

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-53846

Chapter 9

CITY OF DETROIT, MICHIGAN,

Hon. Steven W. Rhodes

Debtor.

MOTION OF BRENDAN MYLEWSKI AND ADVISACARE
HEALTH CARE SOLUTIONS
FOR RELIEF FROM THE AUTOMATIC STAY

Brendan Mylewski and Advisacare Health Care Solutions, Inc. (collectively, “**Movants**”), by their attorneys, Jami Jones PLLC and Rhoades McKee PC, pursuant to 11 U.S.C. §362, Fed. R. Bankr. P. 4001 and LBR 4001-1, request that this Court issue an Order conditioning, modifying or lifting the automatic stay imposed by 11 U.S.C. §362. In support of this Motion, the Movants state:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter under 28 U.S.C. §§157 and 1334.
2. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G).
3. Venue is proper in this Court pursuant to 28 U.S.C. §1409.

BACKGROUND

4. The Movant Mylewski was employed by the City of Detroit as a firefighter at all times relevant hereto.

5. On or about August 13, 2010, Movant Mylewski was engaged in firefighting duties on behalf of the City in a building at the intersection of Drexel Road and Jefferson Avenue.

6. During and in the course of his firefighting duties as described in the preceding paragraph, Movant Mylewski became permanently and completely disabled when he suffered multiple severe injuries, leaving him wheel chair bound.

7. Pursuant to both the Detroit City Charter (the “Charter”), and the Master Agreement between the City of Detroit and the Detroit Fire Fighter’s Association (the “Agreement”), Movant Mylewski, upon becoming so disabled, became entitled to certain benefits from the Police and Firefighters Retirement System (the “**Fund**”), as a duty disability retiree. These benefits from the Fund include, but are not limited to, benefits “like” those devised in the Michigan Worker’s Disability Compensation Act, such as:

- a. Medical expenses;
- b. Home modifications;
- c. Prescription coverage;
- d. Attendant Care;
- e. Medical equipment and supplies; and,
- f. Case Management
- g. Vehicle Modification
- h. Wage loss
- i. Attorney fees for medical benefits wrongfully denied.

8. Under the terms and conditions of the Charter and Agreement, Debtor became obligated to pay from the Fund, on behalf of Movant Mylewski, the foregoing expenses or losses which Movant Mylewski sustained relative to his duty-related bodily injury and total disability.

9. Movant Mylewski meets all the requirements of total disability and his application for duty disability retirement was approved. See **Exhibit 6-1**.

10. Specifically, Movant Mylewski is unable to perform, for wage or profit, due to injury, illness or disease, the material and substantial duties of either his occupation or of any occupation for which he is suited, based on education, training and experience.

11. Movants believe that Debtor does not dispute that Movant Mylewski is totally disabled and totally incapacitated within the meaning of the Agreement and thus entitled to duty disability retirement benefits. Movant Mylewski continues, postpetition, to receive his duty disability compensation, and payment or reimbursement of certain medical and prescription expenses from the Fund. Debtor has, however, without reason, refused to pay certain benefits on behalf of Movant Mylewski, such as physician prescribed medical equipment and expenses, home modifications and, in particular, attendant care.

12. Upon information and belief, the Debtor does not contend that Movant Mylewski is not entitled to benefits such as attendant care, and it has no medical opinion disputing the necessity of the same, but rather, it may have questions with respect to the extent and costs of the equipment, home modifications and attendant care services.

13. Debtor has wrongfully refused to pay for the items recited above, such as attendant care, despite being supplied adequate proof of loss and entitlement to benefits.

14. Debtor last paid any benefits of the type and variety listed in paragraph 11 on or about January, 2012, and has provided no reasonable basis for its further refusal to pay the benefits to which Plaintiff is entitled.

15. Movant Mylewski must continue to receive attendant care to deal with such functions as managing bowel program, personal hygiene and other bodily functions.

16. On September 5, 2012, Movant Mylewski filed a civil action in the Circuit Court for Wayne County, Michigan (the “**Prepetition Action**”) (Case No. 12-011731-CK) seeking to recover the expenses which the City is obligated to pay on account of his disability. A copy the Complaint in the Prepetition Action accompanies this Motion as **Exhibit 6-2**. As of the date of this Motion, the amount of the disability related expenses the City is obligated to pay to the Movants exceeds \$180,000.00.

17. Movant Advisacare Health Care Solutions, Inc. (“**Advisacare**”) is a party to this Motion for the reason that Advisacare has continued to provide daily in-home care to Movant Mylewski since April of 2012 without payment in recognition of Movant Mylewski’s acute need for Advisacare’s services due to his severe disability.

18. The City has failed to pay any of Advisacare’s invoices, and Advisacare cannot continue to provide the in-home care Movant Mylewski requires indefinitely without payment.

19. On July 1, 2013, Advisacare moved to intervene in the Prepetition Action due to its pecuniary interest in the subject matter of the Prepetition Action. A copy of Advisacare’s Motion to Intervene accompanies this Motion as **Exhibit 6-3**.

20. Movants believe that only the Debtor has an interest in the subject matter of this Motion.

21. The Movants do not believe that this Motion will require an evidentiary hearing.

RELIEF REQUESTED

22. Given the grave, life effecting consequences to Movant Mylewski should he be unable to obtain the disability benefits for which the City is obligated to pay, the Movants submit that such consequences constitute just cause for modifying the automatic stay of 11 U.S.C. §362 so as to allow the Prepetition Action to proceed, as well as to allow Advisacare to seek to intervene in that action.

23. That furthermore, the home modifications and medical equipment being sought will assist the claimant in becoming more independent and being able to negotiate these items with the Debtor will likely provide a long-term cost benefit to the Debtor.

WHEREFORE, the Movants request that this Honorable Court enter an Order:

- (A) Modifying the stay so as to allow the Prepetition Action to proceed in the Wayne County Circuit Court;
- (B) Modifying the stay so as to allow Advisacare to seek to intervene in the Prepetition Action;
- (C) Granting such other or further relief as may be just or equitable.

Respectfully submitted,

JAMI JONES, PLLC
Attorneys for Brendan Milewski

Dated: November 7, 2013

By: /s/ Jami W. Jones
Jami W. Jones (P-64720)
Business Address:
33200 Dequindre, Suite 100
Sterling Heights, MI 48310
(586) 268-8200

RHOADES MCKEE PC
Attorneys for Advisacare Health Care Solutions,
Inc.

By: /s/ **Harold E. Nelson**
Harold E. Nelson (P-27974)
Business Address:
161 Ottawa, N.W., Suite 600
Grand Rapids, MI 49503
(616) 235-3500

SUMMARY OF ATTACHMENTS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1	Proposed Order
Exhibit 2	Notice of Motion and Opportunity to Object
Exhibit 3	Brief in Support of Motion for Relief from Stay
Exhibit 4	Certificate of Service
Exhibit 5	None
Exhibit 6-1	Correspondence with City of Detroit and Physician Statements
Exhibit 6-2	Copy of Complaint in Prepetition Action
Exhibit 6-3	Copy of Advisacare's Motion to Intervene

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-53846
Chapter 9

CITY OF DETROIT, MICHIGAN,

Hon. Steven W. Rhodes

Debtor.

ORDER FOR RELIEF FROM STAY
RE: BRENDAN MYLEWSKI AND ADVISACARE
HEALTH CARE SOLUTIONS

The Motion of Brendan Mylewski and Advisacare Health Care Solutions, Inc. for Relief from the Automatic Stay (“**Motion**”), having come before the Court; the Court finding that LBR 9014 provides for the entry of an order if a response has not been filed within fourteen (14) days after the service of the Motion; and the Court finding that no response has been filed within fourteen (14) days; and the Court independently finding cause to grant the Motion has been demonstrated,

NOW, THEREFORE, IT IS ORDERED that the stay is modified so as to allow Movant Brendan Mylewski to go forward with the Wayne County Circuit Court Case No. 12-011731-CK against the Debtor (the “**Action**”).

IT IS FURTHER ORDERED that the stay is modified insofar as necessary to allow Movant Advisacare Health Care Solutions, Inc. to seek permission from the Wayne County Circuit Court to intervene in the Action.

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-53846
Chapter 9

CITY OF DETROIT, MICHIGAN,
Debtor,

Hon. Steven W. Rhodes

NOTICE AND OPPORTUNITY TO OBJECT RE:
MOTION OF BRENDAN MYLEWSKI AND
ADVISACARE HEALTH CARE SOLUTIONS (COLLECTIVELY "MOVANTS")
FROM STAY AND REQUEST FOR ENTRY OF AN ORDER WAIVING
PROVISIONS OF FED. R. BANKR. P. 4001(A)(3)

Jami Jones, PLLC and Rhoades McKee PC have filed papers with the Court to Request Relief from Stay and Request for Entry of an Order Waiving Provisions of Fed. R. Bankr. P. 4001(a)(3).

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to [relief sought in a motion or objection], or if you want the court to consider your views on the Motion, within fourteen (14) days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

United States Bankruptcy Court
Eastern District of Michigan

(Mail to correct Court Address
Detroit, Flint or Bay City)

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

¹ Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

You must also mail a copy to:

Jami W. Jones
JAMI JONES, PLLC
33200 Dequindre, Suite 100
Sterling Heights, MI 48310
(586) 268-8200

Harold E. Nelson
RHOADES MCKEE PC
161 Ottawa, N.W., Suite 600
Grand Rapids, MI 49503
(616) 235-3500

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

JAMI JONES, PLLC
Attorneys for Brendan Milewski

By: /s/ Jami W. Jones
Jami W. Jones (P-64720)

Business Address:
33200 Dequindre, Suite 100
Sterling Heights, MI 48310
(586) 268-8200

Dated: November 7, 2013

RHOADES MCKEE PC
Attorneys for Brendan Milewski

By: /s/ Harold E. Nelson
Harold E. Nelson (P-27974)

Business Address:
161 Ottawa, N.W., Suite 600
Grand Rapids, MI 49503
(616) 235-3500

Dated: November 7, 2013

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-53846
Chapter 9

CITY OF DETROIT, MICHIGAN,
Debtor.

Hon. Steven W. Rhodes

**BRIEF IN SUPPORT OF MOTION OF BRENDAN MYLEWSKI AND
ADVISACARE HEALTH CARE SOLUTIONS FOR RELIEF
FROM THE AUTOMATIC STAY**

FACTS

On or about August 13, 2010, Brendan Mylewski, a firefighter for the Debtor, was engaged in his duties on behalf of the Debtor with respect to a fire at the intersection of Drexel Road and Jefferson Avenue in Detroit, Michigan. In the course of exercising his duties, Mr. Mylewski suffered multiple severe injuries, resulting in permanent and complete disability.

Pursuant to both the Detroit City Charter and the Master Agreement between the City of Detroit and the Detroit Firefighters Association, Mr. Mylewski became entitled to certain benefits as a duty disability retiree, similar to the benefits available under the Michigan Worker's Disability Compensation Act.

On or about January 2012, the Debtor ceased making disability payments for the care Mr. Mylewski required. On September 5, 2012, Mr. Mylewski filed a civil action against the Debtor (the "**Prepetition Action**") in the Circuit Court for Wayne County, Michigan (Case No. 12-011731-CK), seeking to recover the expenses which the City is obligated to pay on account of his disability. The Prepetition Action has been pending for approximately 14 months and discovery has been completed.

Advisacare Health Care Solutions, Inc. was, and is, providing Mr. Mylewski with physician approved in-home attendant care services. However, the Debtor has refused and failed to pay Advisacare's invoices for such services. As a result, Advisacare filed a Motion to Intervene in the Prepetition Action to assert and protect its pecuniary interest in the subject matter of the action.

The Prepetition Action has been stayed pursuant to 11 U.S.C. §§362 and 922.

DISCUSSION

THE AUTOMATIC STAY AGAINST THE MOVANTS SHOULD BE LIFTED PURSUANT TO 11 U.S.C. §362(D)(1).

The Bankruptcy Code, under 11 U.S.C. §362(d)(1), gives the Court the right “to grant relief from the stay ... for cause.” The term “cause” has no clear definition under the Bankruptcy Code and is determined on a case by case basis. Although 11 U.S.C. §362(d) provides examples of factors which would constitute “cause”. Those factors are not exclusive. *Matter of Fernstrom Storage and Van Co.*, 938 F.2d at 731 (7th Cir. 1991); *In re Miller*, 459 B.R. 657, 676 (BAP 6th Cir. 2011).

“ ‘Cause’ ” as used in § 362(d) “has no clear definition and is determined on a case-by-case basis.” *In re Tucson Estates*, 912 F.2d 1162, 1166 (9th Cir.1990). *See also In re Makarewicz*, 121 B.R. 262, 264 (Bankr.S.D.Fla.1990); *In re Revco D.S.*, 99 B.R. 768, 777 (Bankr.N.D.Ohio 1989). Nevertheless, a number of themes emerge from the cases interpreting § 362(d)'s expansive language. As we wrote in *Matthews*, 739 F.2d at 251, “[s]uspension of [the automatic stay] may be consonant with the purposes of the Bankruptcy Act when equitable considerations weigh heavily in favor of the creditor and the debtor bears some responsibility for creating the problems.” An influential district court opinion adopts a three factor test for determining whether “cause” exists, asking whether

- a) Any great prejudice to either the bankrupt estate or the debtor will result from continuation of the civil suit,
- b) the hardship to the [non-bankrupt party] by maintenance of the stay considerably outweighs the hardship of the debtor, and

c) the creditor has a probability of prevailing on the merits.

In re Pro Football Weekly, 60 B.R. 824, 826 (N.D.Ill.1986) (bracketed text in original, internal quotations omitted). See also *In re Bock Laundry Machine*, 37 B.R. 564, 566 (Bankr.N.D.Ohio 1984).

Matter of Fernstrom Storage and Van Co., 938 F.2d 731,735 (C.A.7,1991).

The Sixth Circuit has also identified the factors to be considered in determining whether cause exists to lift the stay:

Bankruptcy Code §362(d)(1) provides that the bankruptcy court may grant relief from the automatic stay for cause. See 11 U.S.C. §362(d)(1). The bankruptcy court considers the following factors in deciding whether to lift a stay: 1) judicial economy; 2) trial readiness; 3) the resolution of preliminary bankruptcy issues; 4) the creditor's chance of success on the merits; and 5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.

Garzoni v Kmart Corp., 35 F. App'x 179, 181 (6th Cir. 2002) (citing *In re United Imports, Inc.*, 203 B.R. 162, 167 (Bankr. D. Neb. 1996)).

Mr. Mylewski has a case pending in the Wayne County Circuit Court in which discovery has been completed and is essentially ready for trial. Judicial economy would be achieved by letting the Prepetition Action proceed. It is not apparent that the cost of defense to the Debtor would be greater in the Prepetition Action than it would be in another form. No great prejudice to the Debtor will result from the continuation of that action and, moreover, the hardship to Mr. Mylewski by maintenance of the stay is palpable and considerably outweighs any hardship of continuation of the Prepetition Action would cause the Debtor. Moreover, the Movants submit that they have a probability of prevailing on the merits given the provisions of the City Charter and the Firefighters' Agreement. Finally, the benefits to which Mr. Mylewski may be found entitled would be provided by the Police and Firefighters Retirement System, not from the Debtor's general revenues.

WHEREFORE, the Movants respectfully request that this Court grant their Motion.

Respectfully submitted,

JAMI JONES, PLLC
Attorneys for Brendan Milewski

Dated: November 7, 2013

By: /s/ Jami W. Jones
Jami W. Jones (P-64720)

Business Address:
33200 Dequindre, Suite 100
Sterling Heights, MI 48310
(586) 268-8200

RHOADES MCKEE PC
Attorneys for Advisacare Health Care Solutions,
Inc.

By: /s/ Harold E. Nelson
Harold E. Nelson (P-27974)

Business Address:
161 Ottawa, N.W., Suite 600
Grand Rapids, MI 49503
(616) 235-3500

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 13-53846
Chapter 9

CITY OF DETROIT, MICHIGAN,
Debtor.

Hon. Steven W. Rhodes

CERTIFICATE OF SERVICE

I hereby certify that on November 7, 2013, I served the following Papers: Motion of Brendan Mylewski and Advisacare Health Care Solutions for Relief from the Automatic Stay with attachments, on the following party at the following address:

CITY OF DETROIT – VIA ECF

RHOADES MCKEE PC

Attorneys for Advisacare Health Care Solutions,
Inc.

Dated: November 7, 2013

By: /s/ Harold E. Nelson

Harold E. Nelson (P-27974)

Business Address:

161 Ottawa, N.W., Suite 600

Grand Rapids, MI 49503

Phone: (616) 235-3500

E-Mail: ecf-hen@rhowadesmckee.com

EXHIBIT 5

AFFIDAVITS

NONE.

EXHIBIT 6-1



POLICE AND FIRE
RETIREMENT SYSTEM
OF THE
CITY OF DETROIT

2 WOODWARD AVE. STE. 908
DETROIT, MICHIGAN 48226
PHONE 313•224•3362
TOLL FREE 800•339•8344
FAX 313•224•3522

235945

August 9, 2011

Brendan Milewski
12289 Parkside Circle
Washington Township, Michigan 48094

On Thursday, July 21, 2011, the Board of Trustees approved your application for Duty Disability Retirement, effective August 14, 2011. Your monthly retirement allowance will be approximately \$2,957.61, and your first check, covering the period August 14, 2011, through September 30, 2011, will be mailed to you on or about October 1, 2011.

Employees disabled due to their employment are eligible for Workers' Compensation benefits pursuant to State Law. However, Michigan Law and Pension Provisions do not allow a disabled police officer or a disabled fire fighter to receive both a charter-authorized disability pension benefit and a Workers' Compensation benefit. Generally, an election must be made by the disabled employee as to which benefit will be paid. The disability benefit in the Defined Benefit Plan of the Retirement System is in the nature of and in lieu of Worker's Compensation. The recipient should consult a tax advisor with respect to the tax treatment of these benefits.

In accordance with the contractual language governing your Duty Disability Retirement, you will be contacted for re-examination purposes and to verify outside earned income. Failure to report for any re-examination or report any earnings will result in the WITHHOLDING of your pension check(s).

Any and all medical bills you incur, which are a direct result of your disability, should be submitted to the City Worker Compensation Office, 611 Coleman A. Young Municipal Center, Detroit MI 48226. Also, should you require authorization to seek medical attention regarding your disability, contact Joan Sikora (of the City Worker Compensation Office) at 224/3391.

Sincerely,

Walter Stampor, Executive Secretary



CITY OF DETROIT
FINANCE DEPARTMENT
RISK MANAGEMENT DIVISION

COLEMAN A. YOUNG
MUNICIPAL CENTER
2 WOODWARD AVENUE, SUITE 611
DETROIT, MICHIGAN 48226
PHONE 313•224•2282
FAX 313•224•4247
WWW.DETROITMI.GOV

December 4, 2012

Brendan Milewski
12289 Parkside Cir.
Washington Twp, MI 48094

Re: Attendant Care

Dear Mr. Milewski:

Attendant care is a benefit that is provided by the City of Detroit regarding your duty-related injury. But the benefit is only available when supported by medical documentation provided by your treating physician (Dr. Horn). I faxed Dr. Horn November 14, 2012 requesting your current attendant care needs. I was informed that Dr. Horn would not be in his office until November 20, 2012. I spoke to Dr. Horn November 20, 2012 and he stated he could not determine your current attendant care needs because he hasn't seen you since May 2012.

The attendant care benefit will be suspended until Dr. Horn evaluates you and sends your updated medical documentation as well as your current attendant care needs.

Thank you,

Yolanda Carter
Workers' Compensation Specialist

cc: Dr. Horn, University Physicians
Christine Greig, City of Detroit Law Department
Jami Jones, Attorney
File

DEC 05 2012

FRANK R. LANGTON & ASSOCIATES, P.C.

Attorneys at Law

Macomb Trial Lawyers Building
33200 Dequindre, Suite 100
Sterling Heights, Michigan 48310-5916

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*Also admitted in the District of Columbia

Facsimile
(586) 268-8518
Email: info@langtonlaw.com

Celeste Brenz
Office Manager

December 18, 2012

City of Detroit Fire Medical
Attn: Yolanda Daily-Carter
Municipal Center
2 Woodward Ave., Suite 308
Detroit, MI 48226

Re: Brendan Milewski

Dear Ms. Daily Carter:

I am in receipt of your correspondence dated December 4, 2012. Mr. Milewski no longer sees Dr. Horn. He is now seeing Dr. Steven Hinderer, who is prescribing his attendant care.

If you have any further questions or comments, please do not hesitate to contact me.
Thank you.

Very truly yours,


JAMI WITBECK JONES

JWJ/ses

cc: Christine Greig, Attorney at Law



University
Physician Group

DEPARTMENT OF PHYSICAL MEDICINE & REHABILITATION

- 18181 Oakwood Blvd., Ste. 411 • Dearborn, MI 48124 • (313) 438-7373 • Fax (313) 438-7375
- 44000 W. Twelve Mile Rd., Ste. 205 • Novi, MI 48377 • (248) 465-0100 • Fax (248) 465-0107
- 14585 Northline • Southgate, MI 48195 • (734) 284-0865 • Fax (734) 284-1628

- Steven Hinderer, M.D. - NPI#1619915782
- Jay Meythaler, M.D. - NPI#1346287828
- Annette DeSantis, M.D. - NPI#1730135492
- Parmod Mukhi, M.D. - NPI#1144215492
- Michael Yoshida, M.D. - NPI#1871545244
- Kristine Freese, PAC - NPI#1558385401

DATE: 7/02/12 Dx CODE: 344.1

PATIENT NAME: Brendan Mulewski

Rx

Attendant Care 8 hours/day;
7 days/week for 3 months

SIGNATURE: *Steven Hinderer*

Dr. Jay Meythaler M.D.
Dr. Steven Hinderer M.D.
Kristina Freese PA-C

DEPARTMENT OF PHYSICAL MEDICINE AND REHABILITATION

Date: 01/21/13

Dx Code: T4 paraplegia 344.1

Patient Name:

Brendan Milewski

CASE MANAGEMENT SERVICES _____ x 3 months

ATTENDANT CARE 8-16 HRS PER DAY 7 DAYS PER/WK 3 months

REPLACEMENT SERVICES _____ DURATION _____

TRANSPORTATION SERVICES _____ x _____

____ NEURO-OPHTHAMOLOGY EVALUATION _____

____ NEUROPSYCHOLOGY TESTING _____

____ PHYSIOLOGY EVAL AND TREAT _____

SIGNATURE Steven Hinderer DATE 01/21/13

NPI 1619915782

EXHIBIT 6-2

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRENDAN MILEWSKI

Plaintiff,

Docket No: 12-

CK

-vs-

CITY OF DETROIT,

Defendant.

JAMI JONES, PLLC
JAMI W. JONES P64720
Counsel for Plaintiff
33200 Dequindre Suite 100
Sterling Heights, MI48310
Tel: (586) 268-8200 / Fax: (586) 268-8518

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint. MCR 2.113(a).

PLAINTIFF'S COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, BRENDAN MILEWSKI, by and through his attorneys, JAMI JONES PLLC, and for his Complaint against the Defendant, CITY OF DETROIT, states unto this Honorable Court the following:

JURISDICTION

1. That Plaintiff, BRENDAN MILEWSKI, (also, herein, "Plaintiff" or "Milewski"), at all times pertinent hereto was a resident of the Township of Washington, County of Macomb, State of Michigan.
2. That Defendant, CITY OF DETROIT, ("Detroit", the "City", or "Defendant"), is a self-insured municipality located in Wayne County within the State of Michigan.
3. That the amount in controversy is over \$25,000.00 exclusive of costs, interest, and

attorney fees.

COUNT I - BREACH OF CONTRACT/VIOLATION OF DETROIT CITY CHARTER

Plaintiff hereby incorporates paragraphs one (1) through three (3) as if fully stated herein.

4. That Plaintiff was employed by the City of Detroit as a firefighter at all times relevant hereto.
5. That on or about August 13, 2010, Plaintiff was engaged in firefighting duties on behalf of the City in a building at the intersection of Drexel Road and Jefferson Avenue.
6. That during and in the course of his firefighting duties as described in the preceding paragraph, Plaintiff Brendan Milewski became permanently and completely disabled when he suffered multiple severe injuries, including but not limited to T-5 paraplegia.
7. That, pursuant to both the Detroit City Charter, (the "Charter"), and the Master Agreement between the City of Detroit and the Detroit Fire Fighter's Association, (the "Agreement"), Plaintiff, upon becoming so disabled, became entitled to certain benefits as a duty disability retiree. These benefits include, but are not limited to, benefits "like" those devised in the Michigan Worker's Disability Compensation Act, such as:

- a. Medical expenses;
- b. Home modifications;
- c. Prescription coverage;
- d. Attendant Care;
- e. Medical equipment and supplies; and,
- f. Case Management
- h. Vehicle Modification
- i. Wage loss
- j. Attorney fees for medical benefits wrongfully denied

8. That under the terms and conditions of the Charter and Agreement, Defendant became obligated to pay, on behalf of Plaintiff, the foregoing expenses or losses which the Plaintiff sustained relative to his duty-related bodily injury and total disability.
9. That Plaintiff meets all the requirements of total disability and total incapacity under the Charter and the Agreement, as he is, within the meaning of the Agreement, therefore entitled to benefits.
10. Specifically, Plaintiff is unable to perform, for wage or profit, due to injury, illness or disease, the material and substantial duties of either his occupation or of any occupation for which he is suited, based on education, training and experience.
11. Upon information and belief, Defendant does not dispute that the Plaintiff is totally disabled and totally incapacitated within the meaning of the Agreement and thus entitled to duty disability retirement benefits, however, Defendant has, without reason, discontinued and/or refused to pay the following benefits on behalf of the Plaintiff, to which he is entitled as stated above:
 - a. Medical expenses, including, but not limited to, hospitalizations, doctor's bills, and physical therapy;
 - b. Home and vehicle modifications;
 - c. Prescription medications;
 - d. Attendant Care;
 - e. Medical equipment and supplies; and,
 - f. Case Management services.
12. That Plaintiff has exhausted administrative or other remedies, if any, and this Court has jurisdiction over the subject matter of this case.
13. That Plaintiff's injuries and total disability/incapacitation persist, and benefits are (past)

due and owing, and Plaintiff is further unable to obtain some of the services and/or items to which he is entitled under the Agreement/Charter because of Defendant's inexplicable refusal to pay.

14. That the aforementioned contract of duty disability benefits was personal in nature in that it was foreseeable to the parties at the time of contracting that the Plaintiff relied and depended upon the performance of said contract in the event that he suffered a covered injury so as to insure his well-being.
15. It was also foreseeable to Defendant at the time of contracting, and at the time of the breach, that the failure to perform such contract would cause the Plaintiff to suffer anxiety, distress, fear, worry, and mental anguish and further daily difficulties from lack of needed care and equipment/modifications.
16. That Plaintiff has suffered mental anguish, damages, worry, distress and anxiety as a consequence of the breach of contract by Defendant.
17. That Plaintiff is claiming damages for any and all other items of loss and damage that he may be entitled to receive under the law as a result of Defendant's breach.
18. That Plaintiff has complied with any and all obligations on his part under the Agreement/Charter, both with regard to his duty disability retirement claim and otherwise.
19. That Defendant has wrongfully refused to pay for the items recited above in Paragraph Eleven, despite being supplied adequate proof of loss and entitlement to benefits.
20. That Defendant last paid any benefits of the type and variety listed in paragraph Eleven on or about January, 2012, and has provided no reasonable basis for its further refusal to pay the benefits to which Plaintiff is entitled.

21. That Plaintiff herein is claiming damages for any and all losses and expenses and for any and all other items of damage he may be entitled to receive under the law as a result of the wrongful breach of contract of the Defendant herein.

WHEREFORE, Plaintiff, BRENDAN MILEWSKI, seeks damages in whatever amount he is found to be entitled to in excess of Twenty-Five Thousand Dollars, (\$25,000.00), plus interest, and attorney fees for wrongfully denied medical benefits, as well as any other and/or further relief in his favor which the Court deems appropriate and just.

COUNT II - DECLARATORY RELIEF

Plaintiff adopts by reference paragraphs 1 through 21 as if fully re-stated herein.

22. The Court must determine the following:

- a. The applicability of the Detroit City Charter, the Master Agreement, and Defendant's Duty Disability Retirement benefits to Plaintiff's claims;
- b. The amount of medical expenses, attendant care expenses, and other expenses as set forth above in Paragraph Eleven of this Complaint, and/or other benefits, owed to Plaintiff by the Defendant; and,
- c. Any other determinations, orders, and/or judgments necessary to fully adjudicate the rights of the parties.

WHEREFORE, Plaintiff, BRENDAN MILEWSKI, seeks damages in whatever amount Plaintiff is found to be entitled to in excess of Twenty-Five Thousand Dollars, (\$25,000.00), plus interest, declaratory relief as above, as well as attorney fees for wrongfully denied benefits and any other and/or further relief in his favor which the Court deems appropriate and just.

Respectfully Submitted,

JAMI JONES, PLLC

/s/ Jami W. Jones

By: JAMI W. JONES P64720

Counsel for Plaintiff

33200 Dequindre Suite 100

Sterling Heights, MI 48310

Tel: (586) 268-8200 / Fax: (586) 268-8518

August 31, 2012

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRENDAN MILEWSKI

Plaintiff,

Docket No: 12-

CK

-vs-

CITY OF DETROIT,

Defendant.

JAMI JONES, PLLC
JAMI W. JONES P64720
Counsel for Plaintiff
33200 Dequindre Suite 100
Sterling Heights, MI 48310
Tel: (586) 268-8200 / Fax: (586) 268-8518

JURY DEMAND

NOW COMES the Plaintiff, BRENDAN MILEWSKI, by and through his attorneys, JAMI JONES, PLLC, and hereby makes this demand for trial by jury relative to the above-captioned matter. The appropriate fee has been paid herewith.

Respectfully Submitted,

JAMI JONES, PLLC

/s/ Jami W. Jones

By: JAMI W. JONES P64720

Counsel for Plaintiff

33200 Dequindre Suite 100

Sterling Heights, MI 48310

Tel: (586) 268-8200 / Fax: (586) 268-8518

August 31, 2012

EXHIBIT 6-3

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

BRENDAN MILEWSKI,

Plaintiff,

Case No. 12 -011731-CK

v.

Hon. Daniel P. Ryan

12-011731-CK

CITY OF DETROIT,

Defendant.

FILED IN MY OFFICE
WAYNE COUNTY CLERK
7/1/2013 3:52:06 PM
CATHY M. GARRETT

Jami W. Jones (P64720)
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Mary Ann Cartwright (P28678)
Stephen J. Hulst (P70257)
RHOADES McKEE PC
Attorneys for AdvisaCare Healthcare Solutions
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Grand Rapids, MI 49503
(616) 235-3500

ADVISACARE HEALTHCARE SOLUTIONS' MOTION TO INTERVENE

AdvisiCare Healthcare Solutions, Inc. ("AdvisiCare"), pursuant to MCR 2.209 and through its attorneys Rhoades McKee PC, moves to intervene in the above-captioned matter. As explained in more detail in the accompanying Brief in Support (incorporated by reference), AdvisiCare has provided daily in-home care to Plaintiff Brendan Milewski since April of 2012, but Defendant City of Detroit has failed to pay any of AdvisiCare's invoices. In order to

protect its legitimate interests in receiving compensation for the substantial services it has provided, and continues to provide, to Mr. Milewski, AdvisaCare moves to intervene in this matter as a plaintiff, pursuant to the pleading attached as **Exhibit 1** to the Brief in Support of this Motion.

WHEREFORE, AdvisaCare respectfully requests that the Court grant its Motion to Intervene and permit AdvisaCare to join this case as an Intervening Plaintiff pursuant to the pleading attached as **Exhibit 1**.

Dated: July 1, 2013

RHOADES McKEE PC
Attorneys for AdvisaCare

By: /s/ Stephen J. Hulst

Mary Ann Cartwright (P28678)

Stephen J. Hulst (P70257)

Business Address:

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Telephone: (616) 235-3500

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

BRENDAN MILEWSKI,

Plaintiff,

Case No. 12 -011731-CK

v.

Hon. Daniel P. Ryan

CITY OF DETROIT,

Defendant.

Jami W. Jones (P64720)
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ADVISACARE HEALTHCARE SOLUTIONS' MOTION TO INTERVENE

AdvisaCare Healthcare Solutions, Inc. ("AdvisaCare"), pursuant to MCR 2.209 and through its attorneys Rhoades McKee PC, moves to intervene in the above-captioned matter. As explained in more detail in the accompanying Brief in Support (incorporated by reference), AdvisaCare has provided daily in-home care to Plaintiff Brendan Milewski since April of 2012, but Defendant City of Detroit has failed to pay any of AdvisaCare's invoices. In order to

protect its legitimate interests in receiving compensation for the substantial services it has provided, and continues to provide, to Mr. Milewski, AdvisaCare moves to intervene in this matter as a plaintiff, pursuant to the pleading attached as **Exhibit 1** to the Brief in Support of this Motion.

WHEREFORE, AdvisaCare respectfully requests that the Court grant its Motion to Intervene and permit AdvisaCare to join this case as an Intervening Plaintiff pursuant to the pleading attached as **Exhibit 1**.

Dated: July 1, 2013

RHOADES McKEE PC
Attorneys for AdvisaCare

By: /s/ Stephen J. Hulst

Mary Ann Cartwright (P28678)

Stephen J. Hulst (P70257)

Business Address:

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Grand Rapids, MI 49503

Telephone: (616) 235-3500

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

BRENDAN MILEWSKI,

Plaintiff,

Case No. 12 -011731-CK

v.

Hon. Daniel P. Ryan

CITY OF DETROIT,

Defendant.

Jami W. Jones (P64720)
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**ADVISACARE HEALTHCARE SOLUTIONS' BRIEF IN SUPPORT OF MOTION TO
INTERVENE**

INTRODUCTION

AdvisaCare Healthcare Solutions, Inc. ("AdvisaCare"), has provided daily in-home care to Plaintiff Brendan Milewski since April of 2012, following Mr. Milewski's tragic injuries suffered while working as a firefighter for Defendant City of Detroit. Despite the City of Detroit's obligation to pay for Mr. Milewski's physician-authorized, in-home attendant care, the

City of Detroit has failed to pay any of AdvisaCare's invoices and presently owes well over \$100,000. While Mr. Milewski's Complaint includes a claim against the City of Detroit for his attendant care services, the City of Detroit has recently stated that it will not negotiate with AdvisaCare in an effort to resolve its outstanding invoices because AdvisaCare is not a party to this action. Therefore, in order to protect its legitimate interests in receiving compensation for the substantial services it has provided, and continues to provide, to Mr. Milewski, AdvisaCare moves to intervene in this matter as a plaintiff, pursuant to the pleading attached as **Exhibit 1**.

BACKGROUND

This case involves claims by Plaintiff Brendan Milewski for certain benefits to which he is entitled from Defendant City of Detroit. Mr. Milewski was a firefighter for the City of Detroit who was tragically injured while performing his firefighting duties. Mr. Milewski's injuries have rendered him a paraplegic. As pled in his initial Complaint, Mr. Milewski seeks "benefits 'like' those devised in the Michigan Workers' Disability Compensation Act, such as...Attendant Care." Mr. Milewski's Complaint, ¶ 11.

AdvisaCare has provided daily in-home, attendant care for Mr. Milewski since April of 2012. The in-home care provided by AdvisaCare to Mr. Milewski is pursuant to a plan of care certified by his doctors and is necessitated by the injuries he suffered performing his firefighting duties for the City of Detroit. AdvisaCare has issued invoices to the City of Detroit for this in-home care, but the City of Detroit has failed and refused to make even one payment to AdvisaCare. The amount due to AdvisaCare for the services provided to Mr. Milewski through June 23, 2013, is \$130,822.44.

Although Mr. Milewski included claims for attendant care in his Complaint against the City of Detroit, and despite the fact that only AdvisaCare can properly negotiate its bills, the City

of Detroit has recently made clear that they will not negotiate with AdvisaCare to resolve its outstanding bills because AdvisaCare is not a party to this proceeding. See email attached as **Exhibit 2**. Therefore, to adequately protect its legitimate interests, AdvisaCare now moves to intervene in this case as a plaintiff.

ARGUMENT

Intervention has been described as “an action where a third party becomes a party in a suit that is pending between others.” *Hill v L.F. Transp, Inc*, 277 Mich App 500, 508; 746 NW2d 118 (2008). “The rule for intervention should be **liberally construed to allow intervention** where the applicant's interests may be inadequately represented.” *Neal v Neal*, 219 Mich App 490, 492; 557 NW2d 133 (1996) (emphasis added). Intervention is a “favored method” for purposes of judicial economy and avoiding a multiplicity of suits. *See, e.g., Tucker v Clare Bros Limited*, 196 Mich App 513, 520 n 2; 493 NW2d 918 (1992).

The applicable rule addressing intervention is MCR 2.209. That Rule permits both intervention as a matter of right as well as permissive intervention:

(A) Intervention of Right. On timely application a person has a right to intervene in an action:

(1) when a Michigan statute or court rule confers an unconditional right to intervene;

(2) by stipulation of all the parties; or

(3) **when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.**

(B) Permissive Intervention. On timely application a person may intervene in an action

(1) when a Michigan statute or court rule confers a conditional right to intervene; or

(2) **when an applicant's claim or defense and the main action have a question of law or fact in common.**

In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

MCR 2.209(A), (B) (emphasis added). Procedurally, the person seeking to intervene must simply apply to the court by motion, stating the grounds for intervention and including a pleading stating the claim or defense for which intervention is sought. MCR 2.209(C).

These rules were recently applied by the Michigan Court of Appeals in *Johnson v Titan Indemnity Co*, 2013 WL 2226962 (Mich App, May 21, 2013) (**Exhibit 3**). There, the plaintiff was injured in an auto accident and received medical treatment from Southeast Michigan Hospital. The plaintiff filed a first-party suit against an insurance company for personal injury protection benefits under the no-fault act. The parties ultimately entered into a settlement agreement, but that agreement failed to account for the Hospital's bills and lien. The Hospital moved to intervene but was denied by the trial court. The Court of Appeals reversed.

On appeal, the court reviewed MCR 2.209 and noted that the rule for intervention "should be liberally construed." *Id.*, at *3 (internal citation omitted). Reviewing the record, the court concluded that the Hospital had an interest in the "property or transaction" that was the subject of the action, namely, "Southeast provided over \$56,000 of medical treatment to [plaintiff]." *Id.* In addition, the court held that the disposition of the action would impair or impede the Hospital's ability to protect its interest in recovering the unpaid medical bills and that the Hospital's intervention would not overcomplicate the proceedings because "its claim is similar to the other claims involved in the case." *Id.* Therefore, the Court of Appeals held that the trial court abused its discretion in denying the Hospital's motion to intervene. *Id.*; *see also Tucker, supra* at 517-518 (stating that the proper procedure for parties looking to protect their workers' compensation lien is to "formally intervene").

Here, AdvisaCare is entitled to intervene as a matter of right. Like Southeast Hospital in *Johnson*, AdvisaCare has a clear interest in the subject matter of this case, namely, the fact that it has provided over \$100,000 of in-home care to Mr. Milewski. Only AdvisaCare can properly negotiate its bills for the substantial services it has rendered to Mr. Milewski. Moreover, given the City of Detroit's recent indication that it will not negotiate with AdvisaCare because it is currently a non-party, AdvisaCare's interest certainly may be impaired if this case continues in its absence. Therefore, AdvisaCare has a right to intervene as a plaintiff and assert its claims in order to protect its interests. Those claims are reflected in the pleading attached as **Exhibit 1**, as required by MCR 2.209(C).

At the very least, AdvisaCare should be allowed to permissively intervene. AdvisaCare's claims for payment and the case filed by Mr. Milewski unquestionably involve common issues of law and fact. Indeed, Mr. Milewski included claims for attendant care in his own Complaint and, therefore, AdvisaCare's claims involve the same facts and law applicable to Mr. Milewski's claims for attendant care benefits. Moreover, there is no undue delay or prejudice to Mr. Milewski or the City of Detroit. The City of Detroit only recently indicated its unwillingness to negotiate with AdvisaCare to resolve its substantial bills for the in-home care provided to Mr. Milewski, discovery in this matter does not close until September of 2013, this case has yet to go to case evaluation, and, as noted above, AdvisaCare's claims seek the same damages that Mr. Milewski has been seeking from the beginning of this litigation.

Finally, permitting AdvisaCare to intervene in this matter makes abundant sense from a judicial economy standpoint. All of the benefits to which Mr. Milewski is entitled, including AdvisaCare's bills, can and should be resolved in this proceeding, thereby avoiding separate litigation of these issues.

CONCLUSION

AdvisaCare is entitled as a matter of right to intervene in this case in order to protect its legitimate interests and pursue recovery for the substantial in-home care provided to Mr. Milewski. At a minimum, given the common questions of law and fact and the lack of any undue delay or prejudice, AdvisaCare should be permitted to intervene in this case.

WHEREFORE, AdvisaCare respectfully requests that the Court grant its Motion to Intervene and permit AdvisaCare to join this case as an Intervening Plaintiff pursuant to the pleading attached as **Exhibit 1**.

Dated: July 1, 2013

RHOADES McKEE PC
Attorneys for AdvisaCare

By: /s/ Stephn J. Hulst

Mary Ann Cartwright (P28678)

Stephen J. Hulst (P70257)

Business Address:

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EXHIBIT 1 TO
ADVISACARE'S MOTION TO INTERVENE

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

BRENDAN MILEWSKI,

Plaintiff,

Case No. 12 -011731-CK

and

ADVISACARE HEALTHCARE
SOLUTIONS, INC.

Intervening Plaintiff,

v.

Hon. Daniel P. Ryan

CITY OF DETROIT,

Defendant.

Jami W. Jones (P64720)
JAMI JONES, PLLC
Attorney for Plaintiff
33200 Dequindre, Suite 100
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Christine M. Greig (P58116)
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Mary Ann Cartwright (P28678)
Stephen J. Hulst (P70257)
RHOADES McKEE PC
Attorneys for Intervening Plaintiff
AdvisaCare Healthcare Solutions
161 Ottawa Ave., NW, Ste. 600
Grand Rapids, MI 49503
(616) 235-3500

INTERVENING PLAINTIFF ADVISACARE HEALTHCARE SOLUTIONS'
COMPLAINT

Intervening Plaintiff AdvisaCare Healthcare Solutions, Inc. ("AdvisaCare"), through its attorneys Rhoades McKee PC, states as follows for its Complaint in the above-captioned matter:

JURISDICTION AND VENUE

1. Plaintiff Brendan Milewski is a resident of the Township of Washington, Macomb County, Michigan.
2. Intervening Plaintiff AdvisaCare is a Michigan corporation with a registered office address of 4234 Cascade Road, Suite 3, Grand Rapids, Kent County, Michigan.
3. Defendant City of Detroit (“the City” or “City of Detroit”) is a self-insured municipality located in Wayne County, Michigan.
4. This Complaint arises out of the City’s agreement and obligation under its Charter and the Master Agreement between the City and the Detroit Firefighter’s Association to pay AdvisaCare for medical treatment and care rendered to Brendan Milewski, as a permanently and completely disabled firefighter for the City.
5. AdvisaCare is seeking damages in excess of \$25,000.00, exclusive of interest and costs.
6. Jurisdiction and venue are proper in this Court.

GENERAL ALLEGATIONS

7. AdvisaCare incorporates all foregoing allegations by reference.
8. On or about August 13, 2010, Brendan Milewski was engaged in firefighting duties on behalf of the City in a building at the intersection of Drexel Road and Jefferson Avenue.
9. During and in the course of his firefighting duties, Mr. Milewski became permanently and completely disabled when he suffered multiple severe injuries, including but not limited to T-5 paraplegia.

10. Pursuant to both the Detroit City Charter (“Charter”) and the Master Agreement (“Agreement”) between the City of Detroit and the Detroit Fire Fighter’s Association, Mr. Milewski, upon becoming so disabled, became entitled to certain benefits as a duty disability retiree. These benefits include, but are not limited to, benefits “like” those provided under Michigan’s Worker’s Disability Compensation Act, such as:

- a. Medical expenses;
- b. Home modifications;
- c. Prescription coverage;
- d. Attendant care;
- e. Medical equipment and supplies;
- f. Case management;
- g. Vehicle modification;
- h. Wage loss; and
- i. Attorney fees for medical benefits wrongfully denied.

11. Under the terms and conditions of the Charter, Agreement, and applicable law, Defendant City became obligated to pay, on behalf of Mr. Milewski, the foregoing expenses or losses which Mr. Milewski incurred or sustained relative to his duty-related bodily injury and total disability.

12. Upon information and belief, the City does not dispute that Mr. Milewski is entitled to attendant care benefits and does not dispute that it is required to pay for such benefits on Mr. Milewski’s behalf.

13. AdvisaCare has been providing in-home, attendant care for Mr. Milewski since April of 2012.

14. The in-home care provided by AdvisaCare to Mr. Milewski is pursuant to a plan of care certified by his doctors and is necessitated by the permanent injuries he suffered performing his firefighting duties for the City of Detroit.

15. The City of Detroit is obligated to pay AdvisaCare for the care and treatment provided to Mr. Milewski.

16. AdvisaCare has provided, and continues to provide, Mr. Milewski with quality medical care and treatment.

17. AdvisaCare has issued invoices to the City of Detroit for Mr. Milewski's in-home care.

18. The amounts charged by AdvisaCare to the City of Detroit relating to Mr. Milewski were and are reasonable, customary, and fair under the Charter, Agreement, and applicable law.

19. The City of Detroit, however, has failed and refused to make even one payment to AdvisaCare for the care and treatment provided to Mr. Milewski.

20. The amount due to AdvisaCare for the services provided to Mr. Milewski through June 23, 2013, is \$130,822.44.

21. AdvisaCare continues to provide quality medical care and treatment to Mr. Milewski to date and continues to bill the City for such services.

**COUNT I – BREACH OF CONTRACT AND OBLIGATIONS UNDER CHARTER,
AGREEMENT, AND APPLICABLE LAW**

22. AdvisaCare incorporates all foregoing allegations by reference.

23. The City is obligated and agreed to pay AdvisaCare for the medical care and treatment provided by AdvisaCare to Brendan Milewski.

24. The City of Detroit breached its obligations and agreement to pay AdvisaCare by failing and refusing to pay AdvisaCare for the reasonable, customary, and fair fees charged by AdvisaCare for the care and treatment provided to Mr. Milewski.

25. As a result of the City's breach, AdvisaCare has suffered damages.

26. The City has unreasonably refused to pay or has unreasonably delayed making proper payments to AdvisaCare.

27. The City is also liable for the costs and fees incurred by AdvisaCare relative to this action.

WHEREFORE, AdvisaCare requests that judgment enter in its favor and against Defendant City of Detroit in the amount of \$130,822.44 for care rendered through June 23, 2013, damages for any amounts unpaid from June 23, 2013 forward, interest, attorneys' fees as provided by law, including but not limited to MCL 418.315, prejudgment interest, and that the Court grant AdvisaCare all other relief deemed equitable and just.

COUNT II – DECLARATORY RELIEF

28. Plaintiff AdvisaCare incorporates all foregoing allegations by reference.

29. An actual controversy exists between the parties regarding the following:

- a. The applicability of the Charter, Agreement, and the City's Duty Disability Retirement benefits to Mr. Milewski's claims;
- b. The amount of medical expenses, attendant care expenses – including the expenses relating to the care and treatment provided by AdvisaCare – and other expenses and/or benefits owed to Mr. Milewski or to be paid on his behalf by the City;
- c. Any other determinations, orders, and/or judgments necessary to fully

adjudicate the rights of the parties.

30. Declaratory relief is also needed to guide the parties' future conduct.

WHEREFORE, AdvisaCare requests that the Court declare that the City is required to pay the reasonable, customary, and fair fees charged by AdvisaCare for the care and treatment rendered by AdvisaCare to Mr. Milewski in the past, present, and future, and that the Court enter judgment in its favor for damages, interest, attorneys' fees as provided by law, prejudgment interest, and that the Court grant AdvisaCare all other relief deemed equitable and just.

Dated: July 1, 2013

RHOADES McKEE PC
Attorneys for Intervening Plaintiff
AdvisaCare

By: /s/ Stephen J. Hulst
Mary Ann Cartwright (P28678)
Stephen J. Hulst (P70257)
Business Address:
161 Ottawa Avenue, NW, Ste. 600
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Telephone: (616) 235-3500

EXHIBIT 2 TO
ADVISACARE'S MOTION TO INTERVENE

From: Christine Greig [<mailto:GreiC@detroitmi.gov>]
Sent: Tuesday, June 25, 2013 10:14 AM
To: Jami Witbeck
Subject: Milewski v. COD

Jami,

I received your message regarding the medical bills at issue in this matter. When we previously spoke, you indicated that there were \$34,000.00 in unpaid medical bills. I spoke extensively with risk management about unpaid medical bills. We need copies of any medical bills that Plaintiff is alleging the City has not paid. In your message you referenced RIM bills. We need all bills that Mr. Milewski is alleging have not been paid. Also, we need a letter of medical necessity for physical therapy. The City has continuously paid for Mr. Milewski's physical therapy despite the fact that no letter of medical necessity has been provided by his physician. At his deposition, Mr. Milewski presented the City with only three (3) unpaid bills (1) TIMMS; (2) Reflexonic; and (3) the exercise equipment. None of these bills was supported by either a letter of medical necessity or even a prescription.

In our previous conversation, you referenced a prescription written by Dr. Hinderer pertaining to attendant care and the stairlift. It is clear to me that I need to depose Dr. Hinderer. My office will attempt to schedule this deposition. Hopefully, we can get a date in the next 2 weeks.

Also, in speaking with Yolanda Carter and Valerie Bryant from risk management, they informed me that on several occasions they have attempted to contact Mr. Milewski regarding matters pertaining to his benefits. Mr. Milewski has not returned their calls. This is a problem. It is disingenuous for Mr. Milewski to allege that the City is not responsive to his claims and concerns, yet he will not contact us.

I think the best course of action at this time is to postpone our meeting. I do not think the July 1st meeting will be productive without all of the medical bills and Dr. Hinderer's deposition. We can re-schedule after Dr. Hinderer's deposition and all the medical bills in dispute have been produced. Furthermore, AdvisaCare should not attend any meeting to discuss settlement. They are not a party in this case. The City has no contract with AdvisaCare and has never come to terms of any kind to administer Mr. Milewski's attendant care benefit payments to AdvisaCare.

Please call with any questions or concerns. Thank you.

Christine M. Greig
City of Detroit Law Department
Assistant Corporation Counsel

Boleman A. Young Municipal Center
2 Woodward Ave., Ste. 500

Detroit, Michigan 48226
(313) 237-5037

FAX: (313) 224-5505

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EXHIBIT 3 TO
ADVISACARE'S MOTION TO INTERVENE



Not Reported in N.W.2d, 2013 WL 2226962 (Mich.App.)
(Cite as: 2013 WL 2226962 (Mich.App.))

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

UNPUBLISHED

Court of Appeals of Michigan,
Anthony JOHNSON, Plaintiff,
and
Southeast Michigan Surgical Hospital LLC d/b/a
Southeast Michigan Surgical Hospital, Intervening
Plaintiff–Appellant,
and
Great Lakes Anesthesia PLLC and Greater Lakes
Ambulatory Surgical Center PLLC d/b/a Endosur-
gical Center at Great Lakes, Intervening Plaintiffs,
v.
TITAN INDEMNITY COMPANY, Defendant,
and
Victoria General Insurance Company, Defend-
ant–Appellee,
and
Lee Boma Johnson, Defendant.

Docket No. 308685.
May 21, 2013.

Wayne Circuit Court; LC No. 09–020352–NI.

Before: BORRELLO, P.J., and K.F. KELLY and
MURRAY, JJ.

PER CURIAM.

*1 In this action to recover benefits under the no-fault act, intervening plaintiff Southeast Michigan Surgical Hospital (Southeast) appeals as of right a February 3, 2012, trial court order granting defendant Victoria General Insurance Company's (Victoria General's) motion for reconsideration wherein the court set aside an October 14, 2011, order reopening the case to allow Southeast to intervene in the proceeding. The trial court also

held that Victoria General and plaintiff Anthony Johnson had a binding settlement agreement and held that Southeast's patient lien agreement was void and stricken from the record. For the reasons set forth in this opinion, we reverse and remand for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

In August 2008, Johnson was a passenger in an automobile that was involved in an accident. Victoria General was the no-fault insurer of the automobile. Johnson suffered injuries that necessitated professional medical treatment from several medical care providers including Southeast. According to Southeast, Johnson's medical bill totaled \$56,182.19.

On August 18, 2009, Johnson commenced this lawsuit against Victoria General seeking to recover personal injury protection (PIP) benefits under the no fault act, MCL 500.3101 *et seq.* After Johnson filed his complaint and commenced discovery, on August 24, 2010, he signed a “Patient Lien Agreement” with Southeast wherein he agreed to grant the hospital a lien “against any judgments, settlements or other recoveries, for any and all services provided” by the hospital. Johnson agreed that the lien would extend to “any settlements or litigation proceeds, including proceeds from third party actions related to any injuries or conditions for which I am receiving treatment....” Further, the lien instructed Johnson's attorney to “withhold from any and all judgment, settlements or other recoveries monies owed to [Southeast] prior to any distribution....”

At or about the time Johnson signed the lien, according to Southeast, the hospital retained Ira Saperstein as counsel to “look into” Johnson's unpaid medical bills. According to Southeast, Saperstein wrote a letter to Kevin Geer, counsel for Johnson, inquiring about the instant lawsuit. Geer responded by letter on May 23, 2011, wherein he stated that Southeast was aware that “we filed a

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Not Reported in N.W.2d, 2013 WL 2226962 (Mich.App.)
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first party lawsuit *and have been pursuing claims on their behalf*” (emphasis added). Geer further stated, “[a]ccordingly please fully expect that any proceeds payable to your client will have our office as a payee due to our attorney lien.”

On May 24, 2011, the parties proceeded to case evaluation. Thereafter, Johnson and Victoria General agreed to terms of a settlement agreement where Johnson would receive \$50,000 and relinquish his right to any further recovery for all medical services provided between August 2008 and August 2011. The parties did not place a settlement agreement on the record.

*2 When Southeast learned of the terms of the settlement agreement, Saperstein wrote a letter to Geer and counsel for Victoria General indicating that Geer failed to include Southeast's bill at case evaluation. Saperstein indicated that Southeast would move to intervene as a party plaintiff. The next day, on September 22, 2011, Southeast moved to intervene pursuant to MCR 2.209(A) and (B), arguing that the parties would not adequately represent its right to recover from Victoria General.

On September 30, 2011, the trial court granted Southeast's motion to intervene after a hearing where Geer indicated that he had been under the mistaken belief that Southeast had already intervened or filed a separate suit to recover the unpaid medical bill. Victoria General opposed the motion to intervene. Two weeks later, on October 14, 2011, following a settlement conference, the trial court entered an order reopening the case.

Victoria General moved for reconsideration, arguing that Southeast was not entitled to intervene because it was aware of the pending litigation before case evaluation, yet failed to become involved until after the parties agreed to settle. At a motion hearing, Geer argued that Southeast lost its right to assert the patient lien because Southeast failed to become involved in the case until after case evaluation. Geer argued that it would be unjust to allow Southeast to assert the lien against Johnson.

In response, Southeast argued that it had no reason to suspect that Geer would fail to include its bill at case evaluation where Geer requested documents from Southeast to include in the case evaluation and where Southeast sent Geer the hospital bill, records, and the patient lien prior to case evaluation.

After hearing arguments, the trial court granted Victoria General's motion for reconsideration and held that Southeast's patient lien was void because Southeast “sat on their rights.” On February 3, 2012, the trial court entered a written order granting Victoria General's motion for reconsideration, setting aside its October 14, 2011, order reopening the case, and declaring the Southeast patient lien “stricken and void.” This appeal ensued.

II. ANALYSIS

Southeast contends that the trial court erred in denying its motion to intervene and in granting Victoria General's motion for reconsideration. We review a trial court's decision on a motion to intervene for an abuse of discretion. *Auto-Owners Ins. Co. v. Keizer-Morris, Inc.*, 284 Mich.App 610, 612; 773 NW2d 267 (2009). Similarly, we review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Tinman v. Blue Cross & Blue Shield*, 264 Mich.App 546, 556-557; 692 NW2d 58 (2004). A trial court abuses its discretion when it reaches a decision that falls “outside the principled range of outcomes.” *Auto-Owners Ins. Co.*, 284 Mich.App at 612. “This Court reviews de novo a trial court's resolution of issues of law including the interpretation of statutes and court rules.” *Hill v. L.F. Transp., Inc.*, 277 Mich.App 500, 507; 746 NW2d 118 (2008). “A court by definition abuses its discretion when it makes an error of law.” *In re Waters Drainage Dist.*, 296 Mich.App 214, 220; 818 NW2d 478 (2012).

*3 MCR 2.209(A)(3) provides that a party has a right to intervene when:

the applicant claims an interest relating to the property or transaction which is the subject of the

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action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

"The decision whether to grant a motion to intervene is within the court's discretion." *Precision Pipe & Supply, Inc. v. Meram Const., Inc.*, 195 Mich.App 153, 156; 489 NW2d 166 (1992). "The rule for intervention should be liberally construed to allow intervention where the applicant's interests may be inadequately represented." *Neal v. Neal*, 219 Mich.App 490, 492; 557 NW2d 133 (1996). However, "intervention may not be proper where it will have the effect of delaying the action or producing a multifariousness of parties and causes of action." *Precision Pipe & Supply, Inc.*, 195 Mich.App at 157.

Southeast contends that it had the right to intervene pursuant to MCR 2.209(A)(3), because it had an interest in the underlying action where its unpaid medical bill was a component of the PIP benefits that Victoria General owed Johnson.

Having reviewed the record, we conclude that Southeast had a right to intervene under MCR 2.209(A)(3) and that the trial court erred as a matter of law in concluding otherwise. In this case, Southeast had an interest in the "property or transaction" that was the subject of the underlying no-fault action. Specifically, Southeast provided over \$56,000 of medical treatment to Johnson. The benefits were directly related to Johnson's no fault action. In addition, disposition of the present action absent Southeast's participation would impair or impede Southeast's ability to protect its interest in recovering the unpaid medical bill. The proposed settlement agreement between Johnson and Victoria General did not take into account the amounts owed to Southeast, and the agreement would either impair or impede Southeast's future recovery from Victoria General.

Moreover, Southeast did not intentionally delay its motion to intervene by sitting on its rights. See

Precision Pipe & Supply, Inc., 195 Mich.App at 157 (reversing the trial court's order denying the appellant's motion to intervene in part because any delay caused by the intervention was not the fault of the appellant). Here, the record does not support that Southeast "sat on its rights." Rather, Southeast had reason to believe that Geer would include its bill in case evaluation and settlement talks. In particular, on the day before case evaluation, Geer sent a letter to Southeast's counsel representing that he was "pursuing claims" on Southeast's behalf. Furthermore, Geer acknowledged that Southeast sent him copies of the medical bill, records, and a copy of the patient lien agreement. Nevertheless, contrary to the representations in his letter, Geer did not include Southeast's unpaid medical bill in the case evaluation or settlement talks. Instead, Geer and Victoria General reached an informal settlement agreement without considering Southeast's interests. Once Southeast learned that Geer did not include its bill in agreeing to terms of the settlement agreement, it timely moved to intervene two weeks later.^{FN1} Moreover, Southeast's intervention will not overcomplicate the proceedings where its claim is similar to the other claims involved in the case. See *id.* In short, we find that the trial court abused its discretion in denying Southeast's motion to intervene.

FN1. We are mindful that Geer claimed at oral argument that he did not include Southeast's bill in the case evaluation because he thought that Saperstein indicated that he would move separately to recover the bill. However, at most, this assertion created an issue of fact regarding the communications between Geer and Saperstein concerning their respective plans going forward. It did not constitute proof that Southeast lost its right to intervene under MCR 2.209(A)(3) by sitting on its rights.

*4 Southeast also contends that the trial court erred in finding that Johnson and Victoria General had an enforceable settlement agreement. We re-

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view a trial court's decision to enforce a settlement agreement for an abuse of discretion. *Keyser v. Keyser*, 182 Mich.App 268, 270; 451 NW2d 587 (1990). An agreement to settle litigation is contractual in nature. *Kloian v. Domino's Pizza LLC*, 273 Mich.App 449, 456; 733 NW2d 766 (2006). "We review for clear error the findings of fact underlying the circuit judge's determination whether a valid contract was formed." *46th Circuit Trial Court v. Cty. of Crawford*, 476 Mich. 131, 140; 719 NW2d 553 (2006).

In this case, the record supports that the parties negotiated terms of a settlement agreement, but had not finalized the agreement. Here, the parties did not place a settlement agreement on the record. Further, at the time Southeast moved to intervene, based on the assertions of the attorneys for both Victoria General and for Johnson, it appears that Johnson had not yet signed the settlement agreement. At a hearing to address Victoria General's motion for reconsideration, Johnson's counsel agreed that, "the only reason that there isn't a settlement anymore is because of this intervention." Counsel for Victoria General stated: "The settlement was with Mr. Geer. When the intervenor hit ... following that negotiation, everything came to a screeching halt...." Thus, based on the representations of counsel for both parties, the trial court clearly erred in concluding that there was a binding settlement agreement as of January 6, 2012.

Finally, Southeast contends that the trial court erred in voiding its patient lien agreement. Whether a lien is authorized in a particular case involves a question of law that we review de novo. *Ypsilanti Charter Twp. v. Kircher*, 281 Mich.App 251, 281; 761 NW2d (2008).

Here, the trial court stated that the lien was void after finding that Southeast "sat on its rights." Given our conclusion above that the record does not support that Southeast "sat on its rights," the trial court necessarily erred in voiding the lien agreement on that basis. Furthermore, at the time the court made its ruling, Johnson had not yet final-

ized the settlement with Victoria General; thus, Southeast could not have "sat on its rights" with respect to asserting the lien against the settlement.

In sum, we conclude that Southeast had the right to intervene under MCR 2.209(A)(3), and that the trial court erred as a matter of law in concluding otherwise. Consequently, the trial court abused its discretion in denying Southeast's motion to intervene and in granting Victoria General's motion for reconsideration.^{FN2} See *Waters Drainage Dist.*, 296 Mich.App at 220 ("A court by definition abuses its discretion when it makes an error of law"). In addition, the trial court clearly erred in concluding that there was a binding settlement agreement between Johnson and Victoria General and in voiding Southeast's lien agreement.

FN2. Given our conclusion that Southeast had a right to intervene under MCR 2.209(A)(3), we need not address Southeast's argument that it also had a right to intervene under MCR 2.209(A)(1).

*5 Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Appellant having prevailed, may tax costs. MCR 7.219(A).

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