1132 (2009) (“[t]he phrase, ‘real party in interest,’ is a term of art utilized in federal law to refer to an actor with a substantive right whose interests may be represented in litigation by another”); *Greer v. O’Dell*, 305 F.3d 1297, 1303, Bankr. L. Rep. (CCH) P 78723, 53 Fed. R. Serv. 3d 1285 (11th Cir. 2002) (“real party interest

state or federal statutory or common law creating the right being sued upon to ascertain whether the plaintiff possesses that right.² A party not possessing a right under the substantive law is not considered the real party in interest with respect to that right and may not enforce it.³

The real party in interest, however, need not be the party who ultimately will benefit from the recovery.⁴ For example, a shareholder may be the real party in interest in a shareholder derivative action, although any recovery will inure to the

principle is a means to identify the person who possesses the rights sought to be enforced”).

²See *BAC Home Loans Servicing, LP v. Texas Realty Holdings, LLC*, 901 F. Supp. 2d 884, 907 (S.D. Tex. 2012) (“The real party in interest is the person with the right to sue under substantive law, and the determination whether one is the real party in interest with respect to a particular claim is based on the controlling state or federal substantive laws.” (citing *In re Davis*, 194 F.3d 570, 578, Bankr. L. Rep. (CCH) P 78023, 54 Fed. R. Serv. 3d 472 (5th Cir. 1999) and *Farrell Const. Co. v. Jefferson Parish, La.*, 896 F.2d 136, 140, 16 Fed. R. Serv. 3d 545 (5th Cir. 1990)); *Pompa v. American Family Mut. Ins. Co.*, 506 F. Supp. 2d 412, 415 (D. Colo. 2007), judgment aff’d, 520 F.3d 1139 (10th Cir. 2008) (where parties seek to enforce a substantive right arising under state law, real party in interest is determined by state law); *Torske v. Bunn-O-Matic Corp.*, 216 F.R.D. 475, Prod. Liab. Rep. (CCH) P 16671 (D.N.D. 2003) (as a procedural matter, federal rules require suit in name of party with substantive right; however, when action arises under state law, real party in interest is determined by state substantive law). See, e.g., *Federal Treasury Enterprise Sojuzplodoimport v. SPI Spirits Ltd.*, 726 F.3d 62, 83, 107 U.S.P.Q.2d 1839 (2d Cir. 2013) (examining substantive federal law to determine real party in interest action brought pursuant to Latham Act).

³*Old Ben Coal Co. v. Office of Workers’ Compensation Programs*, 476 F.3d 418, 419 (7th Cir. 2007); *South Shore Hellenic Church, Inc. v. Artech Church Interiors, Inc.*, 183 F. Supp. 3d 197, 213 (D. Mass. 2016) (“A party that does ‘not possess[] a right under substantive law is not the real party in interest with respect to that right and may not assert it.’” (alteration in original) (quoting *Farrell Const. Co. v. Jefferson Parish, La.*, 896 F.2d 136, 140, 16 Fed. R. Serv. 3d 545 (5th Cir. 1990)); *In re Enron Corp. Securities, Derivative & ERISA Litigation*, 279 F.R.D. 395, 409 (S.D. Tex. 2011) (“A plaintiff that does not possess a right under the substantive law is not the real party in interest with respect to that right and may not assert it.” (citing *U.S. v. 936.71 Acres of Land, More or Less, in Brevard County, State of Fla.*, 418 F.2d 551, 556 (5th Cir. 1969))).

⁴See *U.S. ex rel. Spicer v. Westbrook*, 751 F.3d 354, 362, 59 Bankr. Ct. Dec. (CRR) 128, 71 Collier Bankr. Cas. 2d (MB) 840 (5th Cir. 2014) (“The real party in interest is the person holding the substantive right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery.” (quoting *Wieburg v. GTE Southwest Inc.*, 272 F.3d 302, 306, 38 Bankr. Ct. Dec. (CRR) 196, 87 Fair Empl. Prac. Cas. (BNA) 445, 81 Empl. Prac. Dec. (CCH) P 40839, 51 Fed. R. Serv. 3d 405 (5th Cir. 2001)); *Act II Jewelry, LLC v. Wooten*, 301 F. Supp. 3d 905, 910 (N.D. Ill. 2018) (“The real party in interest is the one who ‘by the substantive law, possesses the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery.’” (quoting *Checkers, Simon & Rosner v. Lurie Corp.*, 864 F.2d 1338, 1343, 12 Fed. R. Serv. 3d 1162 (7th Cir. 1988))).

corporation's benefit.⁵

Similarly, an executor or administrator may be the real party in interest to maintain a wrongful death action under the applicable state law, even though any recovery would pass through the decedent's estate and go directly to the beneficiaries.⁶ Indeed, the second sentence of Fed. R. Civ. P. 17(a)(1), including subparagraphs (A) through (G), expressly envisions just this situation by providing that "an executor; an administrator; a guardian; a bailee; a trustee of an express trust; a party with whom or in whose name a contract has been made for another's benefit; and a party authorized by statute" may sue in that person's own name without joining the party for whose benefit the action is brought.⁷

In the bankruptcy context, the bankruptcy trustee becomes the real party in interest as to those rights falling within the bankruptcy estate.⁸ Under the Bankruptcy Code, the bankruptcy trustee possesses all substantive rights in connection with the bankruptcy estate, not the debtor whose assets became property of the estate upon filing of a bankruptcy action.⁹ Thus, once a cause of action becomes the property of the bankruptcy estate,

⁵See, e.g., *Ross v. Bernhard*, 396 U.S. 531, 538, 90 S. Ct. 733, 24 L. Ed. 2d 729, Fed. Sec. L. Rep. (CCH) P 92566, 13 Fed. R. Serv. 2d 1042 (1970) (corporation is the real party in interest in a shareholder derivative action); *Tansey v. Rogers*, 2016 WL 3519887, at *2 (D. Del. 2016) (same); *Rudd v. Branch Banking & Trust Company*, 2014 WL 12607795, at *7 (N.D. Ala. 2014) (in a shareholder derivative action, "the corporation itself is both the real party in interest, and an indispensable party" (internal citations omitted)). See generally Chapter 26, "Derivative Actions by Stockholders" (§§ 26:1 et seq.) (discussing Fed. R. Civ. P. 23.1 and derivative actions).

⁶See, e.g., *Guinn v. Great West Cas. Co.*, 2010 WL 4363784, at *2–3 (W.D. Okla. 2010) (administrator is the "real party in interest who may assert claims and seek damages on behalf of the individual survivors without naming those survivors as additional plaintiffs"); *In re Medvedev*, 2010 WL 537637, at *5 (W.D. Wash. 2010) (administrator of decedent's estate is real party in interest in wrongful death action brought for benefit of "the spouse, children or other statutory beneficiar[ies]"); *In re Bryant*, 260 B.R. 839, 845 (Bankr. W.D. Ky. 2001) (an executor or administrator may bring a nondischargeability action "without joining the party to whose benefit the action is brought. Thus, a personal representative is the real party in interest when it is statutorily authorized to bring suit on behalf of a decedent.").

⁷Fed. R. Civ. P. 17(a)(1).

⁸*U.S. ex rel. Spicer v. Westbrook*, 751 F.3d 354, 362, 59 Bankr. Ct. Dec. (CRR) 128, 71 Collier Bankr. Cas. 2d (MB) 840 (5th Cir. 2014); *In re Banks*, 223 Fed. Appx. 149, 151 (3d Cir. 2007); *Parker v. Wendy's Intern., Inc.*, 365 F.3d 1268, 1272, 51 Collier Bankr. Cas. 2d (MB) 1742, 105 Fair Empl. Prac. Cas. (BNA) 716 (11th Cir. 2004); *Putzier v. Ace Hardware Corporation*, 50 F. Supp. 3d 964, 983 (N.D. Ill. 2014); *Marshall v. Honeywell Technology Solutions, Inc.*, 675 F. Supp. 2d 22, 25 (D.D.C. 2009).

⁹See 11 U.S.C.A. § 541.

the bankruptcy trustee assumes the status of the real party in interest in whose name the action must be brought.¹⁰

Ultimately, there may be multiple real parties in interest for a given claim, and if the plaintiff is a real party in interest under the substantive law, Fed. R. Civ. P. 17(a) may not require the addition of other parties also fitting that description.¹¹ For example, in the insurance context, if a subrogor/assignor only partially assigns his rights, the assignor and assignee are each real parties in interest but Fed. R. Civ. P. 17(a) does not require them to both be part of the lawsuit.¹² However, additional parties may need to be joined to the lawsuit pursuant to the requirements of Fed. R.

¹⁰See *Marshall v. Honeywell Technology Solutions, Inc.*, 675 F. Supp. 2d 22, 25 (D.D.C. 2009) (“Once a cause of action becomes the property of the bankruptcy estate, the bankruptcy trustee assumes the status of the real party in interest in whose name Federal Rule of Civil Procedure 17 requires an action to be brought, and the debtor no longer has standing to pursue that cause of action.”). See, e.g., *Bargo v. Porter County, Indiana*, 734 Fed. Appx. 375, 377 (7th Cir. 2018), cert. denied, 139 S. Ct. 1454, 203 L. Ed. 2d 690 (2019) (plaintiff’s “claims arose before [plaintiff] filed for bankruptcy, and thus they are part of the bankruptcy estate and may be prosecuted only by the bankruptcy trustee.”); *In re Banks*, 223 Fed. Appx. 149, 151 (3d Cir. 2007) (“Chapter 7 trustee was the only person with authority to bring . . . a cause of action” after the appointment of the trustee); *Crocheron v. State Farm Fire and Casualty Co.*, 621 B.R. 659, 662 (E.D. Mich. 2020), order vacated, 2020 WL 10045968 (E.D. Mich. 2020) (“[B]ecause pre-petition causes of action belong to the bankruptcy trustee, the trustee is the real party in interest to bring the claim.” (citing *Auday v. Wet Seal Retail, Inc.*, 698 F.3d 902, 905, 57 Bankr. Ct. Dec. (CRR) 34, 68 Collier Bankr. Cas. 2d (MB) 641, 117 Fair Empl. Prac. Cas. (BNA) 1095, 96 Empl. Prac. Dec. (CCH) P 44661 (6th Cir. 2012))); *Macauley v. Estate of Nicholas*, 7 F. Supp. 3d 468, 477 (E.D. Pa. 2014) (“The Chapter 7 trustee is the only person that has the authority to bring these claims, and he or she must be substituted as the real party in interest under Federal Rule of Civil Procedure 17 if this case is to continue.”); *Runaj v. Wells Fargo Bank*, 667 F. Supp. 2d 1199, 1207 (S.D. Cal. 2009) (finding debtor was not a real party in interest and ordering debtor to: (1) substitute or join the bankruptcy trustee; (2) show the trustee’s ratification of this action, pursuant to Fed. R. Civ. P. 17(a)(3); or (3) amend the complaint to allege lawsuit is exempt from the bankruptcy estate or has been abandoned by the bankruptcy trustee); *Cobb v. Aurora Loan Services, LLC*, 408 B.R. 351, 354 (E.D. Cal. 2009) (“After filing a petition for Chapter 7 bankruptcy protection, a debtor ‘may not prosecute a cause of action belonging to the bankruptcy estate’ because the bankruptcy trustee is the ‘real party in interest’ with respect to such claims In order to circumvent this proscription, a debtor must either show that his or her claims are exempt from the bankruptcy estate or were abandoned by the bankruptcy trustee.”).

¹¹*ABI Jaoudi and Azar Trading Corp. v. Cigna Worldwide INS. Co.*, 2016 WL 3959078, at *15 (E.D. Pa. 2016) (“[T]here may be multiple real parties in interest for a given claim, and if the plaintiffs are real parties in interest, Rule 17(a) does not require the addition of other parties also fitting that description.” (quoting *HB General Corp. v. Manchester Partners, L.P.*, 95 F.3d 1185, 1196, 35 Fed. R. Serv. 3d 377 (3d Cir. 1996))).

¹²See, e.g., *Tallman v. HL Corp.*, 2015 WL 306964, at *5–6 (D.N.J. 2015).

Civ. P. 19(a).¹³

§ 24:10 Party must possess substantive right—Executors, administrators, guardians, bailees, trustees of an express trust, and parties with whom or in whose name a contract has been made for another’s benefit

As noted in Section 24:9, Fed. R. Civ. P. 17(a) expressly allows an executor, administrator, guardian, bailee, trustee of an express trust, or party with whom or in whose name a contract has been made for another’s benefit to sue in its own name without joining as a plaintiff the party for whose benefit the action is brought.¹ These are not, however, exceptions to the real party in interest requirement.² Rather, these parties are deemed by the rule to possess the substantive right to sue in their own names, without the need for joinder of the person for whose benefit the action has been brought.³

Notably, the list of parties set forth in Fed. R. Civ. P. 17(a)(1) who are regarded as real parties in interest is meant to be illustrative, and not exhaustive.⁴ Any party possessing a substantive right under the applicable law may bring suit, without regard to the particular factual context in which the case may arise.⁵

For example, nothing in Fed. R. Civ. P. 17 explicitly prevents suit by the ultimate beneficiary in its own name.⁶ Indeed, although Fed. R. Civ. P. 17(a)(1) provides that a trustee of an

¹³See generally Chapter 18, “Joinder, Severance, and Consolidation” (§§ 18:1 et seq.) (discussing the rules and procedures of joinder).

[Section 24:10]

¹Fed. R. Civ. P. 17(a).

²See *Kawa v. U.S.*, 77 Fed. Cl. 294, 301 (2007) (“The real parties in interest enumerated by [Fed. R. Civ. P.] 17(a) ‘are not exceptions to, but illustrations of, the rule.’” (quoting Fed. R. Civ. P. 17 Advisory Committee’s Note to 1966 Amendment)).

³See *Sprint Communications Co., L.P. v. APCC Services, Inc.*, 554 U.S. 269, 287, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008) (stating that “[t]rustees bring suits to benefit their trusts; guardians ad litem bring suits to benefit their wards; receivers bring suit to benefit their receiverships; assignees in bankruptcy bring suit to benefit bankrupt estates; executors bring suit to benefit testator estates; and so forth”).

⁴Fed. R. Civ. P. 17 Advisory Committee’s Note to 1966 Amendment (“[t]hese illustrations, of course, carry no negative implication to the effect that there are not other instances of recognition as the real party in interest of one whose standing as such may be in doubt”).

⁵See, e.g., *Kawa v. U.S.*, 77 Fed. Cl. 294, 301 (2007) (“the absence of ‘escrow agent’ from the list of enumerated parties in [Fed. R. Civ. P.] 17(a) does not preclude an escrow agent from being a real party in interest”).

⁶See, e.g., *In re Narciso*, 149 B.R. 917, 918 (E.D. Ark. 1993) (recognizing

express trust may sue in its own name on behalf of the trust, the rule also allows for suit to be brought in the name of the trust itself.⁷ Similarly, although a promisee in a contract for the benefit of a third party may bring suit as a real party in interest, it is clear that the third-party beneficiary may also maintain an action when the applicable substantive law recognizes that right.⁸

§ 24:11 Party must possess substantive right—Attorneys in fact/agents

A person who is an attorney in fact or an agent solely for the purpose of bringing suit is generally not considered a real party in interest and cannot maintain suit in the attorney in fact's or agent's own name.¹ An agent may acquire the real party in interest status of its principal if the rights that are the subject of the litigation are validly assigned or subrogated to the agent.² Absent a valid assignment or subrogation of a principal's rights, an agent may be entitled to proceed in its own name under certain circumstances. An agent, for example, may, pursuant to the agreement (or power of attorney) giving rise to the agency, sue in its own name on behalf of the principal and thereby bind the

both administrator and heir as real party in interest).

⁷See, e.g., *Emerald Investors Trust v. Gaunt Parsippany Partners*, 492 F.3d 192, 199 n.10 (3d Cir. 2007) (although Rule 17(a) states that a "trustee of an express trust 'may' sue in its own name without joining the trust as a plaintiff," where a trust has the capacity to hold notes and mortgages, the rule does not prohibit the trust bringing suit in its own name); *San Juan Basin Royalty Trust v. Burlington Resources Oil & Gas Co., L.P.*, 588 F. Supp. 2d 1274, 1280 (D.N.M. 2008) (although Rule 17(a) provides that a trustee of an express trust may sue in her own name, the rule also allows for suit to be brought in the name of the trust itself). But see *Thomas D. Philipsborn Irrevocable Insurance Trust v. Avon Capital, LLC*, 2014 WL 273649, at *1–2 (N.D. Ill. 2014) ("There is no dispute that this litigation was commenced and maintained in the name of a trust, which violated Rule 17's real party in interest requirement . . . [T]he correct procedure was to follow the instructions from Rule 17 for substituting the proper party.").

⁸Fed. R. Civ. P. 17 Advisory Committee's Note to 1966 Amendment ("[Fed. R. Civ. P. 17(a)] states that the promisee in a contract for the benefit of a third party may sue as real party in interest; it does not say, because it is obvious, that the third-party beneficiary may sue (when the applicable law gives him that right.>"). See, e.g., *Munnings v. Fedex Ground Package Systems, Inc.*, 2008 WL 1744779, at *4 (M.D. Fla. 2008) (stating that "the third party beneficiary of a contract is the real party in interest and may prosecute an action on it in his own name").

[Section 24:11]

¹See, e.g., *In re Jacobson*, 402 B.R. 359, 366 (Bankr. W.D. Wash. 2009), as modified, (Mar. 10, 2009).

²See §§ 24:13 to 24:15.

principal.³ An agent may also sue in its own name where the agent has rights, independent of the principal, under the substantive law.⁴

§ 24:12 Party must possess substantive right—Fictitious names

While a court has discretion to permit a real party in interest to proceed in litigation under a fictitious name, this practice is unusual and has been allowed only in “exceptional circumstances” where the party has a privacy right so substantial as to outweigh the customary and constitutionally embedded presumption of openness in judicial proceedings.¹

This concern for openness in judicial proceedings reflects another important policy underlying the real party in interest rule. By requiring that all civil actions be prosecuted in the name of the real party in interest, Fed. R. Civ. P. 17(a) protects the public’s legitimate interest in knowing what disputes involving what

³See, e.g., *F.D.I.C. v. Graham*, 2010 WL 5157108, at *4 (S.D. Ohio 2010) (the “pooling and servicing agreement” governing the agency relationship “contained such ‘comprehensive’ delegation of authority that the [agent-servicer] ‘effectively [held] equitable ownership of the claim’ and the trust merely held ‘the bare legal title’”; thus, the agent-servicer was the real party in interest in a foreclosure action (citing *CWCapital Asset Management, LLC v. Chicago Properties, LLC*, 610 F.3d 497 (7th Cir. 2010))); *In re Rent-Way Securities Litigation*, 218 F.R.D. 101, 111 (W.D. Pa. 2003) (investment advisor was real party in interest in securities fraud action on behalf of its clients, where, by agreement, advisor was authorized to sue for recovery of investment losses on behalf of its clients, advisor was in privity with its clients, and clients were bound by outcome of the action); *Weinberg v. Atlas Air Worldwide Holdings, Inc.*, 216 F.R.D. 248, 255 (S.D. N.Y. 2003) (same).

⁴See, e.g., *Marnatha Volunteers Intern., Inc. v. Golden Giant, Inc.*, 181 F.3d 102 (6th Cir. 1999) (“under Ohio law an agent may bring suit in his own name on the contract if the agent contracts in his own name, or in such manner as to become personally bound upon the contract” (internal citations and quotation marks omitted)); *In re Woodberry*, 383 B.R. 373, 379, 65 U.C.C. Rep. Serv. 2d 228 (Bankr. D. S.C. 2008) (agent may be real party in interest “by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage”).

[Section 24:12]

¹See *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020) (“[P]arties who seek to proceed pseudonymously seek a ‘rare dispensation’ from the court. The moving party bears the weighty burden of both demonstrating a concrete need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name.” (internal citations omitted)); *Doe v. Delta Airlines, Inc.*, 310 F.R.D. 222, 224 (S.D. N.Y. 2015), *aff’d*, 672 Fed. Appx. 48 (2d Cir. 2016) (“The use of pseudonyms runs afoul of the public’s common law right of access to judicial proceedings, a right that is supported by the First Amendment.”); *Doe v. Pittsylvania County, Va.*, 844 F. Supp. 2d 724, 727–28 (W.D. Va. 2012) (“it is the exceptional case in which a court allows a party to proceed anonymously”) (collecting cases).

parties are pending in the judicial system.² Because the use of fictitious names undermines this legitimate policy interest, the court must balance the need for anonymity against the presumption that parties' identities are public information.³ Generally, courts have been willing to allow real parties to maintain suits under fictitious names only if there are substantial privacy interests at stake; for example, where the interests of children are involved or where the claims involve highly sensitive personal issues such as abortion, mental illness, personal safety, illegal aliens, or sexual intimacy.⁴ Moreover, issues reflecting societal and judicial changes, such as attitudes toward sexual harass-

²See *Doe v. Delta Airlines, Inc.*, 310 F.R.D. 222, 224 (S.D. N.Y. 2015), *aff'd*, 672 Fed. Appx. 48 (2d Cir. 2016) (“The use of pseudonyms runs afoul of the public’s common law right of access to judicial proceedings, a right that is supported by the First Amendment.”); *Patrick Collins, Inc. v. Does 1-38*, 941 F. Supp. 2d 153, 161 (D. Mass. 2013) (regarding the use of pseudonyms, “[t]he court must . . . ‘weigh the public interest in determining whether some form of anonymity is warranted’” (alteration in original) (quoting *Sunlust Pictures, LLC v. Cisa*, 2012 WL 5187837, at *3 (D. Colo. 2012))); *Freedom From Religion Foundation, Inc. v. Cherry Creek School Dist. # 5*, 2009 WL 2176624, at *5 (D. Colo. 2009) (the requirements of Fed. R. Civ. P. 17(a) “protect the public’s legitimate interest in knowing which disputes involving which parties are before the federal courts that are supported with tax payments and that exist ultimately to serve the American public”).

³See *Doe v. Megless*, 654 F.3d 404, 408, 80 Fed. R. Serv. 3d 71 (3d Cir. 2011) (“When a litigant sufficiently alleges that he or she has a reasonable fear of severe harm from litigating without a pseudonym, courts of appeals are in agreement that district courts should balance a plaintiff’s interest and fear against the public’s strong interest in an open litigation process.”); *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020) (“Once a legitimate showing of need has been made, the court must then balance the litigant’s legitimate interest in anonymity against countervailing interests in full disclosure. This balancing test is necessarily flexible and fact driven.” (internal citations and quotation marks omitted)). See also *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068, 6 Wage & Hour Cas. 2d (BNA) 97, 140 Lab. Cas. (CCH) P 34069, 46 Fed. R. Serv. 3d 1105 (9th Cir. 2000) (outlining factors courts must consider to determine whether a “party’s need for anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the party’s identity”); *Doe v. Cox*, 2015 WL 6962857, at *4 (D. Nev. 2015) (applying a balancing test to determine if the need for anonymity outweighs public’s right to access).

⁴See *In re Boeing 737 MAX Pilots Litigation*, 2020 WL 247404, at *3 (N.D. Ill. 2020) (“[F]ictitious names are allowed when necessary to protect the privacy of children, rape victims, and other particularly vulnerable parties or witnesses.” (quoting *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872, 20 Employee Benefits Cas. (BNA) 2889, 38 Fed. R. Serv. 3d 292 (7th Cir. 1997) and citing *Doe v. Frank*, 951 F.2d 320, 324, 57 Fair Empl. Prac. Cas. (BNA) 1329, 58 Empl. Prac. Dec. (CCH) P 41265, 21 Fed. R. Serv. 3d 1096 (11th Cir. 1992))); *Doe through Doe v. Brighton School District 27J*, 2019 WL 1573301, at *1–2 (D. Colo. 2019) (discussing “exceptional circumstances” in which Tenth Circuit permits use of fictitious names and permitting motion for leave to proceed anonymously for student who was sexually assaulted); *Doe v. Solera Capital LLC*, 2019 WL 1437520, at *3–8 (S.D. N.Y. 2019) (applying Second

ment, sexual offenders, and public registries of sexual offenders, are often reflected in the balancing of the competing interests.⁵

A real party in interest wishing to file suit anonymously or under a pseudonym typically must first seek the court's permission to do so.⁶ However, some courts have held that failure to

Circuit factors regarding permission to proceed anonymously, and finding that plaintiff's "interest in anonymity . . . does not outweigh the public interest in disclosure or prejudice to the Defendants"); *Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 504 n.27 (M.D. Pa. 2007), *aff'd in part, vacated in part on other grounds*, 620 F.3d 170, 31 I.E.R. Cas. (BNA) 129 (3d Cir. 2010), cert. granted, judgment vacated, 563 U.S. 1030, 131 S. Ct. 2958, 180 L. Ed. 2d 243, 32 I.E.R. Cas. (BNA) 480 (2011) and *aff'd in part, rev'd in part on other grounds*, 724 F.3d 297, 36 I.E.R. Cas. (BNA) 440 (3d Cir. 2013) (plaintiffs, all of whom had uncertain immigration status, were entitled to proceed anonymously); *Doe v. Hartford Life and Acc. Ins. Co.*, 237 F.R.D. 545, 549–51 (D.N.J. 2006) (plaintiff permitted to proceed under pseudonym in ERISA litigation seeking long-term disability benefits for severe bipolar disease; plaintiff's interests in proceeding anonymously outweighed public's interest in knowing identity, plaintiff kept his illness confidential from colleagues, disclosure of name would risk stigmatization in plaintiff's professional life as lawyer, and there was substantial public interest in ensuring that rights of mental illness sufferers were adjudicated without risk of stigmatization). See also *Doe v. Indiana Black Expo, Inc.*, 923 F. Supp. 137, 139–40, 16 A.D.D. 724, 5 A.D. Cas. (BNA) 944 (S.D. Ind. 1996) (collecting cases where the use of fictitious names has been allowed). But see *Raiser v. Brigham Young University*, 127 Fed. Appx. 409, 410–11 (10th Cir. 2005) (where plaintiff did not provide any particularized reasons why proceeding publicly would cause him real psychological or physical injury, plaintiff not entitled to proceed under pseudonym in civil rights complaint, despite contention that harmful and prejudicial information might be made public and might harm reputation); *Doe v. Merck & Co., Inc.*, 2012 WL 555520, at *4 (D. Colo. 2012) (denying plaintiff's motion to proceed anonymously despite the fact that his alleged injuries were of a "sexual nature").

⁵See *Doe v. City of Chicago*, 360 F.3d 667, 669–70, 58 Fed. R. Serv. 3d 103 (7th Cir. 2004) (although suit alleged sexual harassment, plaintiff was "not a minor, a rape or torture victim . . . , a closeted homosexual, or—so far as appears—a likely target of retaliation by people who would learn her identity only from a judicial opinion or other court filing" and no other basis existed for allowing plaintiff to proceed anonymously); *Femedeer v. Haun*, 227 F.3d 1244, 1246, 47 Fed. R. Serv. 3d 574 (10th Cir. 2000) (rejecting sex offender's request to file suit under pseudonym to protect his identity on basis that "those using the courts must be prepared to accept the public scrutiny that is an inherent part of public trials").

⁶*United States ex rel. Little v. Triumph Gear Systems, Inc.*, 870 F.3d 1242, 1249–50, 98 Fed. R. Serv. 3d 1162 (10th Cir. 2017) (rejected on other grounds by, *In re Plavix Marketing, Sales Practices and Products Liability Litigation* (No. II), 974 F.3d 228 (3d Cir. 2020)) ("[T]he parties must make a request to the district court for permission to proceed anonymously. Otherwise, the federal courts lack jurisdiction over the unnamed parties, as a case has not been commenced with respect to them." (internal citations and quotation marks omitted)); *Citizens for a Strong Ohio v. Marsh*, 123 Fed. Appx. 630, 637, 2005 FED App. 0004N (6th Cir. 2005) (stating that "[f]ailure to seek permission to proceed under a pseudonym is fatal to an anonymous plaintiff's case"); *W.N.J. v. Yocom*,

seek permission prior to commencement of suit does not deprive the court of jurisdiction or require immediate or automatic dismissal.⁷

§ 24:13 Effect of assignment or subrogation of claim

As set forth in detail in Sections 24:14 to 24:15, a valid assignment or subrogation of a claim shifts real party in interest status to the assignee or subrogee.

§ 24:14 Effect of assignment or subrogation of claim— Valid assignment shifts real party in interest status

Fed. R. Civ. P. 17(a) makes the assignee of a valid assignment, written or oral, a real party in interest.¹ The rule applies only to transfers of interest that occur prior to the commencement of an action; transfers that take place during the action are governed by Fed. R. Civ. P. 25(c).² Where the assignment is total, the assignee is the only real party in interest and suit must be brought in its name.³ Where, however, the assignment is partial and the assignor still retains a portion of the substantive right being sued

257 F.3d 1171, 1172, 51 Fed. R. Serv. 3d 414 (10th Cir. 2001) (“[w]hen a party wishes to file a case anonymously or under a pseudonym, it must first petition the district court for permission to do so”); *Does v. Shalushi*, 38 Media L. Rep. (BNA) 2335, 2010 WL 3037789, at *1 (E.D. Mich. 2010) (refusing to allow a complaint filed pseudonymously to proceed without a protective order).

⁷See, e.g., *A.G. v. American Credit Bureau, Inc.*, 2011 WL 6140903, at *1 (D. Conn. 2011); *Doe v. Barrow County, Ga.*, 219 F.R.D. 189, 192, 57 Fed. R. Serv. 3d 805 (N.D. Ga. 2003); *EW v. New York Blood Center*, 213 F.R.D. 108, 109–10, 54 Fed. R. Serv. 3d 1149 (E.D. N.Y. 2003).

[Section 24:14]

¹See *Sprint Communications Co., L.P. v. APCC Services, Inc.*, 554 U.S. 269, 285, 128 S. Ct. 2531, 171 L. Ed. 2d 424 (2008) (an assignee for collection may properly sue on the assigned claim in federal court); *Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*, 403 F. Supp. 3d 257, 263 (S.D. N.Y. 2019) (“Where a valid assignment has been executed, the assignee is the real party in interest and the right to sue is exclusively the assignee’s. However, if the accrued causes of action are not expressly included in the assignment, the assignee will not be able to prosecute them.” (internal citations and quotation marks omitted)); *American Soc. for Testing & Materials v. Corrpro Companies, Inc.*, 292 F. Supp. 2d 713, 718 (E.D. Pa. 2003) (if assignment is effective, assignee is the real party in interest and “an action on the assignment must be prosecuted in his name”).

²*Wheeler v. Florida Dept. of Corrections*, 2006 WL 2321114, at *5 (M.D. Fla. 2006); *Metlife Capital Corp. v. Water Quality Ins. Syndicate*, 198 F. Supp. 2d 97, 103 (D.P.R. 2002). See also §§ 24:75 to 24:78.

³*Wade v. EMCASCO Ins. Co.*, 483 F.3d 657, 675 (10th Cir. 2007) (where injured party assigns rights to a third party, the assignee becomes the real party in interest and the assignor can no longer pursue a claim); *Emerald*