STATE OF MICHIGAN
IN THE SUPREME COURT

C-SPINE ORTHOPEDICS, PLLC,
as Assignee of Sandra Cruz,

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court Docket No 165537

Court of Appeals Case No. 358171
Lower Court: Macomb County Circuit Court
Lower Court Case No. 20-000386-NF
Lower Court Judge: Jennifer Faunce

*********CONSOLIDATED WITH*********

C-SPINE ORTHOPEDICS, PLLC,
as Assignee of Jose Cruz-Muniz,

Plaintiff-Appellee,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellant.

Supreme Court Docket No 165538
Court of Appeals Case No. 358170
Lower Court: Macomb County Circuit Court
Lower Court Case No. 20-001710-NF
Lower Court Judge: Jennifer Faunce

Defendant-Appellant Progressive Michigan Insurance Company's Appendix

---

MATTHEW S. PAYNE (P73982)
Sigal Law Firm, PLLC
Attorney for Plaintiff-Appellee
27041 Southfield Road, Suite 100
Southfield, MI 48076
(248) 220-1234; Fax: (248) 598-4044
mpayne@sigallaw.com

KAITLYN A. CRAMER (P77699)
KIERSTEN J. REINHOLD (P85523)
Novara Tesija Catenacci
McDonald & Baas, PLLC
Attorney for Defendant-Appellant
888 W. Big Beaver Rd., Suite 600
Troy, MI 48084
(248) 354-0380; Fax: (248) 250-9927
kac@novaralaw.com

/

Appendix Index

Exhibit A

Novara Tesija Catenacci
McDonald & Baas, PLLC

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Case No. 20-1710-NF
Honorable Jennifer Faunce

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

/

Jenifer Measel (P74711)
Haas & Goldstein, PC
Attorney for Plaintiff
31275 Northwestern Highway, Suite 225
Farmington Hills, MI 48334
(248) 702-6550 / Fax: (248) 538-9044

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorneys for Defendant
888 West Big Beaver, Suite 600
Troy, MI 48084
(248) 354-0380 / Fax: (248) 250-9927
fvl@ntclaw.com
NAH@ntclaw.com

/

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

At a session of the Court, held in the City of Mt. Clemens,
County of Macomb, State of Michigan,
on: 07/26/2021

PRESENT: Hon. Jennifer M. Faunce

This matter having come before the Court by way of Defendant Progressive Insurance Company's Motion for Summary Disposition, the Court having heard oral argument, and the Court being otherwise fully advised;

IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition is GRANTED for the reasons stated on the record;

IT IS FURTHER ORDERED that all claims against Defendant Progressive are dismissed with prejudice.

IT IS SO ORDERED.

This is a Final Order, and does close this case.

CIRCUIT COURT JUDGE

/S/ JENNIFER M. FAUNCE
CIRCUIT COURT JUDGE, P43816

07/27/2021

Exhibit B

Novara Tesija Catenacci
McDonald & Baas, PLLC

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Case No. 20-1710-NF
Honorable Jennifer Faunce

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.
_____/

Jenifer Measel (P74711)
Haas & Goldstein, PC
Attorney for Plaintiff
31275 Northwestern Highway, Suite 225
Farmington Hills, MI 48334
(248) 702-6550 / Fax: (248) 538-9044

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorneys for Defendant
888 West Big Beaver, Suite 600
Troy, MI 48084
(248) 354-0380 / Fax: (248) 250-9927
fvl@ntclaw.com
NAH@ntclaw.com
_____/

DEFENDANT PROGRESSIVE MARATHON INSURANCE COMPANY'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) and 2.116(C)(5)

NOW COMES the Defendant, PROGRESSIVE MARATHON INSURANCE COMPANY, by and through its attorneys, NOVARA TESIJA & CATENACCI, PLLC, and in its motion in support of Summary Disposition pursuant to MCR 2.116(C)(10) and MCR 2.116(C)(5), states as follows:

1. On or about May 11, 2020, Plaintiff, C-Spine Orthopedics, initiated this action against Progressive to recover benefits for treatment provided to Jose Cruz-Muniz pursuant to the No-Fault Act. **[Exhibit A]**

2. Specifically, C-Spine Orthopedics filed the instant action as ***assignee of Jose Cruz-Muniz***. **[Exhibit A]**

3. However, through the discovery process, it was revealed that C-Spine Orthopedics had in fact, sold the right to pursue payment regarding Mr. Cruz's outstanding bills to multiple third-party factoring companies.

4. As a result of the aforementioned sale, it became apparent C-Spine Orthopedics no longer had standing to pursue the subject claims against Defendant Progressive. In fact, C-Spine never had standing to pursue the subject claims as the sale was complete prior to this Complaint being filed.

5. Therefore, Defendant brought a Motion for Summary Disposition related to Plaintiff's agreement to convey all rights and interests to multiple financing companies shortly after providing treatment to Mr. Cruz.

6. In response and in support its claim that it was the real party in interest, Plaintiff produced three documents, two amended agreements that are duplicative and one document identified as "Counter-Assignment of Accounts Receivable for Patient Jose Cruz-Muniz."

7. Notably, the very first time Defendant became aware of the existence of these documents was after Defendant filed the subject Motion for Summary Disposition.

8. The first document purportedly re-conveys an interest from MedFinance Servicing LLC ("MedFinance") to C-Spine for dates of service August 21, 2019 through October 2, 2019. Further, the assignment identifies and effective date of "May 4, 2020." **[Exhibit B]**

9. The second document purportedly amends a prior agreement between C-Spine and Apogee Capital Fund, which purportedly appoints C-Spine to service the account receivables

on behalf of Apogee Capital Fund in relation to the two dates of service, 8/7/19 & 8/15/19 sold to Apogee Capital Fund. The document was allegedly executed on July 1, 2020. **[Exhibit C]**

10. The third document purportedly seeks to once again amend a prior agreement between C-Spine and Apogee Capital Fund, which purportedly appoints C-Spine to service the account receivables on behalf of Apogee Capital Fund in relation to the two dates of service, 8/7/19 & 8/15/19 sold to Apogee Capital Fund. The document was allegedly executed on July 23, 2020. **[Exhibit D]**

11. Ultimately, this Honorable Court denied Defendant's Motion for Summary Disposition on the basis of standing, without prejudice.

12. In denying Defendant's Motion, this Court stated, "A plain and ordinary reading of paragraphs 2 and 4 of the Original Sale Agreement and the warranty section leads to one inescapable conclusion – Plaintiff sold or assigned its rights in the accounts to the factoring companies." **[Exhibit E pgs. 5-6]**

13. However, the Court further determined that the Counter-Assignment provided by Plaintiff operated to re-confer an ownership interest in the accounts to Plaintiff such that Plaintiff is a real party in interest. **[Exhibit E pgs. 5-6]**

14. Nevertheless, the aforementioned determination was made ***assuming*** the dates indicated on the subject "Counter-Assignments" were accurate, which Defendant strongly questioned.

15. Following the denial of Defendant's Motion, the Court re-opened discovery in order to allow Defendant to further investigate the dates these "counter-assignments" were in fact executed.

16. **Defendant was forced to file several discovery motions and complete at least one deposition for Plaintiff to eventually state "<u>that she was given permission to disclose</u>" that all assignments at issue in this matter were not created or executed until January 11, 2021, with the exception of the Apogee Capital Fund Amendment that was created on July 29, 2020. [Exhibit F]**

17. Notably, this reveals that these counter-assignments and amended contract did not exist at the time the Complaint was filed.

18. Therefore, Plaintiff did not have standing to bring these claims on the date it filed the instant lawsuit and is unlawfully seeking to obtain standing retroactively by virtue of an assignment during the pendency of the litigation and in response to Defendant's Motion for Summary Disposition regarding standing.

19. Defendant has vigorously defended this matter on the premise that the "counter-assignments" produced by Plaintiff were in fact back-dated by Plaintiff in order to escape the consequences and mislead this Honorable Court into finding that these documents gave Plaintiff standing to file this action when it did not.

20. After a discovery battle, where Plaintiff continuously denied knowing the date these documents were executed, and in response to an Order allowing Defendant to analyze the meta-data of the document to determine its formation date—**Plaintiff finally revealed the truth: these documents were not created or executed on the date represented to Defendant or this Honorable Court**.

21. Thus, Progressive renews its Motion for Summary Disposition pursuant to MCR 2.116(C)(5) and MCR 2.116(C)(10) as C-Spine Orthopedics clearly is not, and has not been, the real party in interest at any point in this litigation.

22. Further, assuming these "Counter-Assignments" are even legally binding or enforceable, Plaintiff cannot claim any bills for services incurred more than one year before the date the assignment was executed on January 11, 2021. MCL 500.3145(2).

23. Consequently, Partial Summary Disposition is appropriate as a matter of law pursuant to MCL 500.3145(2).

WHEREFORE, Defendant, PROGRESSIVE MARATHON INSURANCE COMPANY, respectfully requests this Honorable Court dismiss Plaintiff's claim as to Progressive pursuant to MCR 2.116(C)(10) or MCR 2.116(C)(5), and enter an Order with the following:

a. Plaintiff is not the real party in interest and thus, plaintiff lacks standing;

b. Plaintiff did not have standing at the time suit was filed;

c. All dates of services in relation to the "counter-assignment" incurred one year prior to January 11, 2021 are not compensable pursuant to MCL 500.3145(2); and

d. Award Defendant costs and attorney fees for having to file the instant Motion and defend a frivolous Complaint.

Respectfully submitted,

NOVARA TESIJA & CATENACCI, PLLC

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorney for Defendant
888 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380

Dated: June 8, 2021

Appendix 009

DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) and 2.116(C)(5)

I. FACTUAL BACKGROUND & PROCEDURAL HISTORY

On or about May 11, 2020, Plaintiff C-Spine Orthopedics initiated this action against Progressive as ***assignee of Jose Cruz-Muniz***, claiming to be owed for medical treatment provided to Jose Cruz-Muniz pursuant to the No-Fault Act. **[Exhibit A]**. At the time Plaintiff filed its Complaint, an Assignment of Rights form was attached to Plaintiff's Complaint as Exhibit A, where Plaintiff **specifically plead: "Pursuant to MCL 600.2041, "every action shall be prosecuted in the name of the real party of interest." [See Exhibit A, paragraph 3]**. Further, Plaintiff's Complaint further states: **"All rights, privileges and remedies to payment for health care services, products, or accommodations provided by Plaintiff to the injured party, Jose Cruz-Muniz, for which the injured party is or may be entitled to under MCL 500.3101 have been assigned to Plaintiff. As a result of said assignment, Plaintiff bears the burden of pursuit of payment for health care services…**" **[See Exhibit A, paragraphs 4-5]**.

Despite Plaintiff's assertions, C-Spine Orthopedics, in fact, was not the real party in interest. In fact, through discovery, Defendant requested that Plaintiff produce any agreements which demonstrate that Plaintiff has sold all of Jose Cruz-Muniz's account receivables to third parties.

The documents provided by Plaintiff, which have been previously provided to this Honorable Court, by their plain terms is for the absolute sale of accounts receivable, not a financing agreement, which relinquishes any rights C-Spine had in Mr. Cruz-Muniz's accounts. As a sale, C-Spine retained no interest in those debts sold.

As such, Defendant brought a Motion for Summary Disposition, which was heard before this Honorable Court. In short, Defendant has maintained that the aforementioned sale and conveyance of all rights and interests of the patient account abandoned C-Spine's rights to pursue payment on the subject claims and as such, Plaintiff lacks standing in this matter.

In response, and in an attempt to support its claim that it was the real party in interest, Plaintiff produced an assignment, identified as "Counter-Assignment of Accounts Receivable for Patient Jose Cruz-Muniz." **Suspiciously and conveniently, the document contained a purported execution and effective date of May 4, 2020.** Notably, this was nothing more than an obvious attempt by Plaintiff to ensure that the "Counter-Assignment" would circumvent its lack of standing and the application of any one year back issues. Plaintiff also presented two amended agreements relating to two dates of service that were executed after the Complaint was filed to purportedly give C-Spine permission to service the account receivables on behalf of Apogee Capital Fund LLC.

Despite agreeing with Defendant in finding that a sale did take place, this Honorable Court ultimately denied Defendant's Motion for Summary Disposition without prejudice. In denying Defendant's Motion, this Honorable Court stated:

> **A plain and ordinary reading of paragraphs 2 and 4 of the Original Sale Agreement and the warranty section leads to one inescapable conclusion – Plaintiff sold or assigned its rights in the accounts to the factoring companies…. However, the Original Sale Agreement does not describe any interest Plaintiff retained in the accounts and does not support Plaintiff's argument that the transactions were mere loans or the granting of a security interest in exchange for capital. As such, upon the assignment of the accounts in the Original Sale Agreement, the factoring companies became the real parties in interest on the transferred accounts**.

[Exhibit E, pg. 4]

However, the Court further determined that the Counter-Assignment(s) provided by Plaintiff operated to re-confer an ownership interest in the accounts to Plaintiff such that Plaintiff is a real party in interest. **[Exhibit E pgs. 5-6].** This determination, however, was made with the assumption that the documents produced by plaintiff were an accurate reflection of the execution date.

Subsequently, Defendant served Plaintiff with multiple discovery requests, and sought the Depositions of multiple individuals to testify regarding the purported execution date. **Plaintiff repeatedly refused to identify the actual date of execution and Defendant was forced to file several discovery motions and complete at least one deposition for Plaintiff to eventually reveal that the assignments at issue in this matter were not created or executed until January 11, 2021.** Even if the subject "Counter-Assignments" are somehow legitimate and legally enforceable, the dates the documents were executed are crucial to Plaintiff's claims. In fact, the January 11, 2021 execution date proves C-Spine Orthopedics did not have the right to pursue the subject claims against Progressive at the time the Complaint was filed.

II. STANDARD OF REVIEW

MCR 2.116(C)(5) provides that a party is entitled to summary disposition where "the party asserting the claim lacks the legal capacity to sue." When ruling on a motion under MCR 2.116(C)(5), the trial court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *McHone v Sosnowski*, 239 Mich App 674; 609 NW2d 844 (2000).

Defendant also brings this Motion pursuant to MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10), on the grounds that there is no genuine issue of material fact, tests the factual sufficiency of the complaint. *Kisiel v. Holtz*, 272 Mich. App. 168,

170 (2006). In presenting a motion for summary disposition under MCR 2.116(C)(10), the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Smith v. Globe Life Ins. Co*., 460 Mich. 446, 455 (1999). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof on a dispositive issue rests on the nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Greene v AP Products, Ltd*., 264 Mich. App. 391, 398 (2004). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Coblentz v. City of Novi*, 475 Mich. 558, 568-569 (2006).

III. LAW AND ARGUMENT

A. C-Spine Orthopedics lacks Standing and Dismissal is Required as a Matter of Law.

C-Spine Orthopedics does not, and in fact, did not at the time it filed this Complaint, have standing in this matter. Plaintiff assigned its rights and "sold" their accounts regarding treatment rendered to the underlying patient, and assigned the rights to collect the bills at issue to third party factoring companies. Pursuant to *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 412; 875 NW2d 242 (2015), "an assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." Further, pursuant to *Mich. Pain Mgmt. v. Am. Country Ins*. Co., 2020 Mich. App. LEXIS 158, *8, 2020 WL 113944, "after execution of an assignment, only the assignee may enforce the acquired rights." Here, Plaintiff **unequivocally** assigned its rights to pursue this action to multiple third parties. Pursuant to *Cannon Twp v Rockford Pub Sch* and *Mich. Pain Mgmt. v. Am. Country Ins. Co*., Plaintiff was not at the time this suit was filed the

real party in interest as to the bills at issue in this action, and all rights had been vested in the assignee third party factoring companies.

Under Michigan Commercial Code, a seller of accounts, including medical debts, may not retain any right, legal or equitable, in a debt sold to another. Consequently, Plaintiff cannot, as a matter of law, have a cause of action against Defendant for an account sold to a third party, in this case characterized as a 'factoring' company. Factoring is a "sale of accounts receivable of a firm to a factor at a discounted price * * * ' or ' * * * [t]he purchase of accounts receivable from a business by a factor who thereby assumes the risk of loss in return for some agreed discount.'" Black's Law Dictionary 532 (5th Ed.Rev.1979). Furthermore, Article 9 of the Michigan uniform commercial code applies to "A sale of accounts, chattel paper, payment intangibles, or promissory notes MCL 440.9101(1)(C). An "Account" "means a right to payment of a monetary obligation. . . for services rendered or to be rendered. . .[t]he term includes health-care-insurance receivables." MCL § 440.9102. "A debtor that has sold an account, chattel paper, payment intangibles, or promissory note does not retain a legal or equitable interest in the collateral sold." MCL § 440.9318(1). This includes debt sellers like Plaintiff because "Debtor" means. . .***(ii)*** A seller of accounts, chattel paper, payment intangibles, or promissory notes. MCL 440.9101(bb)(ii), Further, the definition of "Collateral" includes "Accounts. that have been sold." MCLS § 440.9102(l)(ii). As applied to this case, the code maintains that "[a] seller that has sold an account. . . does not retain a legal or equitable interest in the account that has been sold." Official comment #2 to UCC 9-318 affirms this:

> Subsection [9-318](a) makes explicit what was implicit, but perfectly obvious, under former article 9: **The fact that a sale of an account or chattel paper gives rise to a "security interest" does not imply that the seller retains an interest in the property that has been sold**. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has

been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former article 9.

B. Plaintiff cannot retroactively obtain standing through an assignment executed during the pendency of the suit and in response to Plaintiff's Motion for Summary Disposition regarding standing.

The law is very clear on this matter. All legal actions are required to be brought in name of real party in interest unless otherwise provided by statute. *Sinai Hospital of Detroit v. Sivak*, 88 Mich. App. 68, 276 N.W.2d 518, 1979 Mich. App. LEXIS 1947 (Mich. Ct. App. 1979). An action may only be prosecuted in the name of the real party in interest; a real party in interest is one who is vested with the right of action on a given claim regardless of who has the beneficial interest. *Weston v. Dowty*, 163 Mich. App. 238, 414 N.W.2d 165, 1987 Mich. App. LEXIS 2725 (Mich. Ct. App. 1987); *Stillman v. Goldfarb*, 172 Mich. App. 231, 431 N.W.2d 247, 1988 Mich. App. LEXIS 587 (Mich. Ct. App. 1988); *Michigan Nat'l Bank v. Mudgett*, 178 Mich. App. 677, 444 N.W.2d 534, 1989 Mich. App. LEXIS 456 (Mich. Ct. App. 1989).

It is undisputed that Plaintiff did not Plaintiff did not have standing when it filed this complaint as it sold all rights and interests in the unpaid bills to multiple financing companies shortly after providing treatment to Mr. Cruz-Muniz. Plaintiff sought to mislead this Court about whether it had standing at the time it filed this action by backdating the assignment from MedFinance. **Further, Plaintiff executed every single document that purportedly gives it standing to bring this action *after* the lawsuit was filed.**

Plaintiff suggests that it now should be able to the take the benefit of a filing date it obtained when it admits that it did not have that right to file this action until a contract was entered at a later date. This issue has arisen previously in federal courts and federal courts have dealt with the issue of subsequent attempts by parties to repair standing issues by attempting to backdate assignments of rights. The federal courts have arrived at a sound conclusion,

> As a general matter, parties should possess rights before seeking to have them vindicated in court. Allowing a subsequent assignment to automatically cure a standing defect would unjustifiably expand the number of people who are statutorily authorized to sue. Parties could justify the premature initiation of an action by averring to the court that their standing through assignment is imminent. Permitting non-owners and licensees the right to sue, so long as they eventually obtain the rights they seek to have redressed, would enmesh the judiciary in abstract disputes, risk multiple litigation, and provide incentives for parties to obtain assignment in order to expand their arsenal and the scope of litigation. Inevitably, delay and expense would be the order of the day. *Enzo APA & Son, Inc. v. Geapag A.G.*, 134 F.3d 1090, 1093-94 (Fed. Cir. 1998) (quoiting Proctor & Gamble Co. v. Paragon Trade Brands, Inc., 917 F. Supp. 305, 310, 38 U.S.P.Q.2D (BNA) 1678, 1682 (D. Del. 1995)).

If permitted to fix its standing issue retroactively, a plaintiff that is not in fact authorized to file suit may file frivolous litigation against a defendant, then cure its wrong by obtaining a retroactive appointment as a 'servicer' or conveying an assignment by colluding with the owner of the claim, while also giving the owner of the claim the benefit of their wrongful filing date. To permit this would be contrary to Michigan's real party in interest statute and court rules, and essentially permit anyone to toll the statute of limitations despite their filing having no basis in law or fact that they are entitled to relief at the time the action is actually filed. Other Michigan Courts have adopted this same analysis in dismissing actions due to Plaintiff's attempting to retroactively obtain standing after initiating litigation. **[Exhibit G]**

The real party in interest statute, MCL 600.2041, and related court rule, MCR 2.201(B), demonstrate Michigan has made it clear that claims must be prosecuted by and in the name of the owner of the respective claims. § 2041 states that "every action **shall be** prosecuted in the name of the real party in interest." In fact, **Plaintiff acknowledges the authority of this statute in its Complaint.**

C. Amendment is not proper in this case because Plaintiff had no right to bring the action and any amendment would be futile.

Plaintiff may contend that it should be able to amend its complaint, but any amendment would not alter the outcome of the case and should be denied. "[L]eave to amend a complaint may be denied . . . where amendment would be futile." *Hakari v Ski Brule, Inc*, 230 Mich. App. 352, 355; 584 N.W.2d 345 (1998).

The Michigan Supreme Court addressed the issue under current law, where the Plaintiff, a bankrupt, filed suit against defendant, despite the transfer of the claim to the bankruptcy Trustee. *Miller v. Chapman Contracting*, 477 Mich. 102, 730 N.W.2d 462 (2007). Plaintiff attempted to add or substitute the Trustee into his suit against Defendant, despite the fact that the Trustee was the real party in interest in the claim. *Id.* at 105. The Court found that this did not relate back because the claim was not brought by the proper owner of the claim. *Id*. at 106. It also stated the following, regarding its interpretation of the Court rules, affirming that if the claim as not brought within the proper time period, that amendment would be futile and Summary Disposition appropriate. Moreover, this Court adds that MCR 2.118(D) specifies that an amendment relates back to the date of the original pleading only if it "adds a claim or a defense"; it does not specify that an amendment to add a new party also relates back to the date of the original pleading. *Id*. at 107-08.

D. MCL 500.3145(2) bars all claims for services incurred more than a year before January 11, 2021 claimed pursuant to the "Counter-Assignment"

MCL 500.3145(2) is a damages limiting provision and not a statute of limitations. This distinguishment was once again recognized by the Michigan Supreme Court in *Joseph v Auto Club Ins Ass'n*, 491 Mich 200 (2012) when it discussed as to whether the minority/insanity tolling provision of the Revised Judicature Act, MCL 600.5851(1), would toll the damages limiting provision of the one-year-back-rule. Specifically, in *Joseph*, the Michigan Supreme

Court analyzed the pre-amended version of MCL 500.3145 and the prior holding in *Devillers v Auto Club Ins Ass'n*, 473 Mich 562 (2005), where the Michigan Supreme Court held:

> although a no-fault action to recover PIP benefits may be *filed* more than one year after the accident and more than one year after a particular loss has been incurred (provided that notice of injury has been given to the insurer or the insurer has previously paid PIP benefits for the injury), § 3145(1) nevertheless limits *recovery* in that action to those losses incurred within the one year preceding the filing of the action.

Joseph, 491 Mich at 208 (citing *Devillers*, 473 Mich at 574). Ultimately, the Michigan Supreme Court held the minority/insanity tolling provision in MCL 600.5851(1) was not applicable to the one-year-back rule in MCL 500.3145 "because the one-year-back rule is a **damages-limiting provision and does not concern as to when an action may be brought**." *Joseph*, 491 Mich at 222 (emphasis added).

Further, the Michigan Court of Appeals, in *Vhs of Mich. v. Everest Nat'l Ins. Co*., held that a plaintiff provider's claims were barred by the one year back rule, following an assignment of rights that was produced for the first-time during litigation. 2019 Mich. App. LEXIS 1886, 2019 WL 2062824. [See *Vhs* Opinion, attached as **Exhibit H**].

In *Vhs*, the defendant insurer requested summary disposition because the plaintiff provider lacked an assignment of rights under *Covenant*. *Id*. at *2-3. Shortly thereafter, the underlying claimant signed an assignment of rights, and the plaintiff presented it to the court. *Id*. at *3. However, the defendant argued and the court agreed that the date of the assignment provided the applicable reference date for purposes of the one-year-back rule, and applying the reasoning in *Shah v State Farm Mut. Auto. Ins. Co.*, 324 MichApp 182, 920 NW2d 148 (2018), stated that the plaintiff could not acquire any rights greater than what the underlying claimant possessed at the time of the assignment. *Id*. at *12-13. The court held that the newly-signed

assignment of rights did not cover the treatment dates in question, as they were greater than one year old, and thus were barred under the one-year-back rule. *Id*. The court stated,

> Applying the reasoning of *Shah*, plaintiff in this case could not acquire any rights greater than what Ellis possessed at the time of the assignment. Had Ellis filed suit against defendants directly on June 11, 2017, the one-year-back rule would have precluded him from recovering benefits for any portion of the loss incurred more than one year before that date. *MCL 500.3145(1)*; *Shah, 324 Mich App at 204*. That is, on June 11, 2017, Ellis no longer had a right to payment of benefits for medical services obtained in March and April 2016. Accordingly, the June 11, 2017 assignment from Ellis could not confer upon plaintiff a right to recover benefits more than one year before that date because Ellis himself did not possess that right. See *id.* Because plaintiff's complaint in this case seeks to recover payment for medical services rendered before that date, the trial court did not err in determining that the one year- back rule precludes recovery of the benefits sought in plaintiff's complaint by virtue of the June 11, 2017 assignment. **[Exhibit M]**

D. Defendant Progressive is Entitled to Costs for having to File the Subject Motion.

As this Court is aware, Progressive has relentlessly sought the truth in this matter regarding the agreements produced by Plaintiff. Specifically, not only has Plaintiff repeatedly denied the "Counter-assignments" were authored and executed on any other day other than identified, Plaintiff has also repeatedly pursued these claims very well knowing it had absolutely no right to do so. In addition, Plaintiff has denied Progressive's entitlement to discovery since the outset of this matter, forcing Defendant to file multiple discovery Motions and the instant Motion for Summary Disposition for the second time. Plaintiff counsel claims **"her client did not give her permission to disclose"** the information sought in discovery until Defendant expended significant sums in costs, fees and expert fees. Costs should therefore be awarded as Plaintiff had access to the information sought by Defendant the entire time that Defendant was seeking discovery as to the execution dates of the documents. Plaintiff produced discovery

documents and deposition testimony claiming that the date of creation and execution was unknown when it clearly knew that information and could easily obtain that information. It cannot be disputed that Defendant was forced to file multiple discovery motions and attend multiple discovery hearings to obtain unprivileged information being withheld by Plaintiff without cause. Plaintiff's Complaint against Defendant is undoubtedly frivolous under MCR 1.109(E)(5), (6) and (7), as well as MCR 2.625(A)(2). MCR 1.109 states, in pertinent part:

> (5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
> (a) he or she has read the document;
> (b) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, **the document is well grounded in fact** and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
> (c) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
> (6) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.
> (7) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2).

IV. CONCLUSION

At every turn during this litigation, Plaintiff has conveniently found ways to evade accountability for its actions. There is no question here that Plaintiff filed a lawsuit while not having standing in an effort to pursue a debt they had no right to collect. Furthermore, Plaintiff continued this fraudulent and misleading claim in the form of a backdated "Counter-Assignment" until it was forced to admit what was apparent at the outset, that Plaintiff lacked standing at the time it filed this matter. As such, a dismissal of all claims with prejudice is the only justifiable outcome.

WHEREFORE, Defendant, PROGRESSIVE MARATHON INSURANCE COMPANY, respectfully requests this Honorable Court dismiss Plaintiff's claim as to Progressive pursuant to MCR 2.116(C)(10) or MCR 2.116(C)(5), and enter an Order with the following:

a. Plaintiff is not the real party in interest and thus, plaintiff lacks standing;

b. Plaintiff did not have standing at the time suit was filed;

c. All dates of services in relation to the "counter-assignment" incurred one year prior to January 11, 2021 are not compensable pursuant to MCL 500.3145(2); and

d. Award Defendant costs and attorney fees for having to file the instant Motion and defend a frivolous Complaint.

Respectfully submitted,

NOVARA TESIJA & CATENACCI, PLLC

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorney for Defendant
888 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on June 22, 2021 by:

☐ U.S. MAIL ☐ E-MAIL ☐ HAND DELIVERED
☒ E-FILE ☐ FEDEX ☐ OTHER

Signature: /s/ Michelle Gumro
Michelle Gumro

EXHIBIT A

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

Case No. 20-1710-NF
HON. JENNIFER FAUNCE

/

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax

/

THIS IS TO CERTIFY THAT ANOTHER CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT HAS HERETOFORE BEEN COMMENCED IN THIS COURT AND IS PENDING BEFORE JUDGE JENNIFER FAUNCE AND ASSIGNED CASE NO. 20-386-NF.

COMPLAINT

NOW COMES Plaintiff, by and through its attorneys, HAAS & GOLDSTEIN, PC, and for its cause of action against the Defendants, hereby says as follows:

1. Plaintiff is a corporation licensed to conduct business under the laws of the State of Michigan and at all times pertinent herein was conducting business in the State of Michigan.

2. Defendants are corporations, duly organized and existing under the laws of the State of Michigan and, at all times pertinent herein, were, and currently are, conducting business in the County of Macomb, State of Michigan.

3. Pursuant to MCL 600.2041, "every action shall be prosecuted in the name of the real party of interest."

4. All rights, privileges and remedies to payment for health care services, products or accommodations provided by Plaintiff to the injured party, Jose Cruz-Muniz, for which the injured party is or may be entitled to under MCL 500.3101, *et seq*, the No Fault Act, have been assigned to Plaintiff, hereto attached as **Exhibit A**.

5. As a result of said assignment, Plaintiff bears the burden of pursuit of payment for health care services, products or accommodations, provided by Plaintiff to the injured party.

6. The amount in controversy is more than Twenty-Five Thousand ($25,000) Dollars, exclusive of costs and attorneys' fees and jurisdiction is otherwise proper with this Court.

COUNT I- PIP CLAIM

7. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

8. On May 23, 2018, Jose Cruz-Muniz, (hereinafter "the injured party") sustained accidental bodily injuries within the meaning of the statutory provisions of MCL 500.3105.

9. Defendants are first in order of priority and/or in the order of priority to pay for the injured party's claim for no fault personal protection insurance benefits in

accordance with Chapter 31 of the Michigan Insurance Code, more commonly known as the "no-fault insurance law."

10. Defendant assigned claim number 18-4229922 to the injured party's claim.

11. As a result of the aforementioned injuries, Plaintiff provided reasonably necessary products, services and/or accommodations to aid in the injured party's care, recovery and/or rehabilitation.

12. Defendants became obligated to pay for certain expenses incurred for reasonably necessary products, services and/or accommodations rendered for the injured party's care, recovery or rehabilitation as a result of the injured party's sustained accidental bodily injuries arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

13. Plaintiff has provided reasonably necessary products, services and/or accommodations to the injured party and continues to do so, resulting in the following outstanding balances to date:

a. Jose Cruz-Muniz DOS 8.7.19 – 10.2.19 - $37,667.36

(Exhibit B)

14. Plaintiff timely submitted billings to Defendants for products, services and/or accommodations that were rendered to the injured party and that were reasonably necessary for the care, recovery or rehabilitation of the injured party's injuries.

15. Plaintiff also submitted to Defendants supporting documentation and forms necessary for Defendants to determine the reasonableness, necessity and amount of the medical products and/or services rendered to the injured party.

16. Defendants were provided reasonable proof of the fact and of the amount of losses sustained and charges incurred.

17. To date, Defendants have unreasonably refused and/or delayed in making payment to Plaintiff for the products, services and/or accommodations rendered.

18. Pursuant to MCL 500.3157, Plaintiff is entitled to recover the outstanding balance for the products, services and/or accommodations to the injured party from Defendants.

19. Plaintiff has requested payment from Defendants for the amount of the bills due and owing and Defendants has refused and/or neglected to pay them.

20. Plaintiff is entitled to reasonable and actual attorney fees incurred in this action pursuant to MCL 500.3148.

21. Plaintiff is also entitled to costs and interest pursuant to MCL 500.3142 for the overdue bills that have not been paid by Defendants within 30 days after Defendants received reasonable proof of the fact and of the amount of loss sustained.

22. Pursuant to Insurance Bulletin 92-03, Defendants is "required to provide insureds and claimants with complete protection from economic loss for benefits provided under personal protection insurance."

23. Satisfaction of the judgment obtained by Plaintiff will discharge Defendants of their obligation to the injured party for services Plaintiff provided to the injured party.

24. Plaintiff as assignee of the injured party is the real party of interest and as such Plaintiff has the right to prosecute this action against Defendants pursuant to MCL 600.2041.

COUNT II- BREACH OF CONTRACT/CONTRACTUAL AND/OR STATUTORY DUTIES

25. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

26. Defendants' failure to pay Plaintiff personal protection insurance benefits constitutes a material breach of contractual and/or statutory duties pursuant to the contract where the injured party is qualified as an "insured," or otherwise entitled to benefits and/or pursuant to MCL 500.3101, *et seq.*

27. As a direct and proximate cause of Defendants' breach of contractual and/or statutory duties, Plaintiff has sustained damages.

WHEREFORE, Plaintiff claims as damages against Defendants in a sum more than Twenty-Five Thousand ($25,000) Dollars, which the triers of fact deem reasonable, plus costs, attorney fees and interest most wrongly sustained.

Respectfully submitted,

/s/ Jenifer Measel
HAAS & GOLDSTEIN, PC
Jenifer Measel (P74711)
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550

Dated: May 6, 2020

Exhibit A

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment incudes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee. I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature
Cruz-Muniz, Jose — Patient Printed Name
10/2/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

Exhibit B

Patient Ledger

Place of Service: C-Spine Ortho
29255 NorthWestern Hwy #101
Southfield, MI 48034-1018

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 |
PMS: 109224PAT000000270
4432 FOURTH STREET
WAYNE, MI 48184
(734) 502-5918

Remit Payment: C-Spine Ortho
4111 E Valley Auto Drive #202
Mesa, AZ 85206-4605

DOA: 5/23/2018

Account Balance $37,667.36

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
10/02/2019	**—**	**PIP0001JT8**	**421.58**	**0.00**	**0.00**	**421.58**	**0.00**
10/02/2019	10/03/2019	99213 - OFFICE OUTPATIENT VI...	421.58	0.00	0.00	421.58	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/25/2019	**—**	**PIP00017M7**	**5,864.31**	**0.00**	**0.00**	**5,864.31**	**0.00**
09/25/2019	09/26/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/25/2019	09/26/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/25/2019	09/26/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/25/2019	09/26/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00
09/25/2019	09/26/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	C9290 - Injection, bupivacaine lip...	40.00	0.00	0.00	40.00	0.00
09/25/2019	09/26/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/25/2019	09/26/2019	J2001 - Injection, lidocaine hcl for ...	120.00	0.00	0.00	120.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/12/2019	**—**	**PIP0000VV8**	**5,944.31**	**0.00**	**0.00**	**5,944.31**	**0.00**
09/12/2019	09/13/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/12/2019	09/13/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/12/2019	09/13/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/12/2019	09/13/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/12/2019	09/13/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
09/12/2019	09/13/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/21/2019	**—**	**PIP0000F12**	**15,165.34**	**0.00**	**0.00**	**15,165.34**	**0.00**
08/21/2019	08/28/2019	99214 - OFFICE/OUTPATIENT VI...	617.05	0.00	0.00	617.05	0.00
08/21/2019	08/28/2019	64493 - INJ PARAVERT F JNT L/...	8,050.50	0.00	0.00	8,050.50	0.00
08/21/2019	08/28/2019	64494 - INJ PARAVERT F JNT L/...	4,113.90	0.00	0.00	4,113.90	0.00
08/21/2019	08/28/2019	96372 - THER/PROPH/DIAG INJ ...	93.89	0.00	0.00	93.89	0.00
08/21/2019	08/28/2019	J1030 - Methylprednisolone 40 m...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1100 - Dexamethasone sodium p...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1885 - Ketorolac tromethamine inj	80.00	0.00	0.00	80.00	0.00
08/21/2019	08/28/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/21/2019	08/28/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/15/2019	**—**	**PIP00068G6**	**9,651.36**	**0.00**	**0.00**	**9,651.36**	**0.00**
08/15/2019	08/15/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
08/15/2019	08/15/2019	27096 - INJECT SI JOINT ARTH...	7,476.75	0.00	0.00	7,476.75	0.00
08/15/2019	08/15/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/15/2019	08/15/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00
08/15/2019	08/15/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1100 - Injection, dexamethasone ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
08/15/2019	08/15/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/07/2019	**—**	**PIP00068F9**	**620.46**	**0.00**	**0.00**	**620.46**	**0.00**
08/07/2019	08/07/2019	99203	620.46	0.00	0.00	620.46	0.00

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 | **PMS:** 109224PAT000000270

Account Balance $37,667.36

EXHIBIT B

COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ

This COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ ("**Assignment**") is entered into as of May 4, 2020 ("**Effective Date**") by and between **MedFinance Servicing, LLC** ("**Original Purchaser**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and **C-Spine Orthopedics, PLLC**, a company organized and existing under the laws of the State of Michigan with principal place of business located at 36700 Woodward Ave., Suite 202, Bloomfield Hills, Michigan 48304 ("**Original Seller**") (collectively the "**Parties**").

WHEREAS, Original Seller sold, transferred, assigned, and conveyed Original Seller's legal and equitable rights and Interests ("**Rights, Title, and Interest**") in various and numerous Dates of Service between August 21, 2019 and October 2, 2019 for Patient Jose Cruz-Muniz (the "**Patient**" and the "**Account**") to Original Buyer; and

WHEREAS, As of the Effective Date, though some payments may have been received on the Account, the Account remains largely if not wholly open and collectible; and

WHEREAS, In order to obtain payment on the Account, it is likely that a lawsuit or other means of collection activity will need to be filed against the insurance carrier or other responsible party ("**Lawsuit**"). The Parties agrees that the best method to accomplish the best result is for Original Seller to be involved in, pursue, and maintain an interest in the Lawsuit; and

WHEREAS, Original Buyer desires to transfer, assign, and convey a significant portion of Original Buyer's legal and equitable rights and interests, which were previously Original Seller's Rights, Title, and Interest, back to Original Seller, as more clearly and directly outlined herein.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Assignment by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Assignment of Rights back to Original Seller**. Original Buyer wishes to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. This shall include but is not limited to any right to pursue, negotiate, compromise, and settle, the Lawsuit, or at any time short of a Lawsuit. At all times hereafter, Original Seller shall retain the legal Rights, Title, and Interest to the Account, subject to the terms herein.

2. **Assignment of Rights back to Original Seller of Future Dates of Service**. From time-to-time, and in the normal course of business, the Patient may continue to seek treatment from Original Seller after the Effective Date, which may, also in the normal course of business, cause Original Seller to sell, transfer, assign, and convey the future Rights, Title, and Interest in future dates of service related to the Patient ("**Additional Rights, Title and Interest**") which thereby become subject to the Lawsuit. The Parties agree that it is their intent and wish that any such Additional Rights, Title, and Interest be subject to the terms of this Assignment. More specifically, Original Buyer intends that Original Seller maintain any and all rights to pursue, negotiate, compromise, and settle any and all Additional Rights, Title and Interest under the terms of this Assignment.

3. **Consideration**. In consideration for the transfer, assignment, and conveyance of Original Buyer's Rights, Title, and Interest in the Account, as well s the Additional Rights, Title, and Interest, Original Seller agrees to provide Original Buyer, net of all fees and costs associated with the pursuit of payment through a Lawsuit or otherwise (including but not limited to attorney fees and costs, and collection/billing costs), the lesser of the sum of the full amount recovered on the account, or fifty (50%) percent of the total billed charges outstanding and collectible on the Account. Any amount, net of all fees and costs associated with the pursue of payment through a payment or otherwise, shall be the exclusive property of Original Seller.

4. **Original Buyer's Representations and Warranty**. As of the Effective Date, Original Buyer represents and warrants to Original Seller as follows:

a. Original Buyer represents and warrants that it has the legal authority to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. Original Buyer additionally represents and warrants that the Account being transferred, assigned, and conveyed to Original Seller are now and will at all times after the Effective Date remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Original Buyer has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its business now being conducted. Such Authorization was in full force and effect at all relevant times prior to the Effective Date.

c. The execution and delivery of this Assignment and the performance hereunder have been duly authorized, by all necessary actions on the part of Original Buyer, and no provision of applicable law or regulations, the charter or bylaws of Original Buyer, any agreement, judgment, injunction, order, decree, or other instrument binding upon Original Buyer is or will be contravened by Original Buyer's execution and delivery of this Assignment or Original Buyer's performance hereunder.

5. **Original Seller's Representations and Warranty**. As of the Effective Date, Original Seller represents and warrants to Original Buyer as follows:

a. Original Seller is duly organized, validly existing, and in good standing with all requisite power and authority to carry on its business as now being conducted to execute, deliver, and perform under this Assignment and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby.

b. The execution and delivery of this Assignment and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Original Seller.

6. **Confidentiality**. The Parties agree to keep confidential all terms of this Assignment, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the terms set forth in this Assignment to anyone, except as required by law, in which case the disclosing party will give notice to the

non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Original Buyer and Original Seller to any source. If any law requires disclosure of the payment terms between Original Buyer and Original Seller in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Assignment and any related agreement shall not be made part of the Patient's medical file.

7. **Choice of Law, Venue and Jury Waiver**. This Assignment and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Assignment, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAVIE THEIR REPSECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS ASSIGNMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Original Seller and Original Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

8. **Attorneys Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Assignment, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

9. **Confidentiality/Trade Secret**. This Assignment, its terms, conditions, substance of discussions between the Parties, all documentation related to this Assignment, and any other information exchanged between the Parties that relates to this Assignment represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Assignment, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

10. **Relationship of the Parties**. The relationship between Original Seller and Original Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Assignment. Under no circumstances does this Assignment create any medical or healthcare obligation on the part of Original Buyer, as Original Buyer is neither a medical nor healthcare professional or provider of any kind. Original Buyer has not and will not direct medical care in any way, and all medical decisions are solely between Original Seller and the Patient. Original Seller and the Patient are free to embark upon whichever course of medical treatment or services they deem reasonable and necessary.

11. **Severability**. If any provision of this Assignment is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

12. **Interpretation**. Each Party acknowledges that this Assignment has been the subject of active and complete negotiations, and that this Assignment should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Assignment.

13. **Rights Cumulative; Waivers**. The rights of each of the Parties under this Assignment are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

14. **No Strict Construction**. This Assignment is the joint work product of Original Buyer and Original Seller, which ahs been negotiated by the Parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provision of this Assignment, this Assignment shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

15. **Binding Effect**. Subject to the provisions contained herein, this Assignment and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the Exhibits addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned Parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

16. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Assignment.

17. **Counterparts**. This Assignment may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **Notice**. All notices and other communications that are required or may be given under this Assignment shall be in writing and shall be deemed to have been duly given: (a) when received in personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g. Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the other party.

19. **Prior Understandings**. This Assignment supersedes any and all prior discussions and agreements between Original Seller and Original Buyer with respect to the purchase of the Account and other matters contained herein, and this Assignment contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

20. **Non-Merger/Survival**. Each and every covenant hereinabove made by Original Buyer or Original Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

21. **Non-Disclosure Agreement**. Original Buyer and Original Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

22. **Integrated Agreement**. With the exception of the NDA, this Assignment and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Original Buyer and Original Seller. This Assignment shall not be altered or modified except by a subsequent writing, signed by both Original Seller and Original Buyer.

23. **Successors and Assigns**. This Assignment shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Original Seller or Original Buyer assign any of its rights and/or obligations pursuant to this Assignment to any third-party, absent prior express written consent of the other Party.

24. **Headings**. The headings of articles and sections contained in this Assignment are for convenience only and shall not be deemed to control or affect the meaning or construction of any provisions of this Assignment.

25. **No Third-Party Beneficiary**. This Assignment is for the sole benefit of the Parties hereto, and nothing contained in this Assignment shall be construed to grant any person or entity, other than Original Seller and Original Buyer and their respective successors and permitted assigns, any right under or in respect of this Assignment or any provision hereof.

26. **Further Assurances**. In connection with this Assignment and the transactions contemplated hereby, each party of this Assignment will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Assignment and the transactions contemplated or intended hereby.

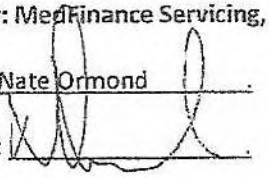
27. **Amendments** Any additions, deletions, or waivers to this Assignment shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

*****SIGNATURE PAGE TO FOLLOW*****

IN WITNESS WHEREOF, the Parties have executed this Assignment on the date indicated in the introductory paragraph herein.

Original Buyer: MedFinance Servicing, LLC

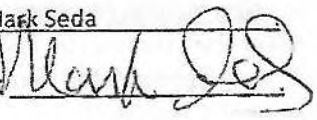
Print Name: Nate Ormond

By (Signature): 

Title: President

Original Seller: C-Spine Orthopedics, PLLC

Print Name: Mark Seda

By (Signature): 

Title: CEO

EXHIBIT C

FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 1, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 16, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

**** 4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/1/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/1/2020

Schedule A

Conformed Agreement

[See attached]

EXHIBIT D

FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 23, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 30, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

**** 4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/23/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/23/2020

Schedule A

Conformed Agreement

[See attached]

EXHIBIT E

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

C-SPINE ORTHOPEDICS, PLLC,
Plaintiff,

vs. Case No. 20-1710-NF

PROGRESSIVE MARATHON
INSURANCE COMPANY,
Defendant.
_____/

OPINION AND ORDER

Defendant Progressive Marathon Insurance Company filed a Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(C)(5).

I. Background

Plaintiff C-Spine Orthopedics, PLLC is a medical provider that seeks payment for its services. Specifically, Plaintiff alleges that it rendered reasonably necessary medical services to its assignee Jose Cruz-Muniz for injuries sustained in a motor vehicle accident that occurred on May 23, 2018. In exchange for Plaintiff's services, Jose Cruz-Muniz assigned to Plaintiff his right to certain no-fault benefits. Now Plaintiff seeks payment from the Defendant no-fault insurer under the terms of that assignment. Plaintiff filed its Complaint on May 13, 2020 alleging: count I, PIP claim and count II, breach of contract/contractual and/or statutory duties.

Defendant maintains that Plaintiff subsequently assigned its interest in its account receivables to third-parties. Therefore, Defendant moved for Summary Disposition claiming Plaintiff lacks standing to bring claims on those accounts it no longer owns. The Court heard oral argument on Defendant's Motion on February 8, 2020 and took the

matter under advisement.

II. Standards of Review

Summary disposition is appropriate under MCR 2.116(C)(5) where the party asserting the claim lacks the legal capacity to sue.[1] "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id*. "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013). However, a motion for summary disposition is generally "premature if granted before discovery on a disputed issue is complete." *Oliver v Smith*, 269 Mich App 560, 567; 715 NW2d 314 (2006). "However, summary disposition may nevertheless be appropriate if

[1] The real-party-in-interest defense is not the same as the legal-capacity-to-sue defense. *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 410–11; 875 NW2d 242 (2015) citation omitted. Accordingly, a motion for summary disposition asserting the real-party-in-interest defense more properly fits within MCR 2.116(C)(10). *Id.*

further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Id*.

III. Arguments, Law and Analysis

Defendant argues that Plaintiff sold the relevant accounts receivable to third parties ("factoring companies"). As a result, according to Defendant, Plaintiff lacks standing to now seek payment on those accounts. In response, Plaintiff argues that it maintains relationships with medical factoring companies that provide capital to Plaintiff in exchange for Article 9 security interests in patient accounts. However, Plaintiff insists that it retains certain rights regarding servicing and settling of claims regarding the accounts, including the filing of lawsuits and power of attorney. In other words, according to Plaintiff, the granting of a security interest to a third-party does not deprive Plaintiff of its interest in the accounts or of standing to collect on the accounts.

MCR 2.201(B) provides that "[a]n action must be prosecuted in the name of the real party in interest...." "In general, standing requires a party to have a sufficient interest in the outcome of litigation to ensure vigorous advocacy and "in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy." *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Tr. Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 621–22; 873 NW2d 783 (2015) citations omitted. Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant's ability to raise the legal rights of another. *Id.* Citation omitted. A litigant has standing whenever there is a legal cause of action. *Id.* Citation omitted. *Lansing Sch Ed Ass'n*, 487 Mich at 372, 792 NW2d 686.

An assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor. *Kearns v Mich Iron & Coke Co*, 340 Mich 577, 582–584; 66 NW2d 230 (1954).

Here, even though Plaintiff characterizes its transactions with the non-party factoring companies as loans, the terms of the agreement(s) make clear that Plaintiff originally sold the debts and retained no interest therein. Defendant attaches as its Exhibit D a document entitled "Bulk Purchase and Sale Agreement for Accounts Receivable ("Original Sale Agreement"). The Original Sale Agreement dated August 2, 2019 was entered between MedFinance Servicing, LLC and/or Well States Healthcare, LLC and Plaintiff. Plaintiff does not dispute that the Original Sale Agreement accurately reflects the terms of its transaction with the factoring companies or that the agreement applies to its patient/assignor in this case.

The Original Sale Agreement states in relevant part, "Seller [Plaintiff] desires . . . to sell, transfer, assign and convey Seller's legal and equitable rights and interests ("Rights, Title and Interest") in each Medical Lien, Letter of Protection, and/or Accounts Receivable . . ." Defendant's Exhibit D. Further, the Original Sale Agreement provides,

> 2. Purchase and Sale of Accounts Receivable. Buyer wishes to purchase, and Seller wishes to sell, subject to the terms herein, Seller's Rights, Title and Interests in certain Accounts Receivable on which Seller has not received payment from any other source. . . . Buyer shall purchase from Seller, and Seller shall sell, transfer, assign, and convey to Buyer, Seller's Rights, Title, and interests in the Accounts Receivable . . . as well as Seller's Rights, Title, and Interests in each Medical Lien or letter of Protection connected to any of the Accounts Receivable . . . Upon closing on the Closing Date . . . Buyer and Seller shall reflect such sale in their financial records. At all times thereafter, Buyer shall retain the Rights, Title, and Interests to the Accounts Receivable listed on Exhibit A, and all Medical Liens or Letters of Protections connected thereto. Buyer at all times will

> retain full legal right to seller, convey, and/or assign the Accounts Receivable purchased from Seller to a third party.

Defendant's Exhibit D, emphasis in original. Moreover, Paragraph 4 of the Original Sale Agreement states, in relevant part, "on the Closing Date . . . Buyer [factoring companies] will take over servicing of all Accounts without limitation." *Id.* Further, in the warranties section, Seller [Plaintiff] warranted that the Agreement represented a "valid assignment to the Buyer of all Rights, Title and Interests of the Seller in the Accounts Receivable and . . . Buyer shall own all Rights, Title and Interest to all Accounts Receivable . . ." *Id.* Paragraph o.

A plain and ordinary reading of the terms of the Original Sale Agreement leads to one inescapable conclusion—Plaintiff sold or assigned its rights in the accounts to the factoring companies. Plaintiff confuses the analysis by referring to the assignment of benefits the patient made to Plaintiff or by citing the terms of its Counter-Assignment. However, the Original Sale Agreement does no describe any interest Plaintiff retained in the accounts and does not support Plaintiff's argument that the transactions were mere loans or the granting of a security interest in exchange for capital. As such, upon the assignment of the accounts in the Original Sale Agreement, the factoring companies became the real parties in interest on the transferred accounts.[2]

---

[2] Additionally, to the extent Article 9 of the UCC would apply to the sale, it supports the conclusion that Plaintiff retained no interest in the assignments to the factoring companies. MCL 440.8318(1) provides, "A debtor that has sold an account . . . does not retain a legal or equitable interest in the collateral sold." MCL 440.9102(bb)(ii) defines "Debtor" as "A seller of accounts, chattel paper, payment intangibles, or promissory notes." The non-binding comment provides in relevant part, "Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a "security interest" does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold."

In response, Plaintiff does not directly address the Original Sale Agreement(s). Instead, Plaintiff cites a documents entitled "Counter-Assignment of Accounts Receivable for Patient Jose Cruz Muniz" ("Counter-Assignment") with effective dates of May 4, 2020. Plaintiff's Exhibit A.

Plaintiff also cites as its Exhibit A, two documents entitled "First Amendment to Bulk Purchase and Sale Agreement for Account Receivable" ("First Amendment"). One First Amendment document is dated July 1, 2020; the second First Amendment document is dated July 23, 2020. The Amendments purport to make Plaintiff the servicer of the accounts receivable. Paragraph 4 of the First Amendment documents states in relevant part, "Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement . . . Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including without limitation, resolve, settle and/or dismiss litigation involving all parties thereto . . ." Exhibit A.

Curiously, the First Amendment documents purporting to make Plaintiff a servicer of certain accounts are dated in July 2020, which occurs *after* the Counter-Assignment, which purports to convey ownership interest. Nonetheless, the First Amendment documents are between Plaintiff and Apogee Capital Partners, LLC as well as Apogee Capital Fund 5, LLC. On the other hand, the Counter-Assignment document is with MedFinance Servicing, LLC—the same entity that purchased the relevant accounts in the Original Sales Agreement. Defendant's Exhibit D. Therefore, it is unclear what relevance

the First Amendment documents have to the current dispute.[3] As a result, the Court will look to the language of the Counter-Assignment.

> The Counter-Assignment(s) state, in relevant part,
>
> 1. Assignment of Rights back to Original Seller. Original Buyer [factoring company] wishes to transfer, assign, and convey to Original Seller [Plaintiff], subject to the terms herein, Original Buyer's Rights, Title and Interest in the Account. This shall include but is not limited to any right to pursue, negotiate, compromise, and settle, the Lawsuit, or at any time short of a Lawsuit. At all times hereafter, Original Seller [Plaintiff] shall retain the legal Rights, Title, and Interest to the Account, subject to the terms herein.

Plaintiff's Exhibit A. Further, the Counter-Assignment states,

> 3. Consideration. In consideration for the transfer, assignment, and conveyance of Original Buyer's [factoring company] Rights, Title, and Interest in the Account, as well s (sic) the Additional Rights, Title, and Interest, Original Seller [Plaintiff] agrees to provide Original Buyer, net of all fees and costs associated with the pursuit of payment through a Lawsuit or otherwise (including but not limited to attorney fees and costs, and collection/billing costs), the lesser of the sum of the full amount recovered on the account, or fifty (50%) percent of the total billed charges outstanding and collectible on the Account. Any amount, net of all fees and costs associated with the pursue (sic) of payment through a payment or otherwise, shall be the exclusive property of Original Seller.

Plaintiff's Exhibit A.

By its plain and ordinary terms, the Counter-Assignment purports to transfer or assign to Plaintiff the rights, title and interest in the accounts. The Counter-Assignment expressly confers on Plaintiff the right to pursue legal claims and makes explicit that Plaintiff retains the legal rights, title and interest to the account. While the consideration

---

[3] Plaintiff makes an additional argument regarding third-party beneficiaries. Specifically, Plaintiff cites MCL 600.2041, which generally requires every action to be prosecuted in the name of the real party in interest. MCL 600.2041 provides for several exceptions such as executors, guardians, etc. Plaintiff relies on that part of MCL 600.2041 that permits a party "with whom or in whose name a contract has been made for the benefit of another" to "sue in his own name without joining with him the party for whose benefit the action was bought . . ." However, it is unclear which party Plaintiff believes to be a third-party beneficiary. Plaintiff contracted directly with the factoring companies.

paragraph describes what Plaintiff pays in exchange for the re-acquisition of the rights to its patient account, nothing in paragraph 3 deprives Plaintiff of an ownership interest in the accounts. Because the Counter-Assignments are dated after the Original Sale Agreement, the Court has no basis to conclude that Plaintiff lacks standing to now assert claims based on the relevant accounts. In other words, the Counter-Assignments apparently re-confer an ownership interest in the accounts to Plaintiff such that Plaintiff is a real party in interest.

Defendant additionally argues that the Court should not enforce the Counter-Assignments because they constitute the unauthorized practice of law. Specifically, Defendant maintains that Plaintiff has only a contingent interest in the accounts while the factoring companies retain a financial stake in the amount collected. According to Defendant, because the Counter-Assignments permit Plaintiff to take legal action on the accounts, Plaintiff, in effect, represents the interests of the factoring companies without being licensed to practice law. In response, Plaintiff argues that it retains an interest in the accounts and that Defendant relies on inapplicable cases concerning collection agencies, not factoring companies that loan money.

MCL 450.681 provides in relevant part, "It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself . . ."

Defendant also relies in large part on the Michigan Supreme Court's decision in *Bay Co Bar Ass'n v Fin Sys, Inc*, 345 Mich 434; 76 NW2d 23 (1956), a case which warrants closer consideration. In *Bay Co. Bar*, there were two defendants—a collection

agency and an individual who had a franchise of the collection agency. The *Bay Co Bar Ass'n* defendants would take assignments from creditors but only for the purpose of collections. The defendants did not pay for the assignments but would take a percentage fee of the collections. The defendants would bring claims in their own names. The individual defendant usually represented himself in court, though he was not an attorney. Defendants argued that since they were the real parties in interest, they could sue in their own names on accounts they held by assignment. The defendants told their client/creditors that their agency had a legal department used for collections.

The *Bay Co. Bar* Court did not disagree that defendants were real parties in interest by virtue of the assignments. However, the Court nonetheless concluded that defendants could not use assignments to accomplish an unlawful purpose. *Id.* At 440. That is, a layperson may not take an assignment to carry on the business of practicing law. The Court distinguished a "casual assignment" made for legitimate purposes such as procedural and administrative convenience, from one made for the sole business of collecting claims for others. The Court held that, collection agencies . . . clearly should not be permitted to prepare legal papers, commence suits, appear in court, prepare judgments and generally manage law suits for its various customers." *Id.* At 441. The *Bay Co. Bar* Court reasoned that at the time defendants solicit the claims for collections, they have "absolutely no interest, either legal or beneficial, in the claim. The only interest they ever get comes by virtue of a promise to prosecute the claim." *Id.*

The *Bay Co. Bar* Court further held that, "The taking of an assignment under circumstances such as those detailed above cannot possibly change the essential fact that the defendants are rendering legal services for another for gain." The Court made

clear that it did not question the right of a party to represent itself in court but rather "the right of defendant to hold himself out as one specially equipped to render services requiring special legal training and knowledge and the right to make a business of habitually rendering such services under the claimed protection of these propositions." *Id.* At 444. The Court thought that defendants were "selling service and merely adopting the guise of an investor to conceal the real nature of [the] operation." *Id.* At 445. The Court concluded, "When proof of . . . numerous instances is combined with evidence of solicitation and advertisement, asking to be entrusted with the conduct of just such transactions, the conclusion that the individual is regularly engaged in the practice becomes irresistible." *Id.* At 447.

While the *Bay Co. Bar* case may have some parallels to the present matter, it differs in several important ways. Nothing before the Court suggests that Plaintiff holds itself out or is in the business of collecting claims. Rather, the Plaintiff here assigned its *own* accounts and then presumably took back a Counter-Assignment of its accounts in exchange for operating capital. It would be a strange result to conclude that Plaintiff, a medical provider seeking payment on its accounts, is actually somehow engaging in this practice as a ruse to practice law without a license.

In the present case, no unlicensed individual appears in Court on behalf of another like what occurred in *Bay Co. Bar Ass'n*. To the extent Defendants argue that Plaintiff, as an entity, is engaged in the unlicensed practice of law, it is worth noting that only individuals may be licensed as lawyers. Taken to its logical end, Defendant's argument would prohibit an entity from litigating its own interests every time the outcome would also benefit another entity or individual.

Moreover, Defendant conflates the analysis of ownership interest in the accounts with the consideration Plaintiff pays for the accounts. The express terms of the Counter-Assignments convey the factoring companies' "rights, title and interest" in the accounts. Using Defendant's own argument raised previously, under MCL 440.8318(1), the factoring companies would retain no interest in accounts sold. The fact that the parties separately agreed on a payment formula as consideration for the assignments, based on the amounts ultimately recovered on the accounts, does not mean that the factoring companies retained an ownership interest in the accounts. In short, the *Bay Co. Bar Ass'n* Court was careful to clarify that its decision did not apply to assignments made for a legitimate purpose. Courts presume contracts are valid. Here, the Court has an insufficient basis to conclude that the Counter-Assignments are void because they are somehow intended for an unlawful purpose. Therefore, the Court is unpersuaded by Defendant's argument that the Counter-Assignments constitute the unlawful practice of law.

For these reasons, Defendant's Motion for Summary Disposition is denied.

IV. Conclusion:

In conclusion, Defendant's Motion for Summary Disposition is DENIED. In accordance with MCR 2.602(A)(3), this Opinion and Order is not final and does not close the case.

IT IS SO ORDERED.

DATED: March 3, 2021

COUNTY OF MACOMB • STATE OF MICHIGAN •

Hon. Jennifer M. Faunce
Circuit Court Judge

/S/ JENNIFER M. FAUNCE
CIRCUIT COURT JUDGE, P43816

03/23/2021

EXHIBIT F

Below are the dates, which I have received permission from all parties listed to disclose. These are the dates the counter-assignments were created and sent to the parties for execution.

Muniz-Cruz:

MedFinance - January 11, 2021
Apogee - July 29, 2020

EXHIBIT G

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

GRAVITY IMAGING, LLC (Martin Dahhoo),

Plaintiff,

Case No. 2019-177316-NF

Hon. Shalina D. Kumar

v.

ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY,

Defendant.

_____/

OPINION AND ORDER

At a session of said Court held in the Courthouse, City of Pontiac, Oakland County, Michigan, on March 23, 2021.

PRESENT: THE HON. SHALINA D. KUMAR, CIRCUIT COURT JUDGE

This matter is before the Court on Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(C)(5), (C)(8), and (C)(10) ("the Motion"). The Court has reviewed the Motion, Plaintiff's Response, and Defendant's Reply. The Court conducted oral argument on this matter on December 9, 2020. The Court then reviewed Defendant's supplemental brief, filed on February 17, 2021, and Plaintiff's supplemental response, filed on February 23, 2021. The Court finds as follows.

I. Facts and Procedural History

In this matter, Plaintiff Gravity Imaging, LLC ("Gravity Imaging") seeks Personal Injury Protection ("PIP") benefits from Defendant Allstate Property and Casualty Insurance Company

("Allstate") as an assignee of Gravity Imaging's patient, Martin Dahhoo ("Mr. Dahhoo"). The assignment signed by Mr. Dahhoo was dated August 2, 2019, which was the precise date on which Gravity Imaging rendered its services to Mr. Dahhoo.

In its Motion, Allstate claims that ten days later, on August 12, 2019, Gravity Imaging assigned all its rights to collect Mr. Dahhoo's PIP benefits to National Health Finance DM, LLC ("NHF"). NHF is not a party to this action. Allstate alleges that this assignment to NHF means that Gravity Imaging no longer possesses any right to collect under Mr. Dahhoo's policy of no-fault insurance.

The "Notice of Sale and Assignment" itself states that Gravity Imaging "hereby sells and assigns to Purchaser [NHF], all its rights, title, and interest for the above-described account and any and all related liens, including all Provider's/Facility's medical provider liens…rights to payment (including accounts receivable and proceeds), rights under related liens, and all rights in connection with personal injury claims of Patient and supported by the attached duly executed lien." The assignment further states that "[t]his sale is a 'true sale' under applicable law, and in furtherance thereof, the undersigned does hereby release any and all rights, interests and powers regarding such account sold to and for the benefit of Purchaser." It further instructs, "[d]o not make payment to Gravity Imaging, LLC," but rather directs payment to be made to NHF, and states that "[t]his assignment may not be revoked, modified or changed without the prior written consent of a duly authorized agent of National Health Finance DM, LLC." This assignment to NHF lists the value of the assignment as $30,600. On October 15, 2019, Gravity Imaging filed suit against Allstate, asserting a claim of PIP benefits in the amount of $30,600 arising from treatment provided to Mr. Dahhoo.

Allstate claims that this Notice of Sale and Assignment evidences a clear lack of standing

on the part of Gravity Imaging, as Gravity Imaging assigned any and all rights to collect under Mr. Dahhoo's policy to NHF, and therefore Allstate asserts that summary disposition in its favor is appropriate.

Gravity Imaging maintains that, despite the assignment to NHF, it is still the proper party to bring this action. The basis of Gravity Imaging's argument is a confidential contract ("the Contract") executed between Gravity Imaging and NHF that Gravity Imaging claims gives it the authority to bring this action on behalf of NHF. Gravity Imaging claims the Contract makes Gravity Imaging the "servicer" of NHF's accounts and gives Gravity Imaging the authority to adjudicate NHF's claim. Gravity Imaging also claims that the Contract gives Gravity Imaging the authority to "[r]educe, forgive, release waive [sic] or otherwise compromise an unpaid balance of an Account in litigation or prelitigation, subject to certain conditions which are not material to the real-party-in-interest analysis." Gravity Imaging also claims to maintain a contingent interest in the account itself, providing an independent basis for this action.

At oral argument on the Motion, the Court directed Gravity Imaging to submit the Contract to the Court for an in-camera inspection. After reviewing the Contract, the Court held that it was relevant to the instant matter and ordered it to be turned over to Allstate for review and supplemental briefing. The Court entered a protective order on February 3, 2021, to which the parties stipulated, governing the production of the Contract. Thereafter, both Gravity Imaging and Allstate filed supplemental briefing reinforcing their aforementioned positions.

The Court will note that the Contract is dated August 13, 2019 (the day after the assignment of Mr. Dahhoo's account from Gravity Imaging to NHF), and there is also an amended form of the Contract ("the Amended Contract") that was executed August 4, 2020—almost ten months after the initiation of the instant matter. The Contract does not contain any language granting

Gravity Imaging any rights to "service" NHF's accounts in litigation or otherwise. The Amended Contract, however, does indeed appoint Gravity Imaging as the servicer of NHF's accounts, granting to Gravity Imaging the ability to take any action deemed necessary to collect on the accounts, including the right to negotiate, release, or forgive the amounts owed, either in litigation or before litigation.[1] However, Gravity Imaging does not maintain full settlement authority, as it must consult with NHF if the recovery is going to result in less than 50% of the unpaid balance on an account being collected. Furthermore, Gravity Imaging may only use attorneys approved by NHF. Despite Gravity Imaging's assertion to the contrary, neither the Contract nor the Amended Contract appear to retain for Gravity Imaging any contingent interest in Mr. Dahhoo's account beyond the aforementioned right to "service" the account on NHF's behalf.

II. Standard of Review

In reviewing a Motion for Summary Disposition under MCR 2.116(C)(5), the Court must examine whether "[t]he party asserting the claim lacks the legal capacity to sue." MCR 2.116(C)(5). In so determining, the Court "must consider the pleadings, depositions, admission, affidavits, and other documentary evidence submitted by the parties." *UAW v Central Michigan University Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012).

In reviewing a Motion for Summary Disposition brought pursuant to MCR 2.116(C)(8), the Court must evaluate the legal sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109; 119, 597 NW2d 817, 823 (1999). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id*. A Motion brought under this Court Rule can only be granted "where the claims alleged are 'so clearly unenforceable as a matter of

[1] Due to the parties' wish to keep the contents of the Contract confidential—and, importantly, the fact that the parties do not actually appear to dispute the contents of the Contract, but rather the effect of its contents on the litigation—the Court will not cite specific language of the Contract or Amended Contract here.

law that no factual development could possibly justify recovery,'" and thus for such a Motion the Court may only consider the pleadings. *Id*. (quoting *Wade v Dep't of Corrections*, 439 Mich 158; 162, 483 NW2d 26 (1992)).

In adjudicating a Motion for Summary Disposition brought under MCR 2.116(C)(10), the Court must assess "the factual sufficiency of the complaint." *Id*. at 120. "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties…in the light most favorable to the party opposing the motion." *Id*. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id*. "'[P]arties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact.'" *Fields v Suburban Mobility Auth for Regional Transportation*, 311 Mich App 231, 237-38, 874 NW2d 715 (2015) (quoting *Detroit v Gen Motors Corp*, 233 Mich App 132, 139, 592 NW2d 732 (1998)).

III. Analysis

The first and most pertinent issue for the Court is whether Gravity Imaging may maintain this action as a "servicer" of NHF when Gravity Imaging filed this action on October 15, 2019 but was not appointed as NHF's servicer until August 4, 2020—almost ten months later.

Gravity Imaging admits that it has no case law to back up its proposition that the Amended Contract can retroactively imbue Gravity Imaging with the right to act as NHF's servicer, at least for purposes of filing a lawsuit. Gravity Imaging's only citation is *Baird v Commissioner of Internal Revenue Service*, 68 TC 115 (1977), a United States Tax Court matter in which a home purchaser was held to be the equitable owner of the house on the date the preliminary purchase

agreement was executed, despite the fact that further documents and the closing occurred later, for purposes of paying interest and claiming tax deductions. Gravity Imaging asserts *Baird* as support for the fact that a contract can be "backdated," to use its terminology.

The *Baird* case is inapposite, irrelevant, and non-binding on this Court, as it in no way suggests that a party may be retroactively imbued with standing through a post-filing contract with the true party in interest. *Baird* was a tax matter dealing with tax deductions before a tax court and has nothing to do with the issue at hand.

The Court agrees with Allstate's quotation of the following matter, which, while it pertains to the law of assignment, is a rationale that applies equally to the law of agency:

> As a general matter, parties should possess rights before seeking to have them vindicated in court. Allowing a subsequent assignment to automatically cure a standing defect would unjustifiably expand the number of people who are statutorily authorized to sue. Parties could justify the premature initiation of an action by averring to the court that their standing through assignment is imminent. Permitting non-owners and licensees the right to sue, so long as they eventually obtain the rights they seek to have redressed, would enmesh the judiciary in abstract disputes, risk multiple litigation, and provide incentives for parties to obtain assignment in order to expand their arsenal and the scope of litigation. Inevitably, delay and expense would be the order of the day.

Enzo Apa & Son, Inc v Geapag AG, 134 F 3d 1090, 1093-94 (1998) (*Procter & Gamble Co v Paragon Trade Brands, Inc*, 917 F Supp 305, 310 (D Del 1995)). For these reasons, the Court holds that Gravity Imaging cannot retroactively achieve standing through the execution of the Amended Contract.

Additionally, Gravity Imaging argues that, under *Shah v State Farm Mut Auto Ins Co*, 324 Mich 182; 920 NW2d 148 (2018), a provider only acquires whatever rights the assignor had at the time of the assignment; therefore, because the date of service for which Gravity Imaging seeks to collect was August 2, 2019, and because the Amended Contract was executed on July 30, 2020, Gravity Imaging argues that on the date of the Amended Contract, Gravity Imaging had the right

to pursue Mr. Dahhoo's benefits pursuant to the one-year-back rule.

First, Gravity Imaging's assertion that the Amended Contract was executed on July 30, 2020 is misleading. While that is the date that Gravity Imaging executed the Amended Contract, NHF did not sign the Amended Contract until August 4, 2020, meaning that NHF did not assign Gravity Imaging as its servicer until August 4, 2020—one year and two days after the relevant date of service in this case. Second, even if the Amended Contract had been fully executed within one year, this Court is unfamiliar with any provision of the no-fault laws that would allow this alone to somehow cure the standing defect without a new filing or an amendment or supplementation to Gravity Imaging's Complaint, which never occurred.

Furthermore, despite Gravity Imaging's contention that Gravity Imaging itself actually still possesses some kind of interest in Mr. Dahhoo's account, Gravity Imaging fails to cite to any provision of the Contract or the Amended Contract that supports this, and the Court finds that the aforementioned language in the "Notice of Sale and Assignment" (which stated that Gravity Imaging sold and assigned to NHF "all its rights, title, and interest for the above-described account…[t]his sale is a 'true sale' under applicable law, and in furtherance thereof, the undersigned does hereby release any and all rights, interests and powers regarding such account sold to and for the benefit of Purchaser") evidences a clear intention for Gravity Imaging to maintain no interest in the account whatsoever.

Therefore, Gravity Imaging's only claim to standing in this matter is as NHF's "servicer", and the Court does not need to reach the propriety of that argument as Gravity Imaging was clearly not acting or appointed as NHF's servicer on October 15, 2019, the date this action was filed. In other words, Gravity Imaging had no standing to sue on the date it sued. Therefore, the Court holds that Gravity Imaging lacks standing in this matter and grants Allstate's Motion pursuant to

MCR 2.116(C)(5). As such, the Court does not need to reach any of Gravity Imaging's other arguments.

IV. Conclusion

The Court holds that because Gravity Imaging had no rights in Mr. Dahhoo's account and no right to act as NHF's servicer on October 15, 2019, which was the date Gravity Imaging filed the instant Complaint, Gravity Imaging had no standing to bring the instant lawsuit and therefore summary disposition in favor of Allstate is appropriate.

WHEREFORE IT IS HEREBY ORDERED that Defendant's Motion for Summary Disposition Pursuant to MCR 2.116(C)(5), (C)(8), and (C)(10) is **GRANTED**.

IT IS SO ORDERED.

THIS ORDER RESOLVES THE LAST PENDING CLAIM IN THIS MATTER AND CLOSES THE CASE.

Dated: 3/23/2021

/s/SHALINA KUMAR
Hon. Shalina D. Kumar JB/AL

Proof of Service

I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by **EFILING** it to their addresses as disclosed by the pleadings of record on the 23rd day of March, 2021.

/s/ James Boufides

EXHIBIT H

Vhs of Mich. v. Everest Nat'l Ins. Co.

Court of Appeals of Michigan

May 9, 2019, Decided

No. 341190

Reporter
2019 Mich. App. LEXIS 1886 *; 2019 WL 2062824

VHS OF MICHIGAN, INC, doing business as DETROIT MEDICAL CENTER, Plaintiff-Appellant, v EVEREST NATIONAL INSURANCE COMPANY, MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, and UNNAMED ASSIGNEE OF MICHIGAN AUTOMOBILE INSURANCE PLACEMENT FACILITY, Defendants-Appellees.

Prior History: **[*1]** Wayne Circuit Court. LC No. 17-004224-NF.

Core Terms

benefits, assign, no-fault, summary disposition, rights, trial court, right to payment, future right, one-year-back, Assignor, assignee, insurer, cause of action, healthcare provider, medical services, one year, anti-assignment, future benefits, possessed, void

Judges: Before: STEPHENS, P.J., and GADOLA and LETICA, JJ.

Opinion

PER CURIAM.

Plaintiff, VHS of Michigan, Inc., doing business as Detroit Medical Center, appeals on delayed leave granted[1] the order of the trial court granting summary disposition to defendants Everest National Insurance Company (Everest), Michigan Automobile Insurance Placement Facility (MAIPF), and the unnamed assignee of the Michigan Automobile Insurance Placement Facility. We affirm.

I. FACTS

This case involves a claim by plaintiff, a healthcare provider, for reimbursement for health care services provided to Steve Ellis. Ellis was injured in a motor vehicle accident on March 15, 2016. Ellis did not have a policy of no-fault insurance, and did not reside with a relative who had an applicable no-fault policy. At the time of the accident, Ellis was driving a vehicle owned by Rhonda Finnister, who allegedly had purchased a policy of no-fault insurance from Everest.

As a result of his injuries in the accident, Ellis was hospitalized at Detroit Medical Center on March 15, 2016, and again on April 13, 2016, with plaintiff allegedly providing health care services **[*2]** in excess of $194,000. Upon each admission to the hospital, Ellis signed a Consent to Treat form, which provided, in relevant part:

> **Contract for Services**: I agree to pay in full any and all charges for hospital and provider services not otherwise covered by insurance benefits. I assign and authorize payment to be made directly to the hospital and/or providers of all healthcare

[1] See *VHS of Michigan, Inc v Everest Nat'l Ins Co*, unpublished order of the Court of Appeals, entered April 26, 2018 (Docket No. 341190).

> benefits otherwise payable to me, but not exceeding the charges for this period of hospitalization. . . .

Plaintiff sought reimbursement for Ellis' medical treatment from defendants, who declined to pay. On March 10, 2017, plaintiff initiated this action against defendants, alleging that it was entitled to reimbursement as a third party beneficiary for the medical services provided to Ellis, but also alleging entitlement to reimbursement by virtue of the Consent to Treat forms that assigned Ellis' rights to payment. In lieu of filing an answer, MAIPF moved for summary disposition under MCR 2.116(C)(8) and (10), and Everest moved for summary disposition under MCR 2.116(C)(8), contending that plaintiff lacked standing to bring the suit in light of our Supreme Court's decision in Covenant Medical Ctr, Inc v State Farm Mut Auto Ins Co, 500 Mich 191; 895 NW2d 490 (2017). Defendants also contended that the Consent to Treat forms were not **[*3]** valid assignments of no-fault benefits.

Thereafter, on June 11, 2017, Ellis signed an assignment that provided:

> I, Steve Ellis (Assignor), do hereby assign my right to collect no-fault insurance benefits from the responsible no-fault insurance company and Michigan Automobile Insurance Placement Facility, for unpaid services rendered by VHS of Michigan, Inc., d/b/a The Detroit Medical Center (Assignee). This is an assignment for services already rendered only; this is not an assignment of benefits for services rendered in the future or after the date of this document. Assignor agrees that as consideration for this assignment, Assignee assumes the burden, otherwise borne by the Assignor, to pursue payment for services rendered by Assignee, from the insurance company or payor entity responsible to pay for such services. This assignment shall be irrevocable unless terminated by mutual agreement of Assignor and Assignee in writing.

Plaintiff responded to defendants' motions for summary disposition, additionally contending that the June 11, 2017 assignment operated to assign to plaintiff Ellis' right to benefits. Defendants replied, arguing that the June 11, 2017 assignment was limited by the **[*4]** one-year-back rule of the no-fault act.

The trial court granted defendants summary disposition under MCR 2.116(C)(8) and (10), holding that under *Covenant*, plaintiff is not a third-party beneficiary of the insurance policy in question, and further holding that Ellis did not validly assign his right to payment to plaintiff. Plaintiff now appeals from that order.

II. DISCUSSION

A. STANDARD OF REVIEW

We review de novo a trial court's decision to grant or deny summary disposition. Johnson v Vanderkooi, 502 Mich 751, 761; 918 NW2d 785 (2018). A motion for summary disposition under MCR 2.116(C)(8) "tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." Maiden v Rozwood, 461 Mich 109, 119; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(8) is properly granted when, considering only the pleadings, the alleged claims are clearly unenforceable as a matter of law and no factual development could justify recovery. *Id.*

When reviewing an order granting summary disposition under MCR 2.116(C)(10), this Court considers all documentary evidence submitted by the parties in the light most favorable to the nonmoving party. Dawoud v State Farm Mut Auto Ins Co, 317 Mich App 517, 520; 895 NW2d 188 (2016). Summary disposition under MCR 2.116(C)(10) is warranted when there is no genuine issue as to any material fact and the moving party is entitled to **[*5]** judgment as a matter of law. *Id.* We also review de novo issues involving the proper interpretation of statutes and contracts. Titan Ins Co v Hyten, 491 Mich 547, 553; 817 NW2d 562 (2012).

B. *COVENANT*

In *Covenant*, our Supreme Court held that healthcare providers lack standing to bring a direct cause of action against insurers for PIP benefits. Covenant Medical Ctr, Inc, 500 Mich at 196. However, the Court also noted that its holding in that case was "not intended to alter an insured's ability to assign his or her right to past or presently due benefits to a healthcare provider." Id. at 217 n 40.

In this case, plaintiff filed its complaint on March 10, 2017, before *Covenant* was issued, seeking payment as a third-party beneficiary under pre-*Covenant* case law that permitted a direct lawsuit by a healthcare provider, but also seeking payment by virtue of the March and April 2016 Consent to Treat forms signed by Ellis that included assignment language. After the *Covenant*

decision was issued, defendants moved for summary disposition based upon that decision. Plaintiff responded to the motions, arguing that it was still entitled to payment by virtue of the March and April 2016 assignments, and also the assignment dated June 11, 2017.

The trial court granted defendants summary disposition, holding that in light **[*6]** of *Covenant*, plaintiff was not a third-party beneficiary entitled to bring the cause of action. On appeal, plaintiff does not dispute this holding. The trial court also held, however, that the purported assignments did not effectively assign Ellis' rights to plaintiff because (1) the anti-assignment clause of the Everest policy precludes the assignment, (2) the one-year-back rule limits any validity of the June 11, 2017 assignment, and (3) the consent forms were not really assignments. On appeal, plaintiff challenges these holdings.

C. ASSIGNMENT OF RIGHTS

Plaintiff first argues that the trial court erred in determining that the anti-assignment clause of the Everest policy operated to bar Ellis from assigning his cause of action for PIP benefits to plaintiff. We agree.

The first inquiry is whether, after *Covenant*, a person entitled to PIP benefits can assign those benefits to a health care provider for payment of health care services. This Court answered that question in the affirmative, in the context of rights under a policy of no-fault insurance, in *Jawad A Shah MD, PC v State Farm Mut Auto Ins Co, 324 Mich App 182; 920 NW2d 148 (2018)*. In that case, this Court held that an anti-assignment clause in a no-fault policy is unenforceable to prohibit an assignment that occurred **[*7]** after the loss or the accrual of the claim to payment "because such a prohibition of assignment violates Michigan public policy that is part of our common law as set forth by our Supreme Court." *Id. at 200*. In *Shah*, this Court quoted the Michigan Supreme Court's decision in *Roger Williams Ins Co v Carrington, 43 Mich 252; 5 NW 303 (1880)*:

> The assignment having been made after the loss, did not require consent of the company. The provision of the policy forfeiting it for an assignment without the company's consent is invalid, so far as it applies to the transfer of an accrued cause of action. It is the absolute right of every person—secured in this State by statute—to assign such claims, and such a right cannot be thus prevented. It cannot concern the debtor, and it is against public policy. [*Shah, 324 Mich App at 199*, quoting *Roger Williams, 43 Mich at 254*.]

This Court concluded that, because our Supreme Court has never rejected the analysis of *Roger Williams*, it is controlling and, as a result, assignments made after a loss are valid and enforceable. *Shah, 324 Mich App at 199-200*; in accord, *Henry Ford Health System v Everest Nat'l Ins*, __ Mich App __; __ NW2d __ (2018) (Docket No. 341563), slip op at 3, concluding that the anti-assignment clause of the insurer's policy was unenforceable under the facts of that case, which this Court noted were identical to those of *Shah*. Applying the reasoning of *Shah* to this case, the anti-assignment **[*8]** clause of the Everest policy in this case likewise violates public policy, and therefore is inapplicable to bar the assignment of rights under the policy. The trial court therefore erred in determining that the anti-assignment clause of the Everest policy was valid.

Moreover, Ellis was not a party to the Everest policy in this case. Instead, Ellis is entitled to PIP benefits under the no-fault act, perhaps from Everest, or perhaps from another defendant, as an uninsured motorist. But because Ellis was not a party to the contract with Everest, he did not possess a contractual right to assign, and instead was assigning his rights to payment under the no-fault act. The next inquiry, then, is whether it is possible for one to assign a right to payment under the no-fault act. We answer this question in the affirmative.

The no-fault act requires an insurer to pay PIP benefits for accidental bodily injury "arising out of the ownership, operation, maintenance, or use of a motor vehicle as a motor vehicle, subject to the provisions of the no-fault act." *Prof Rehab Assoc v State Farm Mut Auto Ins Co, 228 Mich App 167, 172; 577 NW2d 909 (1998)*, citing *MCL 500.3105(1)*. Under the no-fault act, PIP benefits are payable "to or for the benefit of an injured person." *MCL 500.3112*. Such benefits are payable for "[a]llowable **[*9]** expenses consisting of all reasonable charges incurred for reasonably necessary products, services, and accommodations for an injured person's care, recovery, or rehabilitation." *MCL 500.3107(1)(a)*. Our Supreme Court in *Covenant* made clear that the claim for payment of PIP benefits under the no-fault act belongs to the injured party. *Covenant, 500 Mich at 210-217*. Because Ellis had a statutory claim to payment under the no-fault act, he had a cause of action for those benefits when the defendant insurers refused to pay.

"Generally, all legitimate causes of action are assignable." *Grand Traverse Convention & Visitor's Bureau v Park Place Motor Inn, Inc, 176 Mich App 445, 448; 440 NW2d 28 (1989)* Our review of the no-fault act reveals nothing that indicates that the Legislature intended to prohibit an injured party from assigning his or her statutory right to payment of PIP benefits under the act. See *id. at 448* (this Court's primary objective is to give effect to the intent of the Legislature). We note that such a prohibition would in fact be contrary to the no-fault act, *MCL 500.3143* (prohibiting only assignments of future benefits), the general rule under Michigan law that "all legitimate causes of action are assignable," *Grand Traverse, 176 Mich App at 448*, and the holding of *Shah* (accrued claims for PIP benefits under a policy of no-fault insurance are freely assignable). See *Shah, 324 Mich App at 200*.

We further conclude **[*10]** that the assignment of the right to payment under the no-fault act includes the assignment of the cause of action to recover payment. "[A]n assignee stands in the shoes of the assignor and acquires the same rights as the assignor possessed." *Prof Rehab Assoc, 228 Mich App at 177*. Thus, in this case, if Ellis was entitled to payment of benefits that were past or presently due under the no-fault act, and in fact assigned that right to plaintiff, then plaintiff, as assignee of Ellis' right to recover PIP benefits, possesses whatever rights Ellis had to recover the benefits.

D. ONE-YEAR-BACK-RULE

Plaintiff next contends that the June 11, 2017 assignment validly assigned Ellis' right to payment to plaintiff. Plaintiff argues that the trial court erred in holding that the one-year-back rule operated to limit the assigned benefits to those benefits incurred within one year before the June 11, 2017 assignment. We disagree.

Section 3145(1) of the no-fault act, *MCL 500.3145(1)*, provides what is often referred to as the one-year-back rule, and states, in relevant part:

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing **[*11]** the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. . . . [*MCL 500.3145(1)*.]

The purpose of the one-year-back rule is to "limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Ass'n, 491 Mich 200, 203; 815 NW2d 412 (2012)*.

In *Shah*, this Court addressed the applicability of the one-year-back rule. There, the plaintiff healthcare providers filed their complaint pre-*Covenant* under a theory of being third-party beneficiaries. After the *Covenant* decision was issued, the plaintiffs obtained an assignment of benefits from the insured. The plaintiffs sought to amend[2] their complaint to proceed under a theory of assignment, and argued that the **[*12]** assignment should relate back to the date of the original complaint, which would permit them to pursue benefits incurred during the year preceding the complaint. The defendant insurer argued that the date of the assignment provided the applicable reference date for purposes of the one-year-back rule. This Court in *Shah* reasoned that:

> "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt* [*v Bailey, 260 Mich App 636, 653; 680 NW2d 453 (2004)*.] For that reason, plaintiffs could not obtain any greater rights from Hensley on the date of the assignments — July 11, 2017 - than Hensley himself possessed on that date. Had Hensley filed an action directly against defendant on July 11, 2017, he would not have been permitted to recover benefits for any portion of the loss incurred one year before that date. *MCL 500.3145(1)*. Accordingly, plaintiffs also could not obtain any right to recover benefits for losses incurred more than one year before July 11,

[2] This Court in *Shah* found that the plaintiffs were actually attempting to supplement their complaint, and that although an amended pleading relates back to the date of the original pleading under *MCR 2.118(D)*, the relation-back doctrine did not apply to a supplemental pleading. *Shah, 324 Mich App at 203*.

> 2017, through an assignment of rights from Hensley. [Shah, 324 Mich App at 204.]

Applying the reasoning of *Shah*, plaintiff in this case could not acquire any rights greater than what Ellis possessed at the time of the assignment. Had Ellis filed suit against **[*13]** defendants directly on June 11, 2017, the one-year-back rule would have precluded him from recovering benefits for any portion of the loss incurred more than one year before that date. MCL 500.3145(1); Shah, 324 Mich App at 204. That is, on June 11, 2017, Ellis no longer had a right to payment of benefits for medical services obtained in March and April 2016. Accordingly, the June 11, 2017 assignment from Ellis could not confer upon plaintiff a right to recover benefits more than one year before that date because Ellis himself did not possess that right. See *id.* Because plaintiff's complaint in this case seeks to recover payment for medical services rendered before that date, the trial court did not err in determining that the one-year-back rule precludes recovery of the benefits sought in plaintiff's complaint by virtue of the June 11, 2017 assignment. See MCL 500.3145(1); Shah, 324 Mich App at 204.

E. CONSENT TO TREAT FORMS

The pivotal inquiry in this case, then, is whether, as plaintiff contends, the Consent to Treat forms signed by Ellis in March and April 2016 were valid assignments of Ellis' right to payment under the no-fault act. Plaintiff argues that the trial court erred when it held that the forms were not valid assignments and operated only as Ellis' **[*14]** agreement to pay for treatment. Defendants argue that if the Consent to Treat forms are an attempt to assign rights under the act, they are invalid because they attempt to assign future rights. Although the trial court was incorrect that the Consent to Treat forms do not represent an attempt by Ellis to assign his cause of action to plaintiff, defendants are correct that the Consent to Treat forms attempt to assign future rights and therefore are invalid.

Under the no-fault act, "[a]n agreement for assignment of a right to benefits payable in the future is void." MCL 500.3143. However, "the statute serves only to ban the assignment of benefits payable in the future and not those that are past due or presently due." Prof Rehab Assoc, 228 Mich App at 172.

In this case, the trial court found that "Plaintiff's proffered March 15, 2016 and April 13, 2016 purported assignments are in fact general consent forms, which obligate Steven Ellis as responsible party for payment of medical services, and fail to assign a cause of action." The trial court's ruling suggests that the Consent to Treat forms were not intended by Ellis to be assignments. However, the language of the Consent to Treat forms unambiguously provides "I assign and authorize **[*15]** payment to be made directly to the hospital . . . healthcare benefits otherwise payable to me. . . ." This Court has stated that "[u]nder Michigan law, a written instrument, even if poorly drafted, creates an assignment if it clearly reflects the intent of the assignor to presently transfer 'the thing' to the assignee." Burkhardt v Bailey, 260 Mich App 636, 654-655; 680 NW2d 453 (2004). We conclude that the language of the Consent to Treat forms in this case unambiguously reflects the intent of Ellis to assign his rights.

The next question is whether Ellis successfully assigned the right to payment in this case. We conclude that he did not. As noted, the no-fault act precludes the assignment of the right to future benefits. MCL 500.3143. In this case, the assignment language attempts to assign a future right, not a past or present right. Ellis signed the Consent to Treat forms upon his admission to the hospital on March 15, 2016 and again on April 13, 2016, before any services were provided. In Aetna Cas & Surety Co v Starkey, 116 Mich App 640, 642, 646; 323 NW2d 325 (1982),[3] this Court declined to enforce an assignment of benefits that "would become payable" over the course of the assignor's hospital stay. See Prof Rehab Assoc, 228 Mich App at 173.

Similarly, in *Prof Rehab Assoc*, this Court found the assignment language to be ambiguous as to whether the language was intended **[*16]** to assign future benefits when it assigned benefits "for services provided by Professional Rehabilitation Associates in connection with injuries to Clifford Lay arising out of an automobile accident." *Id.* In that case, this Court held that the assignment was void to the extent that it attempted to assign future benefits, but was valid to the extent that it intended to assign the right to recover payment for past due or presently due services. Id. at 173-174.

Plaintiff directs this Court to the opinion of the federal

---

[3] A decision of this Court issued before November 1, 1990, though imposing binding precedent on trial courts, is not binding precedent for subsequent panels of the Court of Appeals. Andrusz v Andrusz, 320 Mich App 445, 457 n 2; 904 NW2d 636 (2017).

district court[4] in *Michigan Ambulatory Surgical Ctr, LLC v State Farm Mut Auto Ins Co*, opinion of the United States District Court for the Eastern District of Michigan, issued March 30, 2018, (Case No. 16-cv-14507), wherein the court found that the assignment signed by the patient upon her admission to the medical center was valid because it was written in the present tense, stating "I hereby assign to Specialty Surgical Center ("the Center") my rights to collect no-fault insurance from my auto insurer for my care at the Center" and "I assign and authorize payment directly to Michigan Surgical Hospital of any healthcare benefits that I am entitled to receive." *Id.* at 6. The federal district court **[*17]** reasoned that unlike the assignment in *Starkey*, the assignment language in that case "essentially assigned [Ms. Burrell's] rights as they came into existence." The federal district court thus concluded that although the medical services had not yet been provided when the patient assigned the right to payment, it was essentially "close enough" in time to the services being provided that it did not constitute the assignment of a future benefit. This conclusion, however, is not consistent with the statutory prohibition of assignment of future rights. *MCL 500.3143*.

In this case, the language of the Consent to Treat forms suggests that Ellis was assigning a future right, which would be void. He had not yet received any medical services at the time he signed each form, so assigning any right for the anticipated medical services would, of necessity, be the assignment of a future right. As in *Starkey*, which held that language attempting to convey benefits that "would become payable" was void as an assignment of future rights, Ellis' assignments in the Consent to Treat forms were invalid as an attempt to assign future rights. *Starkey, 116 Mich App at 646*. As an assignment of future rights, Ellis' assignments on March 15, 2016 and **[*18]** April 13, 2016 are void under *MCL 500.3143*. The trial court therefore did not err in granting defendants summary disposition, concluding that plaintiff did not have a valid assignment from Ellis under which it could proceed.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Michael F. Gadola

/s/ Anica Letica

End of Document

[4] The opinions of lower federal courts are not binding upon this Court, but may be viewed as persuasive. See *Abela v Gen Motors Corp, 469 Mich 603, 606-607; 677 NW2d 325 (2004)*.

Exhibit C

Greater Lakes Ambulatory Surgical Ctr., LLC v. Meemic Ins. Co.

Court of Appeals of Michigan

July 29, 2021, Decided

No. 353842

Reporter
2021 Mich. App. LEXIS 4659 *; 2021 WL 3234350

GREATER LAKES AMBULATORY SURGICAL CENTER, LLC, Plaintiff-Appellee, and LATONYA STEEN, Other ***Party***, and MEDS DIRECT PHARMACY, PARAGON DIAGNOSTICS, MERCYLAND HEALTH SERVICES, and TOX TESTING, INC., Intervening Plaintiffs, v MEEMIC INSURANCE COMPANY, Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Prior History: [*1] Macomb Circuit Court. LC No. 2018-003577-NF.

Greater Lakes Ambulatory Surgical Ctr. LLC v. Meemic Ins., 2020 Mich. App. LEXIS 5776 (Mich. Ct. App., Sept. 3, 2020)

Core Terms

accounts receivable, summary disposition, ***real party in interest***, sale agreement, assigned, ***parties***, rights, trial court, quotation, marks, power of attorney, lack standing, unambiguous, argues

Counsel: For GREATER LAKES AMBULATORY SURGICAL CENTER LLC, Plaintiff-Appellee: MISHELLE KHAN.

For MEDS DIRECT PHARMACY, PARAGON DIAGNOSTICS, MERCYLAND HEALTH SERVICES, Intervening Plaintiffs: MARCELLO PEDINI.

For MEEMIC INSURANCE COMPANY, Defendant-Appellant: DANIEL S. SAYLOR.

For TOX TESTING INC, Intervening Plaintiff: MARCELLO PEDINI.

Judges: Before: GADOLA, P.J., and JANSEN and O'BRIEN, JJ.

Opinion

PER CURIAM.

Defendant appeals by leave granted[1] the trial court's order denying its motion for summary disposition in this no-fault action. Defendant argues that the trial court erred in denying its motion for summary disposition because plaintiff, Greater Lakes Ambulatory Surgical Center, LLC, lacks standing and is not the ***real party in interest*** to bring this claim.[2] We vacate the trial court's order, and remand to the trial court to enter an order granting summary disposition to defendant.

Latonya Steen was in a motor vehicle accident on October 10, 2017, sustained bodily injuries, and received treatment from plaintiff. She had a contract for no-fault insurance benefits with defendant at the time. Steen assigned her **[*2]** rights to plaintiff to sue defendant for reimbursement, and although defendant was provided with proof of the amount of loss sustained, it did not make full payment. Thus, plaintiff filed a five-count complaint against defendant on September 18, 2018, alleging violation of defendant's statutory duty under the no-fault act, *MCL 500.3101 et seq.*, breach of contract, and seeking declaratory relief, attorney fees, and statutory ***interest***. In the midst of the lower court

---

[1] *Greater Lakes Ambulatory Surgical Center, LLC v Meemic Ins*, unpublished order of the Court of Appeals, entered September 3, 2020 (Docket No. 353842).

[2] Intervening plaintiffs Meds Direct Pharmacy, Paragon Diagnostics, Mercyland Health Services, and Tox Testing, Inc., are not subject to this appeal because the trial court entered stipulated orders dismissing their claims.

proceedings, defendant learned that plaintiff assigned and sold its accounts receivables to MedFinance Servicing, LLC, and/or Well States Healthcare, LLC ("the servicing companies") on June 27, 2018. Thus, defendant moved for summary disposition of plaintiff's claims because plaintiff lacked standing and was not the ***real party in interest*** having assigned its rights to the servicing companies before filing the complaint. The trial court denied defendant's motion, and ordered that no additional claims could be added or filed by plaintiff or the servicing companies. This appeal followed.

Whether a plaintiff has standing is a question of law reviewed de novo, *Crawford v Dep't of Civil Serv, 466 Mich 250, 255; 645 NW2d 6 (2002)*, as is the related issue of whether a plaintiff is the ***real party in interest***, *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v City of Pontiac, 309 Mich App 611, 621; 873 NW2d 783 (2015)*, and the **[*3]** proper interpretation of a contract, *Klapp v United Ins Group Agency, Inc, 468 Mich 459, 463; 663 NW2d 447 (2003)*. We also review de novo a trial court's decision on a motion for summary disposition. *UAW v Central Mich Univ Trustees, 295 Mich App 486, 493; 815 NW2d 132 (2012)*.

Summary disposition is appropriate under *MCR 2.116(C)(5)* when "[t]he ***party*** asserting the claim lacks the legal capacity to sue." "In reviewing a motion for summary disposition pursuant to *MCR 2.116(C)(5)*, this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the ***parties***." *UAW, 295 Mich App at 493* (quotation marks and citation omitted). However, when a motion for summary disposition is filed under *MCR 2.116(C)(5)* and the ***parties*** present documentary evidence outside the pleadings, review is proper under *MCR 2.116(C)(10)*. *Le Gassick v Univ of Mich Regents, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019)*. Here, the ***parties*** relied on the sales agreement, which was not a part of the initial pleadings, because defendant did not discover that plaintiff had assigned its rights until after this case began. Summary disposition may be granted under *MCR 2.116(C)(10)* when "there is no genuine issue as to any material fact, and the moving ***party*** is entitled to judgment or partial judgment as a matter of law." "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing ***party***, leaves open an issue upon which reasonable minds might differ." **[*4]** *West v Gen Motors Corp, 469 Mich 177, 183; 665 NW2d 468 (2003)*. The Court reviews all of the evidence submitted by the ***parties*** in the light most favorable to the nonmoving ***party*** when reviewing a motion filed under *MCR 2.116(C)(10)*. *Silberstein v Pro-Golf of America, Inc, 278 Mich App 446, 457; 750 NW2d 615 (2008)*.

"In ascertaining the meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co., 473 Mich 457, 464; 703 NW2d 23 (2005)*. The goal of contract interpretation is to give effect to the intent of the ***parties***, as determined by the plain and unambiguous language. *Kendzierski v Macomb Co, 503 Mich 296, 311; 931 NW2d 604 (2019)*. "If the contractual language is unambiguous, courts must interpret and enforce the contract as written, because an unambiguous contract reflects the ***parties***' intent as a matter of law." *Id.* (quotation marks and citation omitted). The terms of a contract are ambiguous on its face only if they are equally susceptible to more than one meaning. *Id.* This Court may not create an ambiguity when the contract is clear. *Id. at 311-312*. This respects the freedom of individuals to contract as they see fit. *Id. at 312*.

As an initial matter, we note plaintiff's argument that defendant "lacks standing" to challenge the sales agreement because defendant is not a ***party*** to the contract. However, plaintiff did not raise this argument in the trial court, so it is not **[*5]** properly before this Court on appeal. See *Omer v Steel Technologies, Inc, 332 Mich App 120, 136; 955 NW2d 575 (2020)* (quotation marks and citation omitted) ("Generally, an issue is not properly preserved if it is not raised before, addressed, or decided by the circuit court[.]"). Moreover, plaintiff provides no authority in support of this proposition. "A ***party*** may not simply announce its position and leave it to this Court to discover and rationalize the basis for the ***party***'s claim." *Badiee v Brighton Area Sch., 265 Mich App 343, 357; 695 NW2d 521 (2005)* (quotation marks and citation omitted). Failure to properly brief an issue on appeal constitutes abandonment. *Tyra v Organ Procurement Agency of Mich, 498 Mich 68, 88; 869 NW2d 213 (2015)*.

The "Purchase and Sale Agreement for Accounts Receivable with Guaranteed Return" was entered between plaintiff and "MedFinance Servicing, LLC and/or Well States Healthcare, LLC" on June 27, 2018. The sales agreement provides that plaintiff had provided medical treatment to individuals and deferred collection of payment pending resolution of third-***party*** lawsuits. Plaintiff maintained a lien against each patient for the payment of any funds recovered. Plaintiff wished to "sell, transfer, assign, and convey [its] legal and

equitable right to the economic benefit and ***interests*** . . . in each of the Medical Liens, Letters of Protection, and Accounts Receivable," and the **[*6]** servicing companies wished to purchase. In the event that plaintiff received payment on an account receivable, it was to transfer the payment to the servicing companies within three days. The sales agreement states that it "constitutes a legal, valid, and binding obligation of" plaintiff, and that "[t]his agreement constitutes a valid ***assignment*** to [the servicing companies] of all Economic Rights and ***Interests*** of [plaintiff] in the Accounts Receivable and the proceeds thereof[.]"

Plaintiff was required to provide "any and all required support reasonably requested by [the servicing companies] in order to prove the Accounts Receivable are due, including but not limited to, documents, Account documents, depositions, live testimony in Court, and reports and/or memoranda necessary or desirable, in any court proceeding, arbitration proceeding, mediation, or settlement negotiations related to the Accounts Receivable due or any Patient's demand or lawsuit against [the servicing companies, plaintiff,] or any third ***party***." Upon certain occurrences, plaintiff was obligated to repurchase from the servicing companies any account receivable. "In the event that it is determined by [the servicing companies] **[*7]** that [plaintiff] is in breach of any covenant, agreement, obligation, warranty, or representation as set forth herein relating to any Accounts purchased by [the servicing companies], [the servicing companies] shall notify [plaintiff] . . . , which thereafter creates [the servicing companies'] right to require [plaintiff] to repurchase the Accounts."

Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the ***real party in interest***[.]" "A ***real party in interest*** is the one who is vested with the right of action on a given claim, although the beneficial ***interest*** may be in another." Barclae v Zarb, 300 Mich App 455, 483; 834 NW2d 100 (2013) (quotation marks and citation omitted). "A plaintiff must assert his own legal rights and ***interests*** and cannot rest his claim to relief on the legal rights or ***interests*** of third ***parties***." *Id.* (quotation marks and citation omitted). The ***real party in interest*** doctrine is a "standing doctrine" that "recognizes that litigation should be begun only by a ***party*** having an ***interest*** that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Id.* (quotation marks and citation omitted). "[A]n assignee of a cause of action becomes the ***real party in interest*** **[*8]** with respect to that cause of action, inasmuch as the ***assignment*** vests in the assignee all rights previously held by the assignor." Cannon Twp v Rockford Pub Sch., 311 Mich App 403, 412; 875 NW2d 242 (2015). "[A]n ***assignment*** divests the assignor of any ***interest*** in the subject matter of the ***assignment***." 6A CJS, ***Assignments***, § 88.

Under the plain and unambiguous language of the sales agreement, it is clear that plaintiff assigned all of its rights in the accounts receivable to the servicing companies. The ***assignments*** divested plaintiff of any ownership ***interest*** in the accounts. Therefore, the trial court erred when it denied defendant's motion for summary disposition because there is no genuine issue of material fact that plaintiff lacked standing and was not the ***real party in interest*** related to the account receivable for Steen because plaintiff had assigned its rights to such to the servicing companies before it filed suit against defendant. MCR 2.116(C)(10).

The ***parties*** dispute the application of ¶ 5 of the sales agreement, entitled "Power of Attorney," which provides in part:

> In order to support [the servicing companies'] collection efforts with regard to the Accounts Receivable, [plaintiff] hereby makes, constitutes, and appoints [the servicing companies], with full power **[*9]** of substitution, its true and lawful attorney in fact, for it and its name, place and stead, to make, execute, sign, acknowledge, swear to, deliver, record, and file any document or instrument which may be considered necessary or desirable by [the servicing companies] to carry out the provisions of this Agreement, including, but not limited to, enforcement of any Medical Lien or Letter of Protection in the name of [plaintiff] with respect to an Account Receivable and issuing payment instructions with respect to any proceeds paid or payable of such Account Receivable ("**Power of Attorney**"). . . .

Plaintiff argues that under this provision, the servicing companies were "afforded the right to initiate legal proceedings on its own behalf *or* in the name of [plaintiff]," and that it was "their intent and interpretation of the power of attorney clause [to] include[] the right of [the servicing companies] to name [plaintiff] as plaintiff." We disagree. The plain language of the power-of-attorney provision granted the servicing companies power of attorney over plaintiff—not the other way around. Nowhere in the contract is plaintiff permitted to pursue an action on behalf of the servicing

companies. **[*10]**

Rather, ¶ 4, entitled "Servicing," provides that plaintiff

> acknowledges that on the **Closing Date** [June 27, 2018], . . . [the servicing companies] will take over servicing of all Accounts without limitation. Among other things, [the servicing companies] shall have the right to retain an attorney to initiate collection efforts on the Accounts Receivable by any available legal means, including without limitation sending notices of a claim, making demands upon insurance companies or ***parties*** allegedly at fault, or initiating legal proceedings. As of the **Cutoff Date** [June 1, 2018] . . . , [plaintiff] shall not settle, solicit, or accept collections on any of the Accounts Receivable. . . .

"[C]ontracts must be read as a whole." *Kyocera Corp v Hemlock Semiconductor, LLC, 313 Mich App 437, 447; 886 NW2d 445 (2015)*. Thus, when these two provisions are read together, under the plain language of the contract, plaintiff did not retain any ***interest*** in the action under the power-of-attorney provision. Rather, the servicing company received power of attorney to act in plaintiff's name, and the servicing companies took over all of the accounts "without limitation."

Plaintiff also argues that the exception to the ***real party in interest*** requirement in *MCR 2.201(B)(1)* applies. This provision provides that **[*11]**

> [a] personal representative, guardian, conservator, trustee of an express trust, a ***party*** with whom *or in whose name a contract has been made for the benefit of another*, or a person authorized by statute may sue in his or her own name without joining the ***party*** for whose benefit the action is brought. [*MCR 2.201(B)(1)*.]

Plaintiff argues that standing is proper with plaintiff under the sales agreement for the benefit of the servicing companies, as agreed to by plaintiff and the servicing companies. We disagree. The sales agreement provides that it "is for the sole benefit of the ***parties*** hereto, and nothing contained in this Agreement shall be construed to grant any person or entity, other than Seller and Buyer and their respective successors and permitted assigns, any right under or in respect of this Agreement or any provision thereof." Thus, under the plain and unambiguous language of the contract, the contract was not made "for the benefit of another." *MCR 2.201(B)(1)*. The contract was made for the sole benefit of plaintiff and the servicing companies. Therefore, plaintiff's reliance on this court rule is misplaced.

Lastly, plaintiff argues that defendant failed to prove that it was prejudiced by plaintiff's failure **[*12]** to disclose the sales agreement, and it has no bearing on the outcome of the case. Defendant argued in reply that it could be prejudiced because any judgment obtained by plaintiff would not preclude the servicing companies from seeking payment on the same account receivable. In the context of standing, this Court has stated that "[a] defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by any other ***party***." *Barclae, 300 Mich App at 483* (quotation marks and citation omitted). The trial court attempted to protect defendant when it delivered its ruling on the motion for summary disposition by stating that "No other action can be brought by either the servicing company or [plaintiff] with respect to this claim," and including in its order that "no additional claims by [plaintiff, or the servicing companies] regarding this claim can be added and/or filed." However, there is no genuine issue of material fact that plaintiff lacked standing and was not a ***real party in interest*** having assigned its rights to the servicing companies. Therefore, the trial court erred by denying defendant's motion **[*13]** for summary disposition.

The order denying defendant's motion for summary disposition regarding standing is vacated, and this matter is remanded to the trial court to enter an order granting summary disposition to defendant. We do not retain jurisdiction.

/s/ Michael F. Gadola

/s/ Kathleen Jansen

/s/ Colleen A. O'Brien

End of Document

Exhibit D

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

Case No. 20-1710-NF
HON. JENNIFER FAUNCE

/

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax

/

THIS IS TO CERTIFY THAT ANOTHER CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT HAS HERETOFORE BEEN COMMENCED IN THIS COURT AND IS PENDING BEFORE JUDGE JENNIFER FAUNCE AND ASSIGNED CASE NO. 20-386-NF.

COMPLAINT

NOW COMES Plaintiff, by and through its attorneys, HAAS & GOLDSTEIN, PC, and for its cause of action against the Defendants, hereby says as follows:

1. Plaintiff is a corporation licensed to conduct business under the laws of the State of Michigan and at all times pertinent herein was conducting business in the State of Michigan.

2. Defendants are corporations, duly organized and existing under the laws of the State of Michigan and, at all times pertinent herein, were, and currently are, conducting business in the County of Macomb, State of Michigan.

3. Pursuant to MCL 600.2041, "every action shall be prosecuted in the name of the real party of interest."

4. All rights, privileges and remedies to payment for health care services, products or accommodations provided by Plaintiff to the injured party, Jose Cruz-Muniz, for which the injured party is or may be entitled to under MCL 500.3101, *et seq*, the No Fault Act, have been assigned to Plaintiff, hereto attached as **Exhibit A**.

5. As a result of said assignment, Plaintiff bears the burden of pursuit of payment for health care services, products or accommodations, provided by Plaintiff to the injured party.

6. The amount in controversy is more than Twenty-Five Thousand ($25,000) Dollars, exclusive of costs and attorneys' fees and jurisdiction is otherwise proper with this Court.

COUNT I- PIP CLAIM

7. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

8. On May 23, 2018, Jose Cruz-Muniz, (hereinafter "the injured party") sustained accidental bodily injuries within the meaning of the statutory provisions of MCL 500.3105.

9. Defendants are first in order of priority and/or in the order of priority to pay for the injured party's claim for no fault personal protection insurance benefits in

accordance with Chapter 31 of the Michigan Insurance Code, more commonly known as the "no-fault insurance law."

10. Defendant assigned claim number 18-4229922 to the injured party's claim.

11. As a result of the aforementioned injuries, Plaintiff provided reasonably necessary products, services and/or accommodations to aid in the injured party's care, recovery and/or rehabilitation.

12. Defendants became obligated to pay for certain expenses incurred for reasonably necessary products, services and/or accommodations rendered for the injured party's care, recovery or rehabilitation as a result of the injured party's sustained accidental bodily injuries arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

13. Plaintiff has provided reasonably necessary products, services and/or accommodations to the injured party and continues to do so, resulting in the following outstanding balances to date:

a. Jose Cruz-Muniz DOS 8.7.19 – 10.2.19 - $37,667.36

(Exhibit B)

14. Plaintiff timely submitted billings to Defendants for products, services and/or accommodations that were rendered to the injured party and that were reasonably necessary for the care, recovery or rehabilitation of the injured party's injuries.

15. Plaintiff also submitted to Defendants supporting documentation and forms necessary for Defendants to determine the reasonableness, necessity and amount of the medical products and/or services rendered to the injured party.

16. Defendants were provided reasonable proof of the fact and of the amount of losses sustained and charges incurred.

17. To date, Defendants have unreasonably refused and/or delayed in making payment to Plaintiff for the products, services and/or accommodations rendered.

18. Pursuant to MCL 500.3157, Plaintiff is entitled to recover the outstanding balance for the products, services and/or accommodations to the injured party from Defendants.

19. Plaintiff has requested payment from Defendants for the amount of the bills due and owing and Defendants has refused and/or neglected to pay them.

20. Plaintiff is entitled to reasonable and actual attorney fees incurred in this action pursuant to MCL 500.3148.

21. Plaintiff is also entitled to costs and interest pursuant to MCL 500.3142 for the overdue bills that have not been paid by Defendants within 30 days after Defendants received reasonable proof of the fact and of the amount of loss sustained.

22. Pursuant to Insurance Bulletin 92-03, Defendants is "required to provide insureds and claimants with complete protection from economic loss for benefits provided under personal protection insurance."

23. Satisfaction of the judgment obtained by Plaintiff will discharge Defendants of their obligation to the injured party for services Plaintiff provided to the injured party.

24. Plaintiff as assignee of the injured party is the real party of interest and as such Plaintiff has the right to prosecute this action against Defendants pursuant to MCL 600.2041.

COUNT II- BREACH OF CONTRACT/CONTRACTUAL AND/OR STATUTORY DUTIES

25. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

26. Defendants' failure to pay Plaintiff personal protection insurance benefits constitutes a material breach of contractual and/or statutory duties pursuant to the contract where the injured party is qualified as an "insured," or otherwise entitled to benefits and/or pursuant to MCL 500.3101, *et seq.*

27. As a direct and proximate cause of Defendants' breach of contractual and/or statutory duties, Plaintiff has sustained damages.

WHEREFORE, Plaintiff claims as damages against Defendants in a sum more than Twenty-Five Thousand ($25,000) Dollars, which the triers of fact deem reasonable, plus costs, attorney fees and interest most wrongly sustained.

Respectfully submitted,

/s/ Jenifer Measel
HAAS & GOLDSTEIN, PC
Jenifer Measel (P74711)
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550

Dated: May 6, 2020

Exhibit A

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment incudes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee. I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature
Cruz-Muniz, Jose — Patient Printed Name
10/2/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

Exhibit B

Patient Ledger

Place of Service: C-Spine Ortho
29255 NorthWestern Hwy #101
Southfield, MI 48034-1018

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 |
PMS: 109224PAT000000270
4432 FOURTH STREET
WAYNE, MI 48184
(734) 502-5918

Remit Payment: C-Spine Ortho
4111 E Valley Auto Drive #202
Mesa, AZ 85206-4605

DOA: 5/23/2018

Account Balance $37,667.36

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
10/02/2019	**—**	**PIP0001JT8**	**421.58**	**0.00**	**0.00**	**421.58**	**0.00**
10/02/2019	10/03/2019	99213 - OFFICE OUTPATIENT VI...	421.58	0.00	0.00	421.58	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/25/2019	**—**	**PIP00017M7**	**5,864.31**	**0.00**	**0.00**	**5,864.31**	**0.00**
09/25/2019	09/26/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/25/2019	09/26/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/25/2019	09/26/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/25/2019	09/26/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00
09/25/2019	09/26/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	C9290 - Injection, bupivacaine lip...	40.00	0.00	0.00	40.00	0.00
09/25/2019	09/26/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/25/2019	09/26/2019	J2001 - Injection, lidocaine hcl for ...	120.00	0.00	0.00	120.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/12/2019	**—**	**PIP0000VV8**	**5,944.31**	**0.00**	**0.00**	**5,944.31**	**0.00**
09/12/2019	09/13/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/12/2019	09/13/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/12/2019	09/13/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/12/2019	09/13/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/12/2019	09/13/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
09/12/2019	09/13/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/21/2019	**—**	**PIP0000F12**	**15,165.34**	**0.00**	**0.00**	**15,165.34**	**0.00**
08/21/2019	08/28/2019	99214 - OFFICE/OUTPATIENT VI...	617.05	0.00	0.00	617.05	0.00
08/21/2019	08/28/2019	64493 - INJ PARAVERT F JNT L/...	8,050.50	0.00	0.00	8,050.50	0.00
08/21/2019	08/28/2019	64494 - INJ PARAVERT F JNT L/...	4,113.90	0.00	0.00	4,113.90	0.00
08/21/2019	08/28/2019	96372 - THER/PROPH/DIAG INJ ...	93.89	0.00	0.00	93.89	0.00
08/21/2019	08/28/2019	J1030 - Methylprednisolone 40 m...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1100 - Dexamethasone sodium p...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1885 - Ketorolac tromethamine inj	80.00	0.00	0.00	80.00	0.00
08/21/2019	08/28/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/21/2019	08/28/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/15/2019	**—**	**PIP00068G6**	**9,651.36**	**0.00**	**0.00**	**9,651.36**	**0.00**
08/15/2019	08/15/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
08/15/2019	08/15/2019	27096 - INJECT SI JOINT ARTH...	7,476.75	0.00	0.00	7,476.75	0.00
08/15/2019	08/15/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/15/2019	08/15/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00
08/15/2019	08/15/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1100 - Injection, dexamethasone ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
08/15/2019	08/15/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/07/2019	**—**	**PIP00068F9**	**620.46**	**0.00**	**0.00**	**620.46**	**0.00**
08/07/2019	08/07/2019	99203	620.46	0.00	0.00	620.46	0.00

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 | **PMS:** 109224PAT000000270

Account Balance $37,667.36

Exhibit E

Lucas Hesskamp

From: Nadine Hammoud
Sent: Tuesday, October 13, 2020 3:35 PM
To: Lucas Hesskamp
Subject: FW: C-Spine cases

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Monday, October 12, 2020 10:37 AM
To: Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

All of the agreements have the exact same contractual language.

From: Nadine Hammoud <nah@ntclaw.com>
Sent: Friday, October 9, 2020 4:02 PM
To: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: RE: C-Spine cases

I get that… but it doesn't help in identification. For example, Jackson, Foshee and Matlock are all the same. How do we know which is which?

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:34 PM
To: Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

I put them in list form – which factoring companies are involved with the patient accounts.

Hello:

Now that we have the order entered, here is my list along with companies involved in factoring:

Albert Jackson – Medfinance
Amber Foshee – Medfinance
Dshane Buckman – Medfinance & Apogee
Hendric Hannon – Medfinance & Apogee & Surgical Capital
Jerry Matlock – Medfinance
Sandra Cruz – Medfinance & Apogee & MMD
Jose Muiz-Cruz – Medfinance & Apogee
Nagi Alrayashi – Medfinance & Apogee & Surgical Capital

From: Nadine Hammoud <nah@ntclaw.com>
Sent: Friday, October 9, 2020 2:31 PM

To: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: RE: C-Spine cases

I understand the safeguard regarding other patients, but what about our patients? Unless I am missing something, each of these agreements does not mention which sales belong to which patient.

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:26 PM
To: Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

The factoring amount has been redacted as this is subject to strict confidentiality. The exhibits contain the names of other patients and would violate HIPAA if disclosed. The language of the security interest agreements is there which is your standing argument.

Thanks,

From: Nadine Hammoud <nah@ntclaw.com>
Sent: Friday, October 9, 2020 2:23 PM
To: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: RE: C-Spine cases

Thank you! A couple questions. Why are the purchase prices redacted? We thought that was the purpose of the Protective Order was to protect that information from being disclosed elsewhere. Also, the agreements refer to Exhibits that are not attached.

Thanks,

Nadine Hammoud
NAH@NTCLaw.com

Attorneys and Counselors at Law
888 W. Big Beaver Road, Suite 600
Troy, MI 48084
Tel: 248.354.0380
Fax: 248.354.0393

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:06 PM
To: Frederick Livingston <fvl@ntclaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>; Elizabeth Spiridon <ems@ntclaw.com>; Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

And this completes what I have on file. I will supplement asap.

Thanks,

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:05 PM
To: Frederick Livingston <fvl@ntclaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>; Elizabeth Spiridon <ems@ntclaw.com>; Nadine Hammoud <nah@ntclaw.com>
Cc: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: C-Spine cases

Hello:

Now that we have the order entered, here is my list along with companies involved in factoring:

Albert Jackson – Medfinance
Amber Foshee – Medfinance
Dshane Buckman – Medfinance & Apogee
Hendric Hannon – Medfinance & Apogee & Surgical Capital
Jerry Matlock – Medfinance
Sandra Cruz – Medfinance & Apogee & MMD
Jose Muiz-Cruz – Medfinance & Apogee
Nagi Alrayashi – Medfinance & Apogee & Surgical Capital

I have an email out to my client to confirm that the information is up to date. I am going to send a few emails attaching the agreements and addendums I have on file. I have requested the Surgical Capital and MMD agreements.

Thanks,

Exhibit F

Bulk Purchase and Sale Agreement for Accounts Receivable

This BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNTS RECEIVABLE ("**Agreement**") is entered into as of August 2, 2019 by and between **MedFinance Servicing, LLC and/or Well States Healthcare, LLC** ("**Buyer**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and Sea Spine Orthopedic, LLC, a company organized and existing under the laws of the State of Florida, with a principal place of business located at 3107 W Hallandale Beach Blvd, Suite 101, Pembroke Park, FL 33009 (the "**Seller**") (collectively the "**Parties**").

WHEREAS, Seller operates a medical practice located in the State of Florida; and

WHEREAS, Seller has provided medical treatment, services, and products (hereinafter collectively referred to as "**Medical Treatment**") to individuals for whom Seller has deferred collection of payment for the Medical Treatment, pending resolution of claims and/or lawsuits which the Patients have brought or will bring against third parties, where the individuals are seeking compensation related to the causation of the injuries or other medical conditions for which the Medical Treatment was provided ("**Patient**" or "**Patients**"); and

WHEREAS, as a condition of deferring the collection of payment for the Medical Treatment provided, Seller has entered into an agreement with each Patient which guarantees that payment for the Medical Treatment provided by Seller will be paid from funds recovered from any source, whether as a result of settlement or trial, relating to the claims and/or lawsuit against a third party who allegedly caused Patient's injuries (hereinafter "**Medical Lien**" and/or "**Letter of Protection**"); and

WHEREAS, The Medical Lien and/or Letter of Protection specifically encumbers the proceeds to be or already realized by Patient from any recovery received from the claims/lawsuit and specifies that the Patient may remain responsible for any outstanding balance owed to Seller for the Medical Treatment until fully paid; and

WHEREAS, Seller desires, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, to sell, transfer, assign, and convey Seller's legal and equitable rights and interests ("**Rights, Title, and Interest**") in each Medical Lien, Letter of Protection, and/or Accounts Receivable (defined below) as identified on the Schedule of Accounts attached hereto as Exhibit A ("**Accounts**"); and

WHEREAS, Buyer desires to purchase, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, Seller's Rights, Title, and Interests in each Medical Lien, Letter of Protection, and/or Accounts Receivable listed on Exhibit A.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Agreement by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Seller's Accounts Receivable**. Seller owns certain accounts receivable created by Seller providing Medical Treatment to a Patient for injuries suffered as the result of an accident or incident caused by a third-party ("**Accounts Receivable**"). The Accounts Receivable are secured by a Medical Lien, Letter of Protection, or other document between the Seller and the Patient whereby the Patient agrees to satisfy the Account with the Seller from future monies recovered as a result of a settlement or trial judgment with a third party against whom the Patient has a claim, including a third party's insurance carrier, or Patient's insurance company, and which provides that in the event that there is no settlement or monies recovered, or the amount received is insufficient to pay the Account, Patient may remain liable for all amounts due to the Seller.

2. **Purchase and Sale of Accounts Receivable**. Buyer wishes to purchase, and Seller wishes to sell, subject to the terms herein, Seller's Rights, Title, and Interests in certain Accounts Receivable on which Seller has not yet received payment from any other source. Attached hereto as Exhibit A is a Schedule of Accounts identifying Accounts Receivable on which Seller has not received payment from any source. Seller represents and warrants that the total value of, and amount due and owing on, the Accounts Receivable is $ 2,083,942.71. Buyer shall purchase from Seller, and Seller shall sell, transfer, assign, and convey to Buyer, Seller's Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A, as well as Seller's Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A. Upon closing on the **Closing Date** (as defined below), Buyer and Seller shall reflect such sale in their financial records. At all times thereafter, Buyer shall retain the Rights, Title, and Interests to the Accounts Receivable listed on Exhibit A, and all Medical Liens or Letters of Protections connected thereto. Buyer at all times will retain full legal right to sell, convey, and/or assign the Accounts Receivable purchased from Seller to a third party.

MMO _____ _____

3. **Consideration**. In consideration for the purchase of the Accounts Receivable identified on Exhibit A, Buyer shall issue payment to Seller in the amount of $_____ ("**Consideration**"). Upon receipt of such Consideration by Seller, Seller's Rights, Title, and Interests in the Accounts Receivable, Medical Liens, and/or Letters of Protection shall be deemed transferred, assigned, and sold to Buyer.

MMO _____ _____

4. **Servicing**. Seller acknowledges that on the **Closing Date**, (as defined in Section 12 below) Buyer will take over servicing of all Accounts without limitation. As of the **Cutoff Date** (as defined in Section 12 below), Seller shall not settle, solicit, or accept collections on any of the Accounts Receivable. If Seller receives any communications or inquiries in connection with any Accounts Receivable sold to Buyer, Seller shall direct the same to Buyer within 72 hours after Seller's receipt of said communication or inquiry.

5. **Power of Attorney**. In order to support the Buyer's collection efforts with regard to the Accounts Receivable, Seller hereby makes, constitutes, and appoints Buyer, with full power of substitution, its true and lawful attorney in fact, for it and its name, place and stead, to make, execute, sign, acknowledge, swear to, deliver, record, and file any document or instrument which may be considered necessary or desirable by Buyer to carry out the provisions of this Agreement, including, but not limited to, enforcement of any Medical Lien or Letter of Protection in the name of Seller with respect to an Account Receivable and issuing payment instructions with respect to any proceeds paid or payable of such Account Receivable ("**Power of Attorney**"). The foregoing Power of Attorney is coupled with an interest and shall be irrevocable. Without limiting the generality of the Power of Attorney, at the request of Buyer, Seller shall promptly execute and deliver such further documents and instruments as the Buyer reasonably determines to be necessary to enable or facilitate the Buyer's collection efforts with regard to the Accounts Receivable.

6. **Seller's Payment Obligations**.

   a. Payment Received: When Seller receives credits, payments, or other consideration distributed or paid by or on behalf of a Patient with respect to any Accounts Receivable listed in Exhibit A, Seller shall report such payments to Buyer and shall transfer and/or deliver such payments to Buyer via wire transfer or company check along with a copy of the payment received by Seller **within three (3) business days of receipt** until the Guaranteed Return has been satisfied. All payments received by Seller or Buyer for

payment on any Account for which there are multiple, potentially conflicting liens held by any party shall first be applied to pay in full all amounts due and owing to Buyer.

7. **Seller's Representations and Warranty**. As of the date of this Agreement and the Closing Date Seller represents and warrants to Buyer as follows:

a. Seller represents and warrants that it is the sole and unconditional owner of all Accounts Receivable sold to Buyer, and that it has the legal authority to sell and transfer ownership of all Accounts Receivable to Buyer. Seller additionally represents and warrants that all Accounts Receivable sold to Buyer are now and will at all times after Buyer's purchase of the same, remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Seller has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its medical practice as now being conducted and to provide the Medical Treatment which generated the Accounts Receivable. Such Authorizations were in full force and effect at time the Medical Treatment was provided and remain in full force and effect as of the Closing Date (as defined below).

c. Seller's employees, contractors, and agents, each of which have all licenses and permits required by law, if any, to perform the Medical Treatment which generated the Accounts Receivable. All such licenses and permits were in full force and effect at time the Medical Treatment was provided and, to the best Seller's knowledge, remain in full force and effect as of the Closing Date.

d. The execution and delivery of this Agreement and the performance hereunder have been duly authorized, by all necessary actions on the part of Seller, and no provision of applicable law or regulation, the charter or bylaws of Seller, any agreement, judgment, injunction, order, decree, or other instrument binding upon Seller is or will be contravened by Seller's execution and delivery of this Agreement or Seller's performance hereunder.

e. No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration, or registration with, any governmental agency, regulatory authority, or any other body is required to be obtained by Seller in connection with the execution, delivery, or performance by Seller of this Agreement.

f. Seller certifies that each Account Receivable assigned hereunder is being transferred free and clear of any lien and/or encumbrance other than a Medical Lien and/or Letter of Protection. Any Accounts Receivable assigned to Buyer by Seller shall be true, accurate, and complete. Each Medical Lien and/or Letter of Protection shall reflect reasonable and customary charges for bona fide and medically necessary medical procedures and/or treatments actually rendered. All charges, fees, and/or costs for the Medical Treatment underlying the Accounts Receivable are reasonably and customarily priced based on the current relative value of the Current Procedural Terminology ("**CPT**") code associated with the Medical Treatment Seller rendered or provided to the Patients.

g. Seller hereby acknowledges and represents that the assignment of the Accounts Receivable hereunder: (i) is not made in contemplation of the insolvency of Seller; (ii) is not made with the intent to hinder, delay, or defraud the creditors of Seller; (iii) has been approved by an officer of Seller with the authority to approve the assignment contemplated herein; (iv) will be recorded in the records of Seller; and (v) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, Buyer is neither an insider nor an affiliate of Seller.

h. To the best of Seller's knowledge and belief, each of the Accounts Receivable has been originated, maintained, and serviced by Seller in compliance with all applicable local, state, and federal laws.

i. None of the Accounts Receivable being assigned are subject to pending litigation or arbitration against the Seller, nor has Seller been notified of any demand or dispute regarding the Medical Treatment that was performed.

j. None of the Accounts Receivable are subject to any fees owed to any third parties, unless otherwise disclosed to Buyer herein.

k. Except with regard to a representation or warranty related to Seller's operations, formation, or continued existence, all representations and warranties contained in this Section shall survive the execution of the Agreement and the Closing Date.

l. Seller represents and warrants it has provided to Buyer complete and unfettered access to information regarding the Accounts Receivable and, in particular, has informed Buyer of the risks associated with the collectability (and ultimate collection) of the Accounts Receivable.

m. The information supplied to Buyer by Seller concerning the Accounts Receivable is materially true and accurate.

n. This Agreement constitutes a legal, valid, and binding obligation of the Seller and shall remain enforceable, in law and equity, against the Seller.

o. This Agreement constitutes a valid assignment to the Buyer of all Rights, Title, and Interests of the Seller in the Accounts Receivable and the proceeds thereof, and following such assignment, the Buyer shall own all Rights, Title, and Interest to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable.

p. Seller owns all necessary legal and contractual rights to pursue collection on all Accounts Receivable and against all Patients and there are no contractual restrictions, written or oral, or other restrictions of any kind between Seller and any Patient which would restrict Seller or Buyer from pursuing the collection of any Accounts Receivable from any Patient.

q. Seller shall retain all liability for all actions and events of any kind which occurred on or prior to the Closing Date regarding any Accounts Receivable.

r. Seller shall provide any and all required support reasonably requested by Buyer in order to prove the Accounts Receivable are due, including but not limited to, documents, Account documents, depositions, live testimony in Court, and reports and/or memoranda necessary or desirable, in any court proceeding, arbitration proceeding, mediation, or settlement negotiations related to the Accounts Receivable due or any Patient's demand or lawsuit against Buyer, Seller, or any third party.

s. Seller has not failed in any obligation, if any, to file any claim with any medical insurance carrier known to Seller to provide or medical insurance coverage to the Patient at the time the Medical Treatment was received by Patient. None of the Accounts Receivable are subject to any Medicare, Medicaid or other governmental reimbursement program as to the payment of any portion of the Accounts Receivable being purchased by Buyer, nor are any of the Accounts Receivable subject to any capitation arrangement, fee schedule, discount formula, cost-reimbursement or other adjustment or limitation to the Seller's usual charge.

t. SELLER REPRESENTS, WARRANTS, ACKNOWLEDGES, AGREES, AND PROMISES THAT IT SHALL PAY TO BUYER THE FULL AMOUNT OF ANY

PAYMENT RECEIVED BY SELLER ON ANY ACCOUNT INCLUDED, OR REQUIRED TO BE INCLUDED, ON EXHIBIT A.

8. **Buyer's Representations and Warranty**. As of the date of this Agreement and the Closing Date, Buyer represents and warrants to Seller as follows:

a. Buyer is duly organized, validly existing, and in good standing under the laws of the State of Utah with all requisite power and authority to carry on its business as now being conducted, to execute, deliver, and perform this Agreement and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby. Buyer is duly qualified to conduct business as a foreign entity and is in good standing in each jurisdiction in which business transacted by it as contemplated in this Agreement requires such qualification and in which the failure to do so would have a material adverse effect on its ability to perform its obligations under this Agreement or the enforceability thereof.

b. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Buyer, any resolution adopted by the members or managers of Buyer, or any other loan, credit agreement, contract, applicable law, or governmental approval applicable to Buyer, or any court order which affects or binds Buyer. No additional governmental approval and no consent or approval of any other person or entity is required on the part of Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

c. There is no actual pending litigation (i) that has been commenced by or against Buyer or that otherwise relates to or may affect Buyer's right to consummate the transactions contemplated by this Agreement, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with this Agreement or the transactions contemplated hereby. To the knowledge of Buyer, no litigation has been threatened, and no event has occurred, or circumstance exists that may give rise to or serve as a basis for the commencement of any litigation that in any way affects Buyer's ability to complete the transactions contemplated in this Agreement.

d. Buyer and its agents, representatives, and contractors, when performing under this Agreement, and as long as Buyer retains any Rights, Title, and Interests in the Accounts, or the right to collect on the same, will comply with each law that is applicable to Buyer, its agents, representatives, and contractors, on the servicing, ownership, collection on, or use of the Accounts, including, but without limitation, the Gramm-Leach-Bliley Act, HIPAA, HIECH, and all applicable consumer credit laws, if any.

e. Buyer has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of purchasing the Accounts and is, by virtue of having made other purchases of a similar nature and/or by reason of its business and financial experience or the business and financial experience of those individuals it has retained to advise Buyer with respect to its purchasing the Accounts.

f. The transactions contemplated by this Agreement do not involve, nor are they intended in any way to constitute, the assignment or sale of a "security" or "securities" within the meaning of any applicable securities or blue-sky laws, and none of the representation, warranties, or agreements of the Buyer shall create any inference that the transactions involve any "security" or "securities." Buyer understands that not all Accounts are secured

by collateral or that any payment received is associated with any particular Account. Buyer understands that this purchase involves a high degree of risk.

9. **Events of Default**. Any one or more of the following constitutes an **Event of Default**:

   a. Seller files or has filed against it any bankruptcy proceedings or any assignment for the benefit of creditors, or appointment of a receiver or custodian for any of its Accounts;

   b. Seller becomes insolvent or is generally not paying its debts as they become due, or is left with unreasonably small capital;

   c. Any involuntary lien, garnishment, encumbrance, or attachment attaches to the Accounts Receivable;

   d. Seller breaches or fails to satisfy when due any covenant, agreement, obligation, warranty, or representation in this Agreement;

   e. Seller is in default under any document, instrument, or agreement evidencing any debt, obligation, or liability in favor of Buyer or its affiliates or vendors, regardless of whether the debt, obligation, or liability is direct or indirect, primary or secondary, or fixed or contingent;

   f. An event of default occurs under any guaranty or obligation of Seller to a third party, or any material provision of any guaranty given by Seller to a third party is not valid or enforceable in favor Seller, or is repudiated or terminated;

   g. A default or event of default occurs under any agreement between Seller and any creditor of Seller;

   h. Any creditor that has signed a subordination agreement with Buyer breaches any terms of the subordination agreement; or

   i. A material impairment in the perfection or priority of the Buyer's security interest in the Accounts; (ii) a material adverse change in the business, operations, or conditions (financial or otherwise) of the Seller occurs; or (iii) a material impairment of the prospect of repayment of any portion of the Accounts Receivable occurs.

10. **Seller's Obligation to Repurchase Accounts**. Upon written notice from Buyer, Seller will repurchase any Account to which any of the following conditions applies:

   a. Death of all Patients on or prior to the Cutoff Date (as defined below);

   b. The Account was not properly handled prior to sale, rendering the balance legally uncollectable;

   c. The filing of bankruptcy proceedings, or other proceeding which seeks liquidation, reorganization, or discharge of the Account, by the Patient after the Patient's Account origination date and on or prior to the Cutoff Date without subsequent dismissal;

   d. The Account was created as a result of fraud, forgery, or Seller's mistake, such that the Patient has no liability for such Accounts;

   e. On or prior to the Cutoff Date, Seller received payment in full settlement of the Account, but which was not deleted from the Account schedule by Seller;

   f. The Account is a duplicate record of any other Account being sold hereby;

   g. The Patient has initiated litigation, whether through an administrative or court action, suit, arbitration, or other proceeding, against Seller;

h. The Account was disputed prior to the Cutoff Date in any way that would materially impair the validity or enforcement of any balance or reduce the amount payable under an Account from the balance thereof contained in and on Exhibit A;

i. The Patient has been released from liability, or the respective Account has otherwise been satisfied, compromised, settled, cancelled, released, or subordinated;

j. The Seller is not the sole owner of the account and does not have full right to transfer and sell the Account free and clear of any encumbrance, equity, lien, pledge, charge, claim, or security interest, except as otherwise contemplated herein;

k. The information contained in Exhibit A, in reference to a particular Account, is not true and correct;

l. In the event that it is determined by Buyer that Seller is in breach of any covenant, agreement, obligation, warranty, or representation as set forth herein relating to any Accounts purchased by Buyer, Buyer shall notify Seller in writing of the circumstances which Buyer has discovered, within five (5) days of the discovery, which thereafter creates Buyer's right to require Seller to repurchase the Accounts. If Seller does not cure the event within thirty (30) days of notification, Buyer shall have the right to require that Seller repurchase the Accounts from Buyer consistent with Section 11 below.

11. **Procedure for Account Repurchase**. For any Account that meets a condition set forth in Section 10, Buyer will reassign such Account to Seller. Seller shall refund to the Buyer the Consideration attributable to such Account, less any amounts collected by Buyer after the Cutoff Date and prior to Buyer's notification to Seller that the Account is subject to repurchase. The repurchase price shall be paid to Buyer within fourteen (14) days after Seller's receipt of the documents and instruments required to reassign such Account to Seller, and the appropriate information is received regarding any amounts collected on the account.

12. **Closing**. The **Closing Date** will be on August 2, 2019, or at such other time mutually agreed to by the Parties in writing. The following actions related to this Agreement will be taken by Seller and Buyer on, or immediately subsequent to, the Closing Date:

a. Pre-Closing Adjustments: Purchase is subject to adjustment to reflect:

i. The current balance actually due as of July 19, 2019 (the "**Cutoff Date**") (e.g., deductions for unapplied contractual adjustments/write-offs, or unreported payments received before the Cutoff Date); or

ii. Any Account that Buyer determines, in its sole discretion, to remove from the schedule of Accounts listed in Exhibit A prior to the Closing Date.

b. On the Closing Date, Buyer and Seller will execute this Agreement; and

c. Upon the full execution of the Agreement, Buyer shall pay to Seller the monies for the Accounts as described herein. Consideration shall be paid to Seller in immediately available funds, by wire transfer in accordance with the Wire Transfer Instructions attached hereto as Exhibit B.

MMO NSD

13. **Conditions Precedent**.

a. **Conditions Precedent to Seller's Obligations.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Buyer in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Buyer shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law. Consummation by Seller of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any Law that applies to Seller.

iv. Deliveries at Closing. The Consideration shall have been paid and all documents to be delivered and actions to be taken on or before Closing by Buyer shall have been delivered or taken.

b. **Conditions Precedent to Buyer's Obligations**. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Seller in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Seller shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law or Litigation. Consummation by Buyer of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any law that applies to Buyer. No claim, action, suit, investigation, or proceeding is pending or has been threatened which is likely to restrict, prohibit, or otherwise have a material adverse effect on the transactions contemplated by this Agreement.

iv. Confirmation of Certain Items. Seller shall have confirmed to Buyer that Exhibit A fairly and accurately reflects, in all material respects, the information contained therein.

v. Deliveries at Closing. In accordance with this Agreement, all documents to be delivered and actions to be taken on or before Closing by Seller shall have been delivered or taken.

vi. No Material Adverse Change. There shall have been no material adverse change in the condition, financial or otherwise, of Seller or the Accounts. Through the Closing Date, the Seller and its agents have not effected any material change in their policies and procedures relating to the Accounts that could reasonably be expected to have a material adverse effect on any of the Accounts.

14. **Accounts Receivable in Good Standing**. The Accounts Receivable sold hereunder have been, or will be, made in good faith and authenticated by a representative of the Seller and the Patient, to the extent necessary. The treatment or services rendered, or goods sold, to the Patient on the Accounts Receivable have been, and will continue to be, medically reasonable and necessary and will not have been misrepresented to the Patient. The dollar amount of the Accounts Receivable will not exceed the reasonable and customary charges for the treatment, services, or goods provided to the Patient. Seller guarantees to fulfill all warranties and representations made to the Patient.

15. **Priority**. Seller hereby agrees and acknowledges that any Accounts Receivable or sums otherwise due to Buyer for a Patient shall receive priority over any other accounts or sums due to Seller for such Patient. Buyer shall have the right to collect all amounts due from a Patient for any treatment, services, or goods received from Seller, including amounts related to accounts receivable not purchased by Buyer. In such an event, Buyer will first apply all collected amounts to the sums due and owing on Buyer's Accounts Receivable and thereafter disburse any remaining funds to Seller for any accounts receivable not purchased from the Seller by Buyer.

16. **Confidentiality**. The Parties agree to keep confidential all terms of this Agreement, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the payment terms set forth in this Agreement to anyone, except as required by law, in which case the disclosing party will give notice to the non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Seller and Buyer to any source. If any law requires disclosure of the payment terms between Seller and Buyer in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Agreement and any related agreement shall not be made part of the Patient's medical records.

17. **HIPAA**. The Parties agree to protect the privacy of all Accounts Receivable and medical documents and to comply with the Health Insurance Portability and Accountability Act ("**HIPAA**") guidelines.

18. **Further Assistances Assurances and Cooperation**. Seller, its agents, employees, members, shareholders, representatives, and/or doctors, shall cooperate in all respects with the collection, handling, management, and transfer of the Accounts Receivable. Seller agrees to furnish Buyer with one copy of all medical records, billing documentation, and all other information or documentation that may be necessary to support or assist Buyer's, or its assignee's or representative's, collection of any Accounts Receivable. Seller further agrees to maintain all medical records, billing records, and other books and records relating to the care provided to the Patient in accordance with good and commercially reasonable medical practices and all applicable laws. When requested by Buyer, Seller agrees to cooperate and assist Buyer, at no additional charge to Buyer, with the collection or defense of any Accounts Receivable. Moreover, each Party shall execute and deliver or cause to be executed and delivered to the other such further instruments and shall take such other action as the other may reasonably require to effectuate the contemplated transactions.

19. **Buyer's Indemnification**. From and after the Closing Date, Buyer shall indemnify and hold Seller harmless against and from any and all liability for, and from and against any and all losses or damages Seller may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Seller in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Seller to enforce this indemnification, which Seller shall incur or suffer as a result of:

a. Any act or omission of Buyer or Buyer's agents, assigns, or transferees in connection with the Accounts and its purchase of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Buyer's representations or warranties herein;

c. The material breach of any of Buyer's covenants herein; or

d. Any claim by any Patient regarding assignment, subsequent enforcement, servicing, or administration of the Accounts by Buyer or Buyer's agents.

The obligations of Buyer under this Section 19 shall survive the closing of the transactions herein contemplated.

20. **Seller's Indemnification**. From and after the Closing Date, Seller shall indemnify and hold Buyer harmless against and from any and all liability for, and from and against any and all losses or damages

Buyer may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Buyer in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Buyer to enforce this indemnification, which Buyer shall incur or suffer as a result of:

a. Any act or omission of Seller or Seller's agents (but not including any independent contractors such as collection agencies or attorney or law firms retained to collect on Accounts) in connection with the Accounts and its sale of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Seller's representations or warranties herein;

c. The material breach of any of Seller's covenants herein; or

d. Any claim by any Patient regarding the origination, servicing, collection, or administration of the Accounts by Seller or Seller's agents.

The obligations of Seller under this Section 20 shall survive the closing of the transactions herein contemplated.

21. **Procedure for Indemnification**. Any party seeking indemnification ("**Indemnitee**") with respect to a claim or loss shall give prompt written notice thereof to the party against whom indemnification is sought ("**Indemnitor**"). Indemnitor shall have the right to assume the defense of any and all claims for which indemnification is sought hereunder, and Indemnitee agrees to cooperate with Indemnitor in any such defense. If the amount of any claim or loss shall, at any time subsequent to payment pursuant to this Agreement, be reduced by recovery, settlement, or otherwise, the amount of such reduction, less any expenses incurred in connection therewith, shall promptly be repaid by the Indemnitee to the related Indemnitor. If the Indemnitor elects to assume the defense, the Indemnitee shall retain the right to consent to the selection of counsel, the terms of settlement, and any use of Indemnitee's or its affiliate's name in any settlement or any notification, advertisement, or publication of the settlement.

22. **Choice of Law, Venue and Jury Waiver**. This Agreement and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Agreement, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. In the event that Seller breaches any part of this Agreement in a manner that causes irreparable injury to Buyer, Seller acknowledges that Buyer shall have no adequate remedy at law, and shall therefore be entitled to enforce each such obligation by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies which may be available at law or in equity. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Seller and Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

23. **Attorneys' Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Agreement, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

24. **Confidentiality/Trade Secret**. This Agreement, its terms, conditions, substance of discussions between the parties, all documentation related to this Agreement, and any other information exchanged between the Parties that relates to this Agreement represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Agreement, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

25. **Relationship of the Parties**. The relationship between Seller and Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Agreement. Under no circumstance does this Agreement create any medical or healthcare obligation on the part of Buyer, as Buyer is neither a medical nor healthcare professional or provider of any kind. Buyer will not direct Patient medical care in any way, and all medical decisions are solely between Seller and the Patient. Seller and the Patient(s) are free to embark upon whichever courses of medical treatment or services they deem reasonable and necessary, but Buyer is not obligated to purchase any portion of any Accounts Receivable related to said treatment, services, or goods provided that is not listed on Exhibit A.

26. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

27. **Interpretation**. Each party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

28. **Rights Cumulative; Waivers**. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

29. **Construction**. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

30. **No Strict Construction**. This Agreement is the joint work product of Seller and Buyer, which has been negotiated by the parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provisions of this Agreement, this Agreement shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

31. **Binding Effect**. Subject to the provisions contained herein, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the

Exhibits, addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

32. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Agreement.

33. **Endorsement and Deposit of Payments**. Buyer has the right to endorse and deposit checks which it receives from payers for Accounts Receivable which have been purchased by Buyer.

34. **Counterparts**. This Agreement may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. **Notice**. All notices and other communications that are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (a) when received if personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g., Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the others.

36. **Prior Understandings**. This Agreement supersedes any and all prior discussions and agreements between Seller and Buyer with respect to the purchase of the Accounts and other matters contained herein, and this Agreement contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

37. **Non-Merger/Survival**. Each and every covenant hereinabove made by Buyer or Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

38. **Non-Disclosure Agreement.** Buyer and Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

39. **Integrated Agreement**. With the exception of the NDA, this Agreement and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Buyer and the Seller. This Agreement shall not be altered or modified except by a subsequent writing, signed by Buyer and Seller.

40. **Successors and Assigns**. This Agreement shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Seller assign any of its rights and/or obligations pursuant to this Agreement to any third-party, absent prior express written consent of Buyer.

41. **Headings**. The headings of articles and sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

42. **No Third-Party Beneficiary**. This Agreement is for the sole benefit of the parties hereto, and nothing contained in this Agreement shall be construed to grant any person or entity, other than Seller and Buyer and their respective successors and permitted assigns, any right under or in respect of this Agreement or any provision hereof.

43. **Other Agreements**. This Agreement may not adversely affect Buyer's rights under any other document or agreement. If there is a conflict between this Agreement and any agreement between Seller and Buyer, Buyer may determine in its sole discretion which provision applies.

44. **Further Assurances**. In connection with this Agreement and the transactions contemplated hereby, each party of this Agreement will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Agreement and the transactions contemplated or intended hereby.

45. **Amendments**. Any additions, deletions, or waivers to this Agreement shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement for Accounts Receivable on the date indicated in the introductory paragraph herein.

Buyer: MedFinance Servicing, LLC

Print Name: Nate Ormond

By (Signature): Nate Ormond

Date: 8/2/2019

Title: President

Seller:

Print Name: Mark Seda

By (Signature): M Seda

Date: 8/2/2019

Title: Ceo C Spinceoe ortho

Accounting Signoff

Print Name: Alan T. Macdonald

By (Signature): Alan T. Macdonald

Date: 8/2/2019

Bulk Purchase and Sale Agreement for Accounts Receivable

This BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNTS RECEIVABLE ("**Agreement**") is entered into as of september 13, 2019 by and between **MedFinance Servicing, LLC and/or Well States Healthcare, LLC** ("**Buyer**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and Sea Spine Orthopedic, LLC, a company organized and existing under the laws of the State of Florida, with a principal place of business located at 3107 W Hallandale Beach Blvd, Suite 101, Pembroke Park, FL 33009 (the "**Seller**") (collectively the "**Parties**").

WHEREAS, Seller operates a medical practice located in the State of Florida; and

WHEREAS, Seller has provided medical treatment, services, and products (hereinafter collectively referred to as "**Medical Treatment**") to individuals for whom Seller has deferred collection of payment for the Medical Treatment, pending resolution of claims and/or lawsuits which the Patients have brought or will bring against third parties, where the individuals are seeking compensation related to the causation of the injuries or other medical conditions for which the Medical Treatment was provided ("**Patient**" or "**Patients**"); and

WHEREAS, as a condition of deferring the collection of payment for the Medical Treatment provided, Seller has entered into an agreement with each Patient which guarantees that payment for the Medical Treatment provided by Seller will be paid from funds recovered from any source, whether as a result of settlement or trial, relating to the claims and/or lawsuit against a third party who allegedly caused Patient's injuries (hereinafter "**Medical Lien**" and/or "**Letter of Protection**"); and

WHEREAS, The Medical Lien and/or Letter of Protection specifically encumbers the proceeds to be or already realized by Patient from any recovery received from the claims/lawsuit and specifies that the Patient may remain responsible for any outstanding balance owed to Seller for the Medical Treatment until fully paid; and

WHEREAS, Seller desires, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, to sell, transfer, assign, and convey Seller's legal and equitable rights and interests ("**Rights, Title, and Interest**") in each Medical Lien, Letter of Protection, and/or Accounts Receivable (defined below) as identified on the Schedule of Accounts attached hereto as Exhibit A ("**Accounts**"); and

WHEREAS, Buyer desires to purchase, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, Seller's Rights, Title, and Interests in each Medical Lien, Letter of Protection, and/or Accounts Receivable listed on Exhibit A.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Agreement by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Seller's Accounts Receivable**. Seller owns certain accounts receivable created by Seller providing Medical Treatment to a Patient for injuries suffered as the result of an accident or incident caused by a third-party ("**Accounts Receivable**"). The Accounts Receivable are secured by a Medical Lien, Letter of Protection, or other document between the Seller and the Patient whereby the Patient agrees to satisfy the Account with the Seller from future monies recovered as a result of a settlement or trial judgment with a third party against whom the Patient has a claim, including a third party's insurance carrier, or Patient's insurance company, and which provides that in the event that there is no settlement or monies recovered, or the amount received is insufficient to pay the Account, Patient may remain liable for all amounts due to the Seller.

2. **Purchase and Sale of Accounts Receivable**. Buyer wishes to purchase, and Seller wishes to sell, subject to the terms herein, Seller's Rights, Title, and Interests in certain Accounts Receivable on which Seller has not yet received payment from any other source. Attached hereto as Exhibit A is a Schedule of Accounts identifying Accounts Receivable on which Seller has not received payment from any source. Seller represents and warrants that the total value of, and amount due and owing on, the Accounts Receivable is $ 1,021,980.95. Buyer shall purchase from Seller, and Seller shall sell, transfer, assign, and convey to Buyer, Seller's Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A, as well as Seller's Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A. Upon closing on the **Closing Date** (as defined below), Buyer and Seller shall reflect such sale in their financial records. At all times thereafter, Buyer shall retain the Rights, Title, and Interests to the Accounts Receivable listed on Exhibit A, and all Medical Liens or Letters of Protections connected thereto. Buyer at all times will retain full legal right to sell, convey, and/or assign the Accounts Receivable purchased from Seller to a third party.

MMO _____ _____

3. **Consideration**. In consideration for the purchase of the Accounts Receivable identified on Exhibit A, Buyer shall issue payment to Seller in the amount of $_____ ("**Consideration**"). Upon receipt of such Consideration by Seller, Seller's Rights, Title, and Interests in the Accounts Receivable, Medical Liens, and/or Letters of Protection shall be deemed transferred, assigned, and sold to Buyer.

MMO _____ _____

4. **Servicing**. Seller acknowledges that on the **Closing Date**, (as defined in Section 12 below) Buyer will take over servicing of all Accounts without limitation. As of the **Cutoff Date** (as defined in Section 12 below), Seller shall not settle, solicit, or accept collections on any of the Accounts Receivable. If Seller receives any communications or inquiries in connection with any Accounts Receivable sold to Buyer, Seller shall direct the same to Buyer within 72 hours after Seller's receipt of said communication or inquiry.

5. **Power of Attorney**. In order to support the Buyer's collection efforts with regard to the Accounts Receivable, Seller hereby makes, constitutes, and appoints Buyer, with full power of substitution, its true and lawful attorney in fact, for it and its name, place and stead, to make, execute, sign, acknowledge, swear to, deliver, record, and file any document or instrument which may be considered necessary or desirable by Buyer to carry out the provisions of this Agreement, including, but not limited to, enforcement of any Medical Lien or Letter of Protection in the name of Seller with respect to an Account Receivable and issuing payment instructions with respect to any proceeds paid or payable of such Account Receivable ("**Power of Attorney**"). The foregoing Power of Attorney is coupled with an interest and shall be irrevocable. Without limiting the generality of the Power of Attorney, at the request of Buyer, Seller shall promptly execute and deliver such further documents and instruments as the Buyer reasonably determines to be necessary to enable or facilitate the Buyer's collection efforts with regard to the Accounts Receivable.

6. **Seller's Payment Obligations**.

   a. Payment Received: When Seller receives credits, payments, or other consideration distributed or paid by or on behalf of a Patient with respect to any Accounts Receivable listed in Exhibit A, Seller shall report such payments to Buyer and shall transfer and/or deliver such payments to Buyer via wire transfer or company check along with a copy of the payment received by Seller **within three (3) business days of receipt** until the Guaranteed Return has been satisfied. All payments received by Seller or Buyer for

payment on any Account for which there are multiple, potentially conflicting liens held by any party shall first be applied to pay in full all amounts due and owing to Buyer.

7. **Seller's Representations and Warranty**. As of the date of this Agreement and the Closing Date Seller represents and warrants to Buyer as follows:

a. Seller represents and warrants that it is the sole and unconditional owner of all Accounts Receivable sold to Buyer, and that it has the legal authority to sell and transfer ownership of all Accounts Receivable to Buyer. Seller additionally represents and warrants that all Accounts Receivable sold to Buyer are now and will at all times after Buyer's purchase of the same, remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Seller has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its medical practice as now being conducted and to provide the Medical Treatment which generated the Accounts Receivable. Such Authorizations were in full force and effect at time the Medical Treatment was provided and remain in full force and effect as of the Closing Date (as defined below).

c. Seller's employees, contractors, and agents, each of which have all licenses and permits required by law, if any, to perform the Medical Treatment which generated the Accounts Receivable. All such licenses and permits were in full force and effect at time the Medical Treatment was provided and, to the best Seller's knowledge, remain in full force and effect as of the Closing Date.

d. The execution and delivery of this Agreement and the performance hereunder have been duly authorized, by all necessary actions on the part of Seller, and no provision of applicable law or regulation, the charter or bylaws of Seller, any agreement, judgment, injunction, order, decree, or other instrument binding upon Seller is or will be contravened by Seller's execution and delivery of this Agreement or Seller's performance hereunder.

e. No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration, or registration with, any governmental agency, regulatory authority, or any other body is required to be obtained by Seller in connection with the execution, delivery, or performance by Seller of this Agreement.

f. Seller certifies that each Account Receivable assigned hereunder is being transferred free and clear of any lien and/or encumbrance other than a Medical Lien and/or Letter of Protection. Any Accounts Receivable assigned to Buyer by Seller shall be true, accurate, and complete. Each Medical Lien and/or Letter of Protection shall reflect reasonable and customary charges for bona fide and medically necessary medical procedures and/or treatments actually rendered. All charges, fees, and/or costs for the Medical Treatment underlying the Accounts Receivable are reasonably and customarily priced based on the current relative value of the Current Procedural Terminology ("**CPT**") code associated with the Medical Treatment Seller rendered or provided to the Patients.

g. Seller hereby acknowledges and represents that the assignment of the Accounts Receivable hereunder: (i) is not made in contemplation of the insolvency of Seller; (ii) is not made with the intent to hinder, delay, or defraud the creditors of Seller; (iii) has been approved by an officer of Seller with the authority to approve the assignment contemplated herein; (iv) will be recorded in the records of Seller; and (v) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, Buyer is neither an insider nor an affiliate of Seller.

h. To the best of Seller's knowledge and belief, each of the Accounts Receivable has been originated, maintained, and serviced by Seller in compliance with all applicable local, state, and federal laws.

i. None of the Accounts Receivable being assigned are subject to pending litigation or arbitration against the Seller, nor has Seller been notified of any demand or dispute regarding the Medical Treatment that was performed.

j. None of the Accounts Receivable are subject to any fees owed to any third parties, unless otherwise disclosed to Buyer herein.

k. Except with regard to a representation or warranty related to Seller's operations, formation, or continued existence, all representations and warranties contained in this Section shall survive the execution of the Agreement and the Closing Date.

l. Seller represents and warrants it has provided to Buyer complete and unfettered access to information regarding the Accounts Receivable and, in particular, has informed Buyer of the risks associated with the collectability (and ultimate collection) of the Accounts Receivable.

m. The information supplied to Buyer by Seller concerning the Accounts Receivable is materially true and accurate.

n. This Agreement constitutes a legal, valid, and binding obligation of the Seller and shall remain enforceable, in law and equity, against the Seller.

o. This Agreement constitutes a valid assignment to the Buyer of all Rights, Title, and Interests of the Seller in the Accounts Receivable and the proceeds thereof, and following such assignment, the Buyer shall own all Rights, Title, and Interest to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable.

p. Seller owns all necessary legal and contractual rights to pursue collection on all Accounts Receivable and against all Patients and there are no contractual restrictions, written or oral, or other restrictions of any kind between Seller and any Patient which would restrict Seller or Buyer from pursuing the collection of any Accounts Receivable from any Patient.

q. Seller shall retain all liability for all actions and events of any kind which occurred on or prior to the Closing Date regarding any Accounts Receivable.

r. Seller shall provide any and all required support reasonably requested by Buyer in order to prove the Accounts Receivable are due, including but not limited to, documents, Account documents, depositions, live testimony in Court, and reports and/or memoranda necessary or desirable, in any court proceeding, arbitration proceeding, mediation, or settlement negotiations related to the Accounts Receivable due or any Patient's demand or lawsuit against Buyer, Seller, or any third party.

s. Seller has not failed in any obligation, if any, to file any claim with any medical insurance carrier known to Seller to provide or medical insurance coverage to the Patient at the time the Medical Treatment was received by Patient. None of the Accounts Receivable are subject to any Medicare, Medicaid or other governmental reimbursement program as to the payment of any portion of the Accounts Receivable being purchased by Buyer, nor are any of the Accounts Receivable subject to any capitation arrangement, fee schedule, discount formula, cost-reimbursement or other adjustment or limitation to the Seller's usual charge.

t. SELLER REPRESENTS, WARRANTS, ACKNOWLEDGES, AGREES, AND PROMISES THAT IT SHALL PAY TO BUYER THE FULL AMOUNT OF ANY

PAYMENT RECEIVED BY SELLER ON ANY ACCOUNT INCLUDED, OR REQUIRED TO BE INCLUDED, ON EXHIBIT A.

8. **Buyer's Representations and Warranty**. As of the date of this Agreement and the Closing Date, Buyer represents and warrants to Seller as follows:

a. Buyer is duly organized, validly existing, and in good standing under the laws of the State of Utah with all requisite power and authority to carry on its business as now being conducted, to execute, deliver, and perform this Agreement and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby. Buyer is duly qualified to conduct business as a foreign entity and is in good standing in each jurisdiction in which business transacted by it as contemplated in this Agreement requires such qualification and in which the failure to do so would have a material adverse effect on its ability to perform its obligations under this Agreement or the enforceability thereof.

b. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Buyer, any resolution adopted by the members or managers of Buyer, or any other loan, credit agreement, contract, applicable law, or governmental approval applicable to Buyer, or any court order which affects or binds Buyer. No additional governmental approval and no consent or approval of any other person or entity is required on the part of Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

c. There is no actual pending litigation (i) that has been commenced by or against Buyer or that otherwise relates to or may affect Buyer's right to consummate the transactions contemplated by this Agreement, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with this Agreement or the transactions contemplated hereby. To the knowledge of Buyer, no litigation has been threatened, and no event has occurred, or circumstance exists that may give rise to or serve as a basis for the commencement of any litigation that in any way affects Buyer's ability to complete the transactions contemplated in this Agreement.

d. Buyer and its agents, representatives, and contractors, when performing under this Agreement, and as long as Buyer retains any Rights, Title, and Interests in the Accounts, or the right to collect on the same, will comply with each law that is applicable to Buyer, its agents, representatives, and contractors, on the servicing, ownership, collection on, or use of the Accounts, including, but without limitation, the Gramm-Leach-Bliley Act, HIPAA, HIECH, and all applicable consumer credit laws, if any.

e. Buyer has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of purchasing the Accounts and is, by virtue of having made other purchases of a similar nature and/or by reason of its business and financial experience or the business and financial experience of those individuals it has retained to advise Buyer with respect to its purchasing the Accounts.

f. The transactions contemplated by this Agreement do not involve, nor are they intended in any way to constitute, the assignment or sale of a "security" or "securities" within the meaning of any applicable securities or blue-sky laws, and none of the representation, warranties, or agreements of the Buyer shall create any inference that the transactions involve any "security" or "securities." Buyer understands that not all Accounts are secured

by collateral or that any payment received is associated with any particular Account. Buyer understands that this purchase involves a high degree of risk.

9. **Events of Default**. Any one or more of the following constitutes an **Event of Default**:

   a. Seller files or has filed against it any bankruptcy proceedings or any assignment for the benefit of creditors, or appointment of a receiver or custodian for any of its Accounts;

   b. Seller becomes insolvent or is generally not paying its debts as they become due, or is left with unreasonably small capital;

   c. Any involuntary lien, garnishment, encumbrance, or attachment attaches to the Accounts Receivable;

   d. Seller breaches or fails to satisfy when due any covenant, agreement, obligation, warranty, or representation in this Agreement;

   e. Seller is in default under any document, instrument, or agreement evidencing any debt, obligation, or liability in favor of Buyer or its affiliates or vendors, regardless of whether the debt, obligation, or liability is direct or indirect, primary or secondary, or fixed or contingent;

   f. An event of default occurs under any guaranty or obligation of Seller to a third party, or any material provision of any guaranty given by Seller to a third party is not valid or enforceable in favor Seller, or is repudiated or terminated;

   g. A default or event of default occurs under any agreement between Seller and any creditor of Seller;

   h. Any creditor that has signed a subordination agreement with Buyer breaches any terms of the subordination agreement; or

   i. A material impairment in the perfection or priority of the Buyer's security interest in the Accounts; (ii) a material adverse change in the business, operations, or conditions (financial or otherwise) of the Seller occurs; or (iii) a material impairment of the prospect of repayment of any portion of the Accounts Receivable occurs.

10. **Seller's Obligation to Repurchase Accounts**. Upon written notice from Buyer, Seller will repurchase any Account to which any of the following conditions applies:

   a. Death of all Patients on or prior to the Cutoff Date (as defined below);

   b. The Account was not properly handled prior to sale, rendering the balance legally uncollectable;

   c. The filing of bankruptcy proceedings, or other proceeding which seeks liquidation, reorganization, or discharge of the Account, by the Patient after the Patient's Account origination date and on or prior to the Cutoff Date without subsequent dismissal;

   d. The Account was created as a result of fraud, forgery, or Seller's mistake, such that the Patient has no liability for such Accounts;

   e. On or prior to the Cutoff Date, Seller received payment in full settlement of the Account, but which was not deleted from the Account schedule by Seller;

   f. The Account is a duplicate record of any other Account being sold hereby;

   g. The Patient has initiated litigation, whether through an administrative or court action, suit, arbitration, or other proceeding, against Seller;

h. The Account was disputed prior to the Cutoff Date in any way that would materially impair the validity or enforcement of any balance or reduce the amount payable under an Account from the balance thereof contained in and on Exhibit A;

i. The Patient has been released from liability, or the respective Account has otherwise been satisfied, compromised, settled, cancelled, released, or subordinated;

j. The Seller is not the sole owner of the account and does not have full right to transfer and sell the Account free and clear of any encumbrance, equity, lien, pledge, charge, claim, or security interest, except as otherwise contemplated herein;

k. The information contained in Exhibit A, in reference to a particular Account, is not true and correct;

l. In the event that it is determined by Buyer that Seller is in breach of any covenant, agreement, obligation, warranty, or representation as set forth herein relating to any Accounts purchased by Buyer, Buyer shall notify Seller in writing of the circumstances which Buyer has discovered, within five (5) days of the discovery, which thereafter creates Buyer's right to require Seller to repurchase the Accounts. If Seller does not cure the event within thirty (30) days of notification, Buyer shall have the right to require that Seller repurchase the Accounts from Buyer consistent with Section 11 below.

11. **Procedure for Account Repurchase**. For any Account that meets a condition set forth in Section 10, Buyer will reassign such Account to Seller. Seller shall refund to the Buyer the Consideration attributable to such Account, less any amounts collected by Buyer after the Cutoff Date and prior to Buyer's notification to Seller that the Account is subject to repurchase. The repurchase price shall be paid to Buyer within fourteen (14) days after Seller's receipt of the documents and instruments required to reassign such Account to Seller, and the appropriate information is received regarding any amounts collected on the account.

12. **Closing**. The **Closing Date** will be on September 13, 2019, or at such other time mutually agreed to by the Parties in writing. The following actions related to this Agreement will be taken by Seller and Buyer on, or immediately subsequent to, the Closing Date:

a. Pre-Closing Adjustments: Purchase is subject to adjustment to reflect:

i. The current balance actually due as of September 1, 2019 (the "**Cutoff Date**") (e.g., deductions for unapplied contractual adjustments/write-offs, or unreported payments received before the Cutoff Date); or

ii. Any Account that Buyer determines, in its sole discretion, to remove from the schedule of Accounts listed in Exhibit A prior to the Closing Date.

b. On the Closing Date, Buyer and Seller will execute this Agreement; and

c. Upon the full execution of the Agreement, Buyer shall pay to Seller the monies for the Accounts as described herein. Consideration shall be paid to Seller in immediately available funds, by wire transfer in accordance with the Wire Transfer Instructions attached hereto as Exhibit B.

MMO _____ _____

13. **Conditions Precedent**.

a. **Conditions Precedent to Seller's Obligations.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Buyer in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Buyer shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law. Consummation by Seller of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any Law that applies to Seller.

iv. Deliveries at Closing. The Consideration shall have been paid and all documents to be delivered and actions to be taken on or before Closing by Buyer shall have been delivered or taken.

b. **Conditions Precedent to Buyer's Obligations**. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Seller in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Seller shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law or Litigation. Consummation by Buyer of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any law that applies to Buyer. No claim, action, suit, investigation, or proceeding is pending or has been threatened which is likely to restrict, prohibit, or otherwise have a material adverse effect on the transactions contemplated by this Agreement.

iv. Confirmation of Certain Items. Seller shall have confirmed to Buyer that Exhibit A fairly and accurately reflects, in all material respects, the information contained therein.

v. Deliveries at Closing. In accordance with this Agreement, all documents to be delivered and actions to be taken on or before Closing by Seller shall have been delivered or taken.

vi. No Material Adverse Change. There shall have been no material adverse change in the condition, financial or otherwise, of Seller or the Accounts. Through the Closing Date, the Seller and its agents have not effected any material change in their policies and procedures relating to the Accounts that could reasonably be expected to have a material adverse effect on any of the Accounts.

14. **Accounts Receivable in Good Standing**. The Accounts Receivable sold hereunder have been, or will be, made in good faith and authenticated by a representative of the Seller and the Patient, to the extent necessary. The treatment or services rendered, or goods sold, to the Patient on the Accounts Receivable have been, and will continue to be, medically reasonable and necessary and will not have been misrepresented to the Patient. The dollar amount of the Accounts Receivable will not exceed the reasonable and customary charges for the treatment, services, or goods provided to the Patient. Seller guarantees to fulfill all warranties and representations made to the Patient.

15. **Priority**. Seller hereby agrees and acknowledges that any Accounts Receivable or sums otherwise due to Buyer for a Patient shall receive priority over any other accounts or sums due to Seller for such Patient. Buyer shall have the right to collect all amounts due from a Patient for any treatment, services, or goods received from Seller, including amounts related to accounts receivable not purchased by Buyer. In such an event, Buyer will first apply all collected amounts to the sums due and owing on Buyer's Accounts Receivable and thereafter disburse any remaining funds to Seller for any accounts receivable not purchased from the Seller by Buyer.

16. **Confidentiality**. The Parties agree to keep confidential all terms of this Agreement, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the payment terms set forth in this Agreement to anyone, except as required by law, in which case the disclosing party will give notice to the non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Seller and Buyer to any source. If any law requires disclosure of the payment terms between Seller and Buyer in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Agreement and any related agreement shall not be made part of the Patient's medical records.

17. **HIPAA**. The Parties agree to protect the privacy of all Accounts Receivable and medical documents and to comply with the Health Insurance Portability and Accountability Act ("**HIPAA**") guidelines.

18. **Further Assistances Assurances and Cooperation**. Seller, its agents, employees, members, shareholders, representatives, and/or doctors, shall cooperate in all respects with the collection, handling, management, and transfer of the Accounts Receivable. Seller agrees to furnish Buyer with one copy of all medical records, billing documentation, and all other information or documentation that may be necessary to support or assist Buyer's, or its assignee's or representative's, collection of any Accounts Receivable. Seller further agrees to maintain all medical records, billing records, and other books and records relating to the care provided to the Patient in accordance with good and commercially reasonable medical practices and all applicable laws. When requested by Buyer, Seller agrees to cooperate and assist Buyer, at no additional charge to Buyer, with the collection or defense of any Accounts Receivable. Moreover, each Party shall execute and deliver or cause to be executed and delivered to the other such further instruments and shall take such other action as the other may reasonably require to effectuate the contemplated transactions.

19. **Buyer's Indemnification**. From and after the Closing Date, Buyer shall indemnify and hold Seller harmless against and from any and all liability for, and from and against any and all losses or damages Seller may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Seller in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Seller to enforce this indemnification, which Seller shall incur or suffer as a result of:

a. Any act or omission of Buyer or Buyer's agents, assigns, or transferees in connection with the Accounts and its purchase of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Buyer's representations or warranties herein;

c. The material breach of any of Buyer's covenants herein; or

d. Any claim by any Patient regarding assignment, subsequent enforcement, servicing, or administration of the Accounts by Buyer or Buyer's agents.

The obligations of Buyer under this Section 19 shall survive the closing of the transactions herein contemplated.

20. **Seller's Indemnification**. From and after the Closing Date, Seller shall indemnify and hold Buyer harmless against and from any and all liability for, and from and against any and all losses or damages

Buyer may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Buyer in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Buyer to enforce this indemnification, which Buyer shall incur or suffer as a result of:

a. Any act or omission of Seller or Seller's agents (but not including any independent contractors such as collection agencies or attorney or law firms retained to collect on Accounts) in connection with the Accounts and its sale of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Seller's representations or warranties herein;

c. The material breach of any of Seller's covenants herein; or

d. Any claim by any Patient regarding the origination, servicing, collection, or administration of the Accounts by Seller or Seller's agents.

The obligations of Seller under this Section 20 shall survive the closing of the transactions herein contemplated.

21. **Procedure for Indemnification**. Any party seeking indemnification ("**Indemnitee**") with respect to a claim or loss shall give prompt written notice thereof to the party against whom indemnification is sought ("**Indemnitor**"). Indemnitor shall have the right to assume the defense of any and all claims for which indemnification is sought hereunder, and Indemnitee agrees to cooperate with Indemnitor in any such defense. If the amount of any claim or loss shall, at any time subsequent to payment pursuant to this Agreement, be reduced by recovery, settlement, or otherwise, the amount of such reduction, less any expenses incurred in connection therewith, shall promptly be repaid by the Indemnitee to the related Indemnitor. If the Indemnitor elects to assume the defense, the Indemnitee shall retain the right to consent to the selection of counsel, the terms of settlement, and any use of Indemnitee's or its affiliate's name in any settlement or any notification, advertisement, or publication of the settlement.

22. **Choice of Law, Venue and Jury Waiver**. This Agreement and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Agreement, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. In the event that Seller breaches any part of this Agreement in a manner that causes irreparable injury to Buyer, Seller acknowledges that Buyer shall have no adequate remedy at law, and shall therefore be entitled to enforce each such obligation by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies which may be available at law or in equity. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Seller and Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

23. **Attorneys' Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Agreement, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

24. **Confidentiality/Trade Secret**. This Agreement, its terms, conditions, substance of discussions between the parties, all documentation related to this Agreement, and any other information exchanged between the Parties that relates to this Agreement represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Agreement, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

25. **Relationship of the Parties**. The relationship between Seller and Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Agreement. Under no circumstance does this Agreement create any medical or healthcare obligation on the part of Buyer, as Buyer is neither a medical nor healthcare professional or provider of any kind. Buyer will not direct Patient medical care in any way, and all medical decisions are solely between Seller and the Patient. Seller and the Patient(s) are free to embark upon whichever courses of medical treatment or services they deem reasonable and necessary, but Buyer is not obligated to purchase any portion of any Accounts Receivable related to said treatment, services, or goods provided that is not listed on Exhibit A.

26. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

27. **Interpretation**. Each party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

28. **Rights Cumulative; Waivers**. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

29. **Construction**. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

30. **No Strict Construction**. This Agreement is the joint work product of Seller and Buyer, which has been negotiated by the parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provisions of this Agreement, this Agreement shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

31. **Binding Effect**. Subject to the provisions contained herein, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the

Exhibits, addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

32. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Agreement.

33. **Endorsement and Deposit of Payments**. Buyer has the right to endorse and deposit checks which it receives from payers for Accounts Receivable which have been purchased by Buyer.

34. **Counterparts**. This Agreement may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. **Notice**. All notices and other communications that are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (a) when received if personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g., Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the others.

36. **Prior Understandings**. This Agreement supersedes any and all prior discussions and agreements between Seller and Buyer with respect to the purchase of the Accounts and other matters contained herein, and this Agreement contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

37. **Non-Merger/Survival**. Each and every covenant hereinabove made by Buyer or Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

38. **Non-Disclosure Agreement.** Buyer and Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

39. **Integrated Agreement**. With the exception of the NDA, this Agreement and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Buyer and the Seller. This Agreement shall not be altered or modified except by a subsequent writing, signed by Buyer and Seller.

40. **Successors and Assigns**. This Agreement shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Seller assign any of its rights and/or obligations pursuant to this Agreement to any third-party, absent prior express written consent of Buyer.

41. **Headings**. The headings of articles and sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

42. **No Third-Party Beneficiary**. This Agreement is for the sole benefit of the parties hereto, and nothing contained in this Agreement shall be construed to grant any person or entity, other than Seller and Buyer and their respective successors and permitted assigns, any right under or in respect of this Agreement or any provision hereof.

43. **Other Agreements**. This Agreement may not adversely affect Buyer's rights under any other document or agreement. If there is a conflict between this Agreement and any agreement between Seller and Buyer, Buyer may determine in its sole discretion which provision applies.

44. **Further Assurances**. In connection with this Agreement and the transactions contemplated hereby, each party of this Agreement will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Agreement and the transactions contemplated or intended hereby.

45. **Amendments**. Any additions, deletions, or waivers to this Agreement shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement for Accounts Receivable on the date indicated in the introductory paragraph herein.

Buyer: MedFinance Servicing, LLC

Print Name: Nate Ormond

By (Signature): Nate Ormond

Date: 9/13/2019

Title: President

Seller:

Print Name: Mark Seda

By (Signature): M Seda

Date: 9/13/2019

Title: Ceo

Accounting Signoff:

Alan Macdonald

Alan Macdonald

9/13/2019

RATIFICATION OF PURCHASE AGREEMENTS FOR ACCOUNTS RECEIVABLE

This RATIFICATION OF PURCHASE AGREEMENTS FOR ACCOUNTS RECEIVABLE ("**Agreement**") is entered into as of November 8, 2019, by and between **MedFinance Servicing, LLC** ("**MedFinance**" or "**Buyer**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and **C-Spine Orthopedics, PLLC**, a company organized and existing under the laws of the State of Michigan, with a principal place of business at 29255 Northwestern Hwy, Suite 201, Southfield, MI 48034 (the "**C-Spine**" or "**Seller**") (collectively the "**Parties**").

WHEREAS, C-Spine is a medical practice owned in whole by A. Joshua Appel, whom also owns in whole Sea Spine Orthopedic Institute, LLC, a company organized and existing under the laws of the State of Florida, with a principal place of business located at 3107 West Hallandale Beach Blvd., Unit 100, Pembroke Park, Florida 33009 ("**Sea Spine**").

WHEREAS, C-Spine and Sea Spine provide substantially the same types of services, using substantially similar staff members. Likewise, both companies utilize the third-party billing services of third-party Sentinel Billing Solutions, LLC. Both companies also maintain the same Chief Executive Office, Mark Seda.

WHEREAS, The Parties entered into numerous Purchase Agreements for Accounts Receivable beginning in March 30, 2018 up and through October 25, 2019, as more specifically outlined in Exhibit A, attached hereto (collectively "**Purchase Agreements**"). The Purchase Agreements were utilized for the purpose of selling and assigning various accounts receivables, as specifically outlined in each such Purchase Agreement and the exhibits attached thereto. At the time of entering into these Purchase Agreements, the Parties inadvertently and in error made the contracts in the name of Sea Spine instead of C-Spine, with all contracts being signed by Mark Seda, the CEO of both companies.

WHEREAS, The Parties affirm and agree that the use of Sea Spine instead of C-Spine was completely in error, when it was, in fact, the intent of to bind C-Spine to each of the individual Purchase Agreements.

WHEREAS, The Parties now wish to rectify this error, and by this document ratify all Purchase Agreements in the name of C-Spine, and thereby affirm their intent to be bound by said Purchase Agreements, both as of the time of each individual Purchase Agreement as well as today.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Agreement by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Ratification of Purchase Agreements**. C-Spine affirms and agree, in whole and without reservation, that it was, and is, their intent to be bound by all of the Purchase Agreements, and each of the specific terms outlined therein, as if C-Spine had originally been a party to the Purchase Agreements, as originally intended. C-Spine further affirms that they did, in fact, receive all funds as outlined in each Purchase Agreements, by and through their third-party billing company, Sentinel Billing Solutions, LLC, within no more than two business days from the date of each such Purchase Agreement.

2. **Consideration**. C-Spine acknowledges that sufficient consideration was provided at the time of each of the Purchase Agreements to be bound by said Purchase Agreements. MedFinance acknowledges that sufficient consideration was provided at the time of each of the Purchase

Agreements, when joined in conjunction with this Agreement ratifying each of the Purchase Agreements in the name of C-Spine.

3. **Additional Documents/Duty to Cooperate**. In the event the Parties (either of them or both) determine that any additional documents, testimony, or other evidence or information is required to further ratify this Agreement and/or the Purchase Agreements, both Parties agree and affirm that they will not unreasonably withhold or refuse to further ratify this Agreement and/or the Purchase Agreements without good cause. Further, the Parties affirm and agree that they each have the duty and obligation to cooperate in the collection of the accounts receivable in each of the Purchase Agreements and/or their exhibits.

4. **C-Spine's Representations and Warranty**. As of the date of this Agreement, and as of each of the Purchase Agreements herein referenced, C-Spine represents and warrants to MedFinance as follows:

   a. The execution and delivery of this Agreement and the performance hereunder have been duly authorized, by all necessary actions on the part of C-Spine, and no provision of applicable law or regulation, the charter or bylaws of C-Spine, any agreement, judgment, injunction, order, decree or other instrument binding upon C-Spine is or will be contravened by C-Spine's execution and delivery of this Agreement or C-Spine's performance hereunder.
   b. No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration, or registration with, any governmental agency, regulatory authority, or any other body is required to be obtained by C-Spine in connection with the execution, delivery, or performance by C-Spine of this Agreement.
   c. C-Spine certifies that each of the Accounts Receivable referenced in the Purchase Agreements and being assigned therein are/were transferred free and clear of any lien and/or encumbrance other than a Medical Lien and/or Letter of Protection. Any Accounts Received assigned under the Purchase Agreements and thereby assigned to MedFinance, were true, accurate, and complete. Each Medical Lien and/or Letter of Protection reflect/reflected reasonable and customary charges for bona fide and medically necessary medical procedures and/or treatments actually rendered.
   d. C-Spine hereby acknowledges and represents that the assignment of the Accounts Receivable under the Purchase Agreements: (i) is not made in contemplation of the insolvency of C-Spine; (ii) is not made with the intent to hinder, delay, or defraud the creditors of C-Spine; (iii) has been approved by an officer of C-Spine with the authority to approve the assignment contemplated therein; (iv) will be recorded in the records of C-Spine; and (v) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, MedFinance is neither an insider nor an affiliate of C-Spine.
   e. To the best of C-Spine's knowledge and belief, each of the Accounts Receivable referenced in the Purchase Agreements has been originated, maintained, and serviced by Seller in compliance with all applicable local, state, and federal laws.
   f. None of the Accounts Receivable referenced in the Purchase Agreements are subject to pending litigation or arbitration against C-Spine, nor has C-Spine been notified of any demand or dispute regarding the Medical Treatment that was performed.
   g. None of the Accounts Receivable referenced in the Purchase Agreements are subject to any fees owed to any third parties, unless otherwise disclosed to MedFinance herein.
   h. Except with regard to a representation or warranty related to C-Spine's operations, formation, or continued existence, all representations and warranties contained in this Section shall survive the execution of the Agreement and the Closing Date until such

time as MedFinance no longer retains Economic Right(s) to any of the Accounts Receivable being sold hereunder.

i. C-Spine represents and warrants it has provided to MedFinance complete and unfettered access to information regarding the Account Receivables and, in particular, has informed MedFinance of the risks associated with the collectability (and ultimate collection) of the Account Receivables referenced in the Purchase Agreements.

j. The information supplied to MedFinance by C-Spine concerning the Account Receivables referenced in the Purchase Agreements assigned to MedFinance under the Purchase Agreements is materially true and accurate.

k. This Agreement, as well as each and every Purchase Agreement constitutes a legal, valid, and binding obligation of C-Spine and shall remain enforceable, in law and equity, against the C-Spine.

l. This Agreement as well as each and every Purchase Agreement constitutes a valid assignment to MedFinance of all Economic Rights and interests of the C-Spine in the Account Receivables and the proceeds thereof, and following such assignment, MedFinance shall own all Economic Rights to all Accounts Receivable referenced in the Purchase Agreements, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable.

m. C-Spine owns all necessary legal and contractual rights to pursue collection on all Account Receivables referenced in the Purchase Agreements and against all Patients and there are no contractual restrictions, written or oral, or other restrictions of any kind between C-Spine and any Patient which would restrict C-Spine or MedFinance from pursuing the collection of any Accounts Receivable from any Patient.

n. C-Spine shall retain all liability for all actions and events of any kind which occurred on or prior to the Closing Date of the Purchase Agreements regarding any Accounts Receivable referenced therein.

o. C-Spine shall provide any and all required support reasonably requested by MedFinance in order to prove the Accounts Receivable referenced in the Purchase Agreements are due, including but not limited to, documents, Account documents, depositions, live testimony in Court, and reports and/or memoranda necessary or desirable, in any court proceeding, arbitration proceeding, mediation, or settlement negotiations related to the Accounts Receivable referenced in the Purchase Agreements due or any Patient's demand or lawsuit against MedFinance, C-Spine, or any third party.

p. C-Spine has not failed in any obligation, if any, to file any claim with any medical insurance carrier known to C-Spine to provide or medical insurance coverage to the Patient at the time the Medical Treatment was received by Patient. None of the Accounts Receivable referenced in the Purchase Agreements are subject to any Medicare, Medicaid or other governmental reimbursement program as to the payment of any portion of the Accounts Receivable referenced in the Purchase Agreements purchased by MedFinance, nor are any of the Accounts Receivable referenced in the Purchase Agreements subject to any capitation arrangement, fee schedule, discount formula, cost-reimbursement or other adjustment or limitation to the Seller's usual charge.

q. C-SPINE REPRESENTS, WARRANTS, ACKNOWLEDGES, AGREES, AND PROMISES THAT IT SHALL PAY TO MEDFINANCE THE FULL AMOUNT OF ANY PAYMENT RECEIVED BY C-SPINE ON ANY ACCOUNT INCLUDED, OR

r. REQUIRED TO BE INCLUDED, IN ANY AND EACH OF THE PURCHASE AGREEMENTS AND/OR THE EXHIBITS THERETO TO THE SCHEDULE OF ACCOUNTS.

5. **Confidentiality**. The Parties agree to keep confidential all terms of this Agreement, as well as the Purchase Agreements, including without limitation the payment terms contemplated herein/therein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the payment terms set forth in this Agreement to anyone, except as required by law, in which case the disclosing party will give notice to the non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between C-Sine and MedFinance to any source. If any law requires disclosure of the payment terms between C-Spine and MedFinance in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Agreement and any related agreement shall not be made part of the Patient's medical records.

6. **Choice of Law, Venue and Jury Waiver**. This Agreement and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Agreement, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including in personam jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. In the event that Seller breaches any part of this Agreement in a manner that causes irreparable injury to Buyer, Seller acknowledges that Buyer shall have no adequate remedy at law, and shall therefore be entitled to enforce each such obligation by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies which may be available at law or in equity. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of in personam jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. C-Spine and MedFinance further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

7. **Attorneys' Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Agreement, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

8. **Confidentiality/Trade Secret**. This Agreement, its terms, conditions, substance of discussions between the parties, all documentation related to this Agreement, and any other information exchanged between the Parties that relates to this Agreement represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Agreement, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

9. **Relationship of the Parties**. The relationship between C-Spine and MedFinance is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Agreement. Under no circumstance does this Agreement create any medical or healthcare obligation on the part of MedFinance, as MedFinance is neither a medical nor healthcare professional or provider of any kind. MedFinance will not direct Patient medical care in any way, and all medical decisions are solely between Seller and the Patient. C-Spine and the Patient(s) are free to embark upon whichever courses of medical treatment or services they deem reasonable and necessary, but MedFinance is not obligated to purchase any portion of any Accounts Receivable related to said treatment, services, or goods provided that is not listed on Exhibit A of the Purchase Agreements.

10. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

11. **Interpretation**. Each party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

12. **Rights Cumulative; Waivers**. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

13. **Construction**. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

14. **No Strict Construction**. This Agreement is the joint work product of Seller and Buyer, which has been negotiated by the parties and their respective counsel, and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provisions of this Agreement, this Agreement shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

15. **Binding Effect**. Subject to the provisions contained herein, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the Exhibits, addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

16. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Agreement.

17. **Endorsement and Deposit of Payments**. MedFinance has the right to endorse and deposit checks which it receives from payers for Accounts Receivable referenced in the Purchase Agreements which have been purchased by MedFinance.

18. **Counterparts**. This Agreement may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. **Notice**. All notices and other communications that are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (a) when received if personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g., Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the others.

20. **Successors and Assigns**. This Agreement shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall C-Spine assign any of its rights and/or obligations pursuant to this Agreement to any third-party, absent prior express written consent of MedFinance.

21. **Headings**. The headings of articles and sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

22. **No Third-Party Beneficiary**. This Agreement is for the sole benefit of the parties hereto, and nothing contained in this Agreement shall be construed to grant any person or entity, other than C-Spine and MedFinance and their respective successors and permitted assigns, any right under or in respect of this Agreement or any provision hereof.

23. **Other Agreements**. This Agreement may not adversely affect MedFinance's rights under any other document or agreement. If there is a conflict between this Agreement and any agreement between C-Spine andMedFinance, MedFinance may determine in its sole discretion which provision applies.

24. **Further Assurances**. In connection with this Agreement and the transactions contemplated hereby, each party of this Agreement will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Agreement and the transactions contemplated or intended hereby.

25. **Amendments**. Any additions, deletions, or waivers to this Agreement shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

Signature page to follow

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement for Accounts Receivable on the date indicated in the introductory paragraph herein.

Buyer: MedFinance Servicing

Print Name: Nate Ormond

By (Signature): Nate Ormond

Date: 11/8/2019

Title: President

Seller: C spine ortho

Print Name: Mark Seda

By (Signature): M Seda

Date: 11/8/2019

Title: Ceo

Apogee Capital Fund 5, LLC: Exhibit A C-Spine Orthopedics, PLLC- 002

This Exhibit is entered into between C-Spine Orthopedics, PLLC and Apogee Capital Fund 5, LLC, made pursuant to the fully executed Agreement dated August 30, 2019, and subject to any and all terms located with the August 30, 2019 agreement between the parties.

Assignment will be made on this Exhibit per the Agreement unless C-Spine Orthopedics, PLLC notifies APOGEE CAPITAL FUND 5, LLC, in writing, within 24 hours of receipt of this Exhibit.

NO SIGNATURE IS REQUIRED ON THIS EXHIBIT.

Medical Provider hereby warrants and represents that all bills and invoices which were the basis for the Receivables are true and accurate in all respects and were generated with usual and customary amounts for the Services. Medical Provider hereby further warrants and represents that all Services rendered and billed and listed under Full Bill Charges were necessary (with respect to the applicable Patient), that the amounts charged for the Services were reasonable at the time and place of the Services provided, and related to injuries sustained in the accidents or other occurrences which are the basis of claims or litigation, and the Proceeds from which are subject to the Liens securing the Receivables in the Total Amount of Provider Receivables reflected herein.
The Medical Provider is the person in charge of it's records. Attached to this Purchase Order are records that provide an itemized statement of the service and the charge for the service that Medical Provider provided to Patient on the dates specified therein. The attached records are kept by Medical Provider in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by Medical Provider or an employee or representative of Medical Provider who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the service was provided. The records are the original or an exact duplicate of the original. The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

updated 08-30-2019

Provider	Patients Name	DOS	Billing Amount	Billing Amt. Purchased By Apogee	Purchase %	Purchase Amount
[redacted]						

[redacted]

C-Spine	Cruz-Muniz, Jose	8/7/19	$620.46	$620.46	20%	$124.09
C-Spine	Cruz-Muniz, Jose	8/15/19	$255.59	$255.59	20%	$51.12
C-Spine	Cruz-Muniz, Jose	8/15/19	$7,476.75	$7,476.75	20%	$1,495.35
C-Spine	Cruz-Muniz, Jose	8/15/19	$1,000.00	$1,000.00	20%	$200.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$250.00	$250.00	20%	$50.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$160.00	$160.00	20%	$32.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$93.89	$93.89	20%	$18.78
C-Spine	Cruz-Muniz, Jose	8/15/19	$160.00	$160.00	20%	$32.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$15.13	$15.13	20%	$3.03

[redacted]

Exhibit G

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Case No. 20-1710-NF
Honorable Jennifer Faunce

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

_____/

Jenifer Measel (P74711)
Haas & Goldstein, PC
Attorney for Plaintiff
31275 Northwestern Highway, Suite 225
Farmington Hills, MI 48334
(248) 702-6550 / Fax: (248) 538-9044

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorneys for Defendant
888 West Big Beaver, Suite 600
Troy, MI 48084
(248) 354-0380 / Fax: (248) 250-9927
fvl@ntclaw.com
NAH@ntclaw.com

_____/

DEFENDANT PROGRESSIVE MARATHON INSURANCE COMPANY'S MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) AND 2.116(C)(5)

NOW COMES the Defendant, PROGRESSIVE MICHIGAN INSURANCE COMPANY, by and through its attorneys, NOVARA TESIJA & CATENACCI, PLLC, and in its motion in support of Summary Disposition pursuant to MCR 2.116(C)(10) and MCR 2.116(C)(5), states as follows:

1. That this case involves benefits that Plaintiff alleges are owed to it by Defendant by virtue of assignment of rights by Jose Cruz-Muniz under the No-Fault Act, MCL 500.3101 et seq.

2. That in its complaint Plaintiff states it seeks $106,698.57 for all services rendered for Jose Cruz-Muniz. (**Exhibit C**, Plaintiff's Complaint).

3. That during discovery, Plaintiff has made it apparent that third parties have purchased debts related to Jose Cruz-Muniz. (**Exhibit A**, Email exchange between Plaintiff and Defendant).

4. That Plaintiff delivered a series of account sales documents which have been attached hereto in chronological order as **Exhibit B**.

5. That these documents demonstrate that Plaintiff sold all claims included in the complaint to third parties. (**Exhibit B**; **Exhibit C**, Plaintiff's Complaint).

6. That Plaintiff provided a full sample contract and stated that the language on all its sales contracts were identical. (**Exhibit A**).

7. That the contract provided by and entered into by Plaintiff involving the sales of accounts is clear that Plaintiff retained no interest in any account sold. (**Exhibit D**, Debt Sale agreement).

8. That sales of accounts are governed under Article 9 of the commercial code, which prohibits the reservation of rights, legal or equitable, in the sale of accounts including medical debt. MCL 440.9101(1)(C); MCL 440.9318(1).

9. That there is no arguable legal or factual basis that Plaintiff is entitled to sue or recover on any portion of Cruz-Muniz's claim it has sold to a third party.

10. That no factual development or amendment of its complaint would entitle Plaintiff to relief for a claim that is rightfully owned by another, and amendment for that purpose would therefore be futile and should not be granted.

11. That Summary Disposition under MCR 2.116(C)(10) is proper as documentation provided by Plaintiff demonstrates it lacks the legal right to recover any of the charges it asserted in its complaint and lacks standing.

12. That corporations and voluntary associations do not have the legal capacity to represent the interests of other persons under Michigan's corporate practice of law statue under MCL 450.681, and thus Plaintiff cannot have the legal capacity to sue on for debts owned by another. Because Plaintiff cannot maintain such a suit Summary Disposition is appropriate under MCR 2.116(C)(5) as plaintiff lacks the legal capacity to sue for the debts at issue.

Wherefore, Defendant, PROGRESSIVE MARATHON INSURANCE COMPANY, respectfully requests this honorable Court dismiss Plaintiff's action pursuant to MCR 2.116(C)(10) or MCR 2.116(C)(5) as it deems appropriate.

Respectfully submitted,

NOVARA TESIJA & CATENACCI, PLLC

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorney for Defendant
888 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380
nah@ntclaw.com

Dated: January 19, 2021

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
(as Assignee of Jose Cruz-Muniz)

Plaintiff,

Case No.: 19-003714-NF
Honorable Michael E.

Servitto
-vs-

PROGRESSIVE MICHIGAN
INSURANCE COMPANY,

Defendant.

JENIFER MEASEL (P74711)
Haas & Goldstein, P.C.
Attorney for Plaintiff
31275 Northwestern Highway, Suite 225
Farmington Hills, MI 48334
(248) 702-6550; Fax: (248) 538-9044
jmeasel@haasgoldstein.com

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorneys for Defendant
888 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380; Fax: (248) 250-9927
fvl@ntclaw.com
NAH@ntclaw.com

DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION PURSUANT TO MCR 2.116(C)(10) AND 2.116(C)(5)

NOW COMES the Defendant, PROGRESSIVE MICHIGAN INSURANCE COMPANY, by and through its attorneys, NOVARA TESIJA & CATENACCI, PLLC, and for its brief in support of its motion for Summary Disposition pursuant to MCR 2.116(C)(10) and MCR 2.116(C)(5), states as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

This case involves a claim for variety of medical services for Jose Cruz-Muniz provided by Plaintiff, C-Spine Orthopedics, which seeks $106,698.57. In communications between Defendant and Plaintiff it became apparent that Plaintiff has sold some or all of its account

receivable for Jose Cruz-Muniz to other parties. (**Exhibit A**, Email exchange between Plaintiff and Defendant).

Pursuant to discovery, Defendant has requested that Plaintiff produce any agreements which demonstrate that Plaintiff has sold some or all of Jose Cruz-Muniz's claim to third parties. *Id*. Subsequently, Plaintiff delivered a number of sample agreements which it stated were identical to those at issue in Jose Cruz-Muniz's account. **(Exhibit A)**. According to Plaintiff, the terms of all its sale agreements are identical to the one attached as Exhibit D this Motion. (**Exhibit A**). The Contract by its plain terms is for the sale of accounts receivable, not a financing agreement. (**Exhibit D**).

Plaintiff subsequently produced documents including the sales of medical debts incurred by Cruz-Muniz. **(Exhibit B**, Sales Records). These documents demonstrate that all of the debts asserted in this action in Plaintiff's complaint had been sold. *Id*.

As sales of accounts, Plaintiff retained no interest in those debts sold. However, from initiation of this suit Plaintiff has asserted the whole account of charges originated by Plaintiff in this action without regard to or identification of those portions owned by other parties. (**Exhibit C,** Plaintiff's Complaint).

II. STANDARD OF REVIEW

A. MCR 2.116(C)(5)

MCR 2.116(C)(5) provides that a party is entitled to summary disposition where "the party asserting the claim lacks the legal capacity to sue." When ruling on a motion under MCR 2.116(C)(5), the trial court must consider the pleadings, depositions, admissions, affidavits, and

other documentary evidence submitted by the parties. *McHone v Sosnowski*, 239 Mich App 674; 609 NW2d 844 (2000).

B. MCR2.116(C)(10)

A motion for summary disposition under MCR 2.116(C)(10), on the grounds that there is no genuine issue of material fact, tests the factual sufficiency of the complaint. *Kisiel v. Holtz*, 272 Mich. App. 168, 170 (2006). In presenting a motion for summary disposition under MCR 2.116(C)(10), the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Smith v. Globe Life Ins. Co*., 460 Mich. 446, 455 (1999). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof on a dispositive issue rests on the nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Greene v AP Products, Ltd*., 264 Mich. App. 391, 398 (2004). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Coblentz v. City of Novi*, 475 Mich. 558, 568-569 (2006).

III. LAW AND ARGUMENT

A. Plaintiff's assignments are complete sales debt and Plaintiff has no cause of action or right to recover on those debts

Plaintiff's assignment contracts and others are assignments of debts. "An assignment is defined as "[a] transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein." *Weston v Dowty*, 163 Mich App 238, 242; 414 NW2d 165 (1987) (citing Black's Law Dictionary (4th ed), p. 153).

The agreement entered into by Plaintiff is assignment of all rights by sale of accounts from Plaintiff to the buyer. The contract indicates clearly that it is a sale of debt with the assignment of **all rights** associated with the debt. Plaintiff's sales contract states,

2. **Purchase and Sale of Accounts Receivable**. Buyer wishes to purchase, and Seller wishes to sell, subject to the terms herein, Seller's Rights, Title, and Interests in certain Accounts Receivable on which Seller has not yet received payment from any other source. Attached hereto as Exhibit A is a Schedule of Accounts identifying Accounts Receivable on which Seller has not received payment from any source. Seller represents and warrants that the total value of, and amount due and owing on, the Accounts Receivable is $ 305,650.75 . Buyer shall purchase from Seller, and Seller shall sell, transfer, assign, and convey to Buyer, Seller's Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A, as well as Seller's Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A. Upon closing on the **Closing Date** (as defined below), Buyer and Seller shall reflect such sale in their financial records. At all times thereafter, Buyer shall retain the Rights, Title, and Interests to the Accounts Receivable listed on Exhibit A, and all Medical Liens or Letters of Protections connected thereto. Buyer at all times will retain full legal right to sell, convey, and/or assign the Accounts Receivable purchased from Seller to a third party.

MMO NDD

Exhibit D.

Further, in its warranties section, Plaintiff states that it transferred ***all*** of its interests in the accounts.

o. This Agreement constitutes a valid assignment to the Buyer of all Rights, Title, and Interests of the Seller in the Accounts Receivable and the proceeds thereof, and following such assignment, the Buyer shall own all Rights, Title, and Interest to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable.

Id.

It is plain from the language of this contract that this is an agreement for the total sale of accounts, not limited rights in association with the accounts. This is a total sale of a debt to another party without any reservation of any rights in those accounts whatsoever.

In further support of this conclusion, it is apparent that Plaintiff promised that it would not settle, solicit, or accept collections of accounts receivable sold. Plaintiff also specifically agreed that it was not the servicer of the debt and transfers any such rights upon sale of the accounts. This confirms that Plaintiff maintained no interest in receiving payment or making collection on the accounts, as it is attempting to in this action.

> 4. **Servicing**. Seller acknowledges that on the **Closing Date**, (as defined in Section 12 below) Buyer will take over servicing of all Accounts without limitation. As of the **Cutoff Date** (as defined in Section 12 below), Seller shall not settle, solicit, or accept collections on any of the Accounts Receivable. If Seller receives any communications or inquiries in connection with any Accounts Receivable sold to Buyer, Seller shall direct the same to Buyer within 72 hours after Seller's receipt of said communication or inquiry.

id.

All of these terms must be given their regular meaning and effect because their meaning is unambiguous. Where no ambiguity exists, this Court must enforce the contract as written. *Morley v Automobile Club of Michigan*, 458 Mich. 459, 465; 581 N.W.2d 237 (1998). "A fundamental tenet of our jurisprudence is that unambiguous contracts are not open to judicial construction and must be enforced as written" *Rory v Continental Ins Co*, 473 Mich 457, 468; 703 NW2d 23 (2005).

Following the unambiguous terms of the contract, this sale, as an assignment of all contractual and other legal rights to the debts, completely transferred all of Plaintiff's interest to the buyer. Not only did this render the buyer, as assignee, the real party in interest, it extinguished all of Plaintiff's interests in the accounts. Consistent with the title conveyance language above, Plaintiff cannot have retained *any* interest, beneficial or otherwise on those claims because by operation of its sales contract and cannot have any basis for filing suit over those debts sold under any contract with this language.

As held by the Michigan Supreme court, a party has standing whenever it has a legal cause of action. *Lansing Sch Ed Ass'n v Lansing Bd of Ed,* 487 Mich 349, 372; 792 NW2d 686 (2010). An assignment that transfers all rights, as in this case, deprives Plaintiff of any legal right to debts sold under the plain language of the contracts. Thus, Plaintiff cannot have standing to assert these charges because it has no right to recovery or even seek the debt, it has no claim to it. In short, these documents prove that these alleged debts, to whatever extent they are compensable, are simply not Plaintiff's to pursue. This being the case, there is no genuine issue of material fact that Plaintiff is not entitled to recover on these amounts, and Summary Disposition as to any debt sold under MCR 2.116(C)(10) is appropriate.

B. As a sale of accounts governed by Article 9 of the UCC, Plaintiff could not have retained any interest legal or equitable in the accounts sold and can therefore have no cause of action on those debts.

Under Michigan Commercial Code, a seller of accounts, including medical debts, may not retain any right, legal or equitable, in a debt sold to another. Consequently, Plaintiff cannot, as a matter of law, have a cause of action against Defendant for an account sold to a third party, in this case characterized as a 'factoring' company. Factoring is a "sale of accounts receivable of a firm to a factor at a discounted price * * * ' or ' * * * [t]he purchase of accounts receivable from a business by a factor who thereby assumes the risk of loss in return for some agreed discount.'" Black's Law Dictionary 532 (5th Ed.Rev.1979). Exhibit B shows that the agreements contemplate the transfer of all rights to payment for respective fees.

Article 9 of the Michigan uniform commercial code applies to "A sale of accounts, chattel paper, payment intangibles, or promissory notes MCL 440.9101(1)(C). An "Account" "means a right to payment of a monetary obligation. . . for services rendered or to be rendered. . .[t]he term includes health-care-insurance receivables." MCL § 440.9102.

"A debtor that has sold an account, chattel paper, payment intangibles, or promissory note does not retain a legal or equitable interest in the collateral sold." MCL § 440.9318(1). This includes debt sellers like Plaintiff because "Debtor" means. . .***(ii)*** A seller of accounts, chattel paper, payment intangibles, or promissory notes. MCL 440.9101(bb)(ii), Further, the definition of "Collateral" includes "Accounts. that have been sold." MCLS § 440.9102(l)(ii). As applied to this case, the code maintains that "[a] seller that has sold an account. . . does not retain a legal or equitable interest in the account that has been sold."

Official comment #2 to UCC 9-318 makes this clear:

> Subsection [9-318](a) makes explicit what was implicit, but perfectly obvious, under former article 9: The fact that a sale of an account or chattel paper gives rise to a "security interest" does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold. Subsection (a) also applies to sales of payment intangibles and promissory notes, transactions that were not covered by former article 9.

Since it is clear that this contract is for a sale of accounts governed under Article 9, Plaintiff cannot assert any rights under the debts it has sold against Defendant pursuant to this agreement. Thus, even if there was some question as to the reservation of some right in the contract (which there is not), such a term would be nullified by the code and not given effect. The Code only permits whole sales with all rights attached, and any assertion by Plaintiff that plaintiff retained a beneficial interest on sale is without legal basis.

C. Amendment is not proper in this case because Plaintiff had no right to bring the action and any amendment would be futile.

Plaintiff may contend that it should be able to amend its complaint, but any amendment would not alter the outcome of the case and should be denied. "[L]eave to amend a complaint may

be denied . . . where amendment would be futile." *Hakari v Ski Brule, Inc*, 230 Mich. App. 352, 355; 584 N.W.2d 345 (1998).

In this case, any amendment would not alter the fact that Plaintiff has no right to claims it sold either under the plain terms of the contract or under Article 9. Even if the complaint were amended, no version of the facts before this Court could permit Plaintiff to maintain action on claims it has sold outright to other parties. There exists no rule of law, under the present facts, that would permit it to seek recovery on a claim that may only rightfully be brought by owner of the debt.

D. Plaintiff, as a medical PLLC, lacks the legal capacity to sue on a debt owned by another.

It is clear from the record that the accounts at issue have been sold to third parties and Plaintiff does not own the debts asserted. Any argument that Plaintiff has a right to litigate over the rights of others is without merit as a corporation or association may not represent the legal interests of another in court as a matter of law.

Under MCLS § 600.2051(3), Capacity to sue or be sued; assumed name; partnerships; unincorporated voluntary associations; corporations; state; governmental units; officers, "A corporation, either domestic or foreign, may sue or be sued in its corporate name, except as otherwise provided by statute."

There does not appear to be any statutory provision to empower Plaintiff to bring a claim rightfully owned by another company in its own name. Quite the contrary,

> While an individual may appear *in propria personam*, a corporation, because of the very fact of its being a corporation, can appear only by attorney regardless of whether it is interested in its own corporate capacity or in a fiduciary capacity. *Detroit Bar Ass'n v Union Guardian Trust Co*, 282 Mich 707, 711; 281 NW 432 (1937).

Filing of a lawsuit by one company on behalf of the interests held by another company constitutes unauthorized practice of law, and a Plaintiff has no legal right to maintain an action based on an argument allowing the same, regardless of form. *Bay Co Bar Ass'n v Fin Sys, Inc*, 345 Mich 434, 447; 76 NW2d 23 (1956). A person or entity not licensed to practice law is not permitted to maintain or represent in an action the interests another. *City of Ann Arbor v St James Church of God in Christ Ypsilanti*, ___NW2d___; 2017 Mich. App. LEXIS 306, at *7 (Ct App, Feb. 23, 2017) (**Exhibit E**). "When this is done by one not licensed as an attorney it constitutes the unauthorized practice of law whether done by him in person or through his agent, regardless of whether the latter be a layman or a licensed attorney. *Bay Co Bar Ass'n v Fin Sys, Inc*, 345 Mich 434, 447; 76 NW2d 23 (1956).

Additionally, such practice as performed by a corporation would be unlawful under Michigan Statute. Under MCL 450.681, "It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state… to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner." Further, no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this state." As explained above, it is well settled that companies must be represented by a licensed attorney. Consequently, Plaintiff, as a voluntary association, cannot represent the interests of third parties in court.

Because debts in this case were sold to third party companies, and Plaintiff lacks the legal capacity or right to file an action on their behalf, Summary Disposition Pursuant to MCR 2.116(C)(5) is therefore appropriate. Further, no genuine issue of fact remains as it is clear Plaintiff

lacks standing in this matter and Summary Disposition Pursuant to MCR 2.116(C)(10) is also warranted as a matter of law.

IV. CONCLUSION

Wherefore, Defendant, PROGRESSIVE MARATHON INSURANCE COMPANY, respectfully requests this honorable Court dismiss Plaintiff's action as a whole pursuant to MCR 2.116(C)(10) or MCR 2.116(C)(5) as it deems appropriate.

Respectfully submitted,

NOVARA TESIJA & CATENACCI, PLLC

FREDERICK V. LIVINGSTON (P75206)
NADINE HAMMOUD (P79940)
Novara Tesija & Catenacci, PLLC
Attorney for Defendant
888 West Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380
nah@ntclaw.com

Dated: January 19, 2021

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on January 19, 2021 by:

☐ U.S. MAIL	☐ E-MAIL	☐ HAND DELIVERED
☒ E-FILE	☐ FEDEX	☐ OTHER

Signature: __/s/___*Amanda Apczynski*_____
Amanda Apczynski

EXHIBIT A

Lucas Hesskamp

From: Nadine Hammoud
Sent: Tuesday, October 13, 2020 3:35 PM
To: Lucas Hesskamp
Subject: FW: C-Spine cases

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Monday, October 12, 2020 10:37 AM
To: Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

All of the agreements have the exact same contractual language.

From: Nadine Hammoud <nah@ntclaw.com>
Sent: Friday, October 9, 2020 4:02 PM
To: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: RE: C-Spine cases

I get that… but it doesn't help in identification. For example, Jackson, Foshee and Matlock are all the same. How do we know which is which?

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:34 PM
To: Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

I put them in list form – which factoring companies are involved with the patient accounts.

Hello:

Now that we have the order entered, here is my list along with companies involved in factoring:

Albert Jackson – Medfinance
Amber Foshee – Medfinance
Dshane Buckman – Medfinance & Apogee
Hendric Hannon – Medfinance & Apogee & Surgical Capital
Jerry Matlock – Medfinance
Sandra Cruz – Medfinance & Apogee & MMD
Jose Muiz-Cruz – Medfinance & Apogee
Nagi Alrayashi – Medfinance & Apogee & Surgical Capital

From: Nadine Hammoud <nah@ntclaw.com>
Sent: Friday, October 9, 2020 2:31 PM

To: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: RE: C-Spine cases

I understand the safeguard regarding other patients, but what about our patients? Unless I am missing something, each of these agreements does not mention which sales belong to which patient.

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:26 PM
To: Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

The factoring amount has been redacted as this is subject to strict confidentiality. The exhibits contain the names of other patients and would violate HIPAA if disclosed. The language of the security interest agreements is there which is your standing argument.

Thanks,

From: Nadine Hammoud <nah@ntclaw.com>
Sent: Friday, October 9, 2020 2:23 PM
To: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: RE: C-Spine cases

Thank you! A couple questions. Why are the purchase prices redacted? We thought that was the purpose of the Protective Order was to protect that information from being disclosed elsewhere. Also, the agreements refer to Exhibits that are not attached.

Thanks,

Nadine Hammoud
NAH@NTCLaw.com

Attorneys and Counselors at Law
888 W. Big Beaver Road, Suite 600
Troy, MI 48084
Tel: 248.354.0380
Fax: 248.354.0393

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:06 PM
To: Frederick Livingston <fvl@ntclaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>; Elizabeth Spiridon <ems@ntclaw.com>; Nadine Hammoud <nah@ntclaw.com>
Subject: RE: C-Spine cases

And this completes what I have on file. I will supplement asap.

Thanks,

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Friday, October 9, 2020 2:05 PM
To: Frederick Livingston <fvl@ntclaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>; Elizabeth Spiridon <ems@ntclaw.com>; Nadine Hammoud <nah@ntclaw.com>
Cc: Jenifer Measel <jmeasel@haasgoldstein.com>
Subject: C-Spine cases

Hello:

Now that we have the order entered, here is my list along with companies involved in factoring:

Albert Jackson – Medfinance
Amber Foshee – Medfinance
Dshane Buckman – Medfinance & Apogee
Hendric Hannon – Medfinance & Apogee & Surgical Capital
Jerry Matlock – Medfinance
Sandra Cruz – Medfinance & Apogee & MMD
Jose Muiz-Cruz – Medfinance & Apogee
Nagi Alrayashi – Medfinance & Apogee & Surgical Capital

I have an email out to my client to confirm that the information is up to date. I am going to send a few emails attaching the agreements and addendums I have on file. I have requested the Surgical Capital and MMD agreements.

Thanks,

EXHIBIT B

[redacted]

Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$255.59	$51.12	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$2,004.90	$400.98	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$3,094.80	$618.96	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$15.13	$3.03	20.03% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$40.00	$8.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$80.00	$16.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$93.89	$18.78	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/25/2019	$120.00	$24.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	10/2/2019	$421.58	$84.32	20.00% ACCEPTED

[redacted]

[redacted]

Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$15.13	$3.03	20.03%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$93.89	$18.78	20.00%	ACCEPTED

Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$160.00	$32.00	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$255.59	$51.12	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$2,004.90	$400.98	20.00% ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	9/12/2019	$3,094.80	$618.96	20.00% ACCEPTED

[redacted]

Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$80.00	$16.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$93.89	$18.78	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$250.00	$50.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$480.00	$96.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$480.00	$96.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$617.05	$123.41	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$1,000.00	$200.00	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$4,113.90	$822.78	20.00%	ACCEPTED
Cruz-Muniz, Jose	7/17/1977	Progressive	184229922	5/23/2018	8/21/2019	$8,050.50	$1,610.10	20.00%	ACCEPTED

Apogee Capital Fund 5, LLC: Exhibit A C-Spine Orthopedics, PLLC- 002

This Exhibit is entered into between C-Spine Orthopedics, PLLC and Apogee Capital Fund 5, LLC, made pursuant to the fully executed Agreement dated August 30, 2019, and subject to any and all terms located with the August 30, 2019 agreement between the parties.

Assignment will be made on this Exhibit per the Agreement unless C-Spine Orthopedics, PLLC notifies APOGEE CAPITAL FUND 5, LLC, in writing, within 24 hours of receipt of this Exhibit.

NO SIGNATURE IS REQUIRED ON THIS EXHIBIT.

Medical Provider hereby warrants and represents that all bills and invoices which were the basis for the Receivables are true and accurate in all respects and were generated with usual and customary amounts for the Services. Medical Provider hereby further warrants and represents that all Services rendered and billed and listed under Full Bill Charges were necessary (with respect to the applicable Patient), that the amounts charged for the Services were reasonable at the time and place of the Services provided, and related to injuries sustained in the accidents or other occurrences which are the basis of claims or litigation, and the Proceeds from which are subject to the Liens securing the Receivables in the Total Amount of Provider Receivables reflected herein.
The Medical Provider is the person in charge of it's records. Attached to this Purchase Order are records that provide an itemized statement of the service and the charge for the service that Medical Provider provided to Patient on the dates specified therein. The attached records are kept by Medical Provider in the regular course of business. The information contained in the records was transmitted to me in the regular course of business by Medical Provider or an employee or representative of Medical Provider who had personal knowledge of the information. The records were made at or near the time or reasonably soon after the time that the service was provided. The records are the original or an exact duplicate of the original. The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

updated 08-30-2019

Provider	Patients Name	DOS	Billing Amount	Billing Amt. Purchased By Apogee	Purchase %	Purchase Amount
[redacted]						

C-Spine	Cruz-Muniz, Jose	8/7/19	$620.46	$620.46	20%	$124.09
C-Spine	Cruz-Muniz, Jose	8/15/19	$255.59	$255.59	20%	$51.12
C-Spine	Cruz-Muniz, Jose	8/15/19	$7,476.75	$7,476.75	20%	$1,495.35
C-Spine	Cruz-Muniz, Jose	8/15/19	$1,000.00	$1,000.00	20%	$200.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$250.00	$250.00	20%	$50.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$160.00	$160.00	20%	$32.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$80.00	$80.00	20%	$16.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$93.89	$93.89	20%	$18.78
C-Spine	Cruz-Muniz, Jose	8/15/19	$160.00	$160.00	20%	$32.00
C-Spine	Cruz-Muniz, Jose	8/15/19	$15.13	$15.13	20%	$3.03

EXHIBIT C

H G Haas & Goldstein
A Professional Corporation

Attorneys and Counselors

Partners
Justin Haas
Laurie Goldstein
Jenifer Measel

Jessica Faber
Diana Basel
Michael Szparaga
Gary Felty, Jr.
Alexander R. Baum
Elizabeth Amaru
Yousef M. Farraj

May 21, 2020

VIA CERTIFIED MAIL 7019 2280 0001 5693 3301
Progressive Michigan Insurance Company
46333 Five Mile Rd. Ste. 100
Plymouth, MI 48170

Re: C-Spine Orthopedics, PLLC as assignee of Jose Cruz-Muniz v Progressive
Case #: 20-1710-NF

To Whom It May Concern:

Please be advised that this office has been retained by the above mentioned client to represent it in an action against this insurance company in an attempt to collect payment for outstanding medical bills arising out of the motor vehicle collision as referenced in the enclosed Complaint.

Please process the enclosed Summons and Complaint in your usual manner.

Also enclosed please find Plaintiff's Initial Disclosures pursuant to MCR 2.302 as well as a CD containing the documents referenced therein.

Further, be advised an attorney's lien is claimed on any amounts recovered on behalf of my client.

Thank you for your attention to this matter.

Very truly yours,

Jenifer L. Measel

JLM/sjj
Enclosures

31275 Northwestern Highway, Suite 225, Farmington Hills, MI 48334 Tel: (248) 702-6550 Fax: (248) 538-9044

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Case No. 20-1710-NF
HON. Jennifer Faunce

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.
_____/

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax
_____/

PLAINTIFF'S INITIAL DISCLOSURES PURSUANT TO MCR 2.302

1. Factual Basis of Plaintiff's Claims:

Plaintiff provided reasonably necessary healthcare services to Jose Cruz-Muniz for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle and Defendant has failed to issue reasonable payment for the services.

2. Legal Theories on Which Plaintiff Claims are Based (Including citations):

The Michigan No Fault Act, MCL 500.3101 et. seq.

3. Individuals Likely to Have Discoverable Information that Plaintiff May Use to Support its Claims (names, addresses and telephone number):

a. Jose Cruz-Muniz
b. C-Spine Orthopedics c/o Haas & Goldstein, P.C.:

a. **Mark Seda, Corporate & Billing Representative**
b. **Dr. James Gilas, M.D. c/o Haas & Goldstein**
c. **Dr. Jeffrey Oppenheimer, M.D. c/o Haas & Goldstein**
d. **Dr. Joshua Appel, MD c/o Haas & Goldstein**
e. **Dr. Christopher Manees, MD c/o Haas & Goldstein**
f. **Dr. Patrick Burns, DO c/o Haas & Goldstein**

c. **Defendant's Claims Adjusters**
d. **Outside facility treating physicians**
e. **Any other individuals identified in patient's records including doctors and hospitals listed in patient's intake form**

4. A Copy or Description by Category and Location, of all Documents, ESI, and Tangible Things that Plaintiff has in its Possession, Custody, or Control and May use to Support its Claims:

Plaintiff's records and bills are attached.
Records and CMS 1500 forms were previously submitted to Defendant.

5. A Description By Category and Location of All Documents, ESI, And Tangible Things That Are Not in Plaintiff's Possession, Custody, or Control That Plaintiff May Use to Support Its Claims (Including name, address and telephone number of person who has possession) :

Defendants' claim files are in Defendants' possession and contain additional proof of this claim, including statements from the Defendants, and their insureds, and records from outside facilities.

6. Computation of Damages and Supporting Documents:

See attached records and bills.

7. All Provider Bills or Outstanding Balances for which Plaintiff Seeks Reimbursement:

See attached records and bills. Additional charges may be incurred if additional services are provided by Plaintiff's facility.

/s/ Jenifer Measel
Jenifer Measel (P74711)
Attorney for Plaintiff

Date: May 21, 2020

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN 16th JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 20-1710-NF

Court address
40 N. Main St. Mt. Clemens, MI 48043

Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).	v	Defendant's name(s), address(es), and telephone no(s).
C-SPINE ORTHOPEDICS, PLLC, as assignee of Jose Cruz-Muniz		PROGRESSIVE MICHIGAN INSURANCE COMPANY 46333 Five Mile Road, Suite 100 Plymouth, MI 48170
Plaintiff's attorney, bar no., address, and telephone no. Jenifer Measel (P74711) Haas & Goldstein, PC 31275 Northwestern Hwy. Ste. 225 Farmington Hills, MI 48334 248 702 6550 / 248 538 9044 Fax		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.

☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.

☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).

☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☑ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☑ this court, ☐ _____ Court, where it was given case number 20-386-NF and assigned to Judge Jennifer Faunce.

The action ☑ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
MAY 11 2020	AUG 10 2020	

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (6/19) **SUMMONS** MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

Case No. 20-1710-NF
HON. JENNIFER FAUNCE

/

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax

/

THIS IS TO CERTIFY THAT ANOTHER CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT HAS HERETOFORE BEEN COMMENCED IN THIS COURT AND IS PENDING BEFORE JUDGE JENNIFER FAUNCE AND ASSIGNED CASE NO. 20-386-NF.

COMPLAINT

NOW COMES Plaintiff, by and through its attorneys, HAAS & GOLDSTEIN, PC, and for its cause of action against the Defendants, hereby says as follows:

1. Plaintiff is a corporation licensed to conduct business under the laws of the State of Michigan and at all times pertinent herein was conducting business in the State of Michigan.

2. Defendants are corporations, duly organized and existing under the laws of the State of Michigan and, at all times pertinent herein, were, and currently are, conducting business in the County of Macomb, State of Michigan.

3. Pursuant to MCL 600.2041, "every action shall be prosecuted in the name of the real party of interest."

4. All rights, privileges and remedies to payment for health care services, products or accommodations provided by Plaintiff to the injured party, Jose Cruz-Muniz, for which the injured party is or may be entitled to under MCL 500.3101, *et seq*, the No Fault Act, have been assigned to Plaintiff, hereto attached as **Exhibit A**.

5. As a result of said assignment, Plaintiff bears the burden of pursuit of payment for health care services, products or accommodations, provided by Plaintiff to the injured party.

6. The amount in controversy is more than Twenty-Five Thousand ($25,000) Dollars, exclusive of costs and attorneys' fees and jurisdiction is otherwise proper with this Court.

COUNT I- PIP CLAIM

7. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

8. On May 23, 2018, Jose Cruz-Muniz, (hereinafter "the injured party") sustained accidental bodily injuries within the meaning of the statutory provisions of MCL 500.3105.

9. Defendants are first in order of priority and/or in the order of priority to pay for the injured party's claim for no fault personal protection insurance benefits in

accordance with Chapter 31 of the Michigan Insurance Code, more commonly known as the "no-fault insurance law."

10. Defendant assigned claim number 18-4229922 to the injured party's claim.

11. As a result of the aforementioned injuries, Plaintiff provided reasonably necessary products, services and/or accommodations to aid in the injured party's care, recovery and/or rehabilitation.

12. Defendants became obligated to pay for certain expenses incurred for reasonably necessary products, services and/or accommodations rendered for the injured party's care, recovery or rehabilitation as a result of the injured party's sustained accidental bodily injuries arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

13. Plaintiff has provided reasonably necessary products, services and/or accommodations to the injured party and continues to do so, resulting in the following outstanding balances to date:

a. Jose Cruz-Muniz DOS 8.7.19 – 10.2.19 - $37,667.36

(Exhibit B)

14. Plaintiff timely submitted billings to Defendants for products, services and/or accommodations that were rendered to the injured party and that were reasonably necessary for the care, recovery or rehabilitation of the injured party's injuries.

15. Plaintiff also submitted to Defendants supporting documentation and forms necessary for Defendants to determine the reasonableness, necessity and amount of the medical products and/or services rendered to the injured party.

16. Defendants were provided reasonable proof of the fact and of the amount of losses sustained and charges incurred.

17. To date, Defendants have unreasonably refused and/or delayed in making payment to Plaintiff for the products, services and/or accommodations rendered.

18. Pursuant to MCL 500.3157, Plaintiff is entitled to recover the outstanding balance for the products, services and/or accommodations to the injured party from Defendants.

19. Plaintiff has requested payment from Defendants for the amount of the bills due and owing and Defendants has refused and/or neglected to pay them.

20. Plaintiff is entitled to reasonable and actual attorney fees incurred in this action pursuant to MCL 500.3148.

21. Plaintiff is also entitled to costs and interest pursuant to MCL 500.3142 for the overdue bills that have not been paid by Defendants within 30 days after Defendants received reasonable proof of the fact and of the amount of loss sustained.

22. Pursuant to Insurance Bulletin 92-03, Defendants is "required to provide insureds and claimants with complete protection from economic loss for benefits provided under personal protection insurance."

23. Satisfaction of the judgment obtained by Plaintiff will discharge Defendants of their obligation to the injured party for services Plaintiff provided to the injured party.

24. Plaintiff as assignee of the injured party is the real party of interest and as such Plaintiff has the right to prosecute this action against Defendants pursuant to MCL 600.2041.

COUNT II- BREACH OF CONTRACT/CONTRACTUAL AND/OR STATUTORY DUTIES

25. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

26. Defendants' failure to pay Plaintiff personal protection insurance benefits constitutes a material breach of contractual and/or statutory duties pursuant to the contract where the injured party is qualified as an "insured," or otherwise entitled to benefits and/or pursuant to MCL 500.3101, *et seq.*

27. As a direct and proximate cause of Defendants' breach of contractual and/or statutory duties, Plaintiff has sustained damages.

WHEREFORE, Plaintiff claims as damages against Defendants in a sum more than Twenty-Five Thousand ($25,000) Dollars, which the triers of fact deem reasonable, plus costs, attorney fees and interest most wrongly sustained.

Respectfully submitted,

/s/ Jenifer Measel
HAAS & GOLDSTEIN, PC
Jenifer Measel (P74711)
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550

Dated: May 6, 2020

Exhibit A

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment incudes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee. I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature
Cruz-Muniz, Jose — Patient Printed Name
10/2/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

Exhibit B

Patient Ledger

Place of Service: C-Spine Ortho
29255 NorthWestern Hwy #101
Southfield, MI 48034-1018

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 |
PMS: 109224PAT000000270
4432 FOURTH STREET
WAYNE, MI 48184
(734) 502-5918

Remit Payment: C-Spine Ortho
4111 E Valley Auto Drive #202
Mesa, AZ 85206-4605

DOA: 5/23/2018

Account Balance $37,667.36

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
10/02/2019	**—**	**PIP0001JT8**	**421.58**	**0.00**	**0.00**	**421.58**	**0.00**
10/02/2019	10/03/2019	99213 - OFFICE OUTPATIENT VI...	421.58	0.00	0.00	421.58	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/25/2019	**—**	**PIP00017M7**	**5,864.31**	**0.00**	**0.00**	**5,864.31**	**0.00**
09/25/2019	09/26/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/25/2019	09/26/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/25/2019	09/26/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/25/2019	09/26/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00
09/25/2019	09/26/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	C9290 - Injection, bupivacaine lip...	40.00	0.00	0.00	40.00	0.00
09/25/2019	09/26/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/25/2019	09/26/2019	J2001 - Injection, lidocaine hcl for ...	120.00	0.00	0.00	120.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/12/2019	**—**	**PIP0000VV8**	**5,944.31**	**0.00**	**0.00**	**5,944.31**	**0.00**
09/12/2019	09/13/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/12/2019	09/13/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/12/2019	09/13/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/12/2019	09/13/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/12/2019	09/13/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
09/12/2019	09/13/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/21/2019	**—**	**PIP0000F12**	**15,165.34**	**0.00**	**0.00**	**15,165.34**	**0.00**
08/21/2019	08/28/2019	99214 - OFFICE/OUTPATIENT VI...	617.05	0.00	0.00	617.05	0.00
08/21/2019	08/28/2019	64493 - INJ PARAVERT F JNT L/...	8,050.50	0.00	0.00	8,050.50	0.00
08/21/2019	08/28/2019	64494 - INJ PARAVERT F JNT L/...	4,113.90	0.00	0.00	4,113.90	0.00
08/21/2019	08/28/2019	96372 - THER/PROPH/DIAG INJ ...	93.89	0.00	0.00	93.89	0.00
08/21/2019	08/28/2019	J1030 - Methylprednisolone 40 m...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1100 - Dexamethasone sodium p...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1885 - Ketorolac tromethamine inj	80.00	0.00	0.00	80.00	0.00
08/21/2019	08/28/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/21/2019	08/28/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/15/2019	**—**	**PIP00068G6**	**9,651.36**	**0.00**	**0.00**	**9,651.36**	**0.00**
08/15/2019	08/15/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
08/15/2019	08/15/2019	27096 - INJECT SI JOINT ARTH...	7,476.75	0.00	0.00	7,476.75	0.00
08/15/2019	08/15/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/15/2019	08/15/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00
08/15/2019	08/15/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1100 - Injection, dexamethasone ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
08/15/2019	08/15/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/07/2019	**—**	**PIP00068F9**	**620.46**	**0.00**	**0.00**	**620.46**	**0.00**
08/07/2019	08/07/2019	99203	620.46	0.00	0.00	620.46	0.00

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 | **PMS:** 109224PAT000000270

Account Balance $37,667.36

EXHIBIT D

Bulk Purchase and Sale Agreement for Accounts Receivable

This BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNTS RECEIVABLE ("**Agreement**") is entered into as of August 2, 2019 by and between **MedFinance Servicing, LLC and/or Well States Healthcare, LLC** ("**Buyer**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and Sea Spine Orthopedic, LLC, a company organized and existing under the laws of the State of Florida, with a principal place of business located at 3107 W Hallandale Beach Blvd, Suite 101, Pembroke Park, FL 33009 (the "**Seller**") (collectively the "**Parties**").

WHEREAS, Seller operates a medical practice located in the State of Florida; and

WHEREAS, Seller has provided medical treatment, services, and products (hereinafter collectively referred to as "**Medical Treatment**") to individuals for whom Seller has deferred collection of payment for the Medical Treatment, pending resolution of claims and/or lawsuits which the Patients have brought or will bring against third parties, where the individuals are seeking compensation related to the causation of the injuries or other medical conditions for which the Medical Treatment was provided ("**Patient**" or "**Patients**"); and

WHEREAS, as a condition of deferring the collection of payment for the Medical Treatment provided, Seller has entered into an agreement with each Patient which guarantees that payment for the Medical Treatment provided by Seller will be paid from funds recovered from any source, whether as a result of settlement or trial, relating to the claims and/or lawsuit against a third party who allegedly caused Patient's injuries (hereinafter "**Medical Lien**" and/or "**Letter of Protection**"); and

WHEREAS, The Medical Lien and/or Letter of Protection specifically encumbers the proceeds to be or already realized by Patient from any recovery received from the claims/lawsuit and specifies that the Patient may remain responsible for any outstanding balance owed to Seller for the Medical Treatment until fully paid; and

WHEREAS, Seller desires, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, to sell, transfer, assign, and convey Seller's legal and equitable rights and interests ("**Rights, Title, and Interest**") in each Medical Lien, Letter of Protection, and/or Accounts Receivable (defined below) as identified on the Schedule of Accounts attached hereto as Exhibit A ("**Accounts**"); and

WHEREAS, Buyer desires to purchase, subject to the express terms, provisions, conditions, limitations, waivers, and disclaimers as may be expressly set forth herein, Seller's Rights, Title, and Interests in each Medical Lien, Letter of Protection, and/or Accounts Receivable listed on Exhibit A.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Agreement by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Seller's Accounts Receivable**. Seller owns certain accounts receivable created by Seller providing Medical Treatment to a Patient for injuries suffered as the result of an accident or incident caused by a third-party ("**Accounts Receivable**"). The Accounts Receivable are secured by a Medical Lien, Letter of Protection, or other document between the Seller and the Patient whereby the Patient agrees to satisfy the Account with the Seller from future monies recovered as a result of a settlement or trial judgment with a third party against whom the Patient has a claim, including a third party's insurance carrier, or Patient's insurance company, and which provides that in the event that there is no settlement or monies recovered, or the amount received is insufficient to pay the Account, Patient may remain liable for all amounts due to the Seller.

2. **Purchase and Sale of Accounts Receivable**. Buyer wishes to purchase, and Seller wishes to sell, subject to the terms herein, Seller's Rights, Title, and Interests in certain Accounts Receivable on which Seller has not yet received payment from any other source. Attached hereto as Exhibit A is a Schedule of Accounts identifying Accounts Receivable on which Seller has not received payment from any source. Seller represents and warrants that the total value of, and amount due and owing on, the Accounts Receivable is $ 2,083,942.71 . Buyer shall purchase from Seller, and Seller shall sell, transfer, assign, and convey to Buyer, Seller's Rights, Title, and Interests in the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A, as well as Seller's Rights, Title, and Interests in each Medical Lien or Letter of Protection connected to any of the Accounts Receivable identified on the Schedule of Accounts attached hereto as Exhibit A. Upon closing on the **Closing Date** (as defined below), Buyer and Seller shall reflect such sale in their financial records. At all times thereafter, Buyer shall retain the Rights, Title, and Interests to the Accounts Receivable listed on Exhibit A, and all Medical Liens or Letters of Protections connected thereto. Buyer at all times will retain full legal right to sell, convey, and/or assign the Accounts Receivable purchased from Seller to a third party.

MMO _____ _____

3. **Consideration**. In consideration for the purchase of the Accounts Receivable identified on Exhibit A, Buyer shall issue payment to Seller in the amount of $ _____ ("**Consideration**"). Upon receipt of such Consideration by Seller, Seller's Rights, Title, and Interests in the Accounts Receivable, Medical Liens, and/or Letters of Protection shall be deemed transferred, assigned, and sold to Buyer.

MMO _____ _____

4. **Servicing**. Seller acknowledges that on the **Closing Date**, (as defined in Section 12 below) Buyer will take over servicing of all Accounts without limitation. As of the **Cutoff Date** (as defined in Section 12 below), Seller shall not settle, solicit, or accept collections on any of the Accounts Receivable. If Seller receives any communications or inquiries in connection with any Accounts Receivable sold to Buyer, Seller shall direct the same to Buyer within 72 hours after Seller's receipt of said communication or inquiry.

5. **Power of Attorney**. In order to support the Buyer's collection efforts with regard to the Accounts Receivable, Seller hereby makes, constitutes, and appoints Buyer, with full power of substitution, its true and lawful attorney in fact, for it and its name, place and stead, to make, execute, sign, acknowledge, swear to, deliver, record, and file any document or instrument which may be considered necessary or desirable by Buyer to carry out the provisions of this Agreement, including, but not limited to, enforcement of any Medical Lien or Letter of Protection in the name of Seller with respect to an Account Receivable and issuing payment instructions with respect to any proceeds paid or payable of such Account Receivable ("**Power of Attorney**"). The foregoing Power of Attorney is coupled with an interest and shall be irrevocable. Without limiting the generality of the Power of Attorney, at the request of Buyer, Seller shall promptly execute and deliver such further documents and instruments as the Buyer reasonably determines to be necessary to enable or facilitate the Buyer's collection efforts with regard to the Accounts Receivable.

6. **Seller's Payment Obligations**.

   a. Payment Received: When Seller receives credits, payments, or other consideration distributed or paid by or on behalf of a Patient with respect to any Accounts Receivable listed in Exhibit A, Seller shall report such payments to Buyer and shall transfer and/or deliver such payments to Buyer via wire transfer or company check along with a copy of the payment received by Seller **within three (3) business days of receipt** until the Guaranteed Return has been satisfied. All payments received by Seller or Buyer for

payment on any Account for which there are multiple, potentially conflicting liens held by any party shall first be applied to pay in full all amounts due and owing to Buyer.

7. **Seller's Representations and Warranty**. As of the date of this Agreement and the Closing Date Seller represents and warrants to Buyer as follows:

a. Seller represents and warrants that it is the sole and unconditional owner of all Accounts Receivable sold to Buyer, and that it has the legal authority to sell and transfer ownership of all Accounts Receivable to Buyer. Seller additionally represents and warrants that all Accounts Receivable sold to Buyer are now and will at all times after Buyer's purchase of the same, remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Seller has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its medical practice as now being conducted and to provide the Medical Treatment which generated the Accounts Receivable. Such Authorizations were in full force and effect at time the Medical Treatment was provided and remain in full force and effect as of the Closing Date (as defined below).

c. Seller's employees, contractors, and agents, each of which have all licenses and permits required by law, if any, to perform the Medical Treatment which generated the Accounts Receivable. All such licenses and permits were in full force and effect at time the Medical Treatment was provided and, to the best Seller's knowledge, remain in full force and effect as of the Closing Date.

d. The execution and delivery of this Agreement and the performance hereunder have been duly authorized, by all necessary actions on the part of Seller, and no provision of applicable law or regulation, the charter or bylaws of Seller, any agreement, judgment, injunction, order, decree, or other instrument binding upon Seller is or will be contravened by Seller's execution and delivery of this Agreement or Seller's performance hereunder.

e. No Authorization, consent, approval, license, qualification or formal exemption from, nor any filing, declaration, or registration with, any governmental agency, regulatory authority, or any other body is required to be obtained by Seller in connection with the execution, delivery, or performance by Seller of this Agreement.

f. Seller certifies that each Account Receivable assigned hereunder is being transferred free and clear of any lien and/or encumbrance other than a Medical Lien and/or Letter of Protection. Any Accounts Receivable assigned to Buyer by Seller shall be true, accurate, and complete. Each Medical Lien and/or Letter of Protection shall reflect reasonable and customary charges for bona fide and medically necessary medical procedures and/or treatments actually rendered. All charges, fees, and/or costs for the Medical Treatment underlying the Accounts Receivable are reasonably and customarily priced based on the current relative value of the Current Procedural Terminology ("**CPT**") code associated with the Medical Treatment Seller rendered or provided to the Patients.

g. Seller hereby acknowledges and represents that the assignment of the Accounts Receivable hereunder: (i) is not made in contemplation of the insolvency of Seller; (ii) is not made with the intent to hinder, delay, or defraud the creditors of Seller; (iii) has been approved by an officer of Seller with the authority to approve the assignment contemplated herein; (iv) will be recorded in the records of Seller; and (v) represents a bona fide and arm's length transaction undertaken for adequate consideration in the ordinary course of business. Further, Buyer is neither an insider nor an affiliate of Seller.

h. To the best of Seller's knowledge and belief, each of the Accounts Receivable has been originated, maintained, and serviced by Seller in compliance with all applicable local, state, and federal laws.

i. None of the Accounts Receivable being assigned are subject to pending litigation or arbitration against the Seller, nor has Seller been notified of any demand or dispute regarding the Medical Treatment that was performed.

j. None of the Accounts Receivable are subject to any fees owed to any third parties, unless otherwise disclosed to Buyer herein.

k. Except with regard to a representation or warranty related to Seller's operations, formation, or continued existence, all representations and warranties contained in this Section shall survive the execution of the Agreement and the Closing Date.

l. Seller represents and warrants it has provided to Buyer complete and unfettered access to information regarding the Accounts Receivable and, in particular, has informed Buyer of the risks associated with the collectability (and ultimate collection) of the Accounts Receivable.

m. The information supplied to Buyer by Seller concerning the Accounts Receivable is materially true and accurate.

n. This Agreement constitutes a legal, valid, and binding obligation of the Seller and shall remain enforceable, in law and equity, against the Seller.

o. This Agreement constitutes a valid assignment to the Buyer of all Rights, Title, and Interests of the Seller in the Accounts Receivable and the proceeds thereof, and following such assignment, the Buyer shall own all Rights, Title, and Interest to all Accounts Receivable, free and clear of any encumbrance, senior in priority to any other claim on the Accounts Receivable.

p. Seller owns all necessary legal and contractual rights to pursue collection on all Accounts Receivable and against all Patients and there are no contractual restrictions, written or oral, or other restrictions of any kind between Seller and any Patient which would restrict Seller or Buyer from pursuing the collection of any Accounts Receivable from any Patient.

q. Seller shall retain all liability for all actions and events of any kind which occurred on or prior to the Closing Date regarding any Accounts Receivable.

r. Seller shall provide any and all required support reasonably requested by Buyer in order to prove the Accounts Receivable are due, including but not limited to, documents, Account documents, depositions, live testimony in Court, and reports and/or memoranda necessary or desirable, in any court proceeding, arbitration proceeding, mediation, or settlement negotiations related to the Accounts Receivable due or any Patient's demand or lawsuit against Buyer, Seller, or any third party.

s. Seller has not failed in any obligation, if any, to file any claim with any medical insurance carrier known to Seller to provide or medical insurance coverage to the Patient at the time the Medical Treatment was received by Patient. None of the Accounts Receivable are subject to any Medicare, Medicaid or other governmental reimbursement program as to the payment of any portion of the Accounts Receivable being purchased by Buyer, nor are any of the Accounts Receivable subject to any capitation arrangement, fee schedule, discount formula, cost-reimbursement or other adjustment or limitation to the Seller's usual charge.

t. SELLER REPRESENTS, WARRANTS, ACKNOWLEDGES, AGREES, AND PROMISES THAT IT SHALL PAY TO BUYER THE FULL AMOUNT OF ANY

PAYMENT RECEIVED BY SELLER ON ANY ACCOUNT INCLUDED, OR REQUIRED TO BE INCLUDED, ON EXHIBIT A.

8. **Buyer's Representations and Warranty**. As of the date of this Agreement and the Closing Date, Buyer represents and warrants to Seller as follows:

a. Buyer is duly organized, validly existing, and in good standing under the laws of the State of Utah with all requisite power and authority to carry on its business as now being conducted, to execute, deliver, and perform this Agreement and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby. Buyer is duly qualified to conduct business as a foreign entity and is in good standing in each jurisdiction in which business transacted by it as contemplated in this Agreement requires such qualification and in which the failure to do so would have a material adverse effect on its ability to perform its obligations under this Agreement or the enforceability thereof.

b. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Buyer, any resolution adopted by the members or managers of Buyer, or any other loan, credit agreement, contract, applicable law, or governmental approval applicable to Buyer, or any court order which affects or binds Buyer. No additional governmental approval and no consent or approval of any other person or entity is required on the part of Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

c. There is no actual pending litigation (i) that has been commenced by or against Buyer or that otherwise relates to or may affect Buyer's right to consummate the transactions contemplated by this Agreement, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with this Agreement or the transactions contemplated hereby. To the knowledge of Buyer, no litigation has been threatened, and no event has occurred, or circumstance exists that may give rise to or serve as a basis for the commencement of any litigation that in any way affects Buyer's ability to complete the transactions contemplated in this Agreement.

d. Buyer and its agents, representatives, and contractors, when performing under this Agreement, and as long as Buyer retains any Rights, Title, and Interests in the Accounts, or the right to collect on the same, will comply with each law that is applicable to Buyer, its agents, representatives, and contractors, on the servicing, ownership, collection on, or use of the Accounts, including, but without limitation, the Gramm-Leach-Bliley Act, HIPAA, HIECH, and all applicable consumer credit laws, if any.

e. Buyer has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of purchasing the Accounts and is, by virtue of having made other purchases of a similar nature and/or by reason of its business and financial experience or the business and financial experience of those individuals it has retained to advise Buyer with respect to its purchasing the Accounts.

f. The transactions contemplated by this Agreement do not involve, nor are they intended in any way to constitute, the assignment or sale of a "security" or "securities" within the meaning of any applicable securities or blue-sky laws, and none of the representation, warranties, or agreements of the Buyer shall create any inference that the transactions involve any "security" or "securities." Buyer understands that not all Accounts are secured

by collateral or that any payment received is associated with any particular Account. Buyer understands that this purchase involves a high degree of risk.

9. **Events of Default**. Any one or more of the following constitutes an **Event of Default**:

   a. Seller files or has filed against it any bankruptcy proceedings or any assignment for the benefit of creditors, or appointment of a receiver or custodian for any of its Accounts;

   b. Seller becomes insolvent or is generally not paying its debts as they become due, or is left with unreasonably small capital;

   c. Any involuntary lien, garnishment, encumbrance, or attachment attaches to the Accounts Receivable;

   d. Seller breaches or fails to satisfy when due any covenant, agreement, obligation, warranty, or representation in this Agreement;

   e. Seller is in default under any document, instrument, or agreement evidencing any debt, obligation, or liability in favor of Buyer or its affiliates or vendors, regardless of whether the debt, obligation, or liability is direct or indirect, primary or secondary, or fixed or contingent;

   f. An event of default occurs under any guaranty or obligation of Seller to a third party, or any material provision of any guaranty given by Seller to a third party is not valid or enforceable in favor Seller, or is repudiated or terminated;

   g. A default or event of default occurs under any agreement between Seller and any creditor of Seller;

   h. Any creditor that has signed a subordination agreement with Buyer breaches any terms of the subordination agreement; or

   i. A material impairment in the perfection or priority of the Buyer's security interest in the Accounts; (ii) a material adverse change in the business, operations, or conditions (financial or otherwise) of the Seller occurs; or (iii) a material impairment of the prospect of repayment of any portion of the Accounts Receivable occurs.

10. **Seller's Obligation to Repurchase Accounts**. Upon written notice from Buyer, Seller will repurchase any Account to which any of the following conditions applies:

   a. Death of all Patients on or prior to the Cutoff Date (as defined below);

   b. The Account was not properly handled prior to sale, rendering the balance legally uncollectable;

   c. The filing of bankruptcy proceedings, or other proceeding which seeks liquidation, reorganization, or discharge of the Account, by the Patient after the Patient's Account origination date and on or prior to the Cutoff Date without subsequent dismissal;

   d. The Account was created as a result of fraud, forgery, or Seller's mistake, such that the Patient has no liability for such Accounts;

   e. On or prior to the Cutoff Date, Seller received payment in full settlement of the Account, but which was not deleted from the Account schedule by Seller;

   f. The Account is a duplicate record of any other Account being sold hereby;

   g. The Patient has initiated litigation, whether through an administrative or court action, suit, arbitration, or other proceeding, against Seller;

h. The Account was disputed prior to the Cutoff Date in any way that would materially impair the validity or enforcement of any balance or reduce the amount payable under an Account from the balance thereof contained in and on Exhibit A;

i. The Patient has been released from liability, or the respective Account has otherwise been satisfied, compromised, settled, cancelled, released, or subordinated;

j. The Seller is not the sole owner of the account and does not have full right to transfer and sell the Account free and clear of any encumbrance, equity, lien, pledge, charge, claim, or security interest, except as otherwise contemplated herein;

k. The information contained in Exhibit A, in reference to a particular Account, is not true and correct;

l. In the event that it is determined by Buyer that Seller is in breach of any covenant, agreement, obligation, warranty, or representation as set forth herein relating to any Accounts purchased by Buyer, Buyer shall notify Seller in writing of the circumstances which Buyer has discovered, within five (5) days of the discovery, which thereafter creates Buyer's right to require Seller to repurchase the Accounts. If Seller does not cure the event within thirty (30) days of notification, Buyer shall have the right to require that Seller repurchase the Accounts from Buyer consistent with Section 11 below.

11. **Procedure for Account Repurchase**. For any Account that meets a condition set forth in Section 10, Buyer will reassign such Account to Seller. Seller shall refund to the Buyer the Consideration attributable to such Account, less any amounts collected by Buyer after the Cutoff Date and prior to Buyer's notification to Seller that the Account is subject to repurchase. The repurchase price shall be paid to Buyer within fourteen (14) days after Seller's receipt of the documents and instruments required to reassign such Account to Seller, and the appropriate information is received regarding any amounts collected on the account.

12. **Closing**. The **Closing Date** will be on August 2, 2019, or at such other time mutually agreed to by the Parties in writing. The following actions related to this Agreement will be taken by Seller and Buyer on, or immediately subsequent to, the Closing Date:

a. Pre-Closing Adjustments: Purchase is subject to adjustment to reflect:

i. The current balance actually due as of July 19, 2019 (the "**Cutoff Date**") (e.g., deductions for unapplied contractual adjustments/write-offs, or unreported payments received before the Cutoff Date); or

ii. Any Account that Buyer determines, in its sole discretion, to remove from the schedule of Accounts listed in Exhibit A prior to the Closing Date.

b. On the Closing Date, Buyer and Seller will execute this Agreement; and

c. Upon the full execution of the Agreement, Buyer shall pay to Seller the monies for the Accounts as described herein. Consideration shall be paid to Seller in immediately available funds, by wire transfer in accordance with the Wire Transfer Instructions attached hereto as Exhibit B.

MMO NSD

13. **Conditions Precedent**.

a. **Conditions Precedent to Seller's Obligations.** The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Buyer in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Buyer shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law. Consummation by Seller of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any Law that applies to Seller.

iv. Deliveries at Closing. The Consideration shall have been paid and all documents to be delivered and actions to be taken on or before Closing by Buyer shall have been delivered or taken.

b. **Conditions Precedent to Buyer's Obligations**. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver of each of the following conditions:

i. Representations and Warranties. The representations and warranties of Seller in this Agreement shall be true and correct as of the Closing Date.

ii. Compliance with Covenants and Agreements. Seller shall have complied in all material respects with each of its covenants and agreements in this Agreement on or before the Closing Date.

iii. No Violation of Law or Litigation. Consummation by Buyer of the transactions contemplated by this Agreement and performance on this Agreement will not violate any order of any court or governmental body having competent jurisdiction or any law that applies to Buyer. No claim, action, suit, investigation, or proceeding is pending or has been threatened which is likely to restrict, prohibit, or otherwise have a material adverse effect on the transactions contemplated by this Agreement.

iv. Confirmation of Certain Items. Seller shall have confirmed to Buyer that Exhibit A fairly and accurately reflects, in all material respects, the information contained therein.

v. Deliveries at Closing. In accordance with this Agreement, all documents to be delivered and actions to be taken on or before Closing by Seller shall have been delivered or taken.

vi. No Material Adverse Change. There shall have been no material adverse change in the condition, financial or otherwise, of Seller or the Accounts. Through the Closing Date, the Seller and its agents have not effected any material change in their policies and procedures relating to the Accounts that could reasonably be expected to have a material adverse effect on any of the Accounts.

14. **Accounts Receivable in Good Standing**. The Accounts Receivable sold hereunder have been, or will be, made in good faith and authenticated by a representative of the Seller and the Patient, to the extent necessary. The treatment or services rendered, or goods sold, to the Patient on the Accounts Receivable have been, and will continue to be, medically reasonable and necessary and will not have been misrepresented to the Patient. The dollar amount of the Accounts Receivable will not exceed the reasonable and customary charges for the treatment, services, or goods provided to the Patient. Seller guarantees to fulfill all warranties and representations made to the Patient.

15. **Priority**. Seller hereby agrees and acknowledges that any Accounts Receivable or sums otherwise due to Buyer for a Patient shall receive priority over any other accounts or sums due to Seller for such Patient. Buyer shall have the right to collect all amounts due from a Patient for any treatment, services, or goods received from Seller, including amounts related to accounts receivable not purchased by Buyer. In such an event, Buyer will first apply all collected amounts to the sums due and owing on Buyer's Accounts Receivable and thereafter disburse any remaining funds to Seller for any accounts receivable not purchased from the Seller by Buyer.

16. **Confidentiality**. The Parties agree to keep confidential all terms of this Agreement, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the payment terms set forth in this Agreement to anyone, except as required by law, in which case the disclosing party will give notice to the non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Seller and Buyer to any source. If any law requires disclosure of the payment terms between Seller and Buyer in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Agreement and any related agreement shall not be made part of the Patient's medical records.

17. **HIPAA**. The Parties agree to protect the privacy of all Accounts Receivable and medical documents and to comply with the Health Insurance Portability and Accountability Act ("**HIPAA**") guidelines.

18. **Further Assistances Assurances and Cooperation**. Seller, its agents, employees, members, shareholders, representatives, and/or doctors, shall cooperate in all respects with the collection, handling, management, and transfer of the Accounts Receivable. Seller agrees to furnish Buyer with one copy of all medical records, billing documentation, and all other information or documentation that may be necessary to support or assist Buyer's, or its assignee's or representative's, collection of any Accounts Receivable. Seller further agrees to maintain all medical records, billing records, and other books and records relating to the care provided to the Patient in accordance with good and commercially reasonable medical practices and all applicable laws. When requested by Buyer, Seller agrees to cooperate and assist Buyer, at no additional charge to Buyer, with the collection or defense of any Accounts Receivable. Moreover, each Party shall execute and deliver or cause to be executed and delivered to the other such further instruments and shall take such other action as the other may reasonably require to effectuate the contemplated transactions.

19. **Buyer's Indemnification**. From and after the Closing Date, Buyer shall indemnify and hold Seller harmless against and from any and all liability for, and from and against any and all losses or damages Seller may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Seller in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Seller to enforce this indemnification, which Seller shall incur or suffer as a result of:

a. Any act or omission of Buyer or Buyer's agents, assigns, or transferees in connection with the Accounts and its purchase of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Buyer's representations or warranties herein;

c. The material breach of any of Buyer's covenants herein; or

d. Any claim by any Patient regarding assignment, subsequent enforcement, servicing, or administration of the Accounts by Buyer or Buyer's agents.

The obligations of Buyer under this Section 19 shall survive the closing of the transactions herein contemplated.

20. **Seller's Indemnification**. From and after the Closing Date, Seller shall indemnify and hold Buyer harmless against and from any and all liability for, and from and against any and all losses or damages

Buyer may suffer as a result of, any claim, demand, cost, expense, or judgment of any type, kind, character, or nature asserted by any third party including, without limitation, all reasonable expenses incurred by Buyer in investigating, preparing, or defending against any such claims and reasonable attorneys' fees both for such defense and all costs and expenses incurred by Buyer to enforce this indemnification, which Buyer shall incur or suffer as a result of:

a. Any act or omission of Seller or Seller's agents (but not including any independent contractors such as collection agencies or attorney or law firms retained to collect on Accounts) in connection with the Accounts and its sale of the Accounts pursuant to the Agreement;

b. The material inaccuracy of any of Seller's representations or warranties herein;

c. The material breach of any of Seller's covenants herein; or

d. Any claim by any Patient regarding the origination, servicing, collection, or administration of the Accounts by Seller or Seller's agents.

The obligations of Seller under this Section 20 shall survive the closing of the transactions herein contemplated.

21. **Procedure for Indemnification**. Any party seeking indemnification ("**Indemnitee**") with respect to a claim or loss shall give prompt written notice thereof to the party against whom indemnification is sought ("**Indemnitor**"). Indemnitor shall have the right to assume the defense of any and all claims for which indemnification is sought hereunder, and Indemnitee agrees to cooperate with Indemnitor in any such defense. If the amount of any claim or loss shall, at any time subsequent to payment pursuant to this Agreement, be reduced by recovery, settlement, or otherwise, the amount of such reduction, less any expenses incurred in connection therewith, shall promptly be repaid by the Indemnitee to the related Indemnitor. If the Indemnitor elects to assume the defense, the Indemnitee shall retain the right to consent to the selection of counsel, the terms of settlement, and any use of Indemnitee's or its affiliate's name in any settlement or any notification, advertisement, or publication of the settlement.

22. **Choice of Law, Venue and Jury Waiver**. This Agreement and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Agreement, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. In the event that Seller breaches any part of this Agreement in a manner that causes irreparable injury to Buyer, Seller acknowledges that Buyer shall have no adequate remedy at law, and shall therefore be entitled to enforce each such obligation by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to any other rights and remedies which may be available at law or in equity. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Seller and Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

23. **Attorneys' Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Agreement, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

24. **Confidentiality/Trade Secret**. This Agreement, its terms, conditions, substance of discussions between the parties, all documentation related to this Agreement, and any other information exchanged between the Parties that relates to this Agreement represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Agreement, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

25. **Relationship of the Parties**. The relationship between Seller and Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Agreement. Under no circumstance does this Agreement create any medical or healthcare obligation on the part of Buyer, as Buyer is neither a medical nor healthcare professional or provider of any kind. Buyer will not direct Patient medical care in any way, and all medical decisions are solely between Seller and the Patient. Seller and the Patient(s) are free to embark upon whichever courses of medical treatment or services they deem reasonable and necessary, but Buyer is not obligated to purchase any portion of any Accounts Receivable related to said treatment, services, or goods provided that is not listed on Exhibit A.

26. **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

27. **Interpretation**. Each party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

28. **Rights Cumulative; Waivers**. The rights of each of the parties under this Agreement are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

29. **Construction**. Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to include the plural of such noun or pronoun and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

30. **No Strict Construction**. This Agreement is the joint work product of Seller and Buyer, which has been negotiated by the parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provisions of this Agreement, this Agreement shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

31. **Binding Effect**. Subject to the provisions contained herein, this Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the

Exhibits, addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

32. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Agreement.

33. **Endorsement and Deposit of Payments**. Buyer has the right to endorse and deposit checks which it receives from payers for Accounts Receivable which have been purchased by Buyer.

34. **Counterparts**. This Agreement may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

35. **Notice**. All notices and other communications that are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given: (a) when received if personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g., Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the others.

36. **Prior Understandings**. This Agreement supersedes any and all prior discussions and agreements between Seller and Buyer with respect to the purchase of the Accounts and other matters contained herein, and this Agreement contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

37. **Non-Merger/Survival**. Each and every covenant hereinabove made by Buyer or Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

38. **Non-Disclosure Agreement.** Buyer and Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

39. **Integrated Agreement**. With the exception of the NDA, this Agreement and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Buyer and the Seller. This Agreement shall not be altered or modified except by a subsequent writing, signed by Buyer and Seller.

40. **Successors and Assigns**. This Agreement shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Seller assign any of its rights and/or obligations pursuant to this Agreement to any third-party, absent prior express written consent of Buyer.

41. **Headings**. The headings of articles and sections contained in this Agreement are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Agreement.

42. **No Third-Party Beneficiary**. This Agreement is for the sole benefit of the parties hereto, and nothing contained in this Agreement shall be construed to grant any person or entity, other than Seller and Buyer and their respective successors and permitted assigns, any right under or in respect of this Agreement or any provision hereof.

43. **Other Agreements**. This Agreement may not adversely affect Buyer's rights under any other document or agreement. If there is a conflict between this Agreement and any agreement between Seller and Buyer, Buyer may determine in its sole discretion which provision applies.

44. **Further Assurances**. In connection with this Agreement and the transactions contemplated hereby, each party of this Agreement will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Agreement and the transactions contemplated or intended hereby.

45. **Amendments**. Any additions, deletions, or waivers to this Agreement shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

IN WITNESS WHEREOF, the parties have executed this Purchase Agreement for Accounts Receivable on the date indicated in the introductory paragraph herein.

Buyer: MedFinance Servicing, LLC

Print Name: Nate Ormond

By (Signature): Nate Ormond

Date: 8/2/2019

Title: President

Seller:

Print Name: Mark Seda

By (Signature): M Seda

Date: 8/2/2019

Title: Ceo C Spinceoe ortho

Accounting Signoff

Print Name: Alan T. Macdonald

By (Signature): Alan T. Macdonald

Date: 8/2/2019

EXHIBIT E

City of Ann Arbor v. St. James Church of God in Christ Ypsilanti

Court of Appeals of Michigan

February 23, 2017, Decided

No. 330336

Reporter
2017 Mich. App. LEXIS 306 *

CITY OF ANN ARBOR, Plaintiff-Appellee, v ST. JAMES CHURCH OF GOD IN CHRIST YPSILANTI and REVEREND MELVIN LEWIS, Defendants-Appellants.

Prior History: [*1] Washtenaw Circuit Court. LC No. 15-000451-CB.

Judges: Before: HOEKSTRA, P.J., and SAAD and RIORDAN, JJ.

Opinion

PER CURIAM.

In this nuisance-abatement litigation, plaintiff the City of Ann Arbor ("the City") filed suit against defendants, Reverend Melvin Lewis ("Lewis") and St. James Church of God in Christ Ypsilanti ("the Church") (collectively "defendants"), to have a building on the Church's property declared a nuisance and to obtain relief allowing the City to demolish the building. A default was entered against the Church under MCR 2.603(A)(1) for failing to file an answer or otherwise defend against the complaint. Following a motion by the City for entry of default judgment under MCR 2.603(B)(3), the trial court then entered a default judgment against the Church, granting the City's request to allow demolishment of the building. The Church moved to set aside the default judgment. The trial court denied this motion and later denied a motion for reconsideration. Defendants now appeal as of right. Because the trial court did not abuse its discretion by denying defendants' motion to set aside the default judgment against the Church, we affirm.

The Church is incorporated as a nonprofit corporation, and Lewis is the Church's resident [*2] agent. Lewis is also the pastor of the Church. The Church owns land in the City of Ann Arbor, and the underlying substantive dispute in this case relates to a purportedly dangerous building on the Church's property.

In particular, on May 4, 2015, the City initiated the current lawsuit against defendants, seeking to have the building on the Church's property declared a nuisance and to obtain relief allowing the City to demolish the building at defendants' expense without interference from defendants. In response to the City's complaint, Lewis filed an answer and affirmative defenses. Notably, Lewis filed his responsive pleading in propria persona and, in

doing so, he purported to act in his own name *and* on behalf of the Church. However, Lewis is not a lawyer, meaning that he could not represent the Church. See *Detroit Bar Ass'n v Union Guardian Trust Co*, 282 Mich 707, 711; 281 NW 432 (1938). Thus, despite Lewis's efforts, the Church failed to plead or otherwise defend against the complaint as provided by law. MCR 2.603(A)(1). As a result, a default was entered against the Church on July 29, 2015. The City then moved for a default judgement under MCR 2.603(B)(3). Following a hearing, the trial court granted the City's motion for a default judgment, explaining to Lewis that he could not represent [*3] the Church and that a default judgment was appropriate because the Church had failed to respond to the complaint.

The Church then obtained an attorney and moved to have the default judgment set aside. According to the motion, there existed good cause to set aside the default judgment because Lewis was unaware that his representation of the Church constituted the unauthorized practice of law and, once informed of this fact, he promptly obtained legal counsel for the Church. Regarding a meritorious defense, as supported by an affidavit from Lewis, defendants contended that the City failed to inform the Church why its proposed plans for the building had been rejected;[1] and, once given this information in the course of the City's current lawsuit, the Church corrected the defects in its proposed plan. According to defendants, they should be given the opportunity to correct any safety issues and to avoid the harsh result of demolition.

The trial court denied the motion to set aside the default judgment, concluding that Lewis's ignorance of the law did not constitute good cause to set aside the default judgment and that Lewis's tactical errors could not be excused merely because he proceeded [*4] in propria persona. Given that the Church had not shown good cause, the trial court did not decide whether the Church had a meritorious defense.

Lewis was subsequently dismissed from the case. The Church later moved for reconsideration of its motion to set aside the default judgment. However, the trial court denied the motion as failing to demonstrate a palpable error. Defendants now appeal as of right. According to the parties, the building in question has been demolished.[2]

On appeal, defendants first contend that the trial court abused its discretion by denying the motion to set aside the default judgment because the Church demonstrated good cause for its failure to comply with the requirements leading to the default judgment. Specifically, defendants argue that good cause exists because Lewis was reasonably "confused" about how to proceed. According to defendants, such confusion may be experienced by pro per litigants and licensed attorneys alike. Citing *Bednarsh v Winshall*, 364 Mich 113; 110 NW2d 729 (1961) and other cases, defendants assert that,

---

[1] Prior to the present lawsuit, pursuant to administrative proceedings under Chapter 101 of the Ann Arbor City Code, which included notice and a show cause hearing before the City's Building Board of Appeals ("BBA"), the building on the Church's property was determined to be "dangerous." The Church was given an opportunity to make the building safe, but the Church's site plans were rejected by the City. The BBA then entered an administrative order for the demolishment of the building, and the Church failed to appeal this final determination. According to the City, arrangements were made to have the building demolished, but defendants interfered and prevented demolition, which prompted the current lawsuit.

[2] Because the building has been demolished, the City maintains that defendants' efforts to set aside the default are now moot. We disagree. "An issue becomes moot when a subsequent event renders it impossible for the appellate court to fashion a remedy." *Kieta v Thomas M Cooley Law Sch*, 290 Mich App 144, 147; 799 NW2d 579 (2010). "However, a question is not moot if it will continue to affect a party in some collateral way." *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). See, e.g., *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). In this case, although the building has been destroyed, the Church faces other consequences as a result of the default judgment. For example, under the judgment entered by the trial court, the City may place a lien on the Church's property, the judgment may be recorded with the register of deeds, and the Church is responsible for the City's expenses. While setting aside the default judgment could not save the building, it could potentially relieve the Church of the other ramifications of the judgment. In these circumstances, the appeal is not moot. See *Cathey*, 261 Mich App at 510; *Hayford*, 279 Mich App at 325.

in the case of attorneys, such "confusion" has been held to provide a reasonable excuse for failing to comply with the requirements leading to the default judgment. Defendants maintain that [*5] this same reasoning supports the assertion that Lewis's "confusion" provides good cause for the Church's failure to respond to the complaint and that it would be a miscarriage of justice not to set aside the default judgment. We disagree.

We review a trial court's decision on a motion to set aside a default judgment for an abuse of discretion. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 218; 760 NW2d 674 (2008). An abuse of discretion "involves far more than a difference in judicial opinion." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007) (citation and quotation marks omitted). "Rather, an abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.*

"Michigan law generally disfavors setting aside default judgments that have been properly entered." *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). Under MCR 2.603(D)(1), a trial court may set aside a default judgment as follows: 241 Mich App at 653. The trial court has discretion to determine whether a defendant's excuse for failing to timely answer the complaint was reasonable. *Saffian*, 477 Mich at 16. "Manifest injustice is *not* a third form of good cause that excuses a failure to comply with the court rules where there is a meritorious defense." *Barclay*, 241 Mich App at 653.

> A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted [*6] only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

The party moving to set aside the default bears the burden of demonstrating good cause and a meritorious defense.[3] *Saffian*, 477 Mich at 15. In particular, to establish "good cause," the party seeking to set aside the default must show: "(1) a procedural irregularity or defect, or (2) a reasonable excuse for not complying with the requirements that created the default." *Barclay*,

In evaluating good cause, "[a] party is responsible for any action or inaction by the party or the party's agent," *Alken-Ziegler, Inc*, 461 Mich at 224, and negligence does not normally constitute grounds for setting aside a default judgment, *Park v Am Cas Ins Co*, 219 Mich App 62, 67; 555 NW2d 720 (1996). Moreover, "a person acting *in propria persona* should be held to the same standards as members of the bar," *Totman v Sch Dist of Royal Oak*, 135 Mich App 121, 126; 352 NW2d 364 (1984); and, "a lay defendant's lack of knowledge of the law and its consequences will not necessarily provide a reasonable excuse and good cause to set aside a default," *Reed v Walsh*, 170 Mich App 61, 65; 427 NW2d 588 (1988). Further, a party's failure to obtain counsel, despite sufficient time to do so, is considered a problem of "his own making" that demonstrates neither good cause nor the occurrence of a manifest injustice. *First Bank of Cadillac v Benson*, 81 Mich App 550, 555; 265 NW2d 413 (1978). See also *Miller v Rondeau*, 174 Mich App 483, 489; 436 NW2d 393 (1988).

In this case, the trial court did not abuse its [*7] discretion by concluding that Lewis's ignorance of the law did not provide good cause for the Church's failure to file a timely response to the complaint. In particular, it is a rudimentary principle of law that a corporation has a separate legal existence. *Fraser*

---

[3] The trial court did not reach the question of whether the Church had a meritorious defense. Nevertheless, on appeal, the City maintains that the Church's motion to set aside the default judgment should also have been denied because the Church lacked a meritorious defense. As discussed *infra*, the trial court did not abuse its discretion by denying the Church's motion for lack of good cause. Given the lack of good cause, we need not reach the City's arguments regarding the existence of a meritorious defense. *Zaiter v Riverfront Complex, Ltd*, 463 Mich 544, 553 n 9; 620 NW2d 646 (2001).

Trebilcock Davis & Dunlap PC v Boyce Trust 2350, 497 Mich 265, 275; 870 NW2d 494 (2015). See also MCR 2.201(C)(4). Consequently, a non-lawyer cannot proceed in propria persona on behalf of a corporation. *Detroit Bar Ass'n*, 282 Mich at 711; *Peters Prod, Inc v Desnick Broad Co*, 171 Mich App 283, 287; 429 NW2d 654 (1988). Rather, a corporation must be represented by an attorney, and a non-lawyer attempting to represent a corporation is engaged in the unauthorized practice of law. *Detroit Bar Ass'n*, 282 Mich at 711. See also MCL 600.916; *Shenkman v Bragman*, 261 Mich App 412, 416; 682 NW2d 516 (2004). Thus, Lewis could not file an answer on behalf of the Church, and the Church's complete failure to respond to the complaint resulted in the entry of a default, and subsequently a default judgment, against the Church. See *Huntington Nat Bank v Ristich*, 292 Mich App 376, 387; 808 NW2d 511 (2011); MCR 2.108(A)(1); MCR 2.110(B)(1); MCR 2.603(A)(1), (C)(3).

Contrary to defendants' arguments, they have not identified a procedural irregularity or defect, or a reasonable excuse for not complying with the requirements that created this default. See *Barclay*, 241 Mich App at 653. There is nothing irregular or unusual about the fact that a corporation must be represented by an attorney. To the contrary, a corporation's need for an attorney is a well-recognized and long-settled legal principle of this State. See *Detroit Bar Ass'n*, 282 Mich at 711. [*8] That Lewis, as a non-attorney, was unaware of this rule of law does not establish a reasonable excuse constituting good cause for setting aside the default. See *Reed*, 170 Mich App at 65. Rather, once served with the complaint, the Church had the opportunity to consult an attorney and file a response, but it failed to do so. Cf. *Miller*, 174 Mich App at 489. That Lewis instead chose to improperly proceed on behalf of the Church was a problem of his own making, *First Bank of Cadillac*, 81 Mich App at 555; and, having decided to proceed in propria persona, Lewis was "bound by the burdens that accompany such election," *Hoven v Hoven*, 9 Mich App 168, 174; 156 NW2d 65 (1967). Further, because Lewis is an agent of the Church, the Church is responsible for Lewis's action in improperly attempting to proceed in propria persona and his inaction in failing to obtain an attorney. See *Alken-Ziegler, Inc*, 461 Mich at 224. Overall, given the facts of this case, the trial court did not abuse its discretion by determining that Lewis's unilateral confusion about the law did not constitute good cause for the Church's failure to respond. See *Saffian*, 477 Mich at 15-16. Thus, the trial court properly denied defendants' motion to set aside the default judgment. See MCR 2.603(D)(1).

In contrast, defendants point to several cases in which "confusion" by attorneys was purportedly recognized as good cause for setting aside a default. [*9] Defendants contend that Lewis's similar "confusion" in this case is equally excusable. However, a brief review of these cases makes plain that what defendants describe as "confusion" was occasioned by unusual circumstances in the proceedings not caused solely by the defendant and that the "confusion" could not be categorized as a unilateral misunderstanding of the law.[4] In comparison, in this uncomplicated case, Lewis simply made the decision to proceed in propria persona, despite the well-settled rule that he could not represent a corporate entity as a non-lawyer. There was no reasonable basis in the facts

---

[4] See *Bednarsh*, 364 Mich at 113-114 (finding good cause for the defendant's slight delay in filing an answer where the defendant contacted an attorney, but because the attorney had previously represented the plaintiff, the attorney turned the matter over to another attorney); *ISB Sales Co v Dave's Cakes*, 258 Mich App 520; 672 NW2d 181 (2003) (finding good cause where the attorneys on both sides of the case agreed to an irregular, and "unwise," informal process of communications that resulted in the defendant missing deadlines); *Jones v Philip Atkins Constr Co*, 143 Mich App 150; 371 NW2d 508 (1985) (finding good cause where the plaintiff's attorney was dealing with the defendant's claim office in Michigan but a writ of garnishment was served on the insurance commissioner and then forwarded to offices out-of-state which had no record of the litigation); *Levitt v Kacy Mfg Co*, 142 Mich App 603; 370 NW2d 4 (1985) (finding good cause due to unusual problems associated with the defendant's insurance company being in receivership, such that the suit papers were erroneously sent to the insurance underwriter after the underwriter's relationship with the insurance company had been severed).

or law for this "confusion." See *Huntington Nat Bank*, 292 Mich App at 392-393. Indeed, even if we were to view this case as a close question, "the trial court had discretion to determine whether defendant's excuse for failing to timely answer the complaint was reasonable," *Saffian*, 477 Mich at 16; and defendants have not shown that the trial court's decision fell outside the range of reasonable and principled outcomes. Because the trial court's decision was not an abuse of discretion, the Church is not entitled to have the default judgment set aside. See *id.*

Finally, on appeal, defendants argue for the first time that the trial court committed error [*10] warranting reversal and violated their due process rights by failing to hold a hearing and issue a ruling on their motion to stay proceedings pending the Church's motion for reconsideration and/or their appeal to this Court. Given our conclusion that defendants are not entitled to set aside the default judgment against the Church, defendants' unpreserved due process arguments regarding the motion to stay are moot. That is, "a case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). Here, even if there was some error relating to the motion to stay, the fact remains that the Church cannot succeed in setting aside the default judgment and preventing the demolition of the building or the other consequences of the default judgment. In other words, at this time, consideration of issues relating to the motion to stay would be purposeless because there is simply no relief available for defendants.[5] "An issue becomes moot when a subsequent event renders it impossible for the appellate court to fashion a remedy." *Kieta*, 290 Mich App at 147. We will not decide moot issues. *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016).

Affirmed. Having prevailed in full, the City may tax costs pursuant to MCR 7.219.

/s/ Joel P. [*11] Hoekstra

/s/ Henry William Saad

/s/ Michael J. Riordan

End of Document

[5] Defendants suggest on appeal that they are entitled to damages from the City because the City proceeded in "bad faith" by demolishing the building before the trial court ruled on the motion to stay. Defendants cite no supporting legal authority for this cursory argument, and thus we consider this argument to be abandoned. See *Bill & Dena Brown Trust v Garcia*, 312 Mich App 684, 695; 880 NW2d 269 (2015).

Exhibit H

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Plaintiff,

Case No. 20-1710-NF
HON. Jennifer Faunce

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

/

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax

Frederick V. Livingston (P75206)
Gregory H. Akaraz (P78092)
NOVARA TESIJA & CATENACCI, PLLC
Attorneys for Defendant
888 West Big Beaver, Suite 600
Troy, MI 48084
(248) 354-0380
(248) 250-9927 Fax

/

PLAINTIFF'S RESPONSETO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

NOW COMES Plaintiff, by and through its attorneys, HAAS & GOLDSTEIN, P.C., and in response to Defendant's Motion, states as follows:

1. Admits.

2. Admits.

3. Denies for the reason that parts of the accounts were not purchased. The transactions in question were loans.

4. Denies for the reason that parts of the accounts were not purchased. The transactions in question were loans.

5. Denies for the reason it is not true as **"Exhibit A," documents dated July 23, 2020, July 1, 2020, and May 4, 2020, are Counter-Assignments of Accounts Receivable entered into between C-Spine and the factoring company, which puts to rest any argument that C-Spine is not the real party in interest to maintain standing in litigation[1]. This addendum establishes C-Spine's right to prosecute this matter**. (**Exhibit A**) Further, the transactions in question with factoring companies involved loans, not sales.

6. Denies. The transactions in question with factoring companies involved loans, not sales.

7. Denies for the reason it is not true as **"Exhibit A," documents dated July 23, 2020, July 1, 2020, and May 4, 2020, are Counter-Assignments of Accounts Receivable entered into between C-Spine and the factoring company, which puts to rest any argument that C-Spine is not the real party in interest to maintain standing in litigation. This addendum establishes C-Spine's right to prosecute this matter**. (**Exhibit A**) Further, the transactions in question with factoring companies involved loans, not sales.

8. Neither admits nor denies as the statute speaks for itself. Further, the transactions in question with factoring companies involved loans, not sales.

9. Denies for the reason it is untrue, as **"Exhibit A," documents dated July 23, 2020, July 1, 2020, and May 4, 2020, are Counter-Assignments of Accounts**

[1] This addendum was drafted, in large part, due to the procedural maneuvering by the insurance industry in its attempt to dismiss viable cases and claims.

Receivable entered into between C-Spine and the factoring companies, which puts to rest any argument that C-Spine is not the real party in interest to maintain standing in litigation. This addendum establishes C-Spine's right to prosecute this matter. (**Exhibit A**) Further, the transactions in question with factoring companies involved loans, not sales.

10. Denies for the reason it is untrue, as **"Exhibit A," documents dated July 23, 2020, July 1, 2020, and May 4, 2020, are Counter-Assignments of Accounts Receivable entered into between C-Spine and the factoring companies, which puts to rest any argument that C-Spine is not the real party in interest to maintain standing in litigation. This addendum establishes C-Spine's right to prosecute this matter**. (**Exhibit A**) Further, the transactions in question with factoring companies involved loans, not sales.

11. Denies for the reason it is not true as **"Exhibit A," documents dated July 23, 2020, July 1, 2020, and May 4, 2020, are Counter-Assignments of Accounts Receivable entered into between C-Spine and the factoring company, which puts to rest any argument that C-Spine is not the real party in interest to maintain standing in litigation. This addendum establishes C-Spine's right to prosecute this matter**. (**Exhibit A**) Further, the transactions in question with factoring companies involved loans, not sales.

12. Denies for the reason it is not true as **"Exhibit A," documents dated July 23, 2020, July 1, 2020, and May 4, 2020, are Counter-Assignments of Accounts Receivable entered into between C-Spine and the factoring company, which puts to rest any argument that C-Spine is not the real party in interest to**

maintain standing in litigation. This addendum establishes C-Spine's right to prosecute this matter. (**Exhibit A**) Further, the transactions in question with factoring companies involved loans, not sales.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendant's motion in its entirety.

BRIEF IN SUPPORT

I. Background

Plaintiff, C-Spine Orthopedics, (hereinafter "C-Spine"), provided reasonably necessary healthcare services to Jose Cruz-Muniz for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle, related to his May 23, 2018, motor vehicle accident. Plaintiff C-Spine obtained valid assignments executed by the injured party, Jose Cruz-Muniz, and filed its complaint on May 11, 2020. (See **Exhibits B and C**)

By way of background, C-Spine maintains business relationships with several medical factoring companies granting them an Article 9 security interest in patient accounts receivable in exchange for an infusion of capital[2]. Plaintiff C-Spine retains certain rights in patient accounts such as servicing, deciding when and if to file a lawsuit, power of attorney, and the decision as to the settlement amount. (**Exhibit A**) Plaintiff C-Spine also shares in the settlement funds if they exceed a certain percentage of overall recovery thereby retaining all rights to recovery.

Plaintiff C-Spine vehemently disagrees with the proposition that the act of granting a security interest in patient accounts receivable necessarily strips it of

[2] These funding agreements are subject to confidentiality clauses and will be provided to this Court under seal.

standing to file and maintain lawsuits against No-Fault insurers. However, in spite of this, **Exhibit A** demonstrates that Plaintiff has standing here, and Defendant is aware of this addendum, as it has filed other motions similar to this one in other cases.

On each and every date of service, Mr. Cruz-Muniz executed assignment of rights contracts with C-Spine which conferred upon C-Spine the exclusive right to pursue outstanding No-Fault benefits for treatment rendered by C-Spine to him, through litigation. (**Exhibit B**) C-Spine has always been the real party in interest as it pertains to the pursuit of collection of these benefits. Plaintiff C-Spine filed the instant lawsuit under an assignment theory and NOT a direct cause of action pursuant to MCL 500.3112 which will be addressed below. This is significant. "An assignee of a cause of action becomes the real party in interest with respect to the cause of action, inasmuch as the assignment invests in the assignee all rights previously held by the assignor." *Cannon Twp. v. Rockford Pub. Sch.*, 311 Mich App 402, 412; 875 NW2d 242 (2015). This is unassailable Michigan law.

For the reasons stated above and below, Defendant's analysis is flawed. C-Spine remains the real-party-in-interest is the proper party to bring and maintain the instant lawsuit and Defendant's Motion must be dismissed.

II. Standard of Review

The "Court has viewed a claim that a plaintiff lacks standing as a motion under MCR 2.116(C)(5), i.e., that the plaintiff lacks the legal capacity to sue. See *Glen Lake–Crystal River Watershed Riparians v. Glen Lake Ass'n,* 264 Mich.App. 523, 528, 695 N.W.2d 508 (2004). Further, to preserve a motion under subrule (C)(5), a party must raise the issue in its "first responsive pleading or in a motion filed prior to that

pleading." *Id.,* citing MCR 2.116(D)(2). *Pontiac Police & Fire Retiree Prefunded Grp. Health & Ins. Tr. Bd. of Trustees v. Pontiac No. 2*, 309 Mich. App. 611, 619, 873 N.W.2d 783, 789 (2015).

The affidavits, together with the pleadings, depositions, admissions, and documentary evidence must be considered by the court when the motion is based on MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. MCR 2.116(G)(4) requires that:

> When a motion under MCR 2.116(C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her. *Maiden v. Rozwood,* 461 Mich 109, 120; (1999).

It is <u>not</u> sufficient for Plaintiff to allege that he will prove at trial that there is a genuine issue of material fact with regard to the issue. Plaintiff must come forward with evidence showing that there is a genuine issue for trial in response to ***this motion***, as she cannot wait until trial in this matter to do so.

In *Maiden*, the Court clarified the correct legal standard under MCR 2.116(C)(10) since it had been inconsistently applied since the 1985 amendment of the Court Rules. The Court in *Maiden*, held:

> The reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence actually proffered in opposition to the motion. A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules.

Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross &*

Peters Co, 451 Mich. 358 (1996). Summary disposition under MCR 2.116(C)(10) is appropriate where affidavits or other documentary evidence show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co,* 460 Mich 446 (1999). Where a nonmoving party fails to present evidence required to establish the existence of a genuine issue of material fact, summary disposition is proper. *Id.*

III. Applicable Law

A. C-Spine is the Real Party in Interest Here and Therefore does not Lack the Legal Capacity to Sue

The real-party-in-interest rule is statutory. MCL 600.2041 provides, in pertinent part:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action was brought,...

The statute allows "a party with whom...a contract has been made for the benefit of another...may sue in his own name without joining with him the party for whose benefit the action was brought" This arrangement complies with the letter of the law above. But what about the spirit of the law?

> A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. *Hofmann v. Auto Club Ins. Ass'n,* 211 Mich.App. 55, 95, 535 N.W.2d 529 (1995). This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. *Michigan Nat'l Bank v. Mudgett,* 178 Mich.App. 677, 679, 444 N.W.2d 534 (1989). **In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. *Kearns v. Michigan Iron & Coke Co.,* 340 Mich 577, 581, 66 N.W.2d 230 (1954).** A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in

> controversy that may be pleaded to bar any further suit instituted by any other party. *Id. at 582.* See also *Cody Park Ass'n v. Royal Oak School Dist.,* 116 Mich.App. 103, 110, 321 N.W.2d 855 (1982). *City of Kalamazoo v. Richland Twp.,* 221 Mich. App. 531, 534, 562 N.W.2d 237, 238 (1997).[emphasis added.]

The purpose of the real-party-in-interest rule is to provide Defendants with the protection of "full, final and conclusive adjudication" of a claim. The funding agreement and addendums entered into by C-Spine and the factoring companies shows that C-Spine has the authority to fully, finally, and conclusively adjudicate the claims at issue in this case. (**Exhibit A**) The agreements and addendums confer upon C-Spine the role of servicer for Mr. Cruz-Muniz's account. As the servicer of the account, C-Spine has authority to exercise a certain control over the account. Generally, the Counter-Assignment of Accounts/Addendum provides that C-Spine can:

1. **Assignment of Rights back to Original Seller**. Original Buyer wishes to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. This shall include but is not limited to any right to pursue, negotiate, compromise, and settle, the Lawsuit, or at any time short of a Lawsuit. At all times hereafter, Original Seller shall retain the legal Rights, Title, and interest to the Account subject to the terms herein.

   (Exhibit A)

The above provides Plaintiff with all the necessary abilities to conclude this issue, once-and-for-all, in this court. Therefore, C-Spine satisfies the letter and spirit of the real-party-in-interest rule. Additionally, and independently of its authority as a servicer, C-Spine retains a contingent interest in Mr. Cruz-Muniz's account under the terms of the agreement. Pursuant to numbered paragraph three (3) the terms of the agreement, the factoring company is entitled to either of the following whichever is greater: (1) the entire

amount recovered on the date of service funded; or 50% of the billed charges with C-Spine retaining the right to collect anything in excess of that amount.

> 3. **Consideration.** In consideration for the transfer, assignment, and conveyance of Original Buyer's Rights, Title, and Interest in the Account, as well as the Additional Rights, Title, and Interest, Original Seller agrees to provide Original Buyer, net of all fees and costs associated with the pursuit of payment through a Lawsuit or otherwise (including but not limited to attorney fees and costs and collection/billing costs), the lesser of the sum of the full amount recovered on the account, or fifty (50%) percent of the total billed charges outstanding and collectible on the Account. Any amount, net of all fees and costs associated with the pursuit of payment through a payment or otherwise, shall be the exclusive property of the original seller.

(**Exhibit A**, Page 2, paragraph 3).

Because the factoring companies have vested C-Spine with complete authority to resolve Mr. Cruz-Muniz's account in which they hold a security interest, there is no danger to the Defendant that it will be subject to a multiplicity of lawsuits pursuing the same claim. The terms of the funding agreements and addendums provide that C-Spine has all the authority and abilities necessary to resolve this claim against Progressive fully, finally and completely. Progressive will not be put at risk of multiple lawsuits claiming the same bills as C-Spine remains the real party in interest and the Defendant's motion should be denied.

B. Plaintiff, due to the addendum counter-assignment, is not "suing on a debt owned by another"

The caselaw cited by Defendant is misplaced here and not on point. Defendant is attempting to circumvent its duty to pay claims based on a hyper technical and factually inaccurate legal argument that is completely irrelevant to the claims in this lawsuit. Upon information and belief, Defendant Progressive has placed all of C-Spine's claims under

investigation in order to file this exact same motion in each and every claim made against it – even where they have admitted the benefits were properly payable – to the tune of $1,997,676.60[3], in order to attempt to circumvent its duty to pay under the No-Fault statute. The issues in this lawsuit are whether the relevant treatment was reasonably necessary, related to the motor vehicle accident, and charged at a customary rate. The fact that Plaintiff chooses to obtain operating loans using its accounts receivable is irrelevant to this lawsuit and a red herring brought before this court by Defendant to create confusion, as is its argument regarding the unauthorized practice of law.

Once the counter assignments were executed, Defendant's arguments here became moot. These counter assignments do not prejudice Defendant in any way, but should the Court refuse to acknowledge them, as the Court will probably be urged by Defendant, would be extremely prejudicial to Plaintiff. This Court should not allow Defendant to perpetrate arguments that are irrelevant to any of the issues in this No-Fault case, in order to avoid its obligations as a No-Fault insurer.

C. Plaintiff is Not Suing on a debt owned by another corporation

The line of cases cited by Defendant to bolster its argument that Plaintiff is perpetrating the unauthorized practice of law is inapposite to the case at bar. Defendant's cited cases involve collection agencies that receive assignments from clients, not factoring companies who loan money in exchange for obtaining a security interest in accounts receivable. In the collection lines of cases, creditors assigned their accounts to collection agencies for the sole purpose of collection. The contingency fees

[3] Defense counsel is currently defending nine (9) cases filed by C-Spine and is attempting to raise the standing argument in all of them.

paid to the collection agencies necessarily included payment for such tasks as processing and executing legal documents if necessary. See *Bay County Ass'n v. Finance System Inc.*, 345 Mich 434; 76 NW2d 23(1956). "But collection agencies as a part of their business of serving others, clearly should not be permitted to prepare legal papers, commence suits, appear in court, prepare judgments and generally manage law suits for its various customers." The crux of these holdings as articulated in *Bay County* is as follows:

> When the defendants solicit the placement of claims with them for collection, they are asking third parties to allow them to render the service of collecting the claim. At that time the collection agency has absolutely no interest, either legal or beneficial, in the claim. The only interest they ever get comes by virtue of a promise to prosecute the claim. Courts cannot remain blind to the fact that the assignment of the claim to the defendants for collection is not made as a gratuity. The percentage of the amount collected which is allowed to the defendants is given to them for one purpose only; to compensate them for services rendered in the collection thereof. Where the collection practice involves the preparing of legal papers, furnishing legal advice and other legal services, the compensation allowed must be assumed to be in part allowed to pay for the legal services so rendered. *Bay City, supra* at 442.

The instant case does not involve collection agencies. The factoring companies are not assigned the right to file lawsuits in their own name for the sole purpose of collection. Quite the opposite in fact. By virtue of the counter assignments, Plaintiff is the real party in interest in this matter and retains complete interest in this claim. Again, Defendant is attempting to obfuscate this matter by throwing another red herring into the case to confuse the Court.

D. Should the Court Decide that Plaintiff C-Spine did not have Standing at the time the Complaint was filed, the Proper Remedy is Joinder Pursuant to MCR 2.205 and not Dismissal

Plaintiff is the real party in interest. The analysis begins with the applicable statute:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, **a party with whom or in whose name a contract has been made for the benefit of another**, or a party authorized by statute **may sue in his own name without joining with him the party for whose benefit the action was brought**... MCL 600.2041 (emphasis added).

Simply stated, both the assignor and assignee remain real parties in interest when rights have been assigned. This is mirrored in procedural court rules:

> Transfer or Change of Interest. If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c). MCR 2.202(B).

In other words, even if this Court were to erroneously conclude that the factoring companies are the only real parties in interest, the appropriate course would be to simply join them as parties to this action. Dismissal due to a change in interest is not appropriate.

Case law dating back almost 100 years confirms this analysis. Our Supreme Court has explained the purpose of the real party in interest requirement and that it only operates to preclude duplicative recovery:

> Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain. He is entitled to be protected against vexatious litigation by different parties claiming to assert the same cause of action, but, so long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the

> defendant is not harmed. *George Poy v. Allan*, 247 Mich. 385, 388; 225 N.W. 532 (1929).

More recently, the Court of Appeals explained precisely what this writer suggested based on the plain language of the applicable statute and court rule; to wit, that the issue is one of joinder, not dismissal:

> The real party in interest rule is concerned only with the power of the plaintiff before the court to bring suit upon the claim stated. Whether additional parties also have an interest, such that their joinder is required or the plaintiff is prohibited from proceeding without them, is not a question of real party in interest, but of necessary joinder of parties under MCR 2.205. *Rite-Way Refuse Disposal, Inc v. Vanderploeg*, 161 Mich.App. 274, 278; 409 N.W.2d 804 (1987).

Accordingly, the only relief that this Court can provide would be to join Apogee and Medfinance Servicing to this action. However, joinder is unnecessary and ultimately inappropriate, given the instruction above that joinder is only necessary where a judgment would not serve as a complete adjudication of the issues asserted or possibly asserted against a defendant.

If Apogee and Medfinance Servicing were joined to this lawsuit, pursuant to MCL 600.5856, the original filing date of Plaintiff's complaint would prevail as the statute would have tolled the filing date.

> The statutes of limitations or repose are tolled in any of the following circumstances:
> (a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
> (b) At the time jurisdiction over the defendant is otherwise acquired.
> (c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number of days remaining in the applicable notice period after the date notice is given. MCL 600.5856.

In *Affiliated Bank of Middleton v. American Ins. Co.*, 77 Mich App 376, 258 NW2d 232 (1977), the Court of Appeals addressed a prior action brought by the assignor of the claim at issue in both cases, that had been dismissed because the assignor was not the real party in interest to pursue the claim, due to prior assignment. There was no dispute that the second action, brought by the assignee, was past the applicable limitation period for the claim asserted. **The court ultimately held that despite the assignor never having a valid claim in the first place, that filing did toll the limitation period for the subsequent action brought by the assignee**:

> Cases from other jurisdictions have, for the most part, construed similar statutes to permit, after failure of the original action commenced within the limitations period, a renewed action by a different plaintiff when he represents the same interest as the original plaintiff. 'Failure of an action for defects in parties is frequently within the statutes permitting a new action to be instituted within a specified time after such failure. ***Thus the failure of a former suit, because prosecuted in the name of the wrong person as plaintiff, brought to recover the same claim sought to be recovered in a later suit by the proper person as plaintiff, is a failure within a statute allowing a new action to be brought within a limited time after the failure of a former action***; but there is also authority to the contrary.' We think the trial court was in error in not applying the tolling, or 'saving' statute. The statute is remedial and deserves a construction as broad as that given similar statutes in most other jurisdictions." *Id.*, at 379-380, quoting 54 C.J.S., Limitations of Actions, § 292C, p. 360 (internal citations omitted, emphasis added).

Binding precedent thus instructs here that the injured person's filing date tolled both the statute of limitations (i.e. the filing limitation) and the statute of repose (i.e. the recovery or "year-back" limitation) delineated in MCL 500.3145.

This analysis is consistent with other authority interpreting MCL 600.5856, concluding that even the most severe defect any case can possibly have – lack of subject matter jurisdiction – is still not a preclusion to tolling. The only two preclusions

are failing to obtain personal jurisdiction over the defendant in the later filed action, or a resolution on the merits of the prior filed action before commencement of the subsequent case. See, e.g., *Kiluma v. Wayne State University*, 72 Mich App 446, 250 NW2d 81 (1976) (holding that the first case having been dismissed for lack of subject matter jurisdiction nonetheless tolled the limitation periods for a subsequent action filed in the proper venue).

Therefore, should the Court disagree with Plaintiff's stance, the proper action here would be to allow Plaintiff to amend its complaint to add the factoring companies, not to dismiss its case altogether.

IV. Conclusion

Plaintiff has provided the Court with adequate evidence that it has standing in this matter pursuant to the attached addendums. (**Exhibit A**) Plaintiff filed this lawsuit in good faith and with the knowledge that it had standing to bring the action. Therefore, this motion must be denied, and no costs or attorney fees can be assessed.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendant's motion in its entirety.

Respectfully Submitted,

/s/ Jenifer L. Measel
Jenifer L. Measel (P74711)
Attorney for Plaintiff
31275 Northwestern Hwy, Ste 225
Farmington Hills, MI 48334
(248) 702-6550

Dated: February 1, 2021

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon all counsel at their above-captioned addresses on February 1, 2021, via:

___ U.S. Mail
___ Facsimile
_____
___ Express Delivery
___ Hand Delivery
_X_ Other (Filed Under Seal via eFile + Serve)

and declares under penalty of perjury that this statement is true to the best of her information, knowledge, and belief.

/s/ Samantha Jacobson
Samantha Jacobson

Exhibit A

FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 1, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 16, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

** **4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/1/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/1/2020

Schedule A

Conformed Agreement

[See attached]

FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 23, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 30, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

** **4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/23/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/23/2020

Schedule A

Conformed Agreement

[See attached]

COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ

This COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ ("**Assignment**") is entered into as of May 4, 2020 ("**Effective Date**") by and between **MedFinance Servicing, LLC** ("**Original Purchaser**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and **C-Spine Orthopedics, PLLC**, a company organized and existing under the laws of the State of Michigan with principal place of business located at 36700 Woodward Ave., Suite 202, Bloomfield Hills, Michigan 48304 ("**Original Seller**") (collectively the "**Parties**").

WHEREAS, Original Seller sold, transferred, assigned, and conveyed Original Seller's legal and equitable rights and interests ("**Rights, Title, and Interest**") in various and numerous Dates of Service between August 21, 2019 and October 2, 2019 for Patient Jose Cruz-Muniz (the "**Patient**" and the "**Account**") to Original Buyer; and

WHEREAS, As of the Effective Date, though some payments may have been received on the Account, the Account remains largely if not wholly open and collectible; and

WHEREAS, In order to obtain payment on the Account, it is likely that a lawsuit or other means of collection activity will need to be filed against the insurance carrier or other responsible party ("**Lawsuit**"). The Parties agrees that the best method to accomplish the best result is for Original Seller to be involved in, pursue, and maintain an interest in the Lawsuit; and

WHEREAS, Original Buyer desires to transfer, assign, and convey a significant portion of Original Buyer's legal and equitable rights and interests, which were previously Original Seller's Rights, Title, and Interest, back to Original Seller, as more clearly and directly outlined herein.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Assignment by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Assignment of Rights back to Original Seller**. Original Buyer wishes to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. This shall include but is not limited to any right to pursue, negotiate, compromise, and settle, the Lawsuit, or at any time short of a Lawsuit. At all times hereafter, Original Seller shall retain the legal Rights, Title, and Interest to the Account, subject to the terms herein.

2. **Assignment of Rights back to Original Seller of Future Dates of Service**. From time-to-time, and in the normal course of business, the Patient may continue to seek treatment from Original Seller after the Effective Date, which may, also in the normal course of business, cause Original Seller to sell, transfer, assign, and convey the future Rights, Title, and Interest in future dates of service related to the Patient ("**Additional Rights, Title and Interest**") which thereby become subject to the Lawsuit. The Parties agree that it is their intent and wish that any such Additional Rights, Title, and Interest be subject to the terms of this Assignment. More specifically, Original Buyer intends that Original Seller maintain any and all rights to pursue, negotiate, compromise, and settle any and all Additional Rights, Title and Interest under the terms of this Assignment.

3. **Consideration**. In consideration for the transfer, assignment, and conveyance of Original Buyer's Rights, Title, and Interest in the Account, as well s the Additional Rights, Title, and Interest, Original Seller agrees to provide Original Buyer, net of all fees and costs associated with the pursuit of payment through a Lawsuit or otherwise (including but not limited to attorney fees and costs, and collection/billing costs), the lesser of the sum of the full amount recovered on the account, or fifty (50%) percent of the total billed charges outstanding and collectible on the Account. Any amount, net of all fees and costs associated with the pursue of payment through a payment or otherwise, shall be the exclusive property of Original Seller.

4. **Original Buyer's Representations and Warranty**. As of the Effective Date, Original Buyer represents and warrants to Original Seller as follows:

a. Original Buyer represents and warrants that it has the legal authority to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. Original Buyer additionally represents and warrants that the Account being transferred, assigned, and conveyed to Original Seller are now and will at all times after the Effective Date remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Original Buyer has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its business now being conducted. Such Authorization was in full force and effect at all relevant times prior to the Effective Date.

c. The execution and delivery of this Assignment and the performance hereunder have been duly authorized, by all necessary actions on the part of Original Buyer, and no provision of applicable law or regulations, the charter or bylaws of Original Buyer, any agreement, judgment, injunction, order, decree, or other instrument binding upon Original Buyer is or will be contravened by Original Buyer's execution and delivery of this Assignment or Original Buyer's performance hereunder.

5. **Original Seller's Representations and Warranty**. As of the Effective Date, Original Seller represents and warrants to Original Buyer as follows:

a. Original Seller is duly organized, validly existing, and in good standing with all requisite power and authority to carry on its business as now being conducted to execute, deliver, and perform under this Assignment and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby.

b. The execution and delivery of this Assignment and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Original Seller.

6. **Confidentiality**. The Parties agree to keep confidential all terms of this Assignment, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the terms set forth in this Assignment to anyone, except as required by law, in which case the disclosing party will give notice to the

non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Original Buyer and Original Seller to any source. If any law requires disclosure of the payment terms between Original Buyer and Original Seller in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Assignment and any related agreement shall not be made part of the Patient's medical file.

7. **Choice of Law, Venue and Jury Waiver**. This Assignment and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Assignment, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAVIE THEIR REPSECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS ASSIGNMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Original Seller and Original Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

8. **Attorneys Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Assignment, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

9. **Confidentiality/Trade Secret**. This Assignment, its terms, conditions, substance of discussions between the Parties, all documentation related to this Assignment, and any other information exchanged between the Parties that relates to this Assignment represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Assignment, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

10. **Relationship of the Parties**. The relationship between Original Seller and Original Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Assignment. Under no circumstances does this Assignment create any medical or healthcare obligation on the part of Original Buyer, as Original Buyer is neither a medical nor healthcare professional or provider of any kind. Original Buyer has not and will not direct medical care in any way, and all medical decisions are solely between Original Seller and the Patient. Original Seller and the Patient are free to embark upon whichever course of medical treatment or services they deem reasonable and necessary.

11. **Severability**. If any provision of this Assignment is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

12. **Interpretation**. Each Party acknowledges that this Assignment has been the subject of active and complete negotiations, and that this Assignment should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Assignment.

13. **Rights Cumulative; Waivers**. The rights of each of the Parties under this Assignment are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

14. **No Strict Construction**. This Assignment is the joint work product of Original Buyer and Original Seller, which ahs been negotiated by the Parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provision of this Assignment, this Assignment shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

15. **Binding Effect**. Subject to the provisions contained herein, this Assignment and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the Exhibits addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned Parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

16. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Assignment.

17. **Counterparts**. This Assignment may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **Notice**. All notices and other communications that are required or may be given under this Assignment shall be in writing and shall be deemed to have been duly given: (a) when received in personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g. Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the other party.

19. **Prior Understandings**. This Assignment supersedes any and all prior discussions and agreements between Original Seller and Original Buyer with respect to the purchase of the Account and other matters contained herein, and this Assignment contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

20. **Non-Merger/Survival**. Each and every covenant hereinabove made by Original Buyer or Original Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

21. **Non-Disclosure Agreement**. Original Buyer and Original Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

22. **Integrated Agreement**. With the exception of the NDA, this Assignment and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Original Buyer and Original Seller. This Assignment shall not be altered or modified except by a subsequent writing, signed by both Original Seller and Original Buyer.

23. **Successors and Assigns**. This Assignment shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Original Seller or Original Buyer assign any of its rights and/or obligations pursuant to this Assignment to any third-party, absent prior express written consent of the other Party.

24. **Headings**. The headings of articles and sections contained in this Assignment are for convenience only and shall not be deemed to control or affect the meaning or construction of any provisions of this Assignment.

25. **No Third-Party Beneficiary**. This Assignment is for the sole benefit of the Parties hereto, and nothing contained in this Assignment shall be construed to grant any person or entity, other than Original Seller and Original Buyer and their respective successors and permitted assigns, any right under or in respect of this Assignment or any provision hereof.

26. **Further Assurances**. In connection with this Assignment and the transactions contemplated hereby, each party of this Assignment will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Assignment and the transactions contemplated or intended hereby.

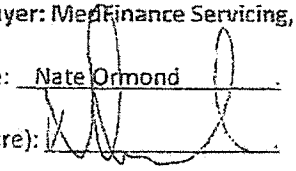
27. **Amendments** Any additions, deletions, or waivers to this Assignment shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

*****SIGNATURE PAGE TO FOLLOW*****

IN WITNESS WHEREOF, the Parties have executed this Assignment on the date indicated in the introductory paragraph herein.

Original Buyer: MedFinance Servicing, LLC

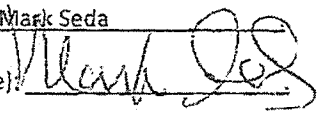
Print Name: Nate Ormond

By (Signature): 

Title: President

Original Seller: C-Spine Orthopedics, PLLC

Print Name: Mark Seda

By (Signature): 

Title: CEO

Exhibit B

C-SPINE ORTHO
"Patients first...that's the difference."

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
Address: 29255 Northwestern Hwy
Southfield, MI 48034
www.c-spineortho.com

ASSIGNMENT OF BENEFITS, AUTHORIZATION TO SETTLE CLAIM AND DIRECTION TO PAY MEDICAL PROVIDER DIRECTLY

By my signature below, for good and valuable consideration (including but not limited to the extension of credit to me), I hereby assign, transfer and convey to C-SPINE ORTHO (hereinafter "the Provider") all of my rights, title and interest in and to medical expense reimbursement in whatever form, including but not limited to any automobile liability medical expense payments or other health benefits indemnification and/or agreement otherwise payable to me. This payment shall not exceed my indebtedness to the above named assignee and I acknowledge that I will timely pay any indebtedness owed by me to the assignee that is not otherwise satisfied by the above-mentioned assigned proceeds. I also acknowledge that any medical expenses not covered under my insurance policy will be my individual responsibility.

I further authorize the Provider to negotiate, collect, and settle any claim with any insurance carrier or other third party payer with regard to these services, which authorization shall include but is not limited to authority to: 1) request and receive from any insurer or any other party any and all documentation and records that I am empowered to request regarding this claim, including, without limitation, any Independent Medical Examination Reports, policies, notices sent to me regarding appointments for Independent Medical Examinations and Examinations Under Oath (including proof of mail), Records Review Reports, coverage denial letters, Explanations of Benefits, and Benefit Payment Sheets or Logs (P.I.P. Payout Sheets), without regard as to whether such documentation has already been provided to me, and 2) to endorse in my name on any check issued for payment where benefits were assigned. By way of this assignment and notice, I further instruct you, the insurer, to furnish to Provider copies of all future notices affecting Provider's interest in this claim, including, without limitation, any notices of requested medical examinations or statements.

I further direct my insurer to direct all payments for services rendered by the Provider directly to Provider at the billing address contained on Provider's medical bills.

THIS IS A DIRECT AND IRREVOCABLE ASSIGNMENT OF THE RIGHTS AND BENEFITS UNDER THE POLICY OF INSURANCE.

A photocopy of this form shall be considered as effective and valid as the original.

I have read the foregoing and understand and agree to each of the above provisions:

Jose Alberto Cruz M
Print Patient Name

X Jose A Cruz M
Patient's Signature

Date: 8-7-19

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment includes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee, I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M
Patient Signature

Cruz-Muniz Jose
Patient Printed Name

8-15-19
Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment incudes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee, I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature

Cruz-Muniz, Jose — Patient Printed Name

5/21/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment includes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee, I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Patient Signature	Patient Printed Name	Date
[signature]	Cruz-Muniz Jose	9.12.19

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment incudes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee, I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M	Cruz-Muniz Jose	9/25/19
Patient Signature	Patient Printed Name	Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment includes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee. I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature
Cruz-Muniz, Jose — Patient Printed Name
10/2/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

Exhibit C

Approved, SCAO | Original - Court, 1st copy - Defendant | 2nd copy - Plaintiff, 3rd copy - Return

STATE OF MICHIGAN 16th JUDICIAL DISTRICT / JUDICIAL CIRCUIT / COUNTY PROBATE	SUMMONS	CASE NO. 20- 1710 - NF

Court address
40 N. Main St. Mt. Clemens, MI 48043

Court telephone no.

Plaintiff's name(s), address(es), and telephone no(s).	v	Defendant's name(s), address(es), and telephone no(s).
C-SPINE ORTHOPEDICS, PLLC, as assignee of Jose Cruz-Muniz		PROGRESSIVE MICHIGAN INSURANCE COMPANY 46333 Five Mile Road, Suite 100 Plymouth, MI 48170
Plaintiff's attorney, bar no., address, and telephone no. Jenifer Measel (P74711) Haas & Goldstein, PC 31275 Northwestern Hwy. Ste. 225 Farmington Hills, MI 48334 248 702 6550 / 248 538 9044 Fax		

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☑ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☑ this court, ☐ _____ Court, where it was given case number 20-386-NF and assigned to Judge Jennifer Faunce.

The action ☑ remains ☐ is no longer pending.

Summons section completed by court clerk. **SUMMONS**

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
MAY 11 2020	AUG 10 2020	

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (6/19) **SUMMONS** MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Plaintiff,

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

Case No. 20-1710-NF
HON. JENNIFER FAUNCE

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax

THIS IS TO CERTIFY THAT ANOTHER CIVIL ACTION ARISING OUT OF THE SAME TRANSACTION OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT HAS HERETOFORE BEEN COMMENCED IN THIS COURT AND IS PENDING BEFORE JUDGE JENNIFER FAUNCE AND ASSIGNED CASE NO. 20-386-NF.

COMPLAINT

NOW COMES Plaintiff, by and through its attorneys, HAAS & GOLDSTEIN, PC, and for its cause of action against the Defendants, hereby says as follows:

1. Plaintiff is a corporation licensed to conduct business under the laws of the State of Michigan and at all times pertinent herein was conducting business in the State of Michigan.

2. Defendants are corporations, duly organized and existing under the laws of the State of Michigan and, at all times pertinent herein, were, and currently are, conducting business in the County of Macomb, State of Michigan.

3. Pursuant to MCL 600.2041, "every action shall be prosecuted in the name of the real party of interest."

4. All rights, privileges and remedies to payment for health care services, products or accommodations provided by Plaintiff to the injured party, Jose Cruz-Muniz, for which the injured party is or may be entitled to under MCL 500.3101, *et seq*, the No Fault Act, have been assigned to Plaintiff, hereto attached as **Exhibit A**.

5. As a result of said assignment, Plaintiff bears the burden of pursuit of payment for health care services, products or accommodations, provided by Plaintiff to the injured party.

6. The amount in controversy is more than Twenty-Five Thousand ($25,000) Dollars, exclusive of costs and attorneys' fees and jurisdiction is otherwise proper with this Court.

COUNT I- PIP CLAIM

7. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

8. On May 23, 2018, Jose Cruz-Muniz, (hereinafter "the injured party") sustained accidental bodily injuries within the meaning of the statutory provisions of MCL 500.3105.

9. Defendants are first in order of priority and/or in the order of priority to pay for the injured party's claim for no fault personal protection insurance benefits in

accordance with Chapter 31 of the Michigan Insurance Code, more commonly known as the "no-fault insurance law."

10. Defendant assigned claim number 18-4229922 to the injured party's claim.

11. As a result of the aforementioned injuries, Plaintiff provided reasonably necessary products, services and/or accommodations to aid in the injured party's care, recovery and/or rehabilitation.

12. Defendants became obligated to pay for certain expenses incurred for reasonably necessary products, services and/or accommodations rendered for the injured party's care, recovery or rehabilitation as a result of the injured party's sustained accidental bodily injuries arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.

13. Plaintiff has provided reasonably necessary products, services and/or accommodations to the injured party and continues to do so, resulting in the following outstanding balances to date:

a. Jose Cruz-Muniz DOS 8.7.19 – 10.2.19 - $37,667.36

(Exhibit B)

14. Plaintiff timely submitted billings to Defendants for products, services and/or accommodations that were rendered to the injured party and that were reasonably necessary for the care, recovery or rehabilitation of the injured party's injuries.

15. Plaintiff also submitted to Defendants supporting documentation and forms necessary for Defendants to determine the reasonableness, necessity and amount of the medical products and/or services rendered to the injured party.

16. Defendants were provided reasonable proof of the fact and of the amount of losses sustained and charges incurred.

17. To date, Defendants have unreasonably refused and/or delayed in making payment to Plaintiff for the products, services and/or accommodations rendered.

18. Pursuant to MCL 500.3157, Plaintiff is entitled to recover the outstanding balance for the products, services and/or accommodations to the injured party from Defendants.

19. Plaintiff has requested payment from Defendants for the amount of the bills due and owing and Defendants has refused and/or neglected to pay them.

20. Plaintiff is entitled to reasonable and actual attorney fees incurred in this action pursuant to MCL 500.3148.

21. Plaintiff is also entitled to costs and interest pursuant to MCL 500.3142 for the overdue bills that have not been paid by Defendants within 30 days after Defendants received reasonable proof of the fact and of the amount of loss sustained.

22. Pursuant to Insurance Bulletin 92-03, Defendants is "required to provide insureds and claimants with complete protection from economic loss for benefits provided under personal protection insurance."

23. Satisfaction of the judgment obtained by Plaintiff will discharge Defendants of their obligation to the injured party for services Plaintiff provided to the injured party.

24. Plaintiff as assignee of the injured party is the real party of interest and as such Plaintiff has the right to prosecute this action against Defendants pursuant to MCL 600.2041.

COUNT II- BREACH OF CONTRACT/CONTRACTUAL AND/OR STATUTORY DUTIES

25. Plaintiff re-alleges and reincorporates each of the preceding paragraphs as though fully set forth herein.

26. Defendants' failure to pay Plaintiff personal protection insurance benefits constitutes a material breach of contractual and/or statutory duties pursuant to the contract where the injured party is qualified as an "insured," or otherwise entitled to benefits and/or pursuant to MCL 500.3101, *et seq.*

27. As a direct and proximate cause of Defendants' breach of contractual and/or statutory duties, Plaintiff has sustained damages.

WHEREFORE, Plaintiff claims as damages against Defendants in a sum more than Twenty-Five Thousand ($25,000) Dollars, which the triers of fact deem reasonable, plus costs, attorney fees and interest most wrongly sustained.

Respectfully submitted,

/s/ Jenifer Measel
HAAS & GOLDSTEIN, PC
Jenifer Measel (P74711)
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550

Dated: May 6, 2020

Exhibit A

C-SPINE ORTHO

Toll Free: (833) 816-7846
Phone: (248) 556-3550
Fax: (248) 556-3632
www.c-spineortho.com

ASSIGNMENT OF BENEFITS FORM/POLICY RIGHTS

I, the undersigned patient, hereby assign the rights and benefits of insurance of the applicable personal injury protections, medical payments, and/or other insurances to C-Spine Ortho for services and/or medical treatment for injuries sustained in the auto accident/incident to the undersigned patient and covered by Personal Injury Protection (PIP) Coverage or other insurance coverage in accordance with Michigan Statute. I, the undersigned patient (Assignor), hereby assign to C-Spine Ortho (Assignee) all rights, privileges and remedies to payment for health care services, products or accommodations ("services") provided by Assignee to Assignor to which Assignor is or my be entitled under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) the No-Fault Act. The undersigned agrees to pay any applicable deductible or co-payment not covered by the PIP or other insurance coverage.

The assignment includes, but is not limited to, all rights to collect benefits directly from the insurance company for the service or services that I have received; and all rights to proceed against the insurance company obligated to provide benefits of which I am due. This assignment also includes any right to recover attorney's fees and costs for such action brought by the provider as the Patient's assignee. I agree that C-Spine Ortho may select any attorney he/she wishes and understand and agree that the attorney selected by them may be different than the attorney handling my personal injury/bodily injury claim or case. This assignment is only for benefits already received, and therefore is signed in conformity with MCL 500.3143.

As part of the assignment of rights and benefits, I hereby instruct the insurance carrier that in the event the medical benefits received are disputed for any reason, including medical reasonableness and/or necessity, that the amount of benefits claimed by C-Spine Ortho is to be set aside and not disbursed until the dispute is resolved. As part of this assignment of rights and benefits, I further instruct the insurance carrier to notify the provider immediately of any dispute as to payment so that he/she may exercise their legal rights. I have read the information herein and it is true and correct to the best of my knowledge and belief.

The Assignor hereby certifies his/her understanding that while Assignee may, pursuant to this assignment, pursue payment from a person or entity other than Assignor, this agreement may be revoked by Assignee if it determines, or a determination is made pursuant to judicial proceedings, that Assignor lacks coverage or that the services subject to this assignment are not payable by any such person or entity for any reason under Chapter 31 of the Insurance Code (MCL500.3101, et seq.) any applicable policy of insurance, and/or due to any actions or conduct of the Assignor.

Assignor and Assignee agree that in the event any terms or provisions of this agreement are declared invalid or unenforceable by any Court or Federal or State Government Agency having jurisdiction over the subject matter of this agreement, the remaining terms and provisions that are not affected thereby shall remain in full force an effect.

Jose A Cruz M — Patient Signature

Cruz-Muniz, Jose — Patient Printed Name

10/2/19 — Date

James T. Gilas, M.D.
NPI # 1184832925
Lic. # BG4442202

Patrick Burns, D.O.
NPI # 1639140866
Lic. # BB7724772

A. Joshua Appel, M.D.
NPI# 1538102124
Lic. # 4301113605

29255 Northwestern Hwy
Southfield Suite 201, MI 48034

Exhibit B

Patient Ledger

Place of Service: C-Spine Ortho
29255 NorthWestern Hwy #101
Southfield, MI 48034-1018

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 |
PMS: 109224PAT000000270
4432 FOURTH STREET
WAYNE, MI 48184
(734) 502-5918

Remit Payment: C-Spine Ortho
4111 E Valley Auto Drive #202
Mesa, AZ 85206-4605

DOA: 5/23/2018

Account Balance $37,667.36

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
10/02/2019	**—**	**PIP0001JT8**	**421.58**	**0.00**	**0.00**	**421.58**	**0.00**
10/02/2019	10/03/2019	99213 - OFFICE OUTPATIENT VI...	421.58	0.00	0.00	421.58	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/25/2019	**—**	**PIP00017M7**	**5,864.31**	**0.00**	**0.00**	**5,864.31**	**0.00**
09/25/2019	09/26/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/25/2019	09/26/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/25/2019	09/26/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/25/2019	09/26/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00
09/25/2019	09/26/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	C9290 - Injection, bupivacaine lip...	40.00	0.00	0.00	40.00	0.00
09/25/2019	09/26/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/25/2019	09/26/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/25/2019	09/26/2019	J2001 - Injection, lidocaine hcl for ...	120.00	0.00	0.00	120.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
09/12/2019	—	**PIP0000VV8**	**5,944.31**	**0.00**	**0.00**	**5,944.31**	**0.00**
09/12/2019	09/13/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
09/12/2019	09/13/2019	20553 - INJECTION SINGLE/MLT...	2,004.90	0.00	0.00	2,004.90	0.00
09/12/2019	09/13/2019	77002 - FLUOROSCOPIC GUIDA...	3,094.80	0.00	0.00	3,094.80	0.00
09/12/2019	09/13/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1100 - Injection, dexamethasone ...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
09/12/2019	09/13/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
09/12/2019	09/13/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
09/12/2019	09/13/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/21/2019	—	**PIP0000F12**	**15,165.34**	**0.00**	**0.00**	**15,165.34**	**0.00**
08/21/2019	08/28/2019	99214 - OFFICE/OUTPATIENT VI...	617.05	0.00	0.00	617.05	0.00
08/21/2019	08/28/2019	64493 - INJ PARAVERT F JNT L/...	8,050.50	0.00	0.00	8,050.50	0.00
08/21/2019	08/28/2019	64494 - INJ PARAVERT F JNT L/...	4,113.90	0.00	0.00	4,113.90	0.00
08/21/2019	08/28/2019	96372 - THER/PROPH/DIAG INJ ...	93.89	0.00	0.00	93.89	0.00
08/21/2019	08/28/2019	J1030 - Methylprednisolone 40 m...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1100 - Dexamethasone sodium p...	480.00	0.00	0.00	480.00	0.00
08/21/2019	08/28/2019	J1885 - Ketorolac tromethamine inj	80.00	0.00	0.00	80.00	0.00
08/21/2019	08/28/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/21/2019	08/28/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/15/2019	**—**	**PIP00068G6**	**9,651.36**	**0.00**	**0.00**	**9,651.36**	**0.00**
08/15/2019	08/15/2019	99212 - OFFICE OUTPATIENT VI...	255.59	0.00	0.00	255.59	0.00
08/15/2019	08/15/2019	27096 - INJECT SI JOINT ARTH...	7,476.75	0.00	0.00	7,476.75	0.00
08/15/2019	08/15/2019	A4649 - Surgical supply; miscella...	1,000.00	0.00	0.00	1,000.00	0.00
08/15/2019	08/15/2019	A4550 - Surgical trays	250.00	0.00	0.00	250.00	0.00
08/15/2019	08/15/2019	J1040 - Injection, methylprednisol...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1100 - Injection, dexamethasone ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	C9290 - Injection, bupivacaine lip...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	J1885 - Injection, ketorolac tromet...	80.00	0.00	0.00	80.00	0.00
08/15/2019	08/15/2019	96372 - THERAPEUTIC PROPHY...	93.89	0.00	0.00	93.89	0.00
08/15/2019	08/15/2019	J2001 - Injection, lidocaine hcl for ...	160.00	0.00	0.00	160.00	0.00
08/15/2019	08/15/2019	94760 - NONINVASIVE EAR/PUL...	15.13	0.00	0.00	15.13	0.00

Bill						James Thomas Gilas MD | C-Spine Orthopedic	
DOS	**Posting Date**	**Details**	**Charges**	**Payment**	**Adj.**	**Ins Balance**	**Pat Balance**
08/07/2019	**—**	**PIP00068F9**	**620.46**	**0.00**	**0.00**	**620.46**	**0.00**
08/07/2019	08/07/2019	99203	620.46	0.00	0.00	620.46	0.00

CRUZ-MUNIZ, JOSE | 07/17/1977 | **MRN:** MM0000000260 | **PMS:** 109224PAT000000270

Account Balance $37,667.36

Exhibit I

COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ

This COUNTER-ASSIGNMENT OF ACCOUNTS RECEIVABLE FOR PATIENT JOSE CRUZ-MUNIZ ("**Assignment**") is entered into as of May 4, 2020 ("**Effective Date**") by and between **MedFinance Servicing, LLC** ("**Original Purchaser**"), located at 333 Perry Street, Suite 302, Castle Rock, CO 80104 and **C-Spine Orthopedics, PLLC**, a company organized and existing under the laws of the State of Michigan with principal place of business located at 36700 Woodward Ave., Suite 202, Bloomfield Hills, Michigan 48304 ("**Original Seller**") (collectively the "**Parties**").

WHEREAS, Original Seller sold, transferred, assigned, and conveyed Original Seller's legal and equitable rights and Interests ("**Rights, Title, and Interest**") in various and numerous Dates of Service between August 21, 2019 and October 2, 2019 for Patient Jose Cruz-Muniz (the "**Patient**" and the "**Account**") to Original Buyer; and

WHEREAS, As of the Effective Date, though some payments may have been received on the Account, the Account remains largely if not wholly open and collectible; and

WHEREAS, In order to obtain payment on the Account, it is likely that a lawsuit or other means of collection activity will need to be filed against the insurance carrier or other responsible party ("**Lawsuit**"). The Parties agrees that the best method to accomplish the best result is for Original Seller to be involved in, pursue, and maintain an interest in the Lawsuit; and

WHEREAS, Original Buyer desires to transfer, assign, and convey a significant portion of Original Buyer's legal and equitable rights and interests, which were previously Original Seller's Rights, Title, and Interest, back to Original Seller, as more clearly and directly outlined herein.

NOW THEREFORE, in consideration of the forgoing recitals (which are hereby incorporated into the remainder of the Assignment by reference), the terms and conditions set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Assignment of Rights back to Original Seller**. Original Buyer wishes to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. This shall include but is not limited to any right to pursue, negotiate, compromise, and settle, the Lawsuit, or at any time short of a Lawsuit. At all times hereafter, Original Seller shall retain the legal Rights, Title, and Interest to the Account, subject to the terms herein.

2. **Assignment of Rights back to Original Seller of Future Dates of Service**. From time-to-time, and in the normal course of business, the Patient may continue to seek treatment from Original Seller after the Effective Date, which may, also in the normal course of business, cause Original Seller to sell, transfer, assign, and convey the future Rights, Title, and Interest in future dates of service related to the Patient ("**Additional Rights, Title and Interest**") which thereby become subject to the Lawsuit. The Parties agree that it is their intent and wish that any such Additional Rights, Title, and Interest be subject to the terms of this Assignment. More specifically, Original Buyer intends that Original Seller maintain any and all rights to pursue, negotiate, compromise, and settle any and all Additional Rights, Title and Interest under the terms of this Assignment.

3. **Consideration**. In consideration for the transfer, assignment, and conveyance of Original Buyer's Rights, Title, and Interest in the Account, as well s the Additional Rights, Title, and Interest, Original Seller agrees to provide Original Buyer, net of all fees and costs associated with the pursuit of payment through a Lawsuit or otherwise (including but not limited to attorney fees and costs, and collection/billing costs), the lesser of the sum of the full amount recovered on the account, or fifty (50%) percent of the total billed charges outstanding and collectible on the Account. Any amount, net of all fees and costs associated with the pursue of payment through a payment or otherwise, shall be the exclusive property of Original Seller.

4. **Original Buyer's Representations and Warranty**. As of the Effective Date, Original Buyer represents and warrants to Original Seller as follows:

a. Original Buyer represents and warrants that it has the legal authority to transfer, assign, and convey to Original Seller, subject to the terms herein, Original Buyer's Rights, Title, and Interest in the Account. Original Buyer additionally represents and warrants that the Account being transferred, assigned, and conveyed to Original Seller are now and will at all times after the Effective Date remain free from any and all claims, liens, or encumbrances of any kind, unless otherwise stated herein.

b. Original Buyer has the power, authority, and all licenses and permits ("**Authorization**"), if any, required by any governmental authority to carry on its business now being conducted. Such Authorization was in full force and effect at all relevant times prior to the Effective Date.

c. The execution and delivery of this Assignment and the performance hereunder have been duly authorized, by all necessary actions on the part of Original Buyer, and no provision of applicable law or regulations, the charter or bylaws of Original Buyer, any agreement, judgment, injunction, order, decree, or other instrument binding upon Original Buyer is or will be contravened by Original Buyer's execution and delivery of this Assignment or Original Buyer's performance hereunder.

5. **Original Seller's Representations and Warranty**. As of the Effective Date, Original Seller represents and warrants to Original Buyer as follows:

a. Original Seller is duly organized, validly existing, and in good standing with all requisite power and authority to carry on its business as now being conducted to execute, deliver, and perform under this Assignment and any other documents related thereto to which it is a party, and to consummate the transactions contemplated hereby.

b. The execution and delivery of this Assignment and the consummation of the transactions contemplated hereby does not and will not contravene, conflict with, or result in any violation of or default under any provision of the articles of organization, bylaws, or other organizational documents of Original Seller.

6. **Confidentiality**. The Parties agree to keep confidential all terms of this Assignment, including without limitation the payment terms contemplated herein. With the exception of accountants, financial institutions, and legal and/or tax advisors, the Parties shall not disclose the terms set forth in this Assignment to anyone, except as required by law, in which case the disclosing party will give notice to the

non-disclosing party at least seven (7) days before it is required or plans to disclose the payment terms between Original Buyer and Original Seller to any source. If any law requires disclosure of the payment terms between Original Buyer and Original Seller in less than seven (7) days, notice shall be given as soon as possible. The Parties agree that this Assignment and any related agreement shall not be made part of the Patient's medical file.

7. **Choice of Law, Venue and Jury Waiver**. This Assignment and all matters and issues collateral thereto shall be governed by the laws of the State of Colorado. The Parties agree that any and all controversies or claims arising out of or relating to this Assignment, or breach thereof, shall be decided in the District Court of the County of Douglas, State of Colorado, and that such court shall have exclusive jurisdiction, including *in personam* jurisdiction, and shall be the exclusive venue for any and all such controversies and claims, except as otherwise unanimously agreed upon by the parties in writing prior to such controversy or claim. Each Party understands that each has a constitutional right of due process which guarantees that each Party must have minimum contacts with the State of Colorado prior to the exercise by a Colorado court of *in personam* jurisdiction over any Party and said constitutional right is hereby expressly waived by each Party. THE PARTIES HEREBY UNCONDITIONALLY WAVIE THEIR REPSECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS ASSIGNMENT, ANY OF THE RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS. Original Seller and Original Buyer further acknowledge the receipt and sufficiency of mutual consideration for such aforementioned benefit.

8. **Attorneys Fees**. If either Party commences any action or proceeding against the other Party in order to enforce the provisions of this Assignment, or to recover damages resulting from the alleged breach of any of the provisions hereof, the prevailing Party shall be entitled to recover from the opposing Party all reasonable costs incurred in connection therewith, including but not limited to, reasonable attorneys' fees.

9. **Confidentiality/Trade Secret**. This Assignment, its terms, conditions, substance of discussions between the Parties, all documentation related to this Assignment, and any other information exchanged between the Parties that relates to this Assignment represent a legitimate business interest and shall be held in strict confidence and given at least the same protections and due care by each Party as that Party gives its other confidential information or trade secrets. In the event that a Party is requested pursuant to, or advised by its legal counsel that it is required by applicable law, regulation or legal process, to disclose any of the other Party's confidential information or trade secrets, including this Assignment, that party will notify the other Party promptly so that the Parties together may object to such disclosure and seek an appropriate protective order(s) or other appropriate remedy enforceable under federal or state law.

10. **Relationship of the Parties**. The relationship between Original Seller and Original Buyer is not that of a partnership, joint venture, or employer and employee, and does not extend to anything beyond the terms of this Assignment. Under no circumstances does this Assignment create any medical or healthcare obligation on the part of Original Buyer, as Original Buyer is neither a medical nor healthcare professional or provider of any kind. Original Buyer has not and will not direct medical care in any way, and all medical decisions are solely between Original Seller and the Patient. Original Seller and the Patient are free to embark upon whichever course of medical treatment or services they deem reasonable and necessary.

11. **Severability**. If any provision of this Assignment is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions shall remain in full force and effect.

12. **Interpretation**. Each Party acknowledges that this Assignment has been the subject of active and complete negotiations, and that this Assignment should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Assignment.

13. **Rights Cumulative; Waivers**. The rights of each of the Parties under this Assignment are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing. Any failure to exercise or any delay in exercising any of such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any of such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.

14. **No Strict Construction**. This Assignment is the joint work product of Original Buyer and Original Seller, which ahs been negotiated by the Parties and their respective counsel and will be fairly interpreted in accordance with its terms. In the event of any ambiguity regarding the terms or intent of any provision of this Assignment, this Assignment shall not be strictly construed against, and no inferences shall be drawn against, any party by reason of the fact that such party may have drafted such particular provision.

15. **Binding Effect**. Subject to the provisions contained herein, this Assignment and the terms, covenants, conditions, provisions, obligations, undertakings, rights, and benefits hereof, including the Exhibits addenda, and/or schedules hereto, shall be binding upon, and shall inure to the benefit of, the undersigned Parties and their respective heirs, executors, administrators, representatives, successors, and assigns.

16. **Compliance with Applicable Law**. The Parties agree that they shall use their best efforts to remain in compliance with all applicable laws and regulations regarding the supply of services under this Assignment.

17. **Counterparts**. This Assignment may be executed in one or more counterparts and may be delivered via facsimile or electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **Notice**. All notices and other communications that are required or may be given under this Assignment shall be in writing and shall be deemed to have been duly given: (a) when received in personally delivered or sent by certified or registered mail, return receipt requested; or (b) the day after being sent, if sent by next-day delivery within the United States by a recognized overnight delivery service (e.g. Federal Express). In each case notice shall be sent to the address set forth below each Party's signature, or to such other place and with such other copies as any Party may designate, in writing, as to itself by notice to the other party.

19. **Prior Understandings**. This Assignment supersedes any and all prior discussions and agreements between Original Seller and Original Buyer with respect to the purchase of the Account and other matters contained herein, and this Assignment contains the sole and entire understanding between the Parties hereto with respect to the transactions contemplated herein.

20. **Non-Merger/Survival**. Each and every covenant hereinabove made by Original Buyer or Original Seller shall survive the delivery of any additional transfer documents necessary to complete the transactions as contemplated herein, and shall not merge into said transfer documents, but instead shall be independently enforceable.

21. **Non-Disclosure Agreement**. Original Buyer and Original Seller have previously executed that certain Confidentiality and Non-Disclosure Agreement ("**NDA**") dated March 30, 2018. The terms of that NDA are incorporated herein by reference as if fully restated herein.

22. **Integrated Agreement**. With the exception of the NDA, this Assignment and all Exhibits, addenda, and/or schedules hereto constitute the final complete expression of the intent and understanding of the Original Buyer and Original Seller. This Assignment shall not be altered or modified except by a subsequent writing, signed by both Original Seller and Original Buyer.

23. **Successors and Assigns**. This Assignment shall be binding upon and inure to the respective representatives, successors, and assigns of both Parties. Under no circumstances shall Original Seller or Original Buyer assign any of its rights and/or obligations pursuant to this Assignment to any third-party, absent prior express written consent of the other Party.

24. **Headings**. The headings of articles and sections contained in this Assignment are for convenience only and shall not be deemed to control or affect the meaning or construction of any provisions of this Assignment.

25. **No Third-Party Beneficiary**. This Assignment is for the sole benefit of the Parties hereto, and nothing contained in this Assignment shall be construed to grant any person or entity, other than Original Seller and Original Buyer and their respective successors and permitted assigns, any right under or in respect of this Assignment or any provision hereof.

26. **Further Assurances**. In connection with this Assignment and the transactions contemplated hereby, each party of this Assignment will execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the obligations of this Assignment and the transactions contemplated or intended hereby.

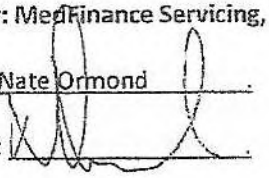
27. **Amendments** Any additions, deletions, or waivers to this Assignment shall not be binding unless evidenced in writing and executed by authorized personnel of each Party.

*****SIGNATURE PAGE TO FOLLOW*****

IN WITNESS WHEREOF, the Parties have executed this Assignment on the date indicated in the introductory paragraph herein.

Original Buyer: MedFinance Servicing, LLC

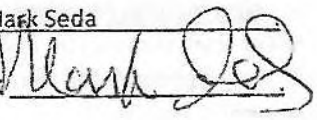
Print Name: Nate Ormond

By (Signature): 

Title: President

Original Seller: C-Spine Orthopedics, PLLC

Print Name: Mark Seda

By (Signature): 

Title: CEO

Exhibit J

FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 1, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 16, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

**** 4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/1/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/1/2020

FIRST AMENDMENT TO
BULK PURCHASE AND SALE AGREEMENT FOR ACCOUNT RECEIVABLE

This First Amendment ("First Amendment") is dated July 23, 2020, by and between Apogee Capital Partners, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Capital"), Apogee Capital Fund 5, LLC, a Delaware limited liability company registered in Michigan as foreign limited liability company ("Apogee Fund 5" and when together with Apogee Capital shall be collectively referred to herein as the "Buyer"), and C-SPINE ORTHOPEDICS, PLLC, a Michigan professional limited liability company ("Seller"). Buyer and Seller are collectively referred to herein as the "Parties."

WHEREAS, the Parties entered that certain Bulk Purchase and Sale Agreement for Account Receivable dated August 30, 2019 governing the sale of Accounts Receivable, a copy of which is attached hereto as ***Exhibit A*** ("Agreement");

WHEREAS, the Parties desire to make Seller the servicer of the Accounts Receivable consistently with Seller's capacity to compromise the Accounts Receivable;

NOW, THEREFORE, in consideration of the foregoing, which is incorporated herein, mutual promises, money to be paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 4 deleted and replaced with the following:

**** 4. Appointment of Servicer**. Buyer will utilize Sentinel Billing (or other third party in Buyer's discretion) to handle billing of Accounts Receivable. Buyer appoints Seller as Buyer's agent to service the Account Receivable under this Agreement. This appointment as the servicer can be immediately revoked at any time by Buyer upon written notice. Seller shall be permitted to reduce, forgive, release, waive or otherwise compromise an unpaid balance of an Account Receivable, including, without limitation, resolve, settle and/or dismiss litigation involving all parties thereto, with or without prejudice, in whole or in part, provided Seller: (a) retains / engages an attorney(s) / law firm approved by Buyer to collect the Account Receivable in court ("Litigation Counsel"); (b) instructs Litigation Counsel to: (i) immediately, upon receipt of a bona fide settlement offer, provide the Buyer with detailed written notice of such offer; (ii) not respond to any such offer until it has considered, in good faith, Buyer's interest and analysis of the offer, provided Buyer communicates its analysis before expiration of the offer; and (iii) ensure Litigation Counsel does not allow a settlement offer to expire without properly responding to such offer, (c) makes reasonable efforts to maximize the amount paid and/or recovered for the Account Receivable as the evidence supports by complying in a timely manner with all litigation requests concerning the Account Receivables including, but not limited to, subpoenas or other discovery requests served on or involving Seller relating to medical services and associated billing, provided to any Patient; and (d) agrees to impose a trust on all funds recovered for each Account Receivable, and shall cause the funds to be deposited in Litigation Counsel's client trust account until such funds are reconciled and distributed in accordance with the Agreement. Consistent with Section 7(r), Seller shall cooperate with Buyer and accommodate all reasonable requests, including executing and delivering all required instruments, documents, and notices to ensure compliance with this Section 4, herein.

2. Section 5 – Power of Attorney – is hereby deleted and replaced with the following:

** 5. **Limited Power of Attorney**. Seller appoints Buyer as my attorney in fact for the limited purpose of doing the following acts for and in Seller's name: (a) to resolve any and all Accounts Receivable associated with the Agreement; (b) to direct Litigation Counsel engaged for such Accounts Receivable to disburse funds deposited into Litigation Counsel's IOLTA Account and resulting from the Accounts Receivable in order to resolve any and all attorney's fees and costs related to the Accounts Receivable and to compensate Buyer as provided under the Agreement; (c) to sign and release documents binding Seller to negotiated settlements and/or do every act necessary and proper in the exercise of any of the aforementioned powers, as fully as can be done

by Seller. Seller expressly reserves all powers not specifically set forth in this Section 5, or that are not necessary and proper in the exercise of those powers. Seller shall fully cooperate with Buyer as provided in the Agreement and as may be reasonably required from time to time to perfect or aid Buyer in acting in any manner authorized by this Section 5. No act by Seller taken pursuant to this Section 5 shall be deemed to change the terms of the Agreement in any manner whatsoever, including, but not limited to, any and all terms of servicing, indemnity and all representations and warranties. This Limited Power of Attorney is given as security for the Agreement by which Seller is indebted to the Buyer. For this reason, Seller declares this power of attorney to be irrevocable by it or any of its agents in any manner whatsoever, and, further, Seller renounces all right to revoke this Limited Power of Attorney or to appoint any other person to perform any of the acts enumerated in this Limited Power of Attorney. The attorney in fact shall have full power of substitution.

3. Section 8(d) is deleted.

4. Section 26 is deleted and replaced with the following:

** 26. **Severability**. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. It is the intention of the Parties, whenever possible, each provision of this Agreement and all related documents will be interpreted in such a manner as to be valid under applicable law, but if any provision or clause of this Agreement, or portion thereof, shall be held by any court or other tribunal of competent jurisdiction to be illegal, void, or unenforceable in such jurisdiction, the remainder of such provision shall not be thereby affected and shall be given full effect, without regard to the invalid portion. It is further the intention of the Parties that, if any court construes any provision or clause of this Agreement, or any portion thereof, to be illegal, void, or unenforceable then such clause, provision or portion so found shall be reformed and otherwise amended by the court to the extent (and only to the extent) necessary to make it legal, valid and enforceable.

5. All defined terms in the Agreement are incorporated herein.

6. Except as specifically addressed in this First Amendment, the Agreement remains fully effective. The Agreement and this First Amendment are to be read as a single document.

7. The First Amendment may be executed in counterparts, electronic signatures, and exchanged by facsimile or by computer scan and email.

8. It is the Parties intention that this First Amendment is retroactive and is fully effective, as to all rights and obligations of each party hereto, as and from the date of the Agreement.

The Parties have executed this First Amendment as of the date first set forth above.

Seller:

By: Mark Seda

Name: Mark Seda

Title: CEO

Date: 7/23/2020

Buyer:

By: Peter Rood

Name: Peter Rood

Title: Managing Member

Date: 7/23/2020

Exhibit K

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

C-SPINE ORTHOPEDICS, PLLC,
Plaintiff,

vs. Case No. 20-1710-NF

PROGRESSIVE MARATHON
INSURANCE COMPANY,
Defendant.
_____/

AMENDED OPINION AND ORDER

Defendant Progressive Marathon Insurance Company filed a Motion for Summary Disposition under MCR 2.116(C)(10) and MCR 2.116(C)(5).

I. Background

Plaintiff C-Spine Orthopedics, PLLC is a medical provider that seeks payment for its services. Specifically, Plaintiff alleges that it rendered reasonably necessary medical services to its assignee Jose Cruz-Muniz for injuries sustained in a motor vehicle accident that occurred on May 23, 2018. In exchange for Plaintiff's services, Jose Cruz-Muniz assigned to Plaintiff his right to certain no-fault benefits. Now Plaintiff seeks payment from the Defendant no-fault insurer under the terms of that assignment. Plaintiff filed its Complaint on May 13, 2020 alleging: count I, PIP claim and count II, breach of contract/contractual and/or statutory duties.

Defendant maintains that Plaintiff subsequently assigned its interest in its account receivables to third-parties. Therefore, Defendant moved for Summary Disposition claiming Plaintiff lacks standing to bring claims on those accounts it no longer owns. The Court heard oral argument on Defendant's Motion on February 8, 2020 and took the

matter under advisement.

II. Standards of Review

Summary disposition is appropriate under MCR 2.116(C)(5) where the party asserting the claim lacks the legal capacity to sue.[1] "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Id*. "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013). However, a motion for summary disposition is generally "premature if granted before discovery on a disputed issue is complete." *Oliver v Smith*, 269 Mich App 560, 567; 715 NW2d 314 (2006). "However, summary disposition may nevertheless be appropriate if

[1] The real-party-in-interest defense is not the same as the legal-capacity-to-sue defense. *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 410–11; 875 NW2d 242 (2015) citation omitted. Accordingly, a motion for summary disposition asserting the real-party-in-interest defense more properly fits within MCR 2.116(C)(10). *Id.*

further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position." *Id*.

III. Arguments, Law and Analysis

Defendant argues that Plaintiff sold the relevant accounts receivable to third parties ("factoring companies"). As a result, according to Defendant, Plaintiff lacks standing to now seek payment on those accounts. In response, Plaintiff argues that it maintains relationships with medical factoring companies that provide capital to Plaintiff in exchange for Article 9 security interests in patient accounts. However, Plaintiff insists that it retains certain rights regarding servicing and settling of claims regarding the accounts, including the filing of lawsuits and power of attorney. In other words, according to Plaintiff, the granting of a security interest to a third-party does not deprive Plaintiff of its interest in the accounts or of standing to collect on the accounts.

MCR 2.201(B) provides that "[a]n action must be prosecuted in the name of the real party in interest...." "In general, standing requires a party to have a sufficient interest in the outcome of litigation to ensure vigorous advocacy and "in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy." *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Tr. Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 621–22; 873 NW2d 783 (2015) citations omitted. Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant's ability to raise the legal rights of another. *Id.* Citation omitted. A litigant has standing whenever there is a legal cause of action. *Id.* Citation omitted. *Lansing Sch Ed Ass'n*, 487 Mich at 372, 792 NW2d 686.

An assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor. *Kearns v Mich Iron & Coke Co*, 340 Mich 577, 582–584; 66 NW2d 230 (1954).

Here, even though Plaintiff characterizes its transactions with the non-party factoring companies as loans, the terms of the agreement(s) make clear that Plaintiff originally sold the debts and retained no interest therein. Defendant attaches as its Exhibit D a document entitled "Bulk Purchase and Sale Agreement for Accounts Receivable ("Original Sale Agreement"). The Original Sale Agreement dated August 2, 2019 was entered between MedFinance Servicing, LLC and/or Well States Healthcare, LLC and Plaintiff. Plaintiff does not dispute that the Original Sale Agreement accurately reflects the terms of its transaction with the factoring companies or that the agreement applies to its patient/assignor in this case.

The Court has reviewed the Original Sale Agreement, including paragraphs 2 and 4. Defendant's Exhibit D, filed under seal. A plain and ordinary reading of the terms of the Original Sale Agreement leads to one inescapable conclusion—Plaintiff sold or assigned its rights in the accounts to the factoring companies. Plaintiff confuses the analysis by referring to the assignment of benefits the patient made to Plaintiff or by citing the terms of its Counter-Assignment. However, the Original Sale Agreement does not describe any interest Plaintiff retained in the accounts and does not support Plaintiff's argument that the transactions were mere loans or the granting of a security interest in exchange for capital. As such, upon the assignment of the accounts in the Original Sale Agreement, the factoring companies became the real parties in interest on the transferred

accounts.[2]

In response, Plaintiff does not directly address the Original Sale Agreement(s). Instead, Plaintiff cites a documents entitled "Counter-Assignment of Accounts Receivable for Patient Jose Cruz Muniz" ("Counter-Assignment") with effective dates of May 4, 2020. Plaintiff's Exhibit A. Plaintiff also cites as its Exhibit A, two documents entitled "First Amendment to Bulk Purchase and Sale Agreement for Account Receivable" ("First Amendment"). One First Amendment document is dated July 1, 2020; the second First Amendment document is dated July 23, 2020. The Amendments purport to make Plaintiff the servicer of the accounts receivable. Exhibit A. Curiously, the First Amendment documents are dated in July 2020, which occurs *after* the Counter-Assignment, which conveys ownership interest. Nonetheless, the First Amendment documents are between Plaintiff and Apogee Capital Partners, LLC as well as Apogee Capital Fund 5, LLC. On the other hand, the Counter-Assignment document is with MedFinance Servicing, LLC—the same entity that purchased the relevant accounts in the Original Sales Agreement. Defendant's Exhibit D. Therefore, it is unclear what relevance the First Amendment documents have to the current dispute.[3] As a result, the Court will look to the language of the Counter-Assignment.

---

[2] Additionally, to the extent Article 9 of the UCC would apply to the sale, it supports the conclusion that Plaintiff retained no interest in the assignments to the factoring companies. MCL 440.8318(1) provides, "A debtor that has sold an account . . . does not retain a legal or equitable interest in the collateral sold." MCL 440.9102(bb)(ii) defines "Debtor" as "A seller of accounts, chattel paper, payment intangibles, or promissory notes." The non-binding comment provides in relevant part, "Subsection (a) makes explicit what was implicit, but perfectly obvious, under former Article 9: The fact that a sale of an account or chattel paper gives rise to a "security interest" does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account or chattel paper retains no interest whatsoever in the property to the extent that it has been sold."

[3] Plaintiff makes an additional argument regarding third-party beneficiaries. Specifically, Plaintiff cites MCL 600.2041, which generally requires every action to be prosecuted in the name of the real party in interest. MCL 600.2041 provides for several exceptions such as executors, guardians, etc. Plaintiff relies on that

The Court carefully reviewed the Counter-Assignment(s), including paragraphs 1 and 3. Plaintiff's Exhibit A. By its plain and ordinary terms, the Counter-Assignment transfers to Plaintiff the rights, title and interest in the accounts. The Counter-Assignment makes clear that Plaintiff retains the legal rights, title and interest to the account. While the consideration paragraph describes what Plaintiff pays in exchange for the re-acquisition of the rights to its patient account, nothing in paragraph 3 deprives Plaintiff of an ownership interest in the accounts. Because the Counter-Assignments are dated after the Original Sale Agreement, the Court has no basis to conclude that Plaintiff lacks standing to now assert claims based on the relevant accounts. In other words, the Counter-Assignments apparently re-confer an ownership interest in the accounts to Plaintiff such that Plaintiff is a real party in interest.

Defendant additionally argues that the Court should not enforce the Counter-Assignments because they constitute the unauthorized practice of law. Specifically, Defendant maintains that Plaintiff has only a contingent interest in the accounts while the factoring companies retain a financial stake in the amount collected. According to Defendant, because the Counter-Assignments permit Plaintiff to take legal action on the accounts, Plaintiff, in effect, represents the interests of the factoring companies without being licensed to practice law. In response, Plaintiff argues that it retains an interest in the accounts and that Defendant relies on inapplicable cases concerning collection agencies, not factoring companies that loan money.

---

part of MCL 600.2041 that permits a party "with whom or in whose name a contract has been made for the benefit of another" to "sue in his own name without joining with him the party for whose benefit the action was bought . . ." However, it is unclear which party Plaintiff believes to be a third-party beneficiary. Plaintiff contracted directly with the factoring companies.

MCL 450.681 provides in relevant part, "It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or to make it a business to practice as an attorney-at-law, for any person other than itself . . ."

Defendant also relies in large part on the Michigan Supreme Court's decision in *Bay Co Bar Ass'n v Fin Sys, Inc*, 345 Mich 434; 76 NW2d 23 (1956), a case which warrants closer consideration. In *Bay Co. Bar*, there were two defendants—a collection agency and an individual who had a franchise of the collection agency. The *Bay Co Bar Ass'n* defendants would take assignments from creditors but only for the purpose of collections. The defendants did not pay for the assignments but would take a percentage fee of the collections. The defendants would bring claims in their own names. The individual defendant usually represented himself in court, though he was not an attorney. Defendants argued that since they were the real parties in interest, they could sue in their own names on accounts they held by assignment. The defendants told their client/creditors that their agency had a legal department used for collections.

The *Bay Co. Bar* Court did not disagree that defendants were real parties in interest by virtue of the assignments. However, the Court nonetheless concluded that defendants could not use assignments to accomplish an unlawful purpose. *Id.* At 440. That is, a layperson may not take an assignment to carry on the business of practicing law. The Court distinguished a "casual assignment" made for legitimate purposes such as procedural and administrative convenience, from one made for the sole business of collecting claims for others. The Court held that, collection agencies . . . clearly should not be permitted to prepare legal papers, commence suits, appear in court, prepare

judgments and generally manage law suits for its various customers." *Id.* At 441. The *Bay Co. Bar* Court reasoned that at the time defendants solicit the claims for collections, they have "absolutely no interest, either legal or beneficial, in the claim. The only interest they ever get comes by virtue of a promise to prosecute the claim." *Id.*

The *Bay Co. Bar* Court further held that, "The taking of an assignment under circumstances such as those detailed above cannot possibly change the essential fact that the defendants are rendering legal services for another for gain." The Court made clear that it did not question the right of a party to represent itself in court but rather "the right of defendant to hold himself out as one specially equipped to render services requiring special legal training and knowledge and the right to make a business of habitually rendering such services under the claimed protection of these propositions." *Id.* At 444. The Court thought that defendants were "selling service and merely adopting the guise of an investor to conceal the real nature of [the] operation." *Id.* At 445. The Court concluded, "When proof of . . . numerous instances is combined with evidence of solicitation and advertisement, asking to be entrusted with the conduct of just such transactions, the conclusion that the individual is regularly engaged in the practice becomes irresistible." *Id.* At 447.

While the *Bay Co. Bar* case may have some parallels to the present matter, it differs in several important ways. Nothing before the Court suggests that Plaintiff holds itself out or is in the business of collecting claims. Rather, the Plaintiff here assigned its *own* accounts and then presumably took back a Counter-Assignment of its accounts in exchange for operating capital. It would be a strange result to conclude that Plaintiff, a medical provider seeking payment on its accounts, is actually somehow engaging in this

practice as a ruse to practice law without a license.

In the present case, no unlicensed individual appears in Court on behalf of another like what occurred in *Bay Co. Bar Ass'n*. To the extent Defendants argue that Plaintiff, as an entity, is engaged in the unlicensed practice of law, it is worth noting that only individuals may be licensed as lawyers. Taken to its logical end, Defendant's argument would prohibit an entity from litigating its own interests every time the outcome would also benefit another entity or individual.

Moreover, Defendant conflates the analysis of ownership interest in the accounts with the consideration Plaintiff pays for the accounts. The express terms of the Counter-Assignments convey the factoring companies' "rights, title and interest" in the accounts. Using Defendant's own argument raised previously, under MCL 440.8318(1), the factoring companies would retain no interest in accounts sold. The fact that the parties separately agreed on a payment formula as consideration for the assignments, based on the amounts ultimately recovered on the accounts, does not mean that the factoring companies retained an ownership interest in the accounts. In short, the *Bay Co. Bar Ass'n* Court was careful to clarify that its decision did not apply to assignments made for a legitimate purpose. Courts presume contracts are valid. Here, the Court has an insufficient basis to conclude that the Counter-Assignments are void because they are somehow intended for an unlawful purpose. Therefore, the Court is unpersuaded by Defendant's argument that the Counter-Assignments constitute the unlawful practice of law.

For these reasons, Defendant's Motion for Summary Disposition is denied.

IV. Conclusion:

In conclusion, Defendant's Motion for Summary Disposition is DENIED. In accordance with MCR 2.602(A)(3), this Opinion and Order is not final and does not close the case.

IT IS SO ORDERED.

DATED: March 24, 2021

Hon. Jennifer M. Faunce
Circuit Court Judge

/S/ JENNIFER M. FAUNCE
CIRCUIT COURT JUDGE, P43816

03/24/2021

Exhibit L

From: Frederick Livingston
To: Haley Paschen; Nadine Hammoud
Subject: FW: motions next week
Date: Thursday, February 3, 2022 1:53:59 PM
Attachments: dates for counter assignments.docx

Frederick V. Livingston, Partner
888 W. Big Beaver, Suite 600 |Troy, MI 48084
Cell: 313-549-5733 |Main: 248-354-0380

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Thursday, May 27, 2021 2:36 PM
To: Frederick Livingston <fvl@novaralaw.com>; Nadine Hammoud <nah@novaralaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>
Cc: Michelle Gumro <mlg@novaralaw.com>
Subject: RE: motions next week

Please see attached. I received this information via email a few minutes ago. Will this suffice?

From: Frederick Livingston <fvl@novaralaw.com>
Sent: Thursday, May 27, 2021 2:30 PM
To: Jenifer Measel <jmeasel@haasgoldstein.com>; Nadine Hammoud <nah@novaralaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>
Cc: Michelle Gumro <mlg@novaralaw.com>
Subject: RE: motions next week

We can adjourn these a few weeks out if you are indicating that you will be producing documentation on these similar to the documentation required by the orders that were recently entered on Hannon and Foshee. Thanks

Frederick V. Livingston, Partner
888 W. Big Beaver, Suite 600 |Troy, MI 48084
Cell: 313-549-5733 |Main: 248-354-0380

From: Jenifer Measel <jmeasel@haasgoldstein.com>
Sent: Thursday, May 27, 2021 9:10 AM
To: Frederick Livingston <fvl@novaralaw.com>; Nadine Hammoud <nah@novaralaw.com>; Sam Jacobson <sjacobson@haasgoldstein.com>

Subject: motions next week

Will you dismiss or adjourn these?

Tuesday 6/1/21
8:45 – J. Matlock – Def MTC Dep of Mark Seda – Faunce – 5262722170 (JM)
9:00 - J. Cruz-Muniz - Def MTC Production of Documents – Faunce – 5622722170 (JM)

Below are the dates, which I have received permission from all parties listed to disclose. These are the dates the counter-assignments were created and sent to the parties for execution.

Muniz-Cruz:

MedFinance - January 11, 2021
Apogee - July 29, 2020

Exhibit M

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

C-SPINE ORTHOPEDICS, PLLC,
as assignee of Jose Cruz-Muniz,

Plaintiff,

Case No. 20-1710-NF
HON. Jennifer Faunce

vs.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant.

/

Jenifer Measel (P74711)
HAAS & GOLDSTEIN, P.C.
Attorney for Plaintiff
31275 Northwestern Hwy., Ste. 225
Farmington Hills, MI 48334
(248) 702-6550
(248) 538-9044 Fax

Frederick V. Livingston (P75206)
Gregory H. Akaraz (P78092)
NOVARA TESIJA & CATENACCI, PLLC
Attorneys for Defendant
888 West Big Beaver, Suite 600
Troy, MI 48084
(248) 354-0380
(248) 250-9927 Fax

/

PLAINTIFF'S RESPONSE TO DEFENDANT'S SUMMARY DISPOSITION MOTION PURSUANT TO MCL 2.116(C)(10) AND 2.116(C)(5)

NOW COMES Plaintiff C-Spine Orthopedics, by and through its attorneys, Haas & Goldstein, and for its Response to Defendant's Summary Disposition Motion, states the following:

1. Admits.

2. Neither admits nor denies as the Pleading speaks for itself.

3. Denies for the reason that Plaintiff maintains that it did not sell the accounts receivable to the factoring companies, but used them as collateral for a loan.

Further, even if this were true, the factoring companies have re-assigned their interests to Plaintiff, and therefore, this issue is moot.

4. Denied because Plaintiff remains the real party in interest, and both the assignor and assignee remain real parties in interest even after rights have been assigned.

5. Neither admits nor denies as the pleading speaks for itself.

6. Admits.

7. Neither admits nor denies but leaves Defendant to its proofs.

8. Neither admits nor denies as the counter-assignments speak for themselves.

9. Neither admits nor denies as the counter-assignments speak for themselves.

10. Neither admits nor denies as the counter-assignments speak for themselves.

11. Admits.

12. Neither admits nor denies, as the Court's opinion speaks for itself.

13. Neither admits nor denies, as the Court's opinion speaks for itself.

14. Denies, as it is Plaintiff's position that the counter-assignments convey standing to Plaintiff regardless of the date they were signed. The factoring companies involved in this matter have essentially modified their original agreements regarding the receivables at issue in this action. Effective May 4, 2020, MedFinance assigned all rights it received in the initial agreements, back to Plaintiff. Effective August 16, and August 30, 2019, Apogee assigned all rights it received in the initial agreements back to

Plaintiff. To be clear, counter-assignments were not executed until July 2020, but the parties to the counter-assignments, **specified the effective dates** as above, and therefore, as the complaint in this matter was filed on May 11, 2020, all of Plaintiff's claims remain within the one-year time limit.

15. Admits, but denies that the date of signing of the counter-assignments is relevant here.

16. Neither admits nor denies, but leaves Defendant to its proofs.

17. Denies, as it is Plaintiff's position that the counter-assignments convey standing to Plaintiff regardless of the date they were signed. The factoring companies involved in this matter have essentially modified their original agreements regarding the receivables at issue in this action. Effective May 4, 2020, MedFinance assigned all rights it received in the initial agreements, back to Plaintiff. Effective August 16, and August 30, 2019, Apogee assigned all rights it received in the initial agreements back to Plaintiff. To be clear, counter-assignments were not executed until July 2020, but the parties to the counter-assignments, **specified the effective dates** as above, and therefore, as the complaint in this matter was filed on May 11, 2020, all of Plaintiff's claims remain within the one-year time limit.

18. Denies, as it is Plaintiff's position that the counter-assignments convey standing to Plaintiff regardless of the date they were signed. The factoring companies involved in this matter have essentially modified their original agreements regarding the receivables at issue in this action. Effective May 4, 2020, MedFinance assigned all rights it received in the initial agreements, back to Plaintiff. Effective August 16, and August 30, 2019, Apogee assigned all rights it received in the initial agreements back to

Plaintiff. To be clear, counter-assignments were not executed until July 2020, but the parties to the counter-assignments, **specified the effective dates** as above, and therefore, as the complaint in this matter was filed on May 11, 2020, all of Plaintiff's claims remain within the one-year time limit.

19. Denies that Plaintiff has been trying to mislead the Court.

20. Denies, as it is Plaintiff's position that the counter-assignments convey standing to Plaintiff regardless of the date they were signed. The factoring companies involved in this matter have essentially modified their original agreements regarding the receivables at issue in this action. Effective May 4, 2020, MedFinance assigned all rights it received in the initial agreements, back to Plaintiff. Effective August 16, and August 30, 2019, Apogee assigned all rights it received in the initial agreements back to Plaintiff. To be clear, counter-assignments were not executed until July 2020, but the parties to the counter-assignments, **specified the effective dates** as above, and therefore, as the complaint in this matter was filed on May 11, 2020, all of Plaintiff's claims remain within the one-year time limit.

21. Denies because Plaintiff remains the real party in interest, and both the assignor and assignee remain real parties in interest even after rights have been assigned.

22. Denies, as it is Plaintiff's position that the counter-assignments convey standing to Plaintiff regardless of the date they were signed. The factoring companies involved in this matter have essentially modified their original agreements regarding the receivables at issue in this action. Effective May 4, 2020, MedFinance assigned all rights it received in the initial agreements, back to Plaintiff. Effective August 16, and

August 30, 2019, Apogee assigned all rights it received in the initial agreements back to Plaintiff. To be clear, counter-assignments were not executed until July 2020, but the parties to the counter-assignments, **specified the effective dates** as above, and therefore, as the complaint in this matter was filed on May 11, 2020, all of Plaintiff's claims remain within the one-year time limit.

23. Denies because Plaintiff remains the real party in interest, and both the assignor and assignee remain real parties in interest even after rights have been assigned.

WHEREFORE, Plaintiff C-Spine Orthopedics respectfully requests that this Honorable Court dismiss this motion in its entirety.

BRIEF IN SUPPORT

I. Background

This action involves claims for personal protection insurance ("PIP") benefits payable to Plaintiff by virtue of assignments and arising out of medical treatment provided to the injured person. The instant Motion is Defendant's request that this Court dismiss the action in its entirety on the premise that Plaintiff assigned the rights to collect the balance for services at issue to several different factoring companies, noted above.

Defendant's factual premise is erroneous. Plaintiff and the factoring companies have provided sworn statements stating that Plaintiff retains the exclusive right to sue on the balance at issue. (**Exhibit A) As** such, Plaintiff is and always has been, the real party in interest. Regardless, however, the factoring companies have essentially modified their original agreements regarding the receivables at issue in this action.

Effective May 4, 2020, MedFinance assigned all rights it received in the initial agreements, back to Plaintiff. Effective August 16, and August 30, 2019, Apogee assigned all rights it received in the initial agreements back to Plaintiff. Those dates are the relevant dates, regardless of when the counter-assignments were actually signed.

"A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Weston v. Dowty*, 163 Mich App 238 242; 414 NW2d 165(1987). Though the factoring companies may have a right to the settlement or judgment Plaintiff obtains in this action, it is undisputed that Plaintiff is vested with the right of action on the claim.

II. Standard of Review

The "Court has viewed a claim that a plaintiff lacks standing as a motion under MCR 2.116(C)(5), i.e., that the plaintiff lacks the legal capacity to sue. See *Glen Lake–Crystal River Watershed Riparians v. Glen Lake Ass'n,* 264 Mich.App. 523, 528, 695 N.W.2d 508 (2004). Further, to preserve a motion under subrule (C)(5), a party must raise the issue in its "first responsive pleading or in a motion filed prior to that pleading." *Id.,* citing MCR 2.116(D)(2). *Pontiac Police & Fire Retiree Prefunded Grp. Health & Ins. Tr. Bd. of Trustees v. Pontiac No. 2*, 309 Mich. App. 611, 619, 873 N.W.2d 783, 789 (2015).

The affidavits, together with the pleadings, depositions, admissions, and documentary evidence must be considered by the court when the motion is based on MCR(C)(10). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. MCR 2.116(G)(4) requires that:

> When a motion under MCR 2.116(C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere

> allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her. *Maiden v. Rozwood,* 461 Mich 109, 120, 597 NW2d 817 (1999).

It is not enough for Defendant to allege that it will prove at trial that there is a genuine issue of material fact regarding the issue. Defendant must come forward with evidence showing that there is a genuine issue for trial in response to ***this motion***, as it cannot wait until trial in this matter to do so.

In *Maiden*, supra., the Court clarified the correct legal standard under MCR 2.116(C)(10), as it had been inconsistently applied since the 1985 amendment of the Court Rules. The *Maiden* court held that the reviewing court should evaluate a motion for summary disposition under MCR 2.116(C)(10) by considering the substantively admissible evidence proffered in opposition to the motion. A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. The *Maiden* Court continued, "A litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Supra* at 121.

III. Applicable Law

A. Effective May 4, 2020, Medfinance, and effective August 16, and August 30, 2019, Apogee, assigned all rights they received in the initial agreements back to Plaintiff. These dates are the relevant dates, regardless of when the counter-assignments were actually signed

Defendant is attempting to dismiss this lawsuit based on its claim that the counter-assignments were signed after the filing of Plaintiff's lawsuit, and that therefore,

Plaintiff did not have standing at that time to file. However, although the counter-assignments in this matter were signed after the initiation of the lawsuit, the effective date of the counter-assignments is for Medfinance is May 4, 2020, and August 19 and 30, 2019, for Apogee. The counter-assignments are unambiguous and the effective dates in the counter-assignments are the effective dates the parties intended when creating the contracts, and that intention must be respected by the Court.

> [U]nless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. We reiterate that the judiciary is without authority to modify unambiguous contracts or rebalance the contractual equities struck by the contracting parties because fundamental principles of contract law preclude such subjective post hoc judicial determinations of "reasonableness" as a basis upon which courts may refuse to enforce unambiguous contractual provisions. *Rory v. Cont'l Ins. Co.*, 473 Mich. 457, 461, 703 N.W.2d 23, 26 (2005)

The intent of the parties regarding the effective date is reflected not only in the contracts, but in the attached affidavits of the parties to the contracts. Therefore, in this instance, the Court must accept the contracts (counter-assignments) as written.

> In interpreting a contract, our obligation is to determine the intent of the contracting parties. If the language of the contract is unambiguous, we construe and enforce the contract as written. Thus, an unambiguous contractual provision is reflective of the parties' intent as a matter of law." *Quality Prods & Concepts Co. v. Nagel Precision, Inc.*, 469 Mich. 362, 375; 666 N.W.2d 251 (2003).

"A contract is deemed ambiguous if its language is "equally susceptible to more than a single meaning," *Stone v. Williamson*, 482 Mich. 144, 150–151; 753 N.W.2d 106 (2008), or when two contractual provisions "irreconcilably conflict with each other." *Klapp v. United Ins. Group Agency, Inc.*, 468 Mich. 459, 467; 663 N.W.2d 447 (2003). The counter-assignments clearly state that when they go into effect and there is no conflict

or alternate interpretation possible. Defendant's attempt to countermand that agreement, "is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance such as a contract in violation of law or public policy." *Rory v. Continental, supra*, at 469.

The parties to these counter-assignments were free to draft the counter-assignments or not, as they saw fit. Plaintiff's cause of action is equally valid whether pursued by Plaintiff or the factoring companies, and either way, Defendant is only liable to pay once. Defendant is only challenging Plaintiff's standing here because it wishes to escape payment of substantial sums of money it owes based on the claims of several C-Spine patients. The parties to the counter-assignments prefer that C-Spine prosecute the claims regarding this patient and therefore, the counter-assignments were executed. Defendant is an irrelevant party in relationship to the wishes of the parties who drafted the counter-assignments and its wishes must be disregarded by the Court. C-Spine has standing to bring this action and Defendant should be negotiating this lawsuit based on the No Fault statute and not miscellaneous issues of contract interpretation that are irrelevant to the issues in this lawsuit.

B. Plaintiff is the Real Party in Interest Here

Plaintiff is the real party in interest. The analysis begins with the applicable statute:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, **a party with whom or in whose name a contract has been made for the benefit of another**, or a party authorized by statute **may sue in his own name without joining with him the party for whose benefit the action was brought**... MCL 600.2041 (emphasis added).

Simply stated, both the assignor and assignee remain real parties in interest when rights have been assigned. This is mirrored in procedural court rules:

> Transfer or Change of Interest. If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c). MCR 2.202(B).

C. Should the Court Decide that Plaintiff C-Spine did not have Standing at the time the Complaint was filed, the Proper Remedy is Joinder Pursuant to MCR 2.205 and not Dismissal

Even if this Court were to erroneously conclude that the factoring companies are the only real parties in interest, the appropriate course would be to join them as parties to this action. Dismissal due to a change in interest is not appropriate.

Case law dating back almost 100 years confirms this analysis. Our Supreme Court has explained the purpose of the real party in interest requirement and that it only operates to preclude duplicative recovery:

> Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain. He is entitled to be protected against vexatious litigation by different parties claiming to assert the same cause of action, but, so long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the defendant is not harmed. *George Poy v. Allan*, 247 Mich. 385, 388; 225 N.W. 532 (1929).

More recently, the Court of Appeals explained precisely what Plaintiff has suggested, based on the plain language of the applicable statute and court rule; to wit, that the issue is one of joinder, not dismissal:

> The real party in interest rule is concerned only with the power of the plaintiff before the court to bring suit upon the claim stated. Whether additional parties also have an interest, such that their joinder is required or the plaintiff is prohibited from proceeding without them, is not a question of real party in interest, but of necessary joinder of parties under MCR 2.205. *Rite-Way Refuse Disposal, Inc v. Vanderploeg*, 161 Mich.App. 274, 278; 409 N.W.2d 804 (1987).

Accordingly, the only relief that this Court can provide would be to join the factoring companies to this action. However, joinder is unnecessary and ultimately inappropriate, given the instruction above that joinder is only necessary where a judgment would not serve as a complete adjudication of the issues asserted or possibly asserted against a defendant.

To be clear, although the counter-assignments were not executed until July 2020 and January 2021, the parties specified their effective dates as much earlier, prior to the filing of Plaintiff's complaint. Defendant may take issue with the purported effective dates in an effort to require a re-filing of this action for the purpose of avoiding liability pursuant to MCL 500.3145. Not only would such an argument be pure gamesmanship and fly in the face of the purpose of limitation periods, but it is legally erroneous as well.

If Medfinance and Apogee were joined to this lawsuit, pursuant to MCL 600.5856, the original filing date of Plaintiff's complaint would prevail as the statute would have tolled the filing date.

> The statutes of limitations or repose are tolled in any of the following circumstances:
> (a) At the time the complaint is filed, if a copy of the summons and complaint are served on the defendant within the time set forth in the supreme court rules.
> (b) At the time jurisdiction over the defendant is otherwise acquired.
> (c) At the time notice is given in compliance with the applicable notice period under section 2912b, if during that period a claim would be barred by the statute of limitations or repose; but in this case, the statute is tolled not longer than the number of days equal to the number

> of days remaining in the applicable notice period after the date notice is given. MCL 600.5856.

Affiliated Bank of Middleton v. American Ins. Co., 77 Mich App 376, 258 NW2d 232 (1977), supports Plaintiff's argument. In that case, the Court of Appeals addressed a prior action brought by the assignor of the claim at issue in both cases that had been dismissed because, due to prior assignment, the assignor was not the real party in interest to pursue the claim. There was no dispute that the second action, brought by the assignee, was past the applicable limitation period for the claim asserted. **The court ultimately held that despite the assignor never having a valid claim in the first place, that filing did toll the limitation period for the subsequent action brought by the assignee**:

> Cases from other jurisdictions have, for the most part, construed similar statutes to permit, after failure of the original action commenced within the limitations period, a renewed action by a different plaintiff when he represents the same interest as the original plaintiff. 'Failure of an action for defects in parties is frequently within the statutes permitting a new action to be instituted within a specified time after such failure. ***Thus the failure of a former suit, because prosecuted in the name of the wrong person as plaintiff, brought to recover the same claim sought to be recovered in a later suit by the proper person as plaintiff, is a failure within a statute allowing a new action to be brought within a limited time after the failure of a former action***; but there is also authority to the contrary.' We think the trial court was in error in not applying the tolling, or 'saving' statute. The statute is remedial and deserves a construction as broad as that given similar statutes in most other jurisdictions." *Id.*, at 379-380, quoting 54 C.J.S., Limitations of Actions, § 292C, p. 360 (internal citations omitted, emphasis added).

Binding precedent thus instructs that the injured person's filing date tolled both the statute of limitations (i.e. the filing limitation) and the statute of repose (i.e. the recovery or "year-back" limitation) delineated in MCL 500.3145. In the instant case, even if the factoring companies should have been the Plaintiffs filing the action, not Plaintiff C-

Spine, pursuant to Michigan case law, the filing tolls the statute of limitations and the statute of repose, and they can be substituted for Plaintiff here, if necessary.

This analysis is consistent with other authority interpreting MCL 600.5856, that has concluded that even the most severe defect any case can possibly have – lack of subject matter jurisdiction – is still not a preclusion to tolling. The only two preclusions to tolling would be failing to obtain personal jurisdiction over the defendant in the later filed action, or a resolution on the merits of the prior filed action before commencement of the subsequent case. See, e.g., *Kiluma v. Wayne State University*, 72 Mich App 446, 250 NW2d 81 (1976) (Holding that the first case having been dismissed for lack of subject matter jurisdiction nonetheless tolled the limitation periods for a subsequent action filed in the proper venue).

Therefore, should the Court disagree with Plaintiff's stance, the proper action here would be to allow Plaintiff to amend its complaint to add the factoring companies, not to dismiss its case altogether.

IV. Conclusion

Plaintiff has provided the Court with adequate evidence that it has standing in this matter pursuant to the counter-assignments and the Affidavits. (See **Exhibit A**) Plaintiff filed this lawsuit in good faith and with the knowledge that it had standing to bring the action. Therefore, this motion must be denied, and no costs or attorney fees can be assessed.

WHEREFORE, Plaintiff C-Spine Orthopedics respectfully requests that this Honorable Court deny Defendant's motion in its entirety.

Respectfully Submitted,

/s/ Jenifer L. Measel
Jenifer L. Measel (P74711)
Attorney for Plaintiff
31275 Northwestern Hwy, Ste 225
Farmington Hills, MI 48334
(248) 702-6550

Dated: July 12, 2021

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon all counsel at their above-captioned addresses on July 12, 2021, via:

___ U.S. Mail	___ Express Delivery
___ Facsimile	___ Hand Delivery
_____	_X_ Other (eFile + Serve)

and declares under penalty of perjury that this statement is true to the best of her information, knowledge, and belief.

/s/ Samantha Bronikowski

Exhibit A

AFFIDAVIT OF MARK SEDA
CEO OF C-SPINE ORTHOPEDICS

COUNTY OF WAYNE)
) ss
STATE OF MICHIGAN)

I, Mark Seda, being first duly sworn, depose and say:

1. I am the Chief Executive Officer of C-Spine Orthopedics.

2. C-Spine Orthopedics' agreement with Well States Healthcare, LLC regarding Jose Cruz-Muniz's patient balance includes C-Spine Orthopedics' obligation to sue for unpaid balances.

3. C-Spine Orthopedics' agreement with MedFinance Servicing, LLC regarding Jose Cruz-Muniz's patient balance includes C-Spine Orthopedics' obligation to sue for unpaid balances.

4. C-Spine Orthopedics' agreement with Apogee Capital Fund 5, LLC regarding Jose Cruz-Muniz's patient balance includes C-Spine Orthopedics' obligation to sue for unpaid balances.

The statements made in this affidavit are true to the best of my knowledge, information and belief and if I am asked to testify, I will attest to the same.

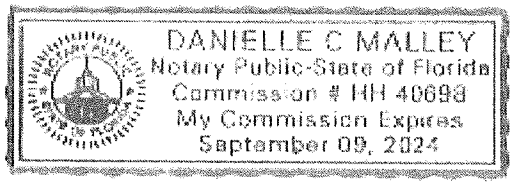
Further, affiant sayeth not.

Mark Seda, CEO

Subscribed and sworn to before me
this 1 day of JULY, 2021.

/s/ Danielle C Malley

BROWARD County, FLORIDA
Acting in the county of BROWARD
My commission expires: 9/924



AFFIDAVIT OF PETER ROOD
MANAGING MEMEBER OF APOGEE CAPITAL FUND 5, LLC

COUNTY OF WAYNE)
) ss
STATE OF MICHIGAN)

I, Peter Rood, being first duly sworn, depose and say:

1. I am a Managing Member of Apogee Capital Fund 5, LLC.

2. C-Spine Orthopedics owns the right to sue for any unpaid balance arising out of treatment to Jose Cruz-Muniz.

The statements made in this affidavit are true to the best of my knowledge, information and belief and if I am asked to testify, I will attest to the same.

Further, affiant sayeth not.

Peter Rood, Managing Member

Subscribed and sworn to before me
this 1st day of July, 2021.

/s/ _____
_____ County, _____
Acting in the county of _____
My commission expires: _____

JESSICA RUIZMARTINEZ
MY COMMISSION EXPIRES
NOVEMBER 16, 2023
#GG 355527
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

AFFIDAVIT OF NATE ORMOND
PRESIDENT OF MEDFINANCE SERVICING, LLC AND
WELL STATES HEALTHCARE, LLC

COUNTY OF WAYNE)
) ss
STATE OF MICHIGAN)

I, Nate Ormond, being first duly sworn, depose and say:

1. I am the President of MedFinance Servicing, LLC and Well States Healthcare, LLC.

2. C-Spine Orthopedics owns the right to sue for any unpaid balance arising out of treatment to Jose Cruz-Muniz.

The statements made in this affidavit are true to the best of my knowledge, information and belief and if I am asked to testify, I will attest to the same.

Further, affiant sayeth not.

_____
Nate Ormond, President

Subscribed and sworn to before me
this _____ day of _____, 2021.

/s/_____

_____ County, _____
Acting in the county of _____
My commission expires: _____

Exhibit N

STATE OF MICHIGAN
IN THE COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v.

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

COA Docket No. 358170

MCCC Case No. 20-001710-NF
Hon. Jennifer Faunce

Matthew Scott Payne (P73982)
SIGAL LAW FIRM, PLLC
Attorney for Plaintiff-Appellant
27041 Southfield Road, Suite 100
Southfield, MI 48076
(248) 220-1234
mpayne@sigallaw.com

Frederick V. Livingston (P75206)
NOVARA TESIJA & CATENACCI, PLLC
Attorney for Defendant-Appellee
888 W. Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380
fvl@ntclaw.com

PLAINTIFF-APPELLANTS' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Court Rules

Statutes

Case Law

STATEMENT OF JURISDICTION

This action involves Plaintiff-Appellant C-SPINE ORTHOPEDICS, PLLC's claims against Defendant-Appellee PROGRESSIVE MICHIGAN INSURANCE COMPANY for personal protection insurance ("PIP").

On July 26, 2021, the trial court entered an Order Granting Defendant's motion for Summary Disposition and dismissing Plaintiff-Appellant's PIP claims in their entirety.

Plaintiff-Appellant timely filed its Claim of Appeal on August 16, 2021. Accordingly, this Court has jurisdiction over this appeal pursuant to MCR 7.203(A)(1).

STATEMENT OF QUESTIONS PRESENTED

1. Did Plaintiff-Appellant, as a matter of law, remain a real party in interest with respect to the cause of action for PIP benefits despite assignments of rights to other entities?

   Plaintiff-Appellant: Yes.

   Defendant-Appellee: No.

   Trial Court: No.

2. Did Plaintiff, as a matter of fact, retain at least the legal cause of action even if the beneficial interest in accounts receivable had been effectively assigned away?

   Plaintiff-Appellant: Yes.

   Defendant-Appellee: No.

   Trial Court: No.

STANDARD OF REVIEW

Rulings on summary disposition are reviewed *de novo*. *McCormick v. Carrier*, 487 Mich. 180, 188; 795 N.W.2d 517 (2010); *In re Smith Trust,* 480 Mich. 19, 23-24; 745 N.W.2d 754 (2008); *Saffian v. Simmons,* 477 Mich. 8, 12; 727 N.W.2d 132 (2007).

Summary disposition is proper where "[t]he party asserting the claim lacks the legal capacity to sue." MCR 2.116(C)(5). "In reviewing a grant of a motion for summary disposition pursuant to MCR 2.116(C)(5), we must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Rohde v. Ann Arbor Public Schools*, 265 Mich.App. 702, 705; 698 N.W.2d 402 (2005).

Summary disposition is proper where "except as to the amount of damages, there is no genuine issue as to any material fact." MCR 2.116(C)(10). "Under MCR 2.116(C)(10), the motion tests the factual support for a claim and must be supported by affidavits, depositions, admissions, or other documentary evidence." *Maiden v. Rozwood,* 461 Mich. 109, 120; 597 N.W.2d 817 (1999). "A court properly grants the motion when the proffered evidence, viewed in the light most favorable to the nonmoving party, fails to establish any genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *West v. Gen. Motors Corp.,* 469 Mich. 177, 183; 665 N.W.2d 468 (2003).

STATEMENT OF FACTS

Plaintiff-Appellant ("Plaintiff") commenced this action against Defendant-Appellee ("Defendant") on May 11, 2020 seeking unpaid personal protection insurance ("PIP") benefits. In addition to the direct statutory cause of action provided by amendment to MCL 500.3112, effective June 11, 2019, the cause of action was premised on various assignments by an injured person named Jose Cruz-Muniz to Plaintiff after Plaintiff provided motor vehicle accident related medical treatment.

Specifically, Plaintiff provided medical services to the injured person on various dates from August 7, 2019 through October 2, 2019. (**Exhibit 1 – Billing Ledger**). After his last appointment on October 2, 2019, the injured person transferred his rights against Defendant to collect payment for those services to Plaintiff. (**Exhibit 2 – Assignment**). Notably, the beneficiary of these contracts is "C-Spine Ortho" (i.e. Plaintiff).

On August 2, 2019, an entity called Sea Spine Orthopedic, LLC ("Sea Spine") transferred rights to certain "Accounts Receivable" to two medical funding entities: Medfinance Servicing, LLC ("Medfinance") and Well States Healthcare, LLC ("Well States"). (**Exhibit 3 – Original Sale Agreement**). By way of three separate amendments, Sea Spine incorporated dates of service from August 21, 2019 through October 2, 2019 into the Original Sale Agreement. (**Exhibit 4 – Amendments**).

Plaintiff is a Michigan PLLC, organized in Michigan on August 29, 2017 with its official address of 29255 Northwestern Highway, Suite 201, Southfield, Michigan. (**Exhibit 5 – Michigan LARA Confirmation**). Sea Spine Orthopedics Institute, LLC is a Florida entity created as of January 20, 2010 with its official address 3107 West Hallandale Beach Boulevard, Unit 100, Pembroke Park, Florida. (**Exhibit 6 – Florida Division of Corporations Confirmation**).

In addition to conflating legal entities, it appears that there is no record evidence regarding any transfer between Plaintiff or Sea-Spine and the third medical factoring company at issue, Apogee Capital Fund 5, LLC. While Defendant provided "Exhibit A" to a referenced "Agreement dated August 30, 2019," the original agreement was seemingly never produced. (**Exhibit 7 – Apogee Agreement Exhibit A**). Plaintiff does not dispute that the two remaining dates of service – August 7, 2019 and August 15, 2019 – are implicated by this transaction, but the terms of that transaction remain unknown.

In response to Defendant's first challenge to Plaintiff's standing to pursue the cause of action asserted in this case, Plaintiff produced a Counter-Assignment of Accounts Receivable ("Counter-Assignment") for Patient Jose Cruz-Muniz, the terms of which vest Plaintiff with the legal cause of action and oblige it to pursue collection against Defendant through litigation or otherwise despite any prior agreements with Medfinance and Well States. The Counter-Assignment is dated May 4, 2020 – prior to commencement of this action – which is expressly listed as its "Effective Date." However, Plaintiff does not dispute that this document was not actually executed until after commencement of this action. (**Exhibit 8 – Counter-Assignment**).

Similarly, Plaintiff provided a First Amendment to Bulk Purchase and Sale Agreement for Account Receivable ("First Amendment") between Plaintiff and Apogee, memorializing the agreement between those entities that Plaintiff be vested with any legal cause of action to collect on the Accounts Receivable and again obliging it to pursue legal action in pursuit of collection. Though the First Amendment was dated July 1, 2020, it clearly is a reformation of the initial contract, which was dated August 16, 2019. (**Exhibit 9 – First Amendment**).

More importantly, Plaintiff produced affidavits from Plaintiff's CEO, Mark Seda; Medfinance and Well States' president, Nate Ormond; and Managing Member of Apogee, Peter Rood explaining through sworn testimony that Plaintiff is exclusively vested with the legal cause of action to collect all applicable accounts receivable. (**Exhibit 10 – Affidavits**).

LAW AND ARGUMENT

I. MCR 2.116(C)(5) is not implicated by the arguments presented in this appeal.

> We note that some recent Court of Appeals cases have erroneously equated standing with capacity to sue for the purposes of dispositive motions under MCR 2.116(C)(5). [citations omitted] However, as this Court previously noted in *Leite v. Dow Chemical Co.,* 439 Mich. 920, 478 N.W.2d 892 (1992), the two concepts are unrelated. Our courts are admonished to avoid conflating the two. *Michigan Chiropractic Council v. Commissioner of Office of Financial and Ins. Services*, 475 Mich. 363, 374 n. 25; 716 N.W.2d 561 (2006).

Defendant has not proffered any argument challenging Plaintiff's *capacity* to sue, but instead challenges only its *standing*. Accordingly, MCR 2.115(C)(5) has no bearing on the issues at bar.

II. The lack of record evidence related to any transfer by Plaintiff to any factoring company requires reversal or vacation of the trial court's Order Granting Defendant's motion for Summary Disposition.

Plaintiff – C-Spine Orthopedics, PLLC – provided treatment to the injured person. Sea Spine Orthopedics Institute, LLC did not. These are two distinct entities not even registered in the same state, nor with the same name. The only similarity between the two entitles is the resident agent. (See **Exhibits 5 and 6**).

All of Plaintiff's dates of service are subsequent to the effective date of an amendment to the No-Fault Act ("NFA") vesting Plaintiff with a direct cause of action against Defendant for unpaid PIP benefits. MCL 500.3112 states, in relevant part:

> Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his or her death, to or for the benefit of his or her dependents. A health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person.
>
> **Compiler's Notes:** Enacting section 1 of Act 21 of 2019 provides: "Enacting section 1. Section 3112 of the insurance code of 1956, 1956 PA 218, MCL 500.3112, as amended by this amendatory act, applies to products, services, or

> accommodations provided after the effective date of this amendatory act." MCL 500.3112.

Plaintiff also obtained an Assignment from the injured person transferring any of his rights to the same benefits exclusively to Plaintiff. (See **Exhibit 2**).

This Court must reverse the trial court's ruling regarding any alleged interest of Medfinance and Well States to Plaintiff's right to benefits because Plaintiff never transferred any such rights. There is no indication that Plaintiff transferred its rights to Sea Spine or that the agreement between Sea Spine and the factoring companies somehow binds Plaintiff.

As to the remaining two dates of service implicated by the alleged agreement between Plaintiff and Apogee, the trial court's ruling must similarly be reversed because the terms of any such agreement remain a mystery. While Plaintiff concedes that there is *some* agreement between those entities regarding the charges at issue in this case, the record reveals only that these charges are incorporated into those agreements but without specifying terms. Consequently, it is legally impossible to determine who owns the cause of action.

III. The No-Fault Act preclusion of future assignments voids any possible interest Medfinance and Well States may otherwise have obtained from Plaintiff.

To reiterate, the Original Sale Agreement between Sea Spine and Medfinance/Well States was executed prior to any of Plaintiff's services to the injured person. (See **Exhibits 1 and 3**). There are no other contracts or documents executed by any of these entities after the initial execution date; the only additional documents are mere lists of numbers.

The NFA precludes any assignment of future no-fault benefits, per MCL 500.3143, which succinctly declares, "An agreement for assignment of a right to benefits payable in the future is void." Where an assignment purports to transfer rights to claims that have not yet accrued, any such provision is void and ineffective to transfer any rights at all:

> We find the language of the assignment somewhat ambiguous. On the one hand, the assignment states "all of Clifford Lay's rights," which connotes both past and future benefits. On the other hand, it refers to "services provided" in the past tense. To the extent that the assignment can be read as assigning future benefits, that part of the assignment is void as a matter of law. M.C.L. § 500.3143; M.S.A. § 24.13143. This holding does not abrogate the entire assignment, however. *Professional Rehabilitation Associates v. State Farm Mut. Auto. Ins. Co.*, 228 Mich.App. 167, 173; 168; 577 N.W.2d 909 (1998).

A cause of action for PIP benefits only accrues once a charge is incurred, not when the injury is sustained, per MCL 500.3110(4) ("Personal protection insurance benefits payable for accidental bodily injury accrue not when the injury occurs but as the allowable expense, work loss or survivors' loss is incurred.").

When the Original Sale Agreement was executed, the injured person had no cause of action for the benefits at issue in this litigation, and Plaintiff also had no right to any statutory or assignment based cause of action against Defendant. While there was a purported assignment of future benefits, that provision in the Original Sale Agreement is necessarily void under the NFA. Regardless of the party issue, neither Plaintiff nor Sea Spine effectively transferred any rights because it would have been an assignment of a future benefit, and thus void.

IV. Regardless of any transfer of rights, both Plaintiff and any factoring assignee remain real parties in interest entitled to pursue the claims at issue in this case.

The analysis begins with the applicable statute requiring all actions to be brought by a real party in interest:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, **a party with whom or in whose name a contract has been made for the benefit of another**, or a party authorized by statute **may sue in his own name without joining with him the party for whose benefit the action was brought**… MCL 600.2041 (emphasis added).

Simply stated, both the assignor and assignee remain real parties in interest when rights have been assigned. This is mirrored in procedural court rules:

> Transfer or Change of Interest. If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c). MCR 2.202(B).

In other words, even if the trial court had been correct that Plaintiff effectively transferred its rights to the benefits at issue, the appropriate remedy is merely to join any other entity that supposedly or allegedly has a duplicative interest in the cause of action.

As a brief pontification, Defendant's only legitimate interest at issue is avoiding duplicate payment for the same claims. Joinder fully protects that interest without providing an inequitable windfall that would ultimately make the injured person liable to pay either Plaintiff or the factoring companies when there was never any dispute that there was no-fault insurance coverage for the allowable expenses at issue.

Case law dating back almost 100 years confirms this analysis. The Supreme Court has explained the purpose of the real party in interest requirement and that it only operates to preclude duplicative recovery:

> Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain. He is entitled to be protected against vexatious litigation by different parties claiming to assert the same cause of action, but, so long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the defendant is not harmed. *George Poy v. Allan*, 247 Mich. 385, 388; 225 N.W. 532 (1929).

More recently, the this Court explained precisely what this writer suggested based on the plain language of the applicable statute and court rule; to wit, that the issue is one of joinder, not dismissal:

> The real party in interest rule is concerned only with the power of the plaintiff before the court to bring suit upon the claim stated. Whether additional parties

> also have an interest, such that their joinder is required or the plaintiff is prohibited from proceeding without them, is not a question of real party in interest, but of necessary joinder of parties under MCR 2.205. *Rite-Way Refuse Disposal, Inc v. Vanderploeg*, 161 Mich.App. 274, 278; 409 N.W.2d 804 (1987).

Accordingly, the only relief that was available to Defendant under Michigan law would be to join all assignee providers to this action. Dismissal is not implicated by any authority whatsoever under the circumstances at bar.

In this case, joinder is unnecessary and ultimately inappropriate for any factoring company, given the instruction above that joinder is only necessary where a judgment would not serve as a complete adjudication of the issues asserted or possibly asserted against a defendant. Here, all purported transfers of PIP benefits were executed more than a year ago. To the extent that the factoring companies ever had any interest, it has since extinguished pursuant to MCL 500.3145.

Defendant's reliance on *Cannon Township v. Rockford Public Schools*, 311 Mich.App. 403, 875 N.W.2d 242 (2015) is misplaced. There is no dispute that an assignor becomes **one of** the real parties in interest. Nowhere in that opinion does the Court of Appeals state that the assignor is the **only** real party in interest.

V. To the extent that Plaintiff transferred away any rights to any factoring company, regardless of when the transfer was effective, the transfer was merely of "Accounts Receivable," which is a beneficial interest only while Plaintiff maintains ownership of the cause of action.

Perhaps the most instructive precedent on this particular issue is *Cannon Township*, *supra*:

> A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by

> any other party. *Cannon Township v. Rockford Public Schools*, 311 Mich.App. 403, 412; 875 N.W.2d 242 (2015), citing *Barclae v. Zarb*, 300 Mich.App. 455, 483; 834 N.W.2d 100 (2013).

This Court explained both that an assignment of a beneficial interest does not preclude the assignor from suing to recover PIP benefits and that the purpose of the real party in interest doctrine is merely to preclude duplicative payment for a single claim.

In this case, any assignment of Plaintiff's rights were limited to "Accounts Receivable." That term is defined as "a balance due from a debtor on a current account."[1] Neither Plaintiff nor any other entity sold the actual claim for benefits, which would vest the assignee with the legal cause of action. An account receivable is thus merely a beneficial interest; transferring only the "balance due" does not also transfer the legal cause of action.

VI. The agreements between Plaintiff and any factoring company vest Plaintiff with the sole cause of action to collect PIP benefits, and in fact requires it to pursue litigation when necessary to collect.

Pursuant to Michigan law, no contract exists unless there is a meeting of the minds between the parties to the agreement:

> Mutuality of agreement, or a meeting of the minds, means that "[t]here must be a meeting of the minds on all the material facts in order to form a valid agreement, and whether such a meeting of the minds occurred is judged by an objective standard, looking to the express words of the parties and their visible acts." *Sanchez v. Eagle Alloy Inc.*, 254 Mich.App. 651, 665-666; 658 N.W.2d 510 (2003), quoting *Groulx v. Carlson,* 176 Mich.App. 484, 491; 440 N.W.2d 644 (1989).

Regardless of the plain language of the agreements at issue, both Plaintiff and all three factoring companies are and always were under the impression that Plaintiff has the right and, in fact, the obligation to sue to collect PIP benefits. (See **Exhibit 10**). Either the parties' agreement is accurate and Plaintiff is the only real party in interest, or there was no contract and thus no transfer of any right.

Significantly, Defendant as a non-party to the agreements lacks standing to challenge those agreements:

> The long-settled rule in Michigan is that a person who is not a party to an assignment lacks standing to challenge it." *Hagerman v. Nationstar Mortgage, L.L.C.*, unpublished *per curiam* Court of Appeals opinion, docket #319271 (2015), citing *Bowles v. Oakman,* 246 Mich. 674, 678; 225 N.W. 613 (1929).

In other words, Defendant cannot even advocate to this Court any version of the plain language of the agreements at issue. As such, the plain language controls as long as there was a meeting of the minds in the first place. Ultimately, this Court is bound to either invalidate the factoring agreements entirely due to the lack of mutuality of agreement or simply enforce them per the interpretation of the parties to those agreements to the exclusion of any argument from Defendant.

[1] https://www.merriam-webster.com/dictionary/account%20receivable

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court REVERSE the trial court's order granting summary disposition and REMAND the case for further proceedings.

Respectfully Submitted,
SIGAL LAW FIRM, PLLC

/s/ Matthew S. Payne
Matthew S. Payne (P73982)
27041 Southfield Rd, #100
Southfield, MI 48076
(248) 220-1234

Date: December 20, 2021

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on: December 20, 2021 via:

US Mail _____ Fax _____
Hand Delivery _____ UPS _____
Fed Ex _____ E-mail X

Signature /s/ Matthew S. Payne

Exhibit O

STATE OF MICHIGAN

IN THE COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,
as Assignee of Jose Cruz-Muniz,

Plaintiff-Appellant,

-vs-

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

Court of Appeals No. 358170
Lower Court: Macomb County Circuit Court
Lower Court Case No. 20-001710-NF

_____/

MATTHEW S. PAYNE (P73982)
Sigal Law Firm, PLLC
Attorney for Plaintiff-Appellant
27041 Southfield Road, Suite 100
Southfield, MI 48076
(248) 220-1234; Fax: (248) 598-4044
mpayne@sigallaw.com

KAITLYN A. CRAMER (P77699)
Novara Tesija Catenacci
McDonald & Baas, PLLC
Attorney for Defendant-Appellee
888 W. Big Beaver Rd., Suite 600
Troy, MI 48084
(248) 354-0380; Fax: (248) 250-9927
kac@novaralaw.com

_____/

DEFENDANT-APPELLEE PROGRESSIVE'S BRIEF ON APPEAL

****ORAL ARGUMENT REQUESTED****

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Novara Tesija Catenacci
McDonald & Baas, PLLC

INDEX OF EXHIBITS

STATEMENT OF QUESTIONS PRESENTED

I. Did the Plaintiff-Appellant, as a matter of law, remain a real party in interest with respect to the cause of action for PIP benefits despite assignments of rights to other entities?

Plaintiffs/Appellants answer: Yes

Defendant/Appellee answers: No

The trial court answered: No

II. Did Plaintiff, as a matter of fact, retain at least the legal cause of action even if the beneficial interest in accounts receivable had been effectively assigned away?

Plaintiffs/Appellants answer: No

Defendant/Appellee answers: Yes

The trial court answered: Yes

Novara Tesija Catenacci
McDonald & Baas, PLLC

STATEMENT OF JURISDICTION

Defendant/Appellee agrees that Plaintiffs/Appellants' jurisdictional statement is complete and correct. This Court has jurisdiction over this appeal pursuant to MCR 7.203(A)(1).

INTRODUCTION

This is a claim for No-Fault benefits in which Plaintiff/Appellant seeks to recover benefits for medical services rendered to the underlying claimant, Jose Cruz-Muniz. However, Plaintiff/Appellant, C-Spine Orthopedics, PLLC, undisputedly sold and assigned Mr. Cruz-Muniz's accounts, including its respective outstanding balance, to multiple third-party factoring companies. In doing so, Plaintiff/Appellant relinquished all of its rights, title, and interests in the subject matter account. Additionally, a sale of account is governed strictly by the Uniform Commercial Code ("UCC"), which spells out that, upon a sale of account, the seller relinquishes any and all legal or equitable interests. MCL 440.9318(1).

As such, the trial court correctly dismissed Plaintiff/Appellant's PIP claims against Defendant/Appellee Progressive Insurance Company, for lack of standing to maintain the underlying legal proceeding. See **Exhibit A**, Order Granting Defendant's Motion for Summary Disposition; see also **Exhibit B**, Defendant's Renewed Motion for Summary Disposition. Notably, this Court recently addressed the issue discussed herein, holding that an assignment vests in the assignee, "all rights previously held by the assignor." [Emphasis Added]. *Mich Pain Mgt v American Country Ins Co*, ___NW2d___; 2020 Mich App LEXIS 158 (Ct App, Jan. 9, 2020). Moreover, this Court also clarified that a medical provider does not have standing to sue after assigning its rights to another entity, where a plaintiff assigned "all of its rights, title, and interest" in the accounts receivable to the purchaser, i.e., a servicing company. See *Greater Lakes Ambulatory Surgical Ctr, LLC v Meemic Ins Co*, No. 353842, 2021 Mich App LEXIS 4659 at 8 (Ct App, July 29, 2021) attached hereto as **Exhibit C**.

While Plaintiff/Appellant fails to acknowledge the legal effect of any assignment of an account, the legal principles regarding assignments of rights have been litigated extensively, resulting in the same conclusion as to its legal effect on respective parties. Thus, Plaintiff/Appellant possesses

no rights, through claimant or other, to pursue claims against Progressive, and, as such, Defendant/Appellee requests that this Honorable Court affirm the Circuit Court's Order granting Defendant's Motion for Summary Disposition.

Novara Tesija Catenacci
McDonald & Baas, PLLC

COUNTER-STATEMENT OF FACTS

This case is a matter of contract interpretation. On May 23, 2018, Mr. Cruz-Muniz was involved in a motor vehicle accident. On August 7, 2019, Mr. Cruz presented to Plaintiff/Appellant's facility, C-Spine Orthopedics, PLLC, where he underwent a series of articular injections. On October 2, 2019, the last day of treatment, Mr. Cruz-Muniz executed an Assignment of Benefits, assigning his rights of personal protection insurance benefits to Plaintiff/Appellant. Thereafter, on May 11, 2020, Plaintiff/Appellant filed its Complaint seeking benefits from Defendant/Appellee, as reimbursement for allegedly outstanding medical expenses. See **Exhibit D**, Plaintiff's Complaint.

While Plaintiff/Appellant specifically pled "[p]ursuant to MCL 600.2041, every cause of action shall be prosecuted in the name of the real party of interest," it was discovered that Plaintiff/Appellant sold all of the Jose Cruz-Muniz account receivables to third parties. **Exhibit D**. Though Plaintiff/Appellant produced only a number of sample agreements, Plaintiff/Appellant represented that the sale agreement for Mr. Cruz-Muniz's accounts was routine and otherwise identical. See **Exhibit E**, Email Correspondence from Plaintiff; see also **Exhibit F**, Sales Agreements.

Specifically, the sale of accounts, by their plain terms, is an absolute sale, and relinquishes any rights Plaintiff/Appellant held in Mr. Cruz-Muniz's accounts. **Exhibit F**. As such, Defendant/Appellee brought its first Motion for Summary Disposition before the trial court, arguing that the aforementioned sale and conveyance of all rights and interests abandoned Plaintiff/Appellant's rights to pursue payment on the subject claims, as they lacked standing in this matter. See **Exhibit G**, Defendant's Original Motion for Summary Disposition. In response, and in an attempt to support its claim that it was the real party in interest, Plaintiff/Appellant produced an assignment from purchaser MedFinance Servicing, LLC (hereinafter "MedFinance"), identified as a "Counter-Assignment of Accounts Receivable for Patient Jose Cruz-Muniz." See **Exhibit H**, Plaintiff's Original Response; see

Exhibit I, Counter-Assignment. Notably, this assignment re-conveyed legal and equitable rights and interests from MedFinance to Plaintiff/Appellant, for accounts/dates of service from August 21, 2019 until October 2, 2019. **Exhibit I**. However, the document suspiciously and conveniently contained an execution and effective date of May 4, 2020, and it became apparent that this was nothing more than an obvious attempt by Plaintiff/Appellant to ensure that the Counter-Assignment would circumvent its lack of standing and the application of any accompanying one-year-back issues. **Exhibit I**.

Further, Plaintiff/Appellant presented two amended sale agreements relating to accounts receivable/dates of service from August 16, 2019 and August 30, 2019. See **Exhibit J**, Amended Purchase and Sale Agreements. Accordingly, each amended sale agreement gave Plaintiff/Appellant permission to service the account receivables on behalf of Apogee Capital Partners, LLC and Apogee Capital Fund 5, LLC (hereinafter "Apogee Capital"), another purchasing servicing company. **Exhibit J**. Notably, said agreements were **not executed until July 23, 2020**, two months after Plaintiff/Appellant filed the subject Complaint. **Exhibit D**; **Exhibit J**.

Despite agreeing with Defendant/Appellee and finding that an absolute sale did take place, the Circuit Court ultimately denied Defendant/Appellee's Motion for Summary Disposition without prejudice. In doing so, and in pertinent part, the Circuit Court stated:

> **A plain and ordinary reading of paragraphs 2 and 4 of the Original Sale Agreement and the warranty section leads to one inescapable conclusion – Plaintiff sold or assigned its rights in the accounts to the factoring companies…. However, the Original Sale Agreement does not describe any interest Plaintiff retained in the accounts and does not support Plaintiff's argument that the transactions were mere loans or the granting of a security interest in exchange for capital. As such, upon the assignment of the accounts in the Original Sale Agreement, the factoring companies became the real parties in interest on the transferred accounts**.

See **Exhibit K**, Opinion and Order Denying Defendant's Motion for Summary Disposition, p. 4.

Moreover, while the Circuit Court determined that the Counter-Assignment reinstated an ownership interest in the subject accounts, and thereby real party interests, this determination was made with the assumption that the documents produced by Plaintiff/Appellant were an accurate reflection of the execution date. **Exhibit K**, pp. 5-6. Eventually, as a result of Plaintiff/Appellant's subsequent refusal to identify the actual date of execution, Defendant/Appellee was forced to file several discovery motions and complete at least one deposition for Plaintiff/Appellant to reveal that the Counter-Assignment was **not created or executed until January 11, 2021**. See **Exhibit L**, Email Correspondence Disclosing Dates of Execution.

There can be no dispute that, even if the subject assignments were enforceable, the dates the documents were executed are vital to Plaintiff/Appellant's claims. Yet, as evidenced, each of the execution dates took place after the date Plaintiff/Appellant filed its Complaint. **Exhibit L**. On this basis, Defendant/Appellee filed a renewed Motion for Summary Disposition pursuant to MCR 2.116(C)(5) and (C)(10). **Exhibit B**. In response, Plaintiff/Appellant produced newly obtained affidavits, attesting to its own interpretation of the initial sale agreements, as well as representatives, from the purchasing service companies, giving Plaintiff/Appellant the right to sue for any unpaid balance arising out of treatment to Mr. Cruz-Muniz. **Exhibit M**, Plaintiff's Second Response. Unfortunately, each of the affidavits, similar to the issue assignments and amendments, were executed in July of 2021 and effectively transfers the necessary rights to sue *after* the time Plaintiff/Appellant filed its Complaint. Thus, as a matter of law, Plaintiff/Appellant relinquished its rights as assignee of Mr. Cruz-Muniz and, thereby, lacked the standing to sue for complementary no-fault benefits at the time of filing. In agreement, the Circuit Court granted Defendant/Appellee's second Motion on July 26, 2021. **Exhibit A**. This appeal follows.

STANDARD OF REVIEW

A trial court's decision on a motion for summary disposition presents a question of law that this Court must review de novo. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). Whether a plaintiff has standing is also a question of law reviewed de novo, *Crawford v Dep't of Civil Serv*, 466 Mich 250, 255; 645 NW2d 6 (2002), as is the related issue of whether a plaintiff is the real party in interest, *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v City of Pontiac*, 309 Mich App 611, 621; 873 NW2d 783 (2015), and the proper interpretation of a contract, *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

Summary disposition is appropriate under MCR 2.116(C)(5) when "[t]he party asserting the claim lacks the legal capacity to sue." "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 493; 815 NW2d 132 (2012). However, when a motion for summary disposition is filed under MCR 2.116(C)(5) and the parties present documentary evidence outside the pleadings, review is proper under MCR 2.116(C)(10). *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019).

A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Downey v Charlevoix County Board of Road Commissioners*, 227 Mich App 621, 625; 227 NW2d 712 (1998). In ruling on the motion, the court must consider not only the pleadings but also any depositions, affidavits, admissions, or other documentary evidence submitted by the parties. MCR 2.116(G)(5). Affidavits and documentary evidence must be viewed in the light most favorable to the non-moving party. *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 397; 576 NW2d 210 (1998). However, "[w]hen a motion under subrule (C)(10) is made and supported as provided in [MCR 2.116],

an adverse party … must, by affidavits or as otherwise provided by this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4).

In so doing, the nonmoving party cannot simply rest on bare allegations, but must come forward with substantively admissible evidence in opposition to the motion that establishes a genuinely contested issue of material fact for trial. See *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163-64; 645 NW2d 643 (2002); see also MCR 2.116(G)(4). In reviewing a summary disposition motion under MCR 2.116(C)(10), the trial court considers "affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion." *Greene v A P Prods, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue of disputed fact. *Smith v Globe Life Ins Co*, 460 Mich 446, 455 n2; 597 NW2d 28 (1999).

ARGUMENT

I. The record clearly evidences various party admissions by Plaintiff/Appellant that it sold the issues debts to MedFinance and Apogee Capital, and waived any alternative arguments when Plaintiff/Appellant failed to preserve said issue for appellate review.

Incredibly, Plaintiff/Appellant now argues that it never transferred any such rights to benefits to MedFinance. Even more astounding, Plaintiff/Appellant asserts that "it is legally impossible to determine who owns the cause of action."[1] Pursuant to *Mich Pain Mgmt v Am Country Ins Co.*, 2020 Mich App LEXIS 158, at 8; 2020 WL 113944, regardless of Plaintiff/Appellant's direct, statutory cause of action, "after execution of an assignment, only the assignee may enforce the acquired rights." Furthermore, the Court of Appeals recently concluded that a medical provider *does not have standing to sue* after assigning its rights to another entity, where a plaintiff assigned "all of its rights, title, and interest" in the accounts receivable to the purchaser, i.e., a servicing company. *Greater Lakes Ambulatory Surgical Ctr, LLC*, 2021 Mich App LEXIS 4659 at 8; see also **Exhibit C**.

Here, Plaintiff/Appellant provided various sales agreements, between Sea Spine Orthopedics Institute, LLC and MedFinance, to Defendant/Appellee, regarding "C-Spine cases" directly involved with factoring companies. **Exhibit E**; **Exhibit F**. Moreover, Plaintiff/Appellant's Ratification of Purchase Agreements as well as its Counter-Assignment, which supposedly re-assigns the equitable and legal rights in Mr. Cruz-Muniz's accounts, explicitly references Plaintiff/Appellant's facility. **Exhibit F**; **Exhibit I**. Likewise, on February 8, 2021, at the hearing for Defendant's original Motion for Summary Disposition, Plaintiff admitted that the sample sale agreements **were entered between MedFinance and Plaintiff/Appellant**, that they **accurately reflect the terms of its transactions**

[1] See Plaintiff/Appellant's Brief on Appeal, page 7-8.

with the issue servicing companies, and that they involve the outstanding accounts rendered to Mr. Cruz-Muniz. **Exhibit K**, p. 4. As such, the terms of the agreements clearly indicate that Plaintiff/Appellant routinely sells its debts to MedFinance, but retains no interest therein. Moreover, attached to its own brief, Plaintiff/Appellant includes a schedule of accounts displaying that **all of Mr. Cruz-Muniz's accounts**, from August 21, 2019 through October 2, 2019, were sold to MedFinance in accordance with the terms of said agreements. **Exhibit F**; see also Plaintiff/Appellant's Exhibits in support of its Brief on Appeal, pp. 18-25. Lastly, even if it were legally impossible to determine who owns the cause of action, this is more reason to affirm the Circuit Court's Order, as a party is required to show proper standing, as the real party in interest, to proceed with its cause of action. *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Tr. Bd of Trustees*, 309 Mich App at 621-622; MCR 2.201(B); MCL 600.2041.

Nevertheless, for "an issue to be preserved for appellate review, it must be raised, *addressed,* and decided by the lower court." *Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014). The failure to timely raise an issue typically waives appellate review of that issue. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). Our Supreme Court has explained the rationale for the preservation requirements as follows:

> The principal rationale for the rule is based in the nature of the adversarial process and judicial efficiency. By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [*Walters*, 481 Mich at 388].

An appellate court has the inherent power to review an unpreserved claim of error, but our Supreme Court has emphasized the fundamental principles that "such power of review is to be exercised quite sparingly" and that the inherent power to review unpreserved issues "is to be exercised only under what appear to be compelling circumstances to avoid a miscarriage of justice or to accord a [criminal] defendant a fair trial." *Napier v Jacobs*, 429 Mich 222, 233; 414 NW2d 862 (1987).

Even though preservation requirements vary according to the issue involved, the trial court must have been given an opportunity to rule on the issue in most cases, especially issues of fact. An "adverse inference against a party that has failed to produce evidence" may even be drawn where "(1) the evidence was under the party's control and could have been produced; (2) the party lacks a reasonable excuse for its failure to produce the evidence; and (3) the evidence is material, not merely cumulative, and not equally available to the other party." *Ward v Consolidated Rail Corp*, 472 Mich 77, 85-86; 693 NW2d 366 (2005).

In light of Plaintiff/Appellant's recurrent party admissions, and without production of any comprehensive records to differentiate Plaintiff/Appellant from Sea Spine at the trial court, Plaintiff/Appellant has waived the argument that they are not legally bound by the sales agreements concerning Mr. Cruz-Muniz's accounts.

II. Plaintiff/Appellant lacks the standing as a real party in interest, after selling and assigning the subject claimant's account receivable months prior to the time of filing its Complaint for no-fault benefits, and, in part, over a year after rendering the relevant medical services giving rise to the account.

a. Under the Michigan Court Rules and the UCC, MedFinance and Apogee Capital were the real parties in interest at the time of filing.

A sale of account is governed strictly by the Uniform Commercial Code ("UCC"), which spells out when a sale of account occurs, the seller relinquishes any and all rights of the account. Article 9 of the UCC applies to "[a] sale of accounts, chattel paper, payment intangibles, or promissory notes.

MCL 440.9101(1)(C). Of note, an "[a]ccount" means "a right to payment of a monetary obligation. . ., for services rendered or to be rendered. . .[t]he term includes health-care-insurance receivables." MCL 440.9102. "A debtor that has sold an account, chattel paper, payment intangibles, or promissory note does not retain a legal or equitable interest in the collateral sold." MCL 440.9318(1). The UCC further clarifies that a "debtor" is a seller of accounts, chattel paper, payment intangibles, or promissory notes. MCL 440.9101(bb)(ii). Further, the definition of "collateral" includes "[a]ccounts...that have been sold." MCL 440.9102(l)(ii). As applied to this case, the UCC should be construed, pursuant to its own definitions, that a seller that has sold an account, including medical debts, "does not retain a legal or equitable interest in the collateral sold." MCL 440.9318(1).

While Plaintiff/Appellant misconstrues MCR 2.202(B)(1), specifically that "a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought" – this language does not apply to the instant action, or any actions concerning full assignments. [A]n assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor. *Kearns v Michigan Iron & Coke Co*, 340 Mich 577; 582-584, 66 NW2d 230 (1954); *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004).

Additionally, Plaintiff/Appellant desperately references MCR 2.202(B). "We construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature.'" *People v Ball*, 297 Mich App 121, 123-24; 823 NW2d 150 (2012). When discerning legislative intent, a particular word in one statutory section must be interpreted in conjunction with every other section, "so as to produce, if possible, a harmonious and consistent enactment as a whole." *Id*. Understanding the legislative

intent, here, is elementary and certainly understood by Plaintiff/Appellant. As plainly written, this statute provides the following relief:

> Transfer or Change of Interest. If there is a change or transfer of interest, the action may be continued by or against the original party in his or her **original capacity**, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be **made a party in another capacity**. Notice must be given as provided in subrule (A)(1)(c). MCR 2.202(B).

Not only does this statute provide relief where rights and/or interests are transferred or changed during an ongoing proceeding, in which the action *may* be *permitted* to continue, it requires notice to be provided.[2] As discussed, Plaintiff/Appellant's rights were transferred well before it filed the subject Complaint and, until forced to do so by way of summary disposition, it provided no documentation, evidence, or other notice that MedFinance and Apogee Capital transferred their legal rights and interests in Mr. Cruz-Muniz's accounts, back to Plaintiff/Appellant. **Exhibit F**; **Exhibit H**; **Exhibit M**. Even then, each re-assignment was executed well after the time that Plaintiff/Appellant filed its Complaint. **Exhibit I**; **Exhibit J**. Consequently, at the time of filing, Plaintiff/Appellant was not the real party in interest and, therefore, lacks the standing to sue under the subject sales, assignments, and Michigan Court Rules. Accordingly, only the third-party servicing companies possessed the right to pursue this cause of action, and the Defendant/Appellee requests that this Court affirm the Circuit Court's judgment as such.

[2] Notably, as Plaintiff/Appellant concedes, Michigan Courts and the Michigan Court Rules often interchange the legal use of "standing" with the presumably non-legal meaning of "capacity" in their verbiage, for purposes of real-party interests. [See Plaintiff/Appellant's Brief on Appeal, page 7.] Thus, while the Michigan Supreme Court and MCR 2.201(B)(2) have taken the precaution to clarify the separate legal concepts, it is logical that the traditional use of capacity as a role continues to be utilized within the Michigan Court Rules. When read in conjunction with MCR 2.202(B) and its context regarding transfers of actionable interests, Defendant/Appellee maintains that the Legislature intended "capacity" to infer legal standing or interest in MCR 2.116(C)(5).

b. Plaintiff/Appellant is attempting to circumvent longstanding principles of civil procedure, including protections against duplicate recovery and statute of limitations.

Plaintiff/Appellant cites *George Poy v. Allan*, 247 Mich 385, 388; 225 NW 532 (1929), and states that the Supreme Court has explained the real party in interest requirement operates to preclude duplicative recovery.[3] This is correct, and preserves fundamental principles of civil procedure.

Significantly, however, the *Poy* case concerned an action on behalf of partnership for fraud in connection with brokerage contract, properly brought by surviving partners. This should be distinguished from the instant case, regarding a medical provider that sold its accounts receivable for a value equal to, if not more, than the existing balance for services provided to their respective claimants. Effectively, through its sales of accounts, Plaintiff/Appellant has already received reasonable sums of money, if not more, that it was entitled to for services rendered following each claimants' motor vehicle accident. Thus, where provider plaintiffs, via contractual assignments or under the revised No-Fault Act, have been afforded the right to similarly recover benefits, and be made whole- Plaintiff/Appellant has already done so.

Moreover, as established, the right to collect partial payment and/or no-fault benefits for Mr. Cruz-Muniz's treatment now belongs to Apogee Capital. If Plaintiff/Appellant were allowed to also collect benefits, through simultaneous legal interests or rights, Defendant/Appellee could be harmed by having to pay out no-fault benefits, twice. This is contrary to public policy:

> **Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action**, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain. **He is entitled**

[3] See Plaintiff/Appellant's Brief on Appeal, page 9.

> **to be protected against vexatious litigation by different parties claiming to assert the same cause of action**, but, so long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the defendant is not harmed. *George Poy*, 247 Mich at 388.

Here, Defendant/Appellee is the exact defendant that the *Poy* Court sought to protect from "vexatious litigation by different parties claiming to assert the same cause of action." *Id*.

When interpreting the No-Fault Act, the Michigan Supreme Court has established that "in the absence of a contrary expression by the Legislature, well-settled common-law principles are not to be abolished by implication in the guise of statutory construction." *Rusinek v Schultz, Snyder & Steele Lumber Co*, 411 Mich 502, 508; 309 NW2d 163 (1981). Michigan statutes routinely limit a defendant's liability by requiring courts to subtract any payments that the plaintiff receives for the same element of damages (i.e., medical care, rehabilitation services, loss of earnings) from another source. *See* MCL 600.6303; *Heinz v Chicago Rd Inv Co*, 216 Mich App 289, 549 NW2d 47 (1996). Previously portrayed, the No-Fault Act has similarly allowed insurers to recoup expenses or limit benefits based on similar damages received from other sources, where a contract does not provide otherwise. And, critically, justiciable harm is an indispensable condition of standing and capacity to bring a lawsuit to begin with. See e.g., *McGill v Automobile Ass'n of Michigan,* 207 Mich App 402; 526 NW2d 12 (1994). In other words, while MedFinance may have re-assigned "a portion of" its legal and equitable rights back to Plaintiff/Appellant, it likely remains that Plaintiff/Appellant has not incurred any damages to warrant standing in an action under the No-Fault Act, has proffered no evidence to show that Plaintiff/Appellant has refunded MedFinance's initial purchase and, thereby, is not entitled to excess recovery. **Exhibit F**.

In that same vein, Plaintiff/Appellant should not be permitted to sit on its rights. While Plaintiff/Appellant proclaims concerns that the servicing companies' rights to pursue no-fault benefits have extinguished pursuant to MCL 500.3145, this argument does not apply.

As the accident took place in May of 2018, the pre-amended version of MCL 500.3145 applies, as Plaintiff/Appellant's alleged no-fault claims arose before June 11, 2019- the enactment date for the relevant statutory provision. Pursuant to the earlier version of MCL 500.3145, recovery of no-fault benefits was precluded for any portion of the loss incurred more than one year before the date on which the action was commenced. Or, in other words, a provider had one year from the date its rendered services, to recover benefits available under the No-Fault Act. While Mr. Cruz-Muniz's assignment of no-fault benefits was executed on October 2, 2019, the date Plaintiff/Appellant rendered its services; Plaintiff/Appellant last ratified its account receivables to MedFinance, in November of 2019.[4] **Exhibit F**. Thus, Plaintiff/Appellant had from August 7, 2019 until November 19, 2019 to claim appropriate benefits. Yet, Plaintiff/Appellant failed to pursue its claims with reasonable diligence and, instead, subsequently sold Mr. Cruz-Muniz's accounts to MedFinance and Apogee Capital, in an understandable effort to earn the sum of the balance.

Plaintiff/Appellant cannot be permitted a second bite at the apple years later, especially after having already been reimbursed, through its various sales of accounts, for any and all financial damages arising out of the treatment rendered to Mr. Cruz-Muniz. Doing so would render limitations under the No-Fault Act meaningless. When interpreting and applying a statute, a court's primary goal is to ascertain and give effect to the Legislature's intent. *Frierson v W Am Ins Co*, 261 Mich App 732,

[4] Plaintiff/Appellant again attempts to distract this Court with its discussion of future assignments; however, the at-issue services, assignments, rights, and interests were all transferred prior to or simultaneously with the Plaintiff/Appellant's sales of accounts. **Exhibit F**.

734; 683 NW2d 695 (2004). In doing so, Michigan's appellate courts have recognized that "[t]erms contained in the no-fault act are read in the light of its legislative history and in the context of the no-fault act as a whole." *Id*. Plaintiff/Appellant's logic is neither consistent with any and all precedent, statutory language, nor legislative intent.

Despite Plaintiff/Appellant's attempts to circumvent legal safeguards, it lacks the standing to sue as a real party in interest, after selling and assigning the subject claimant's accounts, including all of Plaintiff/Appellant's own rights and interests, well after rendering the relevant medical services giving rise to the account. **Exhibit D**; **Exhibit F**. Even if this Court rejects the trial court's reasoning for granting summary disposition in Defendant/Appellee's favor, the trial court's order should alternatively be affirmed on the grounds that the court reached the correct result, albeit for a reason different from those stated on the record. See *Hill v Wilson*, 209 Mich App 356, 358; 531 NW2d 744, 745 (1995) (Finding it appropriate to affirm where Court agreed with trial court's result but not its reasons). Consistent with the analysis set forth therein, this Honorable Court should affirm the Circuit Court's Order, barring Plaintiff/Appellant's baseless and precluded claims.

III. The Trial Court correctly dismissed Plaintiff/Appellant's claims as a matter of law, where Plaintiff/Appellant transferred all rights and interests to third-party purchasers at the time of filing, and failed to show a genuine issue of fact in response to Defendant's Motion for Summary Disposition.

It is well understood that a motion for summary disposition under MCR 2.116(C)(10) may be granted if there is no genuine issue as to any material fact, as the moving party is then entitled to judgment as a matter of law. MCR 2.116(C)(10). However, Michigan law has also articulated that the nonmoving party must produce evidence showing a material dispute of fact left for trial in order to survive a motion for summary disposition under this court rule. MCR 2.116(G)(4); *Etter v Michigan Bell*, 179 Mich App 551, 555; 446 NW2d 500 (1989). "[A]n adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this

rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her." MCR 2.116(G)(4) (emphasis added).

There is no genuine issue of material fact as to the major points which are dispositive in this case. First, at the time of filing, Plaintiff/Appellant did not have standing to bring the subject suit against Defendant because it assigned all of its *rights and its interests* to collect the bills at issue to MedFinance and Apogee Capital. **Exhibit F**; **Exhibit I**; **Exhibit J**. The *assignee* of a sale of accounts is indeed the only real party in interest, excluding contractual language, according to Michigan law. Second, Plaintiff/Appellant had not incurred any damages at the time of filing. **Exhibit F**. Third, while Plaintiff/Appellant now attempts to assert that Plaintiff/Appellant and Sea Spine Orthopedics Institute, LLC are two distinct entities, it cannot be disputed that Plaintiff/Appellant failed to procure any evidence supporting this dispute of material fact in the trial court. Without said evidence, which cannot now be raised in a vain attempt to preserve the issue, Plaintiff could not dispute Defendant's Motion in any real way. As a direct result, not only did Plaintiff fail to show a genuine issue of fact the survive summary disposition, but the Circuit Court was required to grant Defendant's Motion pursuant to MCR 2.116(G)(4). The fact of the matter is that Plaintiff/Appellant had assigned its rights to collect the bills at issue in this action and, therefore, no longer had standing to bring this action against Defendant/Appellee.

CONCLUSION AND REQUESTED RELIEF

For the reasons stated above, Defendant/Appellee asks this Honorable Court to affirm the Circuit Court's Order granting Defendant's Motion for Summary Disposition.

Respectfully submitted,

NOVARA TESIJA CATENACCI
McDONALD & BAAS, PLLC

/s/ Kaitlyn A. Cramer

KAITLYN A. CRAMER (P77699)
Attorney for Defendant-Appellee
888 W. Big Beaver Road, Suite 600
Troy, MI 48084
(248) 354-0380

Dated: February 4, 2022

CERTIFICATE OF SERVICE

The undersigned states that she is an employee of Novara Tesija Catenacci McDonald & Baas, PLLC, and states that she served a copy of the foregoing document(s) with the Court of Appeals using the Court's e-file and service option, which will send notification of such filing to the individuals listed on the Case Service List, on February 4, 2022.

/s/ Joanne M. Hickey
JOANNE M. HICKEY

Exhibit P

STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
December 8, 2022
9:10 a.m.

No. 358170
Macomb Circuit Court
LC No. 2020-001710-NF

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

No. 358171
Macomb Circuit Court
LC No. 2020-000386-NF

Before: GLEICHER, C.J., and MARKEY and PATEL, JJ.

GLEICHER, C.J.

Jose Cruz-Muniz and Sandra Cruz were injured in a motor vehicle accident and received treatment from C-Spine Orthopedics, PLLC. According to C-Spine's complaint, Progressive Michigan Insurance Company refused to pay its reasonable charges for necessary care it provided to the Cruzes. The Cruzes assigned to C-Spine their rights to seek no-fault personal protection insurance (PIP) benefits from Progressive, and C-Spine brought this first-party no-fault action under MCL 500.3112, which imbues healthcare providers with a statutory right to bring a direct cause of action against an insurer "to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person."

Before filing this suit, however, C-Spine entered into assignment agreements of its own with several factoring companies. Factoring companies provide financing to businesses with cash flow issues by purchasing outstanding invoices at a discounted rate. In exchange for sums paid by the factoring companies, C-Spine assigned them its rights to bring first-party lawsuits seeking payment of the outstanding invoice balances. The Cruz invoices were among those bought by the factoring companies.

After the lawsuit was filed, C-Spine and the factoring companies signed counter-assignments and "purchase agreement amendments," reinvesting C-Spine with the right to bring suits seeking payment of outstanding balances. The issue presented is whether C-Spine is entitled to pursue a reimbursement claim against Progressive despite that when the suit was filed, C-Spine had transferred its interests in the Cruzes' debt to the factoring companies.

We hold that the counter-assignments and purchase agreement amendments permit C-Spine to maintain its causes of action under MCL 500.3112, and reverse the circuit court's contrary judgment and remand for further proceedings.

I. THE RELEVANT FACTS

Sandra Cruz's account balance for C-Spine's treatment is $249,258.38. Jose Cruz-Muniz's account balance for C-Spine's treatment is $37,667.36. Both were treated in 2019. C-Spine filed this lawsuit in May 2020, less than one year after the Cruzes' initial encounters with C-Spine. The Cruzes signed separate assignment agreements after each visit.

The record related to C-Spine's contracts with the factoring companies is not nearly as straightforward. Indeed, it may be charitably characterized as messy, thanks in part to the existence of multiple factoring contracts (at least six), and C-Spine's nondisclosure agreements with several of the factoring companies. Although some of the factoring agreements apparently include the Cruzes' accounts, it is impossible to discern with certainty which factoring companies received interests in the specific transactions underlying the Cruzes' debts. Nor does the record contain the actual factoring agreements; rather, C-Spine provided the circuit court with a "sample" agreement, which it represented contains the same language as the actual agreements. These uncertainties do not matter legally because we assume that the factoring agreements assigned the entirety of C-Spine's interests in the Cruzes' accounts receivable to one or more factoring companies.

The counter-assignments and purchase-agreement amendments are somewhat clearer. They evidence agreements between the factoring companies and C-Spine to transfer, assign, and convey the rights, title, and interests previously acquired from C-Spine back to C-Spine relative to medical services provided to Sandra and Jose. The counter-assignments and amendments reinvest C-Spine with the right to pursue and settle lawsuits. Although at least one of the counter-assignments is dated before C-Spine's lawsuit was filed, the record supports that it was back-dated after this litigation commenced. Other counter-assignments and amendments were signed after C-Spine filed suit.

Progressive moved for summary disposition under MCR 2.116(C)(5) and (10), arguing that C-Spine had assigned its interests in the Cruzes' accounts receivable to the factoring companies and therefore lacked standing, legal capacity, or the legal right to bring claims regarding those

accounts. In response C-Spine relied on the counter-assignments and purchase-agreement amendments, among other arguments.

The circuit court at first denied summary disposition, finding that the counter-assignments had re-conferred an ownership interest in the accounts receivable to C-Spine, rendering C-Spine the real party in interest with standing to file suit. About five months later, however, Progressive again sought summary disposition under MCR 2.116(C)(5) and (10), contending that discovery revealed that at least three of the counter-assignments or amendments to the purchase agreements had been backdated to mislead the court and to disguise that C-Spine had filed suit without any genuine legal interest. C-Spine retorted that although the counter-assignments were executed after the Cruz complaints were filed, C-Spine and the factoring companies had "specified the effective dates" as stated on the face of the counter-assignments, and that "the counter-assignments convey standing to [C-Spine] regardless of the date they were signed."

The circuit court granted summary disposition to Progressive, ruling that C-Spine lacked standing when the complaints were filed and observing that "[i]t was done retroactively after." C-Spine appeals by right.

II. ANALYSIS

Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest" subject to several qualifications. This procedural rule requires that a complaint be brought by the party to whom a claim belongs, or by a party who has a legal right to bring the action. This concept is distinct from standing, which asks whether a litigant has a right to have a court consider a claim.

Standing is not a barrier to C-Spine's case because MCL 500.3112 grants C-Spine the right to "assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." As a provider, C-Spine has *statutory* standing to bring a claim on its own behalf. "Statutory standing, which necessitates an inquiry into whether a statute authorizes a plaintiff to sue at all, must be distinguished from whether a statute permits an individual claim for a particular type of relief." *Miller v Allstate Ins Co*, 481 Mich 601, 608; 751 NW2d 463 (2008). Whether C-Spine has an actionable claim for relief is a different question than whether it has a right to litigate its current grievance in our courts.

The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. MCR 2.201(B)(1) provides:

> A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or *a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought*. [Emphasis added.]

C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies.

This Court has explained the principle underlying MCR 2.201(B)(1) as follows: "A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995). C-Spine is "vested with the right of action" against Progressive based on the assignments from the Cruzes, and is "authorized by statute" to sue in its own name under the plain language of MCL 500.3112. That the "beneficial interest" resided with the factoring companies did not eliminate C-Spine as a real party in interest.

We acknowledge that without the counter-assignments, Progressive might have had a legitimate concern that it could face a second lawsuit brought by the factoring companies.[1] But in this hypothetical situation another court rule would have come into play, permitting the case to go forward with the factoring companies joined as necessary party-plaintiffs. MCR 2.205(A) generally requires that "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." This has long been the rule in Michigan. See *DeLong v Marston*, 308 Mich 63, 68-69; 13 NW2d 209 (1944) ("If this suit was brought in the name of a party who is only nominally interested rather than being the real party in interest, it was in the power of the trial court to add or substitute as a party or parties plaintiff the actual parties, rather than to dismiss the bill.").

The necessary joinder rule and real-party-in-interest principles go hand-in-hand to prevent double recoveries and to obviate the risk of subsequent suits. Indeed, the real-party-in-interest requirement exists to "protect[ ] a defendant from multiple lawsuits for the same cause of action." *Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997).

> Statutes requiring every action to be prosecuted in the name of the real party in interest are enacted to protect defendant from being repeatedly harassed by a multiplicity of suits for the same cause of action, but, so long as the defendant's rights are fully protected in the litigation, he cannot complain . . . . [S]o long as the final judgment, when and if obtained, is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded in bar to any further suit instituted by any other party, the defendant is not harmed. [*Kearns v Mich Iron & Coke Co*, 340 Mich 577, 581; 66 NW2d 230 (1954) (quotation marks and citations omitted).]

Even if C-Spine and the factoring companies had not signed the counter-assignments, joinder of the factoring companies would have resulted in a single judgment, eliminating any risk to Progressive of a second lawsuit.

---

[1] We need not decide whether the factoring companies would have standing to sue Progressive, but raise the question. MCL 500.3112 affords "health care provider[s] listed in section 3157" a "direct cause of action against an insurer." MCL 500.3157 refers to a "health care provider," in relevant part, as "a physician, hospital, clinic, or other person that lawfully renders treatment to an injured person for an accidental bodily injury covered by [PIP]." It is unclear whether a factoring company would fall in that category.

We need not dwell on that hypothetical procedural pathway, however, because when the factoring contracts surfaced, C-Spine and its factoring creditors voluntarily entered into counter-assignments and purchase agreement amendments transferring the "beneficial interest" in the Cruzes' no-fault claims back to C-Spine. Those contracts eliminated any risk that Progressive would pay twice for the same benefit claims.

In *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 412-413; 875 NW2d 242 (2015), this Court held a mid-litigation assignment changed the real party in interest and thereby preserved the plaintiff's original claim. Cannon Township sued the Rockford Public Schools alleging that the schools' negligence "caused a large volume of water to be discharged into the sewer line, which eventually led to a sewage backup" in the home of Robert and Pamela Mack. *Id*. at 408. The Macks made an insurance claim and also sued the township. The township settled with the Macks for $50,000, agreeing that its insurer, the Michigan Municipal League Liability and Property Pool (MMLLPP), would pay that amount in partial compensation for the damages. *Id*.

> In exchange, the Macks agreed to release the township from any future liability and to "fully assign" to the township their claim "in total, including but not limited to any and all damages in excess of the Settlement Sum and including but not limited to any and all claims against [the schools] related to" the . . . event. [*Id*.]

The parties understood that as the Macks' assignee, the township planned to sue the schools, and that any amount recovered over $50,000 would be remitted to the Macks. *Id*.

The township sued the schools as the Macks' assignee. A year after the suit was filed, the township entered into another assignment agreement, this time with the MMLLPP. Under this agreement, the MMLLPP assigned its subrogation right to pursue a claim against the schools to the township. *Id*. at 408-409. The schools sought summary disposition, arguing among other things that the township was not the real party in interest "because it had paid no money to the Macks and therefore had no basis to pursue an equitable subrogation claim[.]" *Id*. at 409. The trial court denied the motion, and the schools appealed. *Id*. at 40.

This Court noted that "there is no dispute that the township did not suffer damages and did not itself pay any money to the Macks." *Id*. at 412. Because the township was the assignee of the Macks and the MMLLPP, it became "the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Id*. Relevant here, we specifically recognized "that the MMLLPP did not assign its rights to the township until after this lawsuit was filed. Therefore, at the time the township initiated the lawsuit, it was not the real party in interest as it pertained to the first $50,000 of damages sought in the complaint." *Id*. This was remedied by an amendment to the complaint, we explained. And although the township did not stand to benefit directly from the suit because it had agreed to remit any damages above $50,000 to the Macks, we clarified that "to be a real party in interest, a plaintiff need only be vested with the right of action on the claim; the beneficial interest may be with another." *Id*. at 413.

We find *Cannon Twp* controlling here. Our approach to the shifting assignments in this case also tracks that of the federal courts applying FR Civ P 17, which uses precisely the same language as MCR 2.201(B). See, e.g., *Hess v Eddy*, 689 F2d 977, 981 (CA 11, 1982), abrogated

on other grounds by *Jones v Preuit & Mauldin*, 876 F2d 1480, 1482 (CA 11, 1989) ("The Rule provides that when an action is brought by someone other than the real party in interest, the suit need not be dismissed if the real party in interest subsequently joins or ratifies the action."); *DeVries v Weinstein Int'l Corp*, 80 FRD 452, 459 (D Minn, 1978) ("An agreement which ratifies the commencement and continuation of an action or reassigns the respective interests is normally sufficient under Rule 17 to cure any real party in interest defects.") (quotation marks and citation omitted).

Finally, we observe that our resolution of the real-party-in-interest issue presented here aligns with the overall purpose of the Michigan Court Rules, which declare at their outset that the "rules are to be construed, administered, and employed by the parties and the court to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties." MCR 1.105. C-Spine claims to have provided almost $300,000 worth of services for which it has not been paid. The no-fault act establishes a comprehensive mechanism for resolving this dispute on its merits. Progressive's insistence that C-Spine's failure to obtain the counter-assignments *before* filing suit dooms its claims not only affords Progressive a potential windfall, but contravenes our court rules' animating spirit. "Procedure should be the handmaid of justice," our Supreme Court has declared, "a means to an end," rather than "an end in itself . . . oblivious to the practical needs of those to whose ills it is designed to minister." *Allstate Ins Co v Hayes*, 442 Mich 56, 64; 499 NW2d 743 (1993) (quotation marks and citation omitted). Practically speaking, C-Spine was a real party in interest without the counter-assignments, and eliminated any risk of double recovery by entering into them.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ Sima G. Patel

Exhibit Q

STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

FOR PUBLICATION
December 8, 2022

No. 358170
Macomb Circuit Court
LC No. 2020-001710-NF

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

PROGRESSIVE MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

No. 358171
Macomb Circuit Court
LC No. 2020-000386-NF

Before: GLEICHER, C.J., and MARKEY and PATEL, JJ.

MARKEY, J. (*dissenting*).

In these consolidated appeals, plaintiff, C-Spine Orthopedics, PLLC (C-Spine), appeals by right the trial court's orders granting summary disposition in favor of defendant, Progressive Michigan Insurance Company (Progressive), in both cases. The suits involve C-Spine's efforts to collect personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., pursuant to certain assignments executed by persons injured in a motor vehicle accident who received medical treatment from C-Spine. The trial court determined that C-Spine lacked standing to sue. Although I am sympathetic to the view that Progressive should not be allowed to possibly avoid liability for the payment of PIP benefits, the pertinent court rules, statutes, and caselaw, when viewed in conjunction with the facts and procedural history of these cases, demand summary

dismissal of C-Spine's complaints. Therefore, I would hold that the trial court did not err in granting summary disposition to Progressive. Accordingly, I respectfully dissent.

I. FACTUAL AND PROCEDURAL HISTORY

As acknowledged by the majority, there are "messy" factual aspects of this case. I believe it appropriate to delve into those facts, because they are relevant to the proper analysis of the issues on appeal. Moreover, these messy facts reveal questionable transactions and form the basis of some wholly meritless and disingenuous appellate arguments by C-Spine.

On May 23, 2018, Jose Cruz-Muniz and Sandra Cruz were injured in a motor vehicle accident.[1] C-Spine provided medical products, services, and accommodations to both Jose and Sandra in relation to their injuries arising from the accident. Progressive was the no-fault insurer responsible for paying PIP benefits with respect to their care and treatment. According to the complaints filed in this case and the attachments to the complaints, Sandra received medical services from C-Spine starting on August 7, 2019, and lasting through December 18, 2019. Sandra's total account balance for C-Spine's treatment and care during that period was $249,258.38. Jose received medical services from C-Spine starting on August 7, 2019, and lasting through October 2, 2019. And Jose's total account balance for C-Spine's treatment and care during that period was $37,667.36.

There is no dispute that Sandra and Jose executed multiple assignments of benefits, authorizing C-Spine to directly seek payment of PIP benefits from Progressive and giving C-Spine the power to pursue and settle claims. This case involves numerous agreements between C-Spine and third-party factoring companies.[2] Those factoring companies included: Well States Healthcare, LLC (Well States); MedFinance Servicing, LLC (MedFinance); Apogee Capital Fund 5, LLC, or Apogee Capital Partners, LLC (Apogee); MMD Investments, LLC (MMD); and EzMed, LLC (EzMed).

The numerous agreements between C-Spine and the factoring companies that are relevant to these appeals are somewhat difficult to navigate and understand because of issues concerning confidentiality and privacy, especially in connection with the Health Insurance Portability and Accountability Act (HIPPA), 42 USC 1320d *et seq*., along with the fact that C-Spine had entered into nondisclosure agreements with the factoring companies. In both suits, a stipulated protective order was entered in relation to the production and sealing of agreements. Aside from the

[1] C-Spine filed a complaint regarding Sandra's accounts receivable in LC No. 2020-000386-NF (Docket No. 358171). And C-Spine filed a separate complaint regarding Jose's accounts receivable in LC No. 2020-0001710-NF (Docket No. 358170).

[2] The business of "factoring" involves "[t]he buying of accounts receivable at a discount." *Black's Law Dictionary* (7th ed). "The price is discounted because the factor (who buys them) assumes the risk of delay in collection and loss on the accounts receivable." *Id.*; see also *S & H Packing & Sales Co, Inc v Tanimura Distrib, Inc*, 883 F3d 797, 799 n 2 (CA 9, 2018) (factoring is the commercial practice of converting receivables into cash through their sale at a discount).

assignments between C-Spine and Jose and Sandra, there are effectively four types of documents or transactions in play in these cases.

First, there were bulk purchase and sales agreements between C-Spine and the factoring companies (hereafter "purchase" or "factoring" agreements), pursuant to which C-Spine sold, transferred, assigned, and conveyed its rights, title, and interests in accounts receivable to the factoring companies. No actual purchase agreements concerning Jose's and Sandra's accounts receivable are included in the lower court record. C-Spine did produce a purchase agreement that is contained in the record, but it is dated August 2, 2019, which was before Jose or Sandra began receiving medical services. Progressive describes it as a "sample" purchase agreement, and e-mail correspondence to Progressive's counsel indicated or suggested that all of the actual pertinent factoring agreements had "the exact same contractual language" as the August 2, 2019 purchase agreement. Counter-assignments, purchase-agreement amendments, and schedules of accounts, which I shall discuss below, also referred to underlying purchase agreements.

Second, the record contains some schedules of accounts. The purchase agreements referenced attached schedules of accounts, identifying them as Exhibit A to the agreements. These heavily-redacted schedules of accounts blocked out information about C-Spine patients other than Jose and Sandra. The schedules do show the dates of medical service, the associated charges on those dates, and the discounted amount paid by the factoring companies to C-Spine in regard to those charges. To be clear, because no directly pertinent purchase or factoring agreements are part of the record, the schedules of accounts are not connected to any particular purchase agreements.[3] Rather, C-Spine essentially supplied Progressive with schedules of accounts grouped together that broadly covered all of the numerous purchase agreements that were entered into by C-Spine and the factoring companies.

Third, the record contains several counter-assignments reflecting that C-Spine, under various purchase agreements, had previously sold, transferred, assigned, and conveyed its legal and equitable rights, title, and interests in Jose's or Sandra's accounts receivable to particular factoring companies. The counter-assignments anticipated the need to file suit against the insurer to obtain payment and stated that the best method to do so would be for C-Spine to pursue the action. The counter-assignments thus provided that the factoring companies were now transferring, assigning, and conveying the rights, title, and interests they had previously acquired from C-Spine back to C-Spine relative to medical services provided to Sandra and Jose. The counter-assignments included the right to pursue and settle lawsuits.

Fourth, and finally, the record contains amendments to two Apogee purchase agreements. The amendments acknowledged prior purchase agreements in which Apogee had obtained accounts receivable from C-Spine. The amendments appointed C-Spine as the "servicer" of the accounts receivable consistent with a capacity to litigate and compromise the accounts receivable.

[3] There is an exception regarding Apogee schedules of accounts, which can be tied to particular purchase agreements between C-Spine and Apogee. I will discuss it later in this opinion.

I now move on to the specifics or details regarding Jose's and Sandra's accounts receivable. The record regarding Jose's accounts receivable and related transactions is much clearer than the record concerning Sandra's accounts receivable. Jose received medical services from C-Spine on August 7 and 15, 2019, and was charged $620.46 and $9,651.36, respectively.[4] On August 16 and 30, 2019, C-Spine conveyed accounts receivable to Apogee under purchase agreements, which, in part, encompassed the services provided to Jose on August 7 and 15, 2019. Jose then received medical services from C-Spine on August 21, 2019 ($15,165.34), September 12, 2019 ($5,944.31), September 25, 2019 ($5,864.31), and October 2, 2019 ($421.58). MedFinance acquired all of these accounts receivable pursuant to purchase agreements with C-Spine. By document dated May 4, 2020, C-Spine and MedFinance entered into a counter-assignment of accounts receivable relative to Jose. The counter-assignment indicated that C-Spine had previously sold, transferred, assigned, and conveyed to MedFinance its legal and equitable rights, title, and interests in medical services provided to Jose between August 21 and October 2, 2019. The counter-assignment stated that MedFinance was now transferring, assigning, and conveying the rights, title, and interests it had previously acquired from C-Spine back to C-Spine in regard to accounts receivable associated with medical services provided to Jose. The counter-assignment included the right to pursue and settle lawsuits.

On May 11, 2020, C-Spine filed a two-count complaint against Progressive with respect to services provided to Jose. In the complaint, C-Spine maintained that Progressive had unreasonably refused to make payment for the medical products, services, and accommodations provided to Jose. C-Spine contended that as Jose's assignee, it was the real party in interest and had a right to prosecute the action under MCL 600.2041 ("Every action shall be prosecuted in the name of the real party in interest"). In Count I, C-Spine alleged a claim for PIP benefits. And Count II of the complaint alleged a claim of breach of contractual and statutory duties. C-Spine sought payment of the total account balance with respect to medical services provided to Jose. Post complaint, on July 1 and 23, 2020, C-Spine and Apogee entered into amendments of the August 16 and 30, 2019 purchase agreements, appointing C-Spine as the "servicer" of Jose's accounts receivable consistent with a capacity to litigate and compromise the accounts receivable. Furthermore, it was eventually discovered that the counter-assignment between C-Spine and MedFinance regarding Jose's accounts receivable that was dated May 4, 2020, which date preceded the May 11, 2020 complaint, was actually executed in January 2021, long after the complaint was filed.

Sandra's accounts receivable are more complex and the transactional documents concerning those accounts are more difficult to follow. Sandra received medical services from C-Spine on August 7 and 15, 2019, and was charged $620.46 and $5,994.31, respectively. On August 16 and 30, 2019, C-Spine conveyed accounts receivable to Apogee under purchase agreements, which, in part, encompassed the services provided to Sandra on August 7 and 15, 2019. The preceding mimicked the clear transactions between C-Spine and Apogee relative to Jose. Sandra then received medical services from C-Spine on August 21, 2019 ($6,024.74), September 12, 2019 ($5,918.41), September 25, 2019 (617.05), October 2, 2019 ($9,451.36), October 9, 2019

[4] Again, Jose and Sandra essentially immediately assigned their rights to PIP benefits to C-Spine after they received medical services from C-Spine.

($1,124.10), October 18, 2019 ($13,880.78), October 21, 2019 ($617.05), October 21, 2019 ($617.05),[5] November 1, 2019 ($9,638.93), November 6, 2019 ($421.58), November 15, 2019 ($24,134.72), November 19, 2019 ($136,158.25), November 19, 2019 ($34,039.59), November 20, 2019 (post-op follow-up, no charge), December 5, 2019 (post-op follow-up, no charge), and December 18, 2019 (post-op follow-up, no charge).

As gleaned by e-mails and schedules of accounts supplied by C-Spine to Progressive during discovery, along with documentary references in counter-assignments, Sandra's accounts receivable starting with medical services provided on August 21, 2019, and running through November 19, 2019, were apparently all transferred, sold, assigned, and conveyed to either MedFinance, EzMed, or MMD.[6] But, as discussed below, I am not entirely confident of this factual conclusion.

By document dated January 15, 2020, C-Spine and EzMed entered into a counter-assignment of accounts receivable relative to Sandra. The counter-assignment indicated that C-Spine had previously sold, transferred, assigned, and conveyed to EzMed its legal and equitable rights, title, and interests in medical services provided to Sandra. The counter-assignment stated that EzMed was now transferring, assigning, and conveying the rights, title, and interests it had previously acquired from C-Spine back to C-Spine with respect to accounts receivable associated with medical services provided to Sandra. The counter-assignment included the right to pursue and settle lawsuits. By document also dated January 15, 2020, C-Spine and MMD entered into a nearly-identical counter-assignment of accounts receivable relative to Sandra. And by document dated January 11, 2021, C-Spine and MedFinance also entered into a similar counter-assignment of accounts receivable with regard to Sandra's medical services.

I note that given some ambiguous language in these counter-assignments, it is difficult to connect each counter-assignment to particular dates in 2019 when Sandra received medical services from C-Spine. The MMD counter-assignment pretty clearly spelled out that MMD had purchased Sandra's accounts receivable related to medical services provided to her on November 19, 2019, and that the counter-assignment covered that transaction. The EzMed counter-assignment either pertained to medical services provided "between October 9, 2019 and November 15, 2019[,]" or to EzMed's purchases of Sandra's accounts receivable between those two dates. I find that the dates concerned dates of medical services and not sales because Sandra specifically received treatment on both October 9 and November 15, 2019. Finally, the MedFinance counter-assignment is the most confusing of all. It, like the EzMed counter-assignment, referenced a period of time, "between February 4, 2020 and August 27, 2020," without clearly indicating whether the dates regarded when medical services were provided or when purchase agreements were executed. It is not clear whether Sandra received medical services from C-Spine in 2020, and the complaint

[5] There are indeed two listings for October 21, 2019, for $617.05.

[6] I do note that the schedules of accounts showing the conveyed accounts receivable did not appear to include the two $617.05 charges for services provided on October 21, 2019. The trial court treated those accounts receivable as having been transferred by C-Spine, and the parties on appeal effectively accept the court's treatment by ignoring the matter. I shall, therefore, proceed on the basis that those accounts receivable were conveyed to a factoring company.

only encompasses services provided in 2019. Progressive states that the MedFinance counter-assignment covered dates of service "from October 9, 2019 until August 27, 2020." I am unable to discern where Progressive finds the October 9, 2019 date; it is not in the MedFinance counter-assignment. This results in a lack of clarity as to what accounts receivable MedFinance actually purchased from C-Spine in 2019 (and thus which accounts were counter-assigned). And it leaves open the possibility that MedFinance did not first purchase any of Sandra's accounts receivable until February 2020, which, as shown momentarily, was after C-Spine filed its complaint regarding Sandra's accounts receivable. That said, the parties themselves appear to agree that the three Sandra-related counter-assignments covered all of the accounts receivable pertaining to Sandra and medical services that she received in 2019 and that had been sold to EzMed, MMD, and MedFinance. I shall, therefore, proceed on that basis.

On January 29, 2020, C-Spine filed a two-count complaint against Progressive with respect to services provided to Sandra. In the complaint, C-Spine maintained that Progressive had unreasonably refused to make payment for the medical products, services, and accommodations provided to Sandra. C-Spine contended that as Sandra's assignee, it was the real party in interest and had a right to prosecute the action under MCL 600.2041. In Count I, C-Spine alleged a claim for PIP benefits. And Count II of the complaint alleged a claim of breach of contractual and statutory duties. C-Spine sought payment of the total account balance with respect to medical services provided to Sandra. As with Jose's accounts receivable, post complaint, on July 1 and 23, 2020, C-Spine and Apogee entered into amendments of the August 16 and 30, 2019 purchase agreements, appointing C-Spine as the "servicer" of Sandra's accounts receivable consistent with a capacity to litigate and compromise the accounts receivable. Moreover, it was eventually discovered that the counter-assignments between C-Spine and EzMed and C-Spine and MMD regarding Sandra's accounts receivable that were dated January 15, 2020, which date preceded the January 29, 2020 complaint, were actually executed in January 2021, long after the complaint was filed.

On January 19, 2021, Progressive moved for summary disposition under MCR 2.116(C)(5) and (10) in both cases, arguing that C-Spine had assigned its interests in Sandra's and Jose's accounts receivable to the third-party factoring companies and that, therefore, C-Spine lacked standing to bring claims regarding those accounts. Progressive also contended that for purposes of MCR 2.116(C)(10), the documentary evidence demonstrated as a matter of law that C-Spine lacked the legal right to recover any of the charges set forth in the complaints. Finally, Progressive maintained that corporations such as C-Spine do not have the legal capacity to represent the interests of other persons under MCL 450.681, which prohibits the practice of law by corporations. Consequently, according to Progressive, C-Spine lacked the legal capacity to sue on the debts owned by another, i.e., the factoring companies, because it would entail the unauthorized practice of law. C-Spine responded that the agreements with the factoring companies constituted loans and not sales, with the factoring companies merely holding security interests in the accounts receivable. C-Spine also relied on the counter-assignments and purchase-agreement amendments.

The trial court denied Progressive's motions for summary disposition in extensive written opinions and orders that paralleled each other. The court first determined that even though Jose and Sandra had assigned their rights to C-Spine with respect to collecting insurance benefits from Progressive, C-Spine turned around and "sold or assigned its rights in the accounts to the factoring companies." The trial court rejected C-Spine's contention that the transactions between C-Spine

and the factoring companies merely involved loans or grants of a security interest in exchange for capital. The court concluded that under the plain and unambiguous language of the purchase or factoring agreements, the factoring companies became the owners and real parties in interest in regard to the accounts receivable. But the trial court then acknowledged the various counter-assignments, finding that the counter-assignments had re-conferred an ownership interest in the accounts receivable to C-Spine, such that C-Spine again became the real party in interest and had standing to file suit.[7] The trial court additionally opined that enforcement of the counter-assignments did not result in C-Spine's engagement in the unauthorized practice of law on behalf of the factoring companies. Rather, C-Spine had reacquired a full ownership interest in the accounts receivable, leaving the factoring companies with no interest in the accounts. Accordingly, there could be no representative acts by C-Spine in furtherance of interests held by the factoring companies.

Approximately five months later, in June 2021, Progressive moved for summary disposition once again under MCR 2.116(C)(5) and (10). Progressive recounted the procedural history of the cases. Progressive noted that it had been wholly unaware of the counter-assignments and the amendments to the purchase agreements until after Progressive had filed the original motions for summary disposition. Progressive acknowledged that the trial court's earlier rulings on the motions for summary disposition were predicated on the counter-assignments and the dates indicated on the face of those counter-assignments. Progressive observed that discovery was reopened after the court denied the prior summary disposition motions. Progressive stated that after being forced to file several discovery motions and completing a deposition, C-Spine finally disclosed that the counter-assignments had not been created or executed until January 11, 2021. Only one of the counter-assignments accurately contained that date—the counter-assignment pertaining to MedFinance and Sandra's accounts receivable. The other three counter-assignments, on their face, were dated January 15, 2020 (Sandra), January 15, 2020 (Sandra), and May 4, 2020 (Jose), which dates predated the filing of the pertinent complaints. Stated otherwise, those three counter-assignments had been backdated. And Progressive asserted that C-Spine backdated the counter-assignments in an effort to mislead the trial court and to escape the consequences of filing suit absent any real interest at the time. Progressive argued that on the dates that the complaints were filed, C-Spine was not the real party in interest with respect to the accounts receivable and thus C-Spine lacked standing. Progressive also contended that medical services provided by C-Spine more than one year prior to January 11, 2021, were not compensable under the one-year-back rule, MCL 500.3145(2).

In response to the summary disposition motions, C-Spine took the position that while the counter-assignments were indeed executed after the complaints were filed, C-Spine and the factoring companies had "specified the effective dates" as indicated on the face of the counter-assignments. C-Spine further insisted "that the counter-assignments convey standing to [C-Spine] regardless of the date they were signed." C-Spine also supplied affidavits in support of a claim

[7] The trial court declined to take into consideration the two Apogee purchase-agreement amendments because the amendments occurred after both complaints had been filed. This leaves me puzzled with regard to the court's denial of the summary disposition motions in full.

that C-Spine retained the exclusive right to sue on the outstanding accounts receivable.[8] C-Spine asserted that it was and had always been the real party in interest. According to C-Spine, the factoring companies assigned any rights that they had acquired from C-Spine in relation to the pertinent accounts receivable back to C-Spine, effective on the dates listed in the counter-assignments. C-Spine additionally argued that should the trial court decide that C-Spine did not have standing when the complaints were filed, the proper remedy was joinder of the factoring companies under MCR 2.205 and not summary dismissal of the lawsuits.

In a reply brief, Progressive contended that C-Spine did not acquire rights or interests from the factoring companies until execution of the counter-assignments and amendments to the purchase agreements, regardless of the so-called selected effective date. Progressive further argued that standing is determined at the time a suit is filed, that a standing deficiency cannot be cured retroactively, and that the joinder rules had no application under the circumstances presented.

At a joint hearing on the motions for summary disposition held on July 26, 2021, the trial court entertained brief oral arguments by the parties and then ruled in extremely cursory fashion that C-Spine lacked standing at the time that the complaints were filed. The court noted that "[i]t was done retroactively after." The trial court granted the two motions for summary disposition in favor of Progressive. Orders to that effect were entered on July 27, 2021. C-Spine appeals by right.

II. ANALYSIS

[8] Mark Seda, Chief Executive Officer (CEO) of C-Spine, averred in an affidavit that C-Spine's agreements with Well States, MedFinance, and Apogee regarding Jose's patient account balance included C-Spine's "obligation to sue for unpaid balances." In an affidavit executed by Peter Rood, Managing Member of Apogee, he averred that C-Spine owned "the right to sue for any unpaid balance arising out of the treatment to Jose . . . ." C-Spine also submitted an unsigned and unsworn affidavit by, purportedly, Nate Ormond, President of MedFinance and Well States, in which it was stated that C-Spine owned "the right to sue for any unpaid balance arising out of the treatment to Jose . . . ." C-Spine additionally submitted similar affidavits from Rood and Ormond with respect to Sandra's unpaid balance. Indeed, Ormond executed two affidavits on the matter, both fully signed and sworn. Ormond was President of EzMed, along with being President of MedFinance and Well States. Jay Bansal, CEO of MMD, executed an affidavit indicating that C-Spine owned "the right to sue for any unpaid balance arising out of the treatment to Sandra . . . ." Finally, in an unsigned and unsworn affidavit by C-Spine CEO Seda, he supposedly averred that C-Spine's agreements with Well States, MedFinance, Apogee, MMD, and EzMed regarding Sandra's patient account balance included C-Spine's "obligation to sue for unpaid balances." I note that these affidavits failed to provide context by not referencing any specific or particular agreements.

C-Spine presents six specific arguments on appeal. Those arguments are identical in both cases.

A. STANDARD OF REVIEW

"Whether a party has standing is a question of law that is reviewed de novo." *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). "Further, the issue of whether a plaintiff is the real party in interest is a question of law that we review de novo." *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 411; 875 NW2d 242 (2015).

B. ARGUMENT CONCERNING MCR 2.116(C)(5)

C-Spine initially argues that MCR 2.116(C)(5) was not implicated by the arguments posed by Progressive in these cases. C-Spine maintains, correctly so, that MCR 2.116(C)(5) pertains to the "capacity to sue," not standing. A real-party-in-interest defense is not the same as a defense that a party lacks the legal capacity to file suit. *Cannon*, 311 Mich App at 411. An argument that a party lacks "standing" to sue may be raised in a motion for summary disposition under MCR 2.116(C)(8) or (10). *Salem Springs, LLC v Salem Twp*, 312 Mich App 210, 215; 880 NW2d 793 (2015); *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust v Pontiac No. 2*, 309 Mich App 611, 621; 873 NW2d 783 (2015). The same is true with respect to a defense that a party is not the real party in interest. *Cannon Twp*, 311 Mich App at 411.[9] In these cases, Progressive sought summary disposition on the basis that C-Spine lacked standing because it was not the real party in interest. Although Progressive cited MCR 2.116(C)(5) in support of the motions for summary disposition, Progressive additionally relied on MCR 2.116(C)(10). Moreover, the trial court's orders granting the motions for summary disposition did not reference any particular ground under MCR 2.116(C). Additionally, "an order granting summary disposition under the wrong subrule may be reviewed under the correct rule." *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395 n 3; 573 NW2d 336 (1997), citing *Shirilla v Detroit*, 208 Mich App 434, 437; 528 NW2d 763 (1995). Because the trial court clearly relied on documentary evidence in making its ruling with respect to standing, MCR 2.116(C)(10) was implicated.[10] In sum, I conclude that C-Spine's argument does not warrant reversal.

---

[9] "Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant's ability to raise the legal rights of another." *Pontiac Police & Fire*, 309 Mich App at 621-622.

[10] MCR 2.116(C)(10) provides for summary disposition when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion under subrule (C)(10) tests the factual support for a party's cause of action. *Ass'n of Home Help Care Agencies v Dep't of Health & Human Servs*, 334 Mich App 674, 684 n 4; 965 NW2d 707 (2020). A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmoving party, demonstrate that there is no genuine issue with respect to any material fact. *Id.* "A genuine issue

C. EVIDENCE OF TRANSFER OF INTERESTS BY C-SPINE TO FACTORING COMPANIES

C-Spine argues that there was a complete lack of documentary evidence demonstrating that C-Spine transferred any interests in accounts receivable to the factoring companies. C-Spine initially notes that all of the dates of service were subsequent to the June 11, 2019 effective date of the sweeping amendments to the no-fault act, MCL 500.3101 *et seq*. See 2019 PA 21 and 22. And MCL 500.3112 now provides that "[a] health care provider . . . may make a claim and assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." C-Spine further observes that on top of the statutory basis to file suit, it had also procured assignments from Jose and Sandra. I note that C-Spine, in its complaints, relied on the assignments of rights from Jose and Sandra for purposes of alleging that it was the real party in interest, absent any mention of statutory rights to directly sue Progressive under MCL 500.3112.

C-Spine specifically contends that there was no record evidence related to any transfer by C-Spine of interests in accounts receivable to MedFinance/Well States, considering that the purchase agreement executed by MedFinance/Well States involved a conveyance by Sea Spine Orthopedic, LLC, not C-Spine. This is a reference to the sample purchase agreement dated August 2, 2019, which reflected a conveyance of accounts receivable by Sea Spine Orthopedic to MedFinanace/Well States. The sample agreement was executed before Sandra and Jose even started treatment with C-Spine. There is no indication that this purchase agreement actually transferred any of the accounts receivable at issue in these cases. Rather, the purchase agreement was provided to Progressive as evidence revealing the general language used in all of the purchase agreements employed by C-Spine and the factoring companies with respect to the conveyances of Jose's and Sandra's accounts receivable. I note that attached to Progressive's appellate briefs is a ratification agreement dated November 8, 2019, which indicates that earlier purchase agreements between Sea Spine and MedFinance/Well States were intended to bind C-Spine and not Sea

---

of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A trial court may not assess credibility, weigh the evidence, or resolve factual disputes, and when material evidence conflicts, it is not appropriate for the court to grant a motion for summary disposition. *Ass'n of Home Help Care Agencies*, 334 Mich App at 684 n 4. "Like the trial court's inquiry, when an appellate court reviews a motion for summary disposition, it makes all legitimate inferences in favor of the nonmoving party." *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994). "Affidavits, depositions, admissions, and documentary evidence offered in support of or in opposition to a motion . . . shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion." MCR 2.116(G)(6); see also *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999) (a court may only consider substantively admissible evidence actually proffered by the parties when ruling on a motion).

Spine.[11] But the ratification agreement was not presented to the trial court as part of the summary disposition proceedings.[12] Nevertheless, C-Spine's argument fails because the August 2, 2019 purchase agreement referencing Sea Spine was merely a sample agreement that did not entail a transfer of Jose's and Sandra's accounts receivable. Given the record, C-Spine's argument, in my view, is entirely disingenuous.

C-Spine further argues that the sales of accounts receivable to Apogee, EzMed, and MMD were not established as a matter of law because no purchase agreements were included in the record and therefore the purported transactions effectively remained a "mystery." C-Spine contends that the mere reference to those purchase agreements in other documents constitutes inadequate proof of the purchase agreements. Consequently, according to C-Spine, "it is legally impossible to determine who owns the cause of action." I find this argument to also be disingenuous. C-Spine provided a sample purchase agreement and schedules of accounts depicting the accounts receivable relative to Jose and Sandra that were conveyed to the factoring companies. The e-mail correspondence to Progressive that provided the schedules of accounts stated: "I put them in list form—which factoring companies are involved with the patient accounts." Moreover, C-Spine relied on and had executed counter-assignments and purchase-agreement amendments, which are part of the record, that expressly referred to the purchase agreements. The counter-assignments and amendments would make absolutely no sense absent the existence of underlying transactions between C-Spine and the factoring companies.

Furthermore, C-Spine does not specifically claim that the purchase agreements do not exist. In fact, in response to Progressive's motions for summary disposition, C-Spine did not deny the existence of the agreements; rather, it characterized the agreements as concerning loans and not sales. If not waived outright, the argument that there was no documentary proof of the transactions was certainly not preserved.[13] Regardless, there was uncontroverted evidence establishing that C-

---

[11] There was a Florida entity named Sea Spine Orthopedic, LLC, which was owned by the same owner of C-Spine, A. Joshua Appel.

[12] I note that Progressive also attached to its briefs on appeal a purchase agreement dated September 13, 2019, between Sea Spine and MedFinance/Well States, which paralleled the August 2, 2019 purchase agreement. But, like the ratification agreement, I could not locate the September 13, 2019 purchase agreement in the lower court record, i.e., it was not attached to any parties' summary disposition briefs in the two cases.

[13] In *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008), our Supreme Court explained the rule on unpreserved issues in civil cases:

> Michigan generally follows the "raise or waive" rule of appellate review. Under our jurisprudence, a litigant must preserve an issue for appellate review by raising it in the trial court. Although this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice, generally a failure to timely raise an issue waives review of that issue on appeal.

Spine entered into purchase agreements with the factoring companies, even though the agreements themselves are not part of the record.

D. ASSIGNMENT OF BENEFITS PAYABLE IN THE FUTURE

MCL 500.3143 provides that "[a]n agreement for assignment of a right to benefits payable in the future is void." C-Spine points out that Jose and Sandra first received medical services on August 7, 2019, which was after the August 2, 2019 execution of the purchase agreement between C-Spine (Sea Spine) and MedFinance/Well States. C-Spine contends that a right to PIP benefits accrues when an allowable expense is incurred. According to C-Spine, when "an assignment purports to transfer rights to claims that have not yet accrued, any such provision is void and ineffective [under MCL 500.3143] to transfer any rights at all[.]" C-Spine maintains that the August 2, 2019 purchase agreement concerned the assignment of benefits payable in the future, which was void under MCL 500.3143. This argument was not preserved for appeal.

I initially note that C-Spine attaches as an exhibit to its briefs on appeal the August 2, 2019 purchase agreement, followed immediately by schedules of accounts, making it look like the schedules were incorporated exhibits attached to the August 2, 2019 purchase agreement. Once again, the August 2, 2019 purchase agreement was executed before Jose and Sandra were even C-Spine patients—*it was a sample agreement*. Moreover, the schedules of accounts referenced specific dates of service that necessarily had already taken place. It would require clairvoyance for the August 2, 2019 purchase agreement to have covered accounts receivable for future medical services that already had particular dates associated with the services. I would hold that the record, as a matter of law, does not support the conclusion that C-Spine assigned any rights to future accounts receivable to any of the factoring companies.

E. JOINT PARTIES IN INTEREST

On this preserved issue, C-Spine argues that assignors and assignees are both real parties in interest after rights have been assigned; therefore, the factoring companies and C-Spine were parties in interest for purposes of the litigation. C-Spine, citing MCR 2.202(B), contends that

---

> The principal rationale for the rule is based in the nature of the adversarial process and judicial efficiency. By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [Citations omitted.]

"even if the trial court had been correct that [C-Spine] effectively transferred its rights to the benefits at issue, the appropriate remedy is merely to join any other entity that supposedly or allegedly has a duplicative interest in the cause of action." C-Spine maintains that Progressive's sole legitimate interest was avoidance of duplicate payment and that joinder would have protected that interest. C-Spine asserts that the reason for the "real party in interest" requirement is to prevent double recovery and multiple lawsuits. C-Spine claims that the only relief available to Progressive was joinder of the factoring companies, not dismissal of the lawsuit. But then C-Spine also argues:

> In this case, joinder is unnecessary and ultimately inappropriate for any factoring company, given the instruction above that joinder is only necessary where a judgment would not serve as a complete adjudication of the issues asserted or possibly asserted against a defendant. Here, all purported transfers of PIP benefits were executed more than a year ago. To the extent that the factoring companies ever had any interest, it has since extinguished pursuant to MCL 500.3145.[14]

Subject to certain circumstances, "[a]n action must be prosecuted in the name of the real party in interest . . . ." MCR 2.201(B). In *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013), this Court observed as follows:

> A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another. This standing doctrine recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy. In addition, the doctrine protects a defendant from multiple lawsuits for the same cause of action. A defendant is not harmed provided the final judgment is a full, final, and conclusive adjudication of the rights in controversy that may be pleaded to bar any further suit instituted by any other party. [Quotation marks and citations omitted.]

An assignee of a cause of action becomes the real party in interest in relation to that particular cause of action, considering that the assignment vests in the assignee all the rights earlier held by the assignor. *Kearns v Mich Iron & Coke Co*, 340 Mich 577, 582-584; 66 NW2d 230 (1954); *Cannon Twp*, 311 Mich App at 412-413; *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004). This caselaw does not support C-Spine's contention that an assignor remains a real party in interest after an assignment. Indeed, assignments divest assignors of any interest in the subject matter of the assignments. See *Ward v DAIIE*, 115 Mich App 30, 37; 320 NW2d 280 (1982); *Moore v Baugh*, 106 Mich App 815, 819; 308 NW2d 698 (1981); 6A CJS, Assignments, § 88. Critical to the proper analysis of these lawsuits, caselaw provides that standing is determined at the time a complaint is filed. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 595 n 54; 957 NW2d 731 (2020); *Girard v Wagenmaker*, 437 Mich 231, 244; 470 NW2d 372 (1991). And C-Spine and my colleagues in the majority do not argue to the contrary.

[14] MCL 500.3145(2) provides, in part, that a "claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced."

In support of its position that assignors and assignees remain real parties in interest after an assignment, C-Spine cites and quotes MCL 600.2041, which provides, in part:

> Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, *a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action was brought* . . . . [Emphasis added.]

The emphasized language is the language that C-Spine emphasizes when making its argument. Similarly, MCR 2.201(B)(1) provides:

> (B) An action must be prosecuted in the name of the real party in interest, subject to the following provisions:
>
> (1) A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought.

With respect to contracts made for the benefit of another, this is plainly a reference to contracts with third-party beneficiaries, allowing a contracting party who does not receive a direct benefit to file suit if the other contracting party's promise directed at the third-party beneficiary is not fulfilled. See *Capital Mtg Corp v Mich Basic Prop Ins Ass'n*, 78 Mich App 570, 575; 261 NW2d 5 (1977) ("[A] party in whose name a contract has been made for the benefit of another may sue in his own name without joining the other party"). The purchase agreements or assignments to the factoring companies in these cases did not involve third-party beneficiaries. Rather, the purchase agreements between C-Spine and the factoring companies simply entailed C-Spine's straightforward sale of its interests and rights in accounts receivable to the factoring companies in exchange for immediate payment on those accounts at a discounted rate.

With respect to a party being authorized by statute to sue for the benefit of another, MCL 600.2041; MCR 2.201(B)(1), it is true that under the current version of MCL 500.3112, C-Spine was statutorily authorized to directly file a cause of action against Progressive. The majority concludes that C-Spine had statutory standing to bring the claims on the basis of MCL 500.3112. I initially note that even though the amendment of MCL 500.3112 adding a direct cause of action for healthcare providers was in effect, 2019 PA 21, C-Spine's 2020 complaints, as noted earlier, relied solely on Sandra's and Jose's assignments in pursuing the actions and in claiming that it was the real party in interest. "[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest rule, *they are distinct concepts*." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013) (emphasis added). Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id.* "[I]f a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits." *Id.*, citing *Miller v Allstate Ins Co*, 481 Mich 601, 608-612; 751 NW2d 463 (2008); see also *Grady v Wambach*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 354091); slip op at 3. Jurisdiction is not an issue in this case.

In *Lansing Sch Ed Ass'n, MEA/NEA v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010), our Supreme Court, overruling several of its earlier opinions, enunciated the principles of standing in Michigan going forward:

> We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

While C-Spine had a statutory legal cause of action under MCL 500.3112, it chose not to pursue that route, relying instead on the assignments from Sandra and Jose to state a legal cause of action. Regardless, in either case, C-Spine still needed to be the real party in interest when the suits were commenced, and the majority appears to accept that premise.

The majority addresses the real-party-in-interest provision in MCR 2.201(B)(1), holding as follows:

> C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies.
>
> [C-Spine] is "vested with the right of action" against Progressive based on the assignments from the Cruzes, and is "authorized by statute" to sue in its own name under the plain language of MCL 500.3112. That the "beneficial interest" resided with the factoring companies did not eliminate C-Spine as a real party in interest.

In my view, this analysis ignores the fact that C-Spine assigned or sold all of its rights and interests in PIP benefits to the factoring companies before the suits were filed, thereby losing its status as a real party in interest under the authorities cited earlier. The factoring companies became the real parties in interest at that point, although there might have been legal impediments to them filing suit against Progressive.

I additionally believe that the majority's position reflects a misunderstanding of MCR 2.201(B)(1). The provision addresses circumstances in which (1) a fiduciary party sues for the benefit of a beneficiary, ward, or similarly-situated person, (2) a contracting party who executed an agreement sues for the benefit of a third-party beneficiary, or (3) a party authorized by statute sues for the benefit of another person. This third situation, which forms an integral part of the majority's holding through reliance on MCL 500.3112, plainly concerns statutory provisions that

authorize a party to sue for the benefit of another person. Again, in its complaints, C-Spine did not allege a cause of action or standing under MCL 500.3112, but I shall proceed with my analysis assuming application of MCL 500.3112. As noted earlier, MCL 500.3112 states that "[a] health care provider . . . may make a claim and assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." This statute simply authorizes a healthcare provider such as C-Spine to sue for its own benefit or on its own behalf, i.e., to recover overdue PIP benefits for its products, services, or accommodations. At most, the statute can also be viewed as authorizing a healthcare provider to sue for the benefit of an injured person, considering that payment by an insurer to a healthcare provider can potentially preclude the healthcare provider from seeking payment from the injured person who enjoyed the benefit of healthcare services. But MCL 500.3112 in no form or manner authorizes a healthcare provider to sue for the benefit of factoring companies or others. Accordingly, MCR 2.201(B)(1) and MCL 600.2041 did not give C-Spine the status of a real party in interest at the time the suits were filed in light of the sales of all of C-Spine's interests and rights in the accounts receivable.

Next, MCR 2.202(B), which C-Spine also relies on in support of its position, provides as follows:

> If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity. Notice must be given as provided in subrule (A)(1)(c).

In these cases, it appears and the parties accept that C-Spine transferred its rights and interests in the accounts receivable to the factoring companies *before* the complaints were filed and not while the suits were ongoing or continuing. Although the counter-assignments and amendments to the purchase agreements were executed after the complaints were filed, this would provide a basis to join or substitute in C-Spine to a suit filed by the factoring companies, not visa versa, under MCR 2.202(B).

Although C-Spine does not raise an argument under MCR 2.205(A), the majority discusses the provision. MCR 2.205(A) provides, in part, that "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests." The majority posits that had there been no counter-assignments, Progressive might have had a legitimate concern about facing subsequent lawsuits by the factoring companies; however, according to the majority, in that hypothetical situation, the necessary joinder rule, MCR 2.205(A), would have protected Progressive. I fail to understand this logic. At the time the suits were commenced, which is the timeframe that we must consider for purposes of standing and the real-party-in-interest rule, *League of Women Voters*, 506 Mich at 595 n 54; *Girard*, 437 Mich at 244, C-Spine had fully conveyed their rights and interests in PIP benefits in exchange for compensation, and there were no counter-assignments. Whether under the majority's hypothetical or upon examination of these cases at the time the complaints were filed, necessary *joinder* of the factoring companies would have entailed C-Spine remaining in the lawsuit and being

joined with the factoring companies, but C-Spine would have *no* interest whatsoever such that it would be entitled to stay in the suit.

The majority concludes that *Cannon Twp*, 311 Mich App 403, supports its position. In that case, the township plaintiff did not suffer any damages or have to pay any monies itself, but it was assigned causes of action against the defendant school system by two other nonparties, with one assignment occurring before the township filed suit and one occurring after the township filed suit. *Id.* at 412. With respect to the post-complaint assignment, "the trial court granted the township leave to amend its complaint to properly reflect that it was litigating as the assignee of both [nonparties,]" and this Court found no error "in the trial court's grant of leave to amend." *Id.* at 412-413. In this case, C-Spine did not request leave to amend its complaints to reflect that it was litigating against Progressive on the basis of the counter-assignments and the amended purchase agreements. The *Cannon Twp* panel also found that with regard to the nonparty who assigned a cause of action to the township *before the lawsuit was filed*, the township could still be considered a real party in interest even though the township was seeking to collect a judgment for the nonparty's benefit. *Id.* at 413. This reasoning does not support C-Spine's position. The township was an assignee of a cause of action before and after it filed its complaint. Here, C-Spine sold its interests and rights to collect PIP benefits before filing the suits.

In sum, I would hold that there is no authority for the proposition that the appropriate remedy for the issues raised by Progressive in its motions for summary disposition was to deny the motions and to order joinder of the factoring companies. Joinder would not have magically transformed C-Spine into a real party in interest.

F. TRANSFER OF ACCOUNTS RECEIVABLE AND MAINTENANCE OF A CAUSE OF ACTION

C-Spine argues that to the extent that it transferred rights to a factoring company, regardless of when a transfer was made effective, the conveyances were merely of accounts receivable, which is simply a beneficial interest, with C-Spine retaining ownership of any and all causes of action. This issue was preserved for appeal.

I find it telling that C-Spine does not refer to any language in the standard purchase agreement. The purchase agreements, by way of sample, provided that C-Spine was selling, transferring, assigning, and conveying to the factoring companies its legal and equitable "[r]ights, [t]itle, and [i]nterests in the [a]ccounts [r]eceivable." This all-encompassing language plainly and unambiguously covered and conveyed a right of action to recover payment on an account receivable.[15] And any doubt on the issue is put to rest by additional language in the purchase

[15] In *Highfield Beach at Lake Mich v Sanderson*, 331 Mich App 636, 654; 954 NW2d 231 (2020), this Court set forth the basic principles of contract construction, explaining:

> The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties; to this rule all others are subordinate. In ascertaining the

agreements regarding servicing, which provides that C-Spine "shall not settle, solicit, or accept collections on any of the [a]ccounts [r]eceivable." Therefore, I conclude that C-Spine's argument fails.

Progressive presents an argument under the Uniform Commercial Code (UCC) – Secured Transactions, MCL 440.9101 *et seq.*, specifically MCL 440.9318(1), which provides that "[a] debtor that has sold an account . . . does not retain a legal or equitable interest in the collateral sold." A "debtor" includes "[a] seller of accounts," MCL 440.9102(bb)(*ii*), and an "account" encompasses "a right to payment of a monetary obligation . . . for services rendered," including "health-care-insurance receivables," MCL 440.9102(b). And "collateral" is defined as "property subject to a security interest[,]" including "[a]ccounts . . . that have been sold." MCL 440.9102(*l*)(*ii*). The UCC article on secured transactions does apply to "[a] sale of accounts," MCL 440.9109(1)(c), and a "security interest" includes "any interest of a . . . buyer of accounts," MCL 440.1201(2)(ii). Editor's note 2 to MCL 440.9318 does state, in part, that "[t]he fact that a sale of an account . . . gives rise to a 'security interest' does not imply that the seller retains an interest in the property that has been sold. To the contrary, a seller of an account . . . retains no interest whatsoever in the property to the extent that it has been sold." I note that the trial court seemingly agreed with Progressive's argument, even though the court primarily focused on the plain language of the purchase agreements. I conclude that it is unnecessary to reach the UCC argument because the plain language of the purchase agreements established that all interests, title, and rights in the accounts receivable were conveyed and that C-Spine could not be involved in collecting on the debts represented by the accounts receivable.

G. VESTING C-SPINE WITH CAUSES OF ACTION

C-Spine begins its final argument by noting that Michigan law provides that no contract exists unless there is a meeting of minds between the parties to the purported agreement. Relying on the affidavits of the various executive officers of C-Spine and the factoring companies, C-Spine contends that "[r]egardless of the plain language of the agreements at issue, both [C-Spine] and all . . . factoring companies are and always were under the impression that [C-Spine] has the right and, in fact, the obligation to sue to collect PIP benefits." C-Spine continues, arguing that either it was the only real party in interest or there was no contract and thus no conveyance of any rights. Apparently, C-Spine is arguing that either there were purchase agreements consistent with the affidavits or there were no valid enforceable agreements.

With respect to contract formation, "[a] meeting of the minds is judged by an objective standard, looking to the express words used by the parties and their visible actions, not the parties'

> meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument. Unless a contract provision violates law or one of the traditional defenses to the enforceability of a contract applies, a court must construe and apply unambiguous contract provisions as written. If the language of a contract is ambiguous, testimony may be taken to explain the ambiguity. [Quotation marks, citations, and brackets omitted.]

subjective states of mind." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006) (quotation marks and citations omitted). Additionally, parol or extrinsic evidence is not admissible to vary a contract that is clear and unambiguous. *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997). Here, the affidavits cannot be used to undermine or circumvent the plain and unambiguous language of the purchase agreements; there was a meeting of the minds consistent with the clearly expressed language of the agreements. And the executives' subjective states of mind as revealed in their affidavits were irrelevant. The purchase agreements conveyed the right to sue on the accounts receivable covered by the agreements.

C-Spine also argues that Progressive, as a non-party to the purchase agreements, lacked standing to challenge the agreements. This argument lacks merit. Progressive was not suing anyone and did not challenge the agreements. Progressive merely argued that C-Spine lacked standing in light of the purchase agreements. I conclude that C-Spine's argument fails.

III. CONCLUSION

I would affirm the trial court's rulings granting summary disposition in favor of Progressive.[16] C-Spine has not presented any persuasive arguments on appeal. Instead, its arguments, for the most part, are cursory and undeveloped.

I respectfully dissent.

/s/ Jane E. Markey

[16] I note that this Court in an unpublished nonbinding opinion similarly found that a factoring agreement deprived a plaintiff of standing. In *Greater Lakes Ambulatory Surgical Ctr, LLC v Meemic Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued July 29, 2021 (Docket No. 353842), p 3, the panel ruled:

> Under the plain and unambiguous language of the sales agreement, it is clear that plaintiff assigned all of its rights in the accounts receivable to the servicing companies. The assignments divested plaintiff of any ownership interest in the accounts. Therefore, the trial court erred when it denied defendant's motion for summary disposition because there is no genuine issue of material fact that plaintiff lacked standing and was not the real party in interest related to the account receivable for Steen because plaintiff had assigned its rights to such to the servicing companies before it filed suit against defendant.

Exhibit R

Court of Appeals, State of Michigan

ORDER

C-Spine Orthopedics PLLC v Progressive Michigan Insurance Company

Docket No. 358170; 358171

LC No. 2020-001710-NF; 2020-000386-NF

Elizabeth L. Gleicher
Presiding Judge

Jane E. Markey

Sima G. Patel

Judges

The motion for reconsideration is DENIED.

Presiding Judge

Markey, J., would grant the motion for reconsideration for the reasons set forth in her December 8, 2022 dissenting opinion.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

February 28, 2023
Date

Chief Clerk

Exhibit S

Court of Appeals, State of Michigan

ORDER

C-SPINE ORTHOPEDICS PLLC V PROGRESSIVE MICHIGAN INSURANCE COMPANY

Docket No. **358170; 358171**

LC No. **2020-001710-NF; 2020-000386-NF**

Elizabeth L. Gleicher, Chief Judge, acting under MCR 7.211(E)(2), orders:

These appeals are CONSOLIDATED to advance the efficient administration of the appellate process.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

May 25, 2022
Date

Chief Clerk

Exhibit T

Winfield v. State Auto Prop. & Cas. Ins. Co.

Court of Appeals of Michigan

November 18, 2021, Decided

No. 355681

Reporter
2021 Mich. App. LEXIS 6534 *; 2021 WL 5406035

LARCHERI WINFIELD, Individually and as Next Friend of UNIQUE ALLEN and HEAVEN WINFIELD, Minors, Plaintiff-Appellee, v STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY and STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, Defendants-Appellants.

Prior History: [*1] Wayne Circuit Court. LC No. 19-015455-NF.

Winfield v. State Auto Prop. & Cas. Ins. Co, 2021 Mich. App. LEXIS 1179 (Mich. Ct. App., Feb. 22, 2021)

Counsel: For WINFIELD LARCHERI INDIVIDUALLY & AS NEXT FRIEND, Plaintiff - Appellee: DANIEL J WILLIAMS.

For STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY, Defendant - Appellant: DREW W BROADDUS.

Judges: Before: GLEICHER, P.J., and K. F. KELLY and RONAYNE KRAUSE, JJ.

Opinion

PER CURIAM.

Defendants appeal by leave granted[1] the trial court's order denying defendants' motion for partial summary disposition under MCR 2.116(C)(10). Finding error warranting reversal, we reverse the trial court's order denying defendants' motion for partial summary disposition and remand for proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of an April 2019 motor vehicle accident during which plaintiff and her minor children suffered injuries. Defendants issued plaintiff a no-fault insurance policy that was in effect at the time of the motor vehicle accident. After the motor vehicle accident, plaintiff and her minor children received treatment from several medical providers. Between June 7, 2019, and December 14, 2019, plaintiff assigned to the medical providers the rights to collect PIP benefits from defendants for the services [*2] rendered.

However, on November 18, 2019, plaintiff filed a single-count complaint seeking to collect personal protection insurance (PIP)[2] benefits from defendants on behalf of herself and her minor children pursuant to her no-fault insurance policy. Defendants moved for partial summary disposition

---

[1] *Winfield v State Auto Prop & Cas Ins Co*, unpublished order of the Court of Appeals, entered February 22, 2021 (Docket No. 355681), 2021 Mich. App. LEXIS 1179.

[2] The phrase "PIP benefits" actually refers to personal protection insurance (PPI) benefits, but "PIP benefits" is commonly used to distinguish these benefits from property protection insurance benefits. See *Roberts v Farmers Ins Exch*, 275 Mich App 58, 66 n 4; 737 NW2d 332 (2007).

under MCR 2.116(C)(10), alleging that, by executing valid assignments, plaintiff granted the medical providers the exclusive right to pursue payment for the medical expenses stemming from the motor vehicle accident. Plaintiff opposed the motion for summary disposition, contending that she simply gave permission to a provider to file a separate suit, but the assignment did not prevent plaintiff from seeking payment for a provider's services in her own litigation. The trial court issued an opinion and order denying defendants' motion for partial summary disposition. It found that the medical providers had not submitted written notice to defendants of an intent to pursue a claim through the assignments, and the mere execution of the assignments did not entitle defendants to relief. Rather, the trial court concluded that defendants would only be entitled to partial summary disposition if the medical providers [*3] at issue filed suit to enforce their rights under the assignments or otherwise provided defendants with written notice of their claims. This appeal followed.

II. ANALYSIS

Defendants assert that the trial court erred in denying the motion for partial summary disposition of plaintiff's action for recovery of PIP benefits for services rendered by medical providers to whom plaintiff had granted assignments because she was no longer the real party in interest. We agree.

The appellate court reviews de novo a trial court's decision on a motion for summary disposition. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id.* at 160. When addressing a motion under MCR 2.116(C)(10), the trial court must consider all evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* "A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact." *Id.* (citation omitted). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id.* (citation and quotation marks omitted). Additionally, "the issue of whether a plaintiff is the real party in interest is a question of law that we review de novo." *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 411; 875 NW2d 242 (2015) (citation omitted). [*4]

Under the no-fault act, an insured is entitled to PIP benefits for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). An insured may assign his or her right to past or presently due benefits to a healthcare provider. *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017), superseded by statute as recognized in *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App 21; 944 NW2d 412 (2019).[3] Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest . . . ." "A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013) (citation omitted). The real party in interest doctrine "is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *In re Beatrice Rottenberg Living Trust*, 300 Mich App 339, 355; 833 NW2d 384 (2013) (citations omitted). The doctrine "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Barclae*, 300 Mich App at 483 (citation omitted).

An assignment in law is defined as:

> A transfer or setting over of property, or of

[3] In *Spectrum Health Hosps v Mich Assigned Claims Plan*, 330 Mich App at 28 n 4, this Court stated that "[t]he Michigan Legislature 'overruled' *Covenant* by amending MCL 500.3112 to give healthcare providers the right to file a direct claim or cause of action against an insurer for reimbursement for services provided to an injured person."

> some right or interest therein, from one person to another, and [*5] unless in some way qualified, it is properly the transfer of one's whole interest in an estate, or chattel, or other thing. It is the act by which one person transfers to another, or causes to vest in another, his right of property or interest therein. [*Allardyce v Dart*, 291 Mich 642, 644-645; 289 NW 281 (1939) (citation omitted).]

"[A]n assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp*, 311 Mich App at 412 (citations omitted). "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt v Bailey*, 260 Mich App 636, 653; 680 NW2d 453 (2004) (citations omitted). "No particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation." *Id.* at 654-655 (quotation marks and citations omitted).

Before filing her complaint on November 18, 2019, plaintiff assigned to various medical providers her right to collect PIP benefits from defendants. While the language of the assignments varied, each assignment vested in the medical providers the right to collect PIP benefits from defendants for medical services rendered to plaintiff and her [*6] minor children. Furthermore, there was no indication that plaintiff retained any power to revoke the assignments. Accordingly, the assignments were valid such that the medical providers stood in the position of plaintiff, possessed the same rights as plaintiff, and were subject to the same defenses as plaintiff. Indeed, "an assignee of a cause of action *becomes the real party in interest* with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp*, 311 Mich App at 412 (emphasis added and citations omitted). In other words, after plaintiff executed the assignments, the medical providers became the real parties in interest, and only the medical providers had the ability to enforce the acquired rights.

However, plaintiff may still pursue her claim against defendants for services rendered by Comprehensive Neuropsychological Services, PC, because plaintiff assigned to this provider her right to collect PIP benefits from defendants after she filed the instant action. Indeed, plaintiff filed the instant complaint on November 18, 2019, and plaintiff assigned to Comprehensive Neuropsychological Services, PC, her right to collect PIP benefits [*7] from defendants on December 14, 2019. MCR 2.202(B) address party substitution and provides in relevant part as follows:

> If there is a change or transfer of interest, the action may be continued by or against the original party in his or her original capacity, unless the court, on motion supported by affidavit, directs that the person to whom the interest is transferred be substituted for or joined with the original party, or directs that the original party be made a party in another capacity.

Here, no motions for substitution or joinder were made, and the trial court did not direct plaintiff to be made a party in another capacity. Accordingly, under the plain language of MCR 2.202(B), plaintiff may still pursue her claim against defendants for services rendered by Comprehensive Neuropsychological Services, PC, in light of her assignment to this provider her right to collect PIP benefits from defendants after she filed the instant action.

We further reject plaintiff's contention that application of MCL 500.3112 effectively precludes summary disposition. MCL 500.3112 provides, in relevant part, as follows:

> Personal protection insurance benefits are payable to or for the benefit of an injured person or, in case of his or her death, to [*8] or for the benefit of his or her dependents. A

> health care provider listed in section 3157 may make a claim and assert a direct cause of action against an insurer, or under the assigned claims plan under sections 3171 to 3175, to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person. Payment by an insurer in good faith of personal protection insurance benefits, to or for the benefit of a person who it believes is entitled to the benefits, discharges the insurer's liability to the extent of the payments unless the insurer has been notified in writing of the claim of some other person. If there is doubt about the proper person to receive the benefits or the proper apportionment among the persons entitled to the benefits, the insurer, the claimant, or any other interested person may apply to the circuit court for an appropriate order.

Although plaintiff correctly notes that a health care provider may assert a direct cause of action against an insurer, and MCL 500.3112 insulates insurers from the threat of double payment for services rendered, MCL 500.3112 does not address the legal effect of an assignment on an insured's ability to collect benefits that were the subject of an assignment. [*9]

Lastly, we reject plaintiff's public policy argument. There is no indication that defendant raised the assignments to avoid paying PIP benefits. Moreover, defendant moved for partial summary disposition pertaining to specific medical providers. Although a holding that only an assignee may enforce the rights acquired by way of an assignment has the potential to increase litigation, this Court has recognized the policy underlying the real party in interest doctrine. Indeed, the doctrine "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Barclae*, 300 Mich App at 483 (citation omitted). Moreover, there is nothing to preclude plaintiff from negotiating with the medical providers to revoke the assignments or transfer the assignments to her to allow her to pursue those claims.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher

/s/ Kirsten Frank Kelly

/s/ Amy Ronayne Krause

End of Document

Exhibit U

Farrar v. Suburban Mobility Auth. for Reg'l Transp.

Court of Appeals of Michigan

February 9, 2023, Decided

No. 358872, No. 358884

Reporter
2023 Mich. App. LEXIS 952 *; 2023 WL 1870933

MARCEL FARRAR, Plaintiff-Appellee, and FOCUS IMAGING, LLC, Intervening Plaintiff-Appellee, v SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, also known as SMART, Defendant-Appellant.MARCEL FARRAR, Plaintiff-Appellee, and FOCUS IMAGING, LLC, Intervening Plaintiff, v SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, also known as SMART, Defendant-Appellant.

Prior History: [*1] Wayne Circuit Court. LC No. 20-002192-NF. Wayne Circuit Court. LC No. 20-002192-NF.

Farrar v. SMART, 2022 Mich. App. LEXIS 1047 (Mich. Ct. App., Feb. 23, 2022)

Counsel: For MARCEL FARRAR, Plaintiff (358872, 358884): BRIAN E MUAWAD.

For FOCUS IMAGING LLC, Intervening Plaintiff - Appellee (358872, 358884): MATTHEW SCOTT PAYNE.

For SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, Defendant - Appellant (358872, 358884): NATHAN S SCHERBARTH.

Judges: Before: CAVANAGH, P.J., and K. F. KELLY and GARRETT, JJ.

Opinion

PER CURIAM.

In these consolidated appeals,[1] in Docket No. 358872, defendant, the Suburban Mobility Authority for Regional Transportation, appeals by leave granted[2] the trial court's order denying defendant's motion for summary disposition as to the claims made by intervening plaintiff Focus Imaging, LLC. In Docket No. 358884, defendant appeals by leave granted[3] the trial court's order granting in part and denying in part defendant's motion for partial summary disposition as to claims related to services provided by nonparty medical providers who obtained assignments from plaintiff Marcel Farrar. Because we conclude that the trial court erred when it denied defendant's motions for summary disposition, we reverse and remand.

I. BASIC FACTS AND PROCEDURAL HISTORY

The underlying facts of the case are largely not in dispute. On February 13, 2019, plaintiff was riding as a passenger on a bus operated by defendant. Plaintiff was injured after another car hit the bus. As a result of the accident, plaintiff sought

[1] *Farrar v Suburban Mobility Auth for Regional Transp*, unpublished order of the Court of Appeals, entered February 23, 2022 (Docket No. 358872).

[2] *Id.*

[3] *Farrar [*2] v Suburban Mobility Auth for Regional Transp*, unpublished order of the Court of Appeals, entered February 23, 2022 (Docket No. 358884).

treatment from a number of medical providers and, in connection with doing so, executed assignments of benefits in exchange for receiving such treatment. As relevant to this appeal, plaintiff executed assignments to Focus Imaging, LLC, C-Spine Ortho, Allied Medical, Assure Neuromonitoring, and Integra Lab Solutions.

On February 11, 2020, plaintiff filed a complaint to recover personal injury protection (PIP) benefits for injuries he sustained to his back, head, arms, legs, and shoulders. Focus Imaging moved to intervene in the case on February 11, 2021, asserting that it provided services to plaintiff which were recoverable under the no-fault act but defendant refused to pay, which the trial court granted. In Focus Imaging's intervening complaint, attached to its motion, it claimed it provided plaintiff with medical services attributable to the accident totaling [*3] $14,996.61. In support of its claim, Focus Imaging attached as Exhibit A to its complaint a "Health Insurance Claim Form," dated July 30, 2019, showing a total charge of $14,996.61 for services provided on March 6, 2019

Defendant subsequently moved for summary disposition as to Focus Imaging's intervening claims, as well as plaintiff's claims related to C-Spine Ortho, Allied Medical, Assure Neuromonitoring, and Integra Lab Solutions. According to defendant, it was entitled to summary disposition because Focus Imaging's claims were barred by the one-year-back rule because Focus Imaging could not relate its intervening complaint back to the date of plaintiff's complaint. Defendant also asserted that plaintiff's claims associated with providers to whom he already executed assignments were barred because plaintiff was not the real party in interest with respect to those claims.

The trial court denied defendant's motions. With respect to Focus Imaging, the court concluded that its claims could relate back to the date of plaintiff's complaint. The court also held that because defendant had notice of Focus Imaging's claims within one year, defendant could not invoke the one-year-back rule as [*4] a shield to liability. The trial court also rejected defendant's argument that once plaintiff executed assignments to medical providers, those providers became the real parties in interest with respect to those claims. These interlocutory appeals followed.

II. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Mich Head & Spine Institute PC v Auto-Owners Ins Co*, 338 Mich App 721, 725; 980 NW2d 567 (2021), lv den _ Mich _; 509 Mich. 915; 971 NW2d 217 (2022). Defendant moved for summary disposition under MCR 2.116(C)(7), (8), and (10). When deciding a motion under MCR 2.116(C)(7), this Court "must accept as true the allegations of the complaint unless contradicted by the parties' documentary submissions." *Allstate Ins. Co. v State Farm Mut. Auto. Ins. Co.*, 321 Mich. App. 543, 550-551; 909 N.W.2d 495 (2017). "[A] party moving for summary disposition under Subrule (C)(7) may support the motion with affidavits, depositions, admissions, or other admissible documentary evidence, which the reviewing court must consider." *Id.* at 551.

A motion under MCR 2.116(C)(8) tests the sufficiency of the complaint based only on the pleadings. *Esurance Prop & Cas Ins Co v Mich Assigned Claims Plan*, 507 Mich 498, 508; 968 NW2d 482 (2021). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint." *Id.* (quotation marks and citation omitted). "A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.* (quotation marks and citation [*5] omitted).

Under MCR 2.116(C)(10), this Court considers the evidence submitted in a light most favorable to the nonmoving party. *Butross Dawood Fashho v Liberty Mut. Ins. Co.*, 333 Mich. App. 612, 616;

963 N.W.2d 695 (2020). "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.* (quotation marks and citation omitted).

Questions concerning the proper interpretation and application of statutes are also reviewed de novo. *Esurance*, 507 Mich at 508. "[C]ourts must interpret statutes in a way that gives effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id.* at 508-509 (quotation marks and citation omitted; alteration in original).

III. DOCKET NO. 358872

Defendant argues that the trial court erred when it denied defendant's motion for summary disposition because Focus Imaging's claims were barred by the one-year-back rule. According to defendant, Focus Imaging filed its intervening complaint more than one year after it provided services to plaintiff. Thus, defendant argues that under MCL 500.3145(2), it was entitled to summary disposition as to Focus Imaging's claims. We agree.

Under MCL 500.3145(2), a "claimant may not recover benefits for any portion of the loss incurred [*6] more than 1 year before the date on which the action was commenced." "The one-year-back rule is designed to limit the amount of benefits recoverable under the no-fault act to those losses occurring no more than one year before an action is brought." *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 202; 815 NW2d 412 (2012).

Focus Imaging treated plaintiff on March 6, 2019, approximately three weeks after the automobile accident. Under the one-year-back rule, Focus Imaging was required to file its complaint by March 6, 2020, to ensure its lawsuit could proceed. However, Focus Imaging did not file its intervening complaint until February 11, 2021, almost two years after the accident. Accordingly, under the express language of the one-year-back rule, Focus Imaging is barred under MCL 500.3145(2) from recovering any benefits that it incurred before February 11, 2020.

However, plaintiff argues that because he timely filed his complaint on February 11, 2020, Focus Imaging's complaint is also timely because Focus Imaging stands in plaintiff's shoes by virtue of the assignment. According to plaintiff, as the two parties share the same interests, the addition of Focus Imaging as an intervening plaintiff does not prevent Focus Imaging from invoking the relation-back doctrine.

Generally [*7] speaking, the relation-back doctrine does not apply to the addition of new parties. *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007). However, plaintiff argues that because he and Focus Imaging have the same interests and the claim arises out of the same transaction or occurrence, Focus Imaging can invoke the relation-back doctrine.

In *Lakeland Neurocare Ctrs v Everest Nat'l Ins Co*, unpublished opinion of the Court of Appeals, 2019 Mich. App. LEXIS 6135, issued October 8, 2019 (Docket No. 340346),[4] however, we rejected the notion that for purposes of the one-year-back rule, the addition of the injured claimant as an intervenor to the medical provider's lawsuit related back to that original suit. In that case, the injured claimant sought to intervene, which the trial court granted. *Lakeland Neurocare Ctrs*, unpub op at 3. The trial court also determined that the injured claimant's intervening complaint related back to the date of the medical provider's complaint. *Id.*

On appeal, we concluded that the trial court did not abuse its discretion when it granted the claimant's motion to intervene. *Id.* at 12. However, we also determined that the trial court erred when it concluded that the intervening complaint related back:

---

[4] Unpublished opinions are not binding but may be considered for their persuasiveness. *Eddington v Torrez*, 311 Mich App 198, 203; 874 NW2d 394 (2015), lv den 498 Mich 951 (2015).

> Gordon is clearly a different party than plaintiffs. [*8] She is not seeking to add new claims or defenses, MCR 2.118(D), but rather, assert the same claims as plaintiffs, but as a different party. Therefore, her claims would not relate back to the date of plaintiffs' complaint. Because Gordon's claims would not relate back to the date of the filing of the original complaint, she could only claim benefits dating one year back from the date that she filed her intervening complaint under MCL 500.3145, which was September 21, 2017. [*Id.* at 15.]

The same is true here. Focus Imaging is a different party that is not seeking to add new claims, but rather the same claims as plaintiff as a different party. Accordingly, the trial court erred when it concluded that Focus Imaging's complaint related back.

The trial court also concluded that Focus Imaging's complaint was timely because defendant had notice of the lawsuit within one year of the incurred claims. In so doing, the trial court relied on MCL 500.3145(1), which states: "An action for recovery of personal protection insurance benefits payable under this chapter for an accidental bodily injury may not be commenced later than 1 year after the date of the accident that caused the injury unless written notice of injury as provided in subsection (4) has [*9] been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury."

The court concluded that because defendant had notice of Focus Imaging's claims within one year of incurring them, defendant could not rely on the one-year-back rule to defeat Focus Imaging's claims. The trial court, however, appears to have confused the limitations period in MCL 500.3145(1) with the one-year-back rule in MCL 500.3145(2). While the trial court was correct that if an insurer has notice of the injury within one year, it cannot invoke the one-year statute of limitations contained in MCL 500.3145(1). However, under MCL 500.3145(2): "[I]f the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss, or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced." It is clear, therefore, that the issue of notice in subsection (1) is distinct from the one-year-back rule in subsection (2). In other words, Focus Imaging's complaint was not time-barred; however, Focus Imaging [*10] was still required to commence the action within one year of incurring the claims in order to recover them. Because Focus Imaging did not, it could not rely on notice to defendant to save its claims.

IV. DOCKET NO. 358884

Defendant also argues the trial court erred when it denied in part defendant's motion for partial summary disposition because after executing the assignments to C-Spine Ortho, Allied Medical, Assure Neuromonitoring, and Integra Lab Solutions, plaintiff could no longer pursue those claims. Defendant asserts that once the assignments were executed, the medical providers became the real parties in interest and only those entities could pursue those claims. We agree.

Under the no-fault act, an insured is entitled to seek from an insurer "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). When an assignment occurs, the "assignee of a cause of action becomes *the real party in interest* with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp v Rockford Pub Sch*, 311 Mich App 403, 412; 875 NW2d 242 (2015) (emphasis added). "A real [*11] party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100

(2013). The real-party-in-interest doctrine "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Id.*

In *Winfield v. State Auto Prop. & Cas. Ins. Co.*, unpublished per curiam opinion of the Court of Appeals, issued November 18, 2021 (Docket No. 355681), 2021 Mich. App. LEXIS 6534, this Court addressed the same issue of whether a plaintiff seeking benefits under the no-fault act could sue to enforce claims of providers to whom the plaintiff has executed assignments. The plaintiff executed multiple assignments to medical providers in which "each assignment vested in the medical providers the right to collect PIP benefits from defendants for medical services rendered to plaintiff and her minor children." *Winfield*, 2021 Mich. App. LEXIS 6534. Determining that by virtue of the assignments, the providers "stood in the position of plaintiff, possessed the same rights as plaintiff, and were subject to the same defenses as plaintiff," we concluded that "after plaintiff executed the [*12] assignments, the medical providers became the real parties in interest, and only the medical providers had the ability to enforce the acquired rights." 2021 Mich. App. LEXIS 6534 at *4-5.

The same is true here. Plaintiff executed assignments to C-Spine Ortho, Allied Medical, Assure Neuromonitoring, and Integra Lab Solutions between March 2019 and January 2020. There is no suggestion that the assignments were not valid. Accordingly, upon execution, these providers became the real parties in interest with respect to their claims for benefits, and only they could sue to recover those benefits. Plaintiff, therefore, did not have standing to sue to recover the benefits associated with those providers, and the trial court erred when it concluded otherwise.

Reversed and remanded for entry of an order granting defendant's motions for summary disposition. We do not retain jurisdiction. Defendant, as the prevailing party, may tax costs. MCR 7.219(A).

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly

/s/ Kristina Robinson Garrett

End of Document

Exhibit V

STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 30, 2023

No. 360887
Macomb Circuit Court
LC No. 2020-002560-NF

Before: CAVANAGH, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Plaintiff, C-Spine Orthopedics, PLLC (C-Spine), appeals by right the trial court's order granting summary disposition in favor of defendant, Allstate Insurance Company (Allstate). The lawsuit involves C-Spine's effort to collect personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq*., pursuant to certain assignments executed by Darryl Beavers, who was injured in a motor vehicle accident and had received medical treatment from C-Spine in relation to the injuries. Allstate insured the car in which Beavers was riding when he was injured, and there is no dispute that Allstate is the responsible no-fault insurer. The trial court ruled that C-Spine was not the real party in interest and lacked standing at the time the action was filed. The court reasoned that C-Spine had transferred all of its rights and interests in certain accounts receivable, including those in relation to services provided to Beavers, to third-party factoring companies before commencing the suit. C-Spine eventually obtained counter-assignments executed by the factoring companies, ostensibly conveying the accounts receivable back to C-Spine, but the trial court refused to consider the counter-assignments because they were not produced until after the close of discovery. We are compelled by binding precedent to reverse and remand for further proceedings under *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___; ___ NW2d ___ (2022) (Dockets Nos. 358170 and 358171).

The facts in this case largely parallel the facts in *C-Spine Orthopedics*—(1) auto accident victims obtained medical treatment and services from C-Spine for injuries incurred in the accidents; (2) the victims assigned their rights to obtain no-fault PIP benefits from responsible insurers to C-Spine; (3) C-Spine transferred all of its rights and interests in certain accounts receivable to third-party factoring companies, including those associated with the underlying auto-

accident victims; (4) C-Spine then commenced civil suits against the no-fault insurers for payment of services rendered to the victims; (5) the insurers moved for summary disposition on the basis that C-Spine was not the real party in interest and lacked standing in light of the transfers; (6) C-Spine produced backdated counter-assignments from the factoring companies, conveying the accounts receivable back to C-Spine; and (7) the trial court eventually granted summary disposition in favor of the insurers. See *C-Spine Orthopedics*, ___ Mich App at ___; slip op at 2-3.

In this case, the trial court did not take into consideration the counter-assignments offered by C-Spine because they were produced after the close of discovery. And in *C-Spine Orthopedics*, the trial court effectively did not take into consideration the counter-assignments because they were not executed until after the litigation was commenced. *Id.* at ___; slip op at 3.

As indicated at the outset of this opinion, the majority opinion in *C-Spine Orthopedics* controls. In pertinent part, this Court held:

> Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest" subject to several qualifications. This procedural rule requires that a complaint be brought by the party to whom a claim belongs, or by a party who has a legal right to bring the action. This concept is distinct from standing, which asks whether a litigant has a right to have a court consider a claim.
>
> Standing is not a barrier to C-Spine's case because MCL 500.3112 grants C-Spine the right to "assert a direct cause of action against an insurer . . . to recover overdue benefits payable for charges for products, services, or accommodations provided to an injured person." As a provider, C-Spine has statutory standing to bring a claim on its own behalf. Statutory standing, which necessitates an inquiry into whether a statute authorizes a plaintiff to sue at all, must be distinguished from whether a statute permits an individual claim for a particular type of relief. Whether C-Spine has an actionable claim for relief is a different question than whether it has a right to litigate its current grievance in our courts.
>
> The real-party-in-interest rule does not preclude C-Spine's suit, either. The court rule anticipates that situations such as this one might arise. MCR 2.201(B)(1) provides:
>
> "A personal representative, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, *or a person authorized by statute may sue in his or her own name without joining the party for whose benefit the action is brought*." [Emphasis added.]
>
> C-Spine is authorized by statute to bring a first-party no-fault claim, and the plain language of the court rule permits it to do so despite that the action was brought for the benefit of the factoring companies, or for the joint benefit of C-Spine and the factoring companies.

> This Court has explained the principle underlying MCR 2.201(B)(1) as follows: A real party in interest is one who is vested with the right of action on a given claim, although the beneficial interest may be in another. C-Spine is vested with the right of action against Progressive based on the assignments from the [injured motorists], and is authorized by statute to sue in its own name under the plain language of MCL 500.3112. That the beneficial interest resided with the factoring companies did not eliminate C-Spine as a real party in interest. [*C-Spine Orthopedics*, ___ Mich App at ___; slip op at 3-4 (quotation marks and citations omitted; emphasis in original).]

Applying *C-Spine Orthopedics*, we must conclude that C-Spine, having statutory standing under MCL 500.3112, has standing in this case and is the real party in interest. Accordingly, we reverse the trial court's ruling granting summary disposition in favor of Allstate. We do note that because the trial court did not take into consideration the counter-assignments given that they were not produced until after discovery, which ruling is not challenged on appeal, *C-Spine Orthopedics* would appear to dictate that the factoring companies be added to the suit on remand as necessary parties, MCR 2.205(A), to eliminate the risk of a second lawsuit by the factoring companies. *C-Spine Orthopedics*, ___ Mich App at ___; slip op at 4.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. We decline to award taxable costs under MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Stephen L. Borrello

Exhibit W

STATE OF MICHIGAN

COURT OF APPEALS

C-SPINE ORTHOPEDICS, PLLC,

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
March 30, 2023

No. 360887
Macomb Circuit Court
LC No. 2020-002560-NF

Before: CAVANAGH, P.J., and MARKEY and BORRELLO, JJ.

MARKEY, J. (*concurring*).

I concur in the majority opinion solely because I am bound to do so under MCR 7.215(J)(1). For the reasons stated in my dissenting opinion in *C-Spine Orthopedics, PLLC v Progressive Mich Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket Nos. 358170 and 358171); slip op at 9-19, I would hold, if not otherwise obligated, that C-Spine lacks standing in this case and is not the real party in interest.

I respectfully concur.

/s/ Jane E. Markey

Exhibit X

Order

Michigan Supreme Court
Lansing, Michigan

September 13, 2023

165537-8

C-SPINE ORTHOPEDICS, PLLC,
Plaintiff-Appellee,

v

SC: 165537
COA: 358170
Macomb CC: 2020-001710-NF

PROGRESSIVE MICHIGAN INSURANCE COMPANY,
Defendant-Appellant.

_____/

C-SPINE ORTHOPEDICS, PLLC,
Plaintiff-Appellee,

v

SC: 165538
COA: 358171
Macomb CC: 2020-000386-NF

PROGRESSIVE MICHIGAN INSURANCE COMPANY,
Defendant-Appellant.

_____/

On order of the Court, the application for leave to appeal the December 8, 2022 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1). The parties shall file supplemental briefs in accordance with MCR 7.312(E), addressing whether a plaintiff has standing and is a real party in interest if, before filing a cause of action, it had assigned its rights to that cause of action to third parties but, after filing the cause of action, the third parties assign those rights back to it. See MCR 2.201(B)(1); MCL 600.2041.

The Coalition Protecting Auto No-Fault, the Insurance Alliance of Michigan, Michigan Defense Trial Counsel, Inc., and Michigan Association for Justice are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae.

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 13, 2023

Clerk

a0906

Exhibit Y

Robinson v. Szczotka

Court of Appeals of Michigan

April 6, 2023, Decided

No. 359646

Reporter

2023 Mich. App. LEXIS 2417 *; 2023 WL 2816798

TIFFANY SHANTEL ROBINSON, Plaintiff-Appellee, v JANET ELAINE SZCZOTKA, and THE ASU GROUP-ASU RISK MANAGEMENT, Defendants, and SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, also known as SMART. Defendant-Appellant.

Notice: THIS IS AN UNPUBLISHED OPINION. IN ACCORDANCE WITH MICHIGAN COURT OF APPEALS RULES, UNPUBLISHED OPINIONS ARE NOT PRECEDENTIALLY BINDING UNDER THE RULES OF STARE DECISIS.

Subsequent History: Reconsideration denied by Robinson v. Szczotka, 2023 Mich. App. LEXIS 3437 (Mich. Ct. App., May 16, 2023)

Prior History: [*1] Wayne Circuit Court. LC No. 20-012733-NI.

Robinson v. SMART, 2022 Mich. App. LEXIS 1927 (Mich. Ct. App., Apr. 7, 2022)

Counsel: For TIFFANY SHANTEL ROBINSON, Plaintiff - Appellee: SAM EMANUEL ELIA, MARK GRANZOTTO.

For JANET ELAINE SZCZOTKA, Defendant: MARK G. VASQUEZ.

For SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION, Defendant - Appellant: JONATHAN R. FRESHOUR.

Judges: Before: K. F. KELLY, P.J., and MURRAY and SWARTZLE, JJ.

Opinion

PER CURIAM.

Defendant-appellant, Suburban Mobility Authority for Regional Transportation (SMART), appeals by leave granted[1] the November 29, 2021 order granting in part and denying in part SMART's motion for partial summary disposition. In partially granting the motion, the court held that plaintiff, Tiffany Shantel Robinson, had the right to pursue personal insurance protection (PIP) benefits from SMART even though plaintiff had previously assigned her claims to several medical providers because (1) SMART had no standing to enforce those assignments between plaintiff and her medical providers, and (2) plaintiff and her medical providers executed valid revocations of those assignments, thereby returning the right to pursue those PIP benefits to plaintiff. We reverse the trial court's order and remand for further proceedings consistent with this opinion. [*2]

I. BACKGROUND

Plaintiff was injured in an automobile accident and subsequently accrued medical bills related to her resulting injuries from Northland Radiology, Quest Physical Therapy, Aligned Chiropractic, Dependable Transportation,

[1] *Robinson v Szczotka*, unpublished order of the Court of Appeals, entered April 7, 2022 (Docket No. 359646).

Michigan Business Management, and Garden City Hospital. Before plaintiff initiated this litigation, she assigned her rights to recover PIP benefits to several of her medical providers, including Northland Radiology, Quest Physical Therapy, Dependable Transportation, Aligned Chiropractic, and Elite Diagnostics.

Thereafter, on September 28, 2020, plaintiff filed a complaint to collect first-party no-fault PIP benefits, underinsured motorist benefits, and uninsured motorist benefits from both SMART and defendant ASU Risk Management. Two months later, the parties stipulated to the dismissal of ASU Risk Management as well as the claims for underinsured and uninsured motorist benefits, leaving at issue only plaintiff's claim for PIP benefits against SMART.

SMART eventually moved for partial summary disposition pursuant to MCR 2.116(C)(7), (C)(8), and (C)(10), arguing that plaintiff had no standing to pursue a cause of action to recover claims that she had already assigned [*3] to her medical providers. SMART noted that one of plaintiff's medical providers, the Michigan Institute of Pain and Headache, PC, had already filed its own lawsuit to collect on its bills related to plaintiff's accident based on its assignment of benefits from plaintiff, and that the other medical providers were also free to do so.

In responding, plaintiff did not contest the factual or legal premises of SMART's motion but instead asserted that *after* she filed her complaint, she and a number of her medical providers executed "Mutual Revocation[s] of Assignment(s)." Plaintiff alleged that these contracts "revoked, rescinded, and nullified" the assignments *nunc pro tunc*, or retroactively, such that plaintiff recovered her rights to PIP benefits dating back to when she assigned them to her medical providers.[2] These assignments, plaintiff argued, should be considered to have never existed, and the medical providers waived any independent causes of action. Plaintiff acknowledged that her medical providers had failed to bring their claims to recover medical bills in a timely manner pursuant to the one-year-back rule, see MCL 500.3145(1), and stated that the only fair avenue for recovery of those medical [*4] bills was to revoke her assignments retroactively and litigate her own timely filed claims.

SMART reply made several points. First, it argued that it had standing to challenge the effect of the assignments because it had a real interest in claims that the medical providers might bring against it. Second, while admitting that it was not challenging the validity of the assignments, SMART argued that a valid assignment is one manifesting a present intent to transfer, where the assignor does not retain any power of revocation. Third, SMART asserted that when plaintiff filed her complaint, she had already executed assignments to her medical providers, and thus those claims belonged to those medical providers, who therefore bore responsibility for pursuing their claims in a timely manner pursuant to the one-year-back rule, MCL 500.3145(1). Because those medical providers failed to pursue their claims in a timely manner, their right to sue for PIP benefits was extinguished by operation of the one-year-back rule. To this point, SMART argued that these medical providers' claims were extinguished before the revocations were

---

[2] Each of the revocations, dated September 20, 2020, contained the following language:

The assignments are revoked nunc pro tunc the date the assignment(s) was/were entered into and should be considered as if it/they never existed and that both [parties of this revocation] wish to revoke and rescind any and all Assignment of Rights as if it never existed by the execution of this agreement.

executed on September 20, 2020, and so there remained no claims to "give back" to plaintiff [*5] through the revocations. Essentially SMART asserted that once plaintiff's medical providers' claims had expired, the parties could properly not thereafter work around the one-year-back rule and effectively restore their expired rights by operating as though the assignments had never existed.

As noted, the trial court granted SMART's motion in part, concluding that plaintiff could not properly claim compensation for the medical bills of Michigan Institute of Pain and Headache (d/b/a Metro Pain Clinic), because that medical provider filed its own suit in district court. Relative to the other providers, the court ultimately held that SMART did not have the authority to enforce plaintiff's assignments with her providers and that those parties to the assignments could, and did, revoke those contracts:

> But in the end, I do believe that the contract is between [plaintiff] and the providers. And if they decide to revoke it, the Plaintiff can always get it.
>
> Now, as I said earlier, the insurance company, or in this case, SMART and/or Allstate, they're only going to have to pay once, if any. They don't have to pay twice 'cause two different entities are going after these bills.
>
> But a lot of times, [*6] I mean, I can see today where you're going to have a Plaintiff going after the bills and a provider. And they're going to duke it out at trial.
>
> And it could get confusing, I don't know. It's never happened before, but I think theoretically, it could happen. They can both go after the bills. But I would instruct the jury you only got to pay once, if you have to pay at all or something like that.
>
> So for those reasons, I think that I respectfully disagree with [defendant's] position, . . . but it was an interesting argument. And I will respectfully deny summary at this time.

II. ANALYSIS

The dispositive question on appeal is whether the revocation of the assignments allowed plaintiff to maintain her PIP claim that was filed prior to the revocation. This involves determining the meaning and effect of the assignments and revocations of those assignments, as well as the impact of those on plaintiff's ability to bring this claim.

A. STANDARDS OF REVIEW

"Construction and interpretation of a contract are questions of law that we review de novo, meaning that we do so without deference to the trial court's decision." *Calhoun Co v Blue Cross Blue Shield Mich*, 297 Mich App 1, 12; 824 NW2d 202 (2012), citing *Comerica Bank v Cohen*, 291 Mich App 40, 46; 805 NW2d 544 (2010). In *Meagher v Wayne State Univ*, 222 Mich App 700, 721-722; 565 NW2d 401 (1997), we explained:

> Under ordinary contract principles, if contractual language [*7] is clear, construction of the contract is a question of law for the court. If the contract is subject to two reasonable interpretations, factual development is necessary to determine the intent of the parties and summary disposition is therefore inappropriate. If the contract, although inartfully worded or clumsily arranged, fairly admits of but one interpretation, it is not ambiguous. The language of a contract should be given its ordinary and plain meaning. [Citations omitted.]

This Court also reviews de novo a motion for summary disposition. *Allen Park Retirees Ass'n, Inc v Allen Park*, 329 Mich App 430, 443; 942 NW2d 618 (2019). A motion under MCR 2.116(C)(7) is appropriate where there

has been an "assignment or other disposition of the claim before commencement of the action." MCR 2.116(C)(7). In reviewing a motion under MCR 2.116(C)(7), "[t]he contents of the complaint must be accepted as true unless contradicted by the documentary evidence, which must be viewed in a light most favorable to the nonmoving party." *Allen Park Retirees Ass'n, Inc*, 329 Mich App at 444. "If there is no factual dispute, the determination whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law." *Id.*

Summary disposition is appropriate under (C)(8) when a party fails to state a claim on which relief can be granted and is appropriate under (C)(10) when there is no [*8] genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. *Capitol Props Group, LLC v 1247 Ctr Street, LLC*, 283 Mich App 422, 425; 770 NW2d 105 (2009).

B. REAL PARTY IN INTEREST

Under MCR 2.201(B), "[a]n action must be prosecuted in the name of the real party in interest[.]" "A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Barclae v Zarb*, 300 Mich App 455, 483; 834 NW2d 100 (2013) (quotation marks and citation omitted). The real party in interest rule "'requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim' that is asserted in the complaint." *Estate of Maki v Coen*, 318 Mich App 532, 539; 899 NW2d 111 (2017), quoting *In re Beatrice Rottenberg Trust*, 300 Mich App 339, 356; 833 NW2d 384 (2013). "A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." *Barclae*, 300 Mich App at 483 (quotation marks and citation omitted). The real party in interest doctrine is a "standing doctrine" that "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Id.* (quotation marks and citation omitted).

"[A]lthough the principle of statutory standing overlaps significantly with the real-party-in-interest [*9] rule, they are distinct concepts." *In re Beatrice Rottenberg Living Trust*, 300 Mich App at 355. Statutory standing is a jurisdictional principle, while "the real-party-in-interest rule is essentially a prudential limitation on a litigant's ability to raise the legal rights of another." *Id.* "[I]f a party lacks statutory standing, then the court generally lacks jurisdiction to entertain the proceeding or reach the merits." *Id.*, citing *Miller v Allstate Ins Co*, 481 Mich 601, 608-612; 751 NW2d 463 (2008); see also *Grady v Wambach*, 339 Mich App 325, 330; 984 NW2d 463 (2021). Jurisdiction is not an issue in this case.

With respect to assignments, the general rule is that "an assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp. v. Rockford Pub. Sch.*, 311 Mich App 403, 412; 875 N.W.2d 242 (2015). Once a valid assignment occurs, the assignee then stands in the shoes of the assignor and may enforce the rights assigned. "[A]n assignment divests the assignor of any interest in the subject matter of the assignment." 6A CJS, Assignments, § 88. Thus, because a legal assignment vests the right to enforce the rights in the assignee, an assignor retains no rights to enforce the rights after they have been assigned, i.e., the assignor loses the right that allows her to prosecute the claim.

C. FILING A LAWSUIT TO COLLECT ON MEDICAL BILLS [*10] WHEN THE RIGHT TO

COLLECT WAS PREVIOUSLY ASSIGNED

Pursuant to the no-fault act,[3] insured individuals may recover PIP benefits for "[a]llowable expenses consisting of reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person's care, recovery, or rehabilitation." MCL 500.3107(1)(a). Under this provision, plaintiff could have pursued her PIP claims against SMART, but she did not. Instead, she assigned the right to bring those claims to her medical providers. Although medical providers also have an independent statutory right to bring a claim to recover for services rendered, under MCL 500.3112, that statute does not address the legal effect of an assignment on an insured's maintaining an action to collect benefits that were the subject of an assignment.

Though plaintiff had a statutory right to seek payment of certain medical benefits, she instead opted to transfer that right to the medical providers, an option she had and was free to exercise. *Covenant Med Ctr, Inc v State Farm Mut Auto Ins Co*, 500 Mich 191, 217 n 40; 895 NW2d 490 (2017). "No particular form of words is required for an assignment, but the assignor must manifest an intent to transfer and must not retain any control or any power of revocation." *Burkhardt v Bailey*, 260 Mich App 636, 655; 680 NW2d 453 (2004) (quotation marks and citation omitted). SMART [*11] does not contest the validity of the assignments.

At the time plaintiff commenced this action, she was not the real party in interest because plaintiff's rights to recover the unpaid medical bills were divested by virtue of the assignments. See *Estate of Maki*, 318 Mich App at 539 (providing that the real party in interest rule "requir[es] that the claim be prosecuted by the party who by the substantive law in question owns the claim that is asserted in the complaint.") (alteration in original; quotation marks and citation omitted). As noted at the outset, following the assignment of these claims the "assignee of a cause of action becomes the real party in interest with respect to that cause of action, inasmuch as the assignment vests in the assignee all rights previously held by the assignor." *Cannon Twp*, 311 Mich App at 412. "An assignee stands in the position of the assignor, possessing the same rights and being subject to the same defenses." *Burkhardt*, 260 Mich App at 653. That being the case, the medical providers as assignees held the right to seek to recover the unpaid medical bills, and plaintiff no longer had a cause of action to pursue, having transferred it away. *Cannon Twp*, 311 Mich App at 412 ("an assignee of a cause of action becomes the real party in interest with respect to that cause of action, [*12] inasmuch as the assignment vests in the assignee all rights previously held by the assignor.").[4]

Although the medical providers, as the real parties in interest, owned the right to bring an action to recover the unpaid medical bills, the record shows that, except for one provider, none of the medical providers utilized the assignment by bringing suit within a year of providing the services. MCL 500.3145(1). Thus, the medical provider's rights under the assignment were statutorily barred. While plaintiff timely sued to recover the cost of the medical services, she had assigned those rights to the medical providers, who were now the real parties in interest. In order to remedy

[3] MCL 500.3101 *et seq.*

[4] Although a valid assignment is one in which the assignor "manifest[s] an intent to transfer and must not retain any control or any power of revocation," *Burkhardt*, 260 Mich App at 655, as a matter of contract plaintiff was free to subsequently negotiate with the medical providers to revoke the assignments or transfer the assignments to her to allow her to pursue those claims.

that situation, the revocations were signed during the course of the trial court proceedings and contained the "nunc pro tunc" language in an attempt to essentially eradicate the original assignments. The attempt, though creative, did not have the intended effect.

Nunc pro tunc refers to a court's inherent power to give modifications to its own orders and judgments retroactive effect in order to make a record of what actually occurred but that had been omitted from the order. Michigan Pleading & Practice (2d ed), § 19.43. See also *Shifferd v Gholston*, 184 Mich App 240, 243; 457 NW2d 58 (1990) ("An entry nunc pro tunc is proper to supply [*13] an omission in the record of action really had, but omitted through inadvertence or mistake") and *Grand Rapids v Coit*, 151 Mich 109, 109; 114 NW 880 (1908). "The function of such an order is to supply an Omission in the record of action previously taken by the court but not properly recorded; an order nunc pro tunc may not be utilized to supply previously omitted action." *Sleboede v Sleboede*, 384 Mich 555, 558-559; 184 NW2d 923 (1971).

The term "*nunc pro tunc*" has also been used in reference to licensing assignments in some federal patent and trademark decisions, holding that a *nunc pro tunc* assignment may not be used to cure a standing defect; rather, the party filing suit must have had standing to sue when the complaint was filed. See *Enzo APA & Son, Inc v Geapag AG*, 134 F3d 1090, 1093 (CA Fed, 1998) (one must hold legal title to the patent to sue for infringement of the patent; "nunc pro tunc assignments are not sufficient to confer retroactive standing") and *Gaia Techs. v Reconversion Techs.*, 93 F.3d 774, 777-780 (CA Fed, 1996) (like other personal property, patents, and trademarks may be assigned to others, and a *nunc pro tunc* assignment executed after a lawsuit is filed may not retroactively confer standing).

The court in *Enzo APA & Son*, 134 F3d 1090, came to the same conclusion:

> [A]s has been aptly stated, nunc pro tunc assignments are not sufficient to confer retroactive standing on the basis that:
>
> As a general matter, parties should possess rights before [*14] seeking to have them vindicated in court. Allowing a subsequent assignment to automatically cure a standing defect would unjustifiably expand the number of people who are statutorily authorized to sue. Parties could justify the premature initiation of an action by averring to the court that their standing through assignment is imminent. Permitting non-owners and licensees the right to sue, so long as they eventually obtain the rights they seek to have redressed, would enmesh the judiciary in abstract disputes, risk multiple litigation, and provide incentives for parties to obtain assignment in order to expand their arsenal and the scope of litigation. Inevitably, delay and expense would be the order of the day. [*Id.* at 1093-1094, quoting *Procter & Gamble Co v Paragon Trade Brands, Inc*, 917 F Supp 305, 310 (D Del, 1995).]

While the present case is not a patent or trademark case, the same logic applies: one must be the real party in interest at the time the lawsuit is filed, and a retroactive, or *nunc pro tunc*, revocation may not be used to correct a factual problem that existed when the lawsuit was filed. While plaintiff and her medical providers were at liberty to mutually decide to revoke the assignments, the revocations were effective as of the date that the revocations were executed [*15] and could not essentially eliminate the fact that the assignments had occurred prior to plaintiff filing suit. And, the medical providers had no timely claims to return to plaintiff as of the date

of the revocations because the revocations occurred more than a year after services were rendered. Thus, the mutual revocations did not reassign any timely claims to plaintiff.

Plaintiff further argues that mutual revocation of an agreement returns the parties to the status quo as it existed prior to the assignment. While this may be true in some cases, the same cannot be said when the revocation occurs after the time for performance matures or the rights of the parties become fixed. "An assignment may be revoked before the rights of the parties become fixed." 6A CJS, Assignments § 71. Thus, although the revocation may have some effect between plaintiff and the medical providers, as to defendant and the court, it cannot impact how plaintiff stood at the time the complaint was filed:

> As an assignee, appellant can stand in no better position than the assignor. And since the Fund was barred by the statute of limitations, so was appellant. Their attempt to make the assignment retroactive to the [*16] date the complaint was filed may have some meaning between them, but it is meaningless as to third parties. [*Stephens v Textron, Inc*, 127 Ariz 227, 230; 619 P2d 736 (1980) (citation omitted).]

Here, it is undisputed that at the time she filed the complaint, plaintiff had assigned her rights to recover the unpaid medical bills to her medical providers. Because the rights of plaintiff viz-a-viz defendant and the court had essentially become fixed under the assignment agreements, the revocations could not impact plaintiff's status at the time the complaint was filed. Because plaintiff was not a real party in interest at the time she filed the lawsuit, the trial court erred in denying defendant's motion for summary disposition.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Christopher M. Murray

/s/ Brock A. Swartzle

End of Document