EXHIBIT A

Filed: 12/18/2018 2:02 PM
Fayette Circuit Court
Fayette County, Indiana

STATE OF INDIANA	)	IN THE FAYETTE CIRCUIT COURT
	)	
COUNTY OF FAYETTE	)	CAUSE NO. 21C01-1810-PL-000757

SISKIN PHYSICIANS, LLC, as assignee of Cardinal Physicians, LLC AND OPYS HOLDING, INC.	)
Plaintiffs,	)
v.	)
FAYETTE REGIONAL HEALTH SYSTEM, INC., RANDY WHITE, SAM BELL-JENT, DEBRA MICHALEK, DENNIS G. LOCKARD, EMERGENCY STAFFING SOLUTIONS, ENVISION HEALTHCARE CORPORATION, JIM THOMAS, DAN PARKER, JOEL LONG, SANDRA CATES, DR. GABOR TOLNAY, DR. RYAN MINNICH, CHRISTY GIBSON, MELISSA MATNEY, AND WENDE SHIPLEY	)
Defendants.	)

THIRD AMENDED COMPLAINT[1]

Plaintiffs Siskin Physicians, LLC ("Siskin"), as assignee of Cardinal Physicians, LLC, ("Cardinal"), and OPYS Holding, Inc. ("OPYS"), for their Complaint against Defendants Fayette Regional Health System, Inc. ("Fayette"), Randy White ("White"), Sam Bell-Jent ("Bell"), Debra Michalek ("Michalek"), Dennis G. Lockard ("Lockard"), Emergency Staffing Solutions ("ESS"), Envision Healthcare Corporation ("Envision"), Jim Thomas, Dan Parker, Joel Long, Sandra Cates,

[1] Plaintiffs have not amended any of the allegations against Fayette. However, the claims against Fayette are stayed by operation of 11 U.S.C. 362.

Dr. Gabor Tolnay, Dr. Ryan Minnich, Christy Gibson, Melissa Matney, and Wende Shipley ("Board") state as follows:

Introduction

1. This action devolves from Randy White, Debra Michalek, Dennis G. Lockard and Sam Bell's – White, as the CEO, and Michalek, Lockard and Bell, as the three CFOs for Fayette from 2010 through 2018 – substantial frauds, lies, and deceits to:

- first, in 2014, induce Plaintiffs to enter into an agreement with the hospital based upon false premises known to White, Michalek and Bell and concealed from Plaintiffs;
- second, once defrauding them to enter the agreement with the hospital, inducing Plaintiffs to refrain from terminating the agreement, with false promise after false promise that White and Bell would cause fulfillment of their obligations to the Plaintiffs despite having no intention of doing so;
- third, after taking advantage of Plaintiffs for close to four full years and causing extraordinary fiscal losses to Plaintiffs, White and Bell putatively terminated the contract through a total failure to perform;
- fourth, invoking the assistance of the Plaintiffs' direct competitors to poach the Plaintiffs' assets for White and Bell's direct benefit; and,
- finally, defaming Plaintiffs in the local Indiana media such that other regional hospitals and doctors would not do business with Plaintiffs.

2. The purpose of the scheme, as discussed within, had been, always, to protect the professional reputation of White and his those who occupied his Chief Financial Officer position (albeit at different times) between 2010 and 2018, including Michalek, Lockard, and Bell, conceal

the truth from the public, and falsely portray the Plaintiffs as the reason for the downfall of Fayette's Regional Health System.

3. Randy White, Michalek, Lockard, and Sam Bell's zeal to protect their reputation within the local Indiana community knows no bounds; and, for that reason, they engaged in the series of frauds, conspiracies, and defamation comprising this action.

4. Since 2010, Randy White has maintained one of the most prominent roles in local Indiana healthcare, as the Chief Executive Officer and President of the Fayette Regional Health System, and has parlayed that role into positions of substantial influence within the Indiana healthcare system overall. During that time, Sam Bell (albeit occupying different positions within White's organizations) worked in concert with White, particularly concerning his financial schemes to protect their reputations in the local community. Michalek and Lockard, similarly, maintained the position of Chief Financial Officer during critical times during 2010 – 2018.

5. The scheme, upon information and belief, originated before Plaintiffs entered the picture. Upon information and belief, because of facts known to White, Michalek, Lockard, and Bell, but concealed from the remainder of the local Indiana healthcare community in 2013 through 2015, White, Michalek, Lockard and Bell would need to find a savior, and then a scapegoat. On information and belief, the facts known to White, Michalek, Lockard and Bell, but concealed from the general community are:

- White, Michalek, Lockard and Bell made clear behind closed doors that they understood that changes in the local economy would result in fewer jobs that would provide private health insurance, leaving many in the Fayette community reliant on Medicaid and Medicare.[2]

[2] In a trade publication, as early as 2011, White wrote: "We're struggling mightily to meet the needs of the community and to give a big breadth of services.. With the declining payor mix and with bad debts mounting, we have to look at

- White, Michalek, Lockard and Bell made clear behind closed doors that they understood this would result in a lower "collection" rate for services provided to patients at Fayette Regional Hospital.
- White, Michalek, Lockard and Bell (and other members of the Fayette hospital c-suite at their direction) committed to volumes of 15,000 per year to Plaintiffs, in the agreement discussed above. However, from 2013 through 2015, they made statements (among other manifestations) that made clear their internal projections for patient volume would not exceed 15,000 in the years between 2015 and 2017 – when they committed to Plaintiffs it would – and that their internal projections showed patient volumes per year most likely to stagnate around 13,000.
- White, Michalek, Lockard and Bell made clear behind closed doors that they understood that the cost of healthcare services would, similarly, be rising.
- White, Michalek, Lockard and Bell anticipated that all of the foregoing would result in what White recently noted in an October 4, 2018 article amounts to "a perfect storm, a poorer, sicker community that has a very high Medicaid and Medicare reimbursement, losing revenue on what is at best a break-even proposition, you have decreasing cash flow…"
- Despite their predictions, and understandings of the root causes of the fiscal disaster on the horizon, White, Michalek, Lockard and Bell could not come up with a solution to save Fayette Regional Hospital.

---

all efficiencies and think outside the box as much as we can to stay viable and to stay open." The article continues that White intended to "spread the pain" to "staffing" companies that provided physician and non-physician service to their ER, among other departments within the hospital. *See*, http://www.ih-mag.com/healthcare/1245-fayette-regional-health-system.html.

- Compounding matters, White, as CEO and President and with the approval and assistance of Michalek, Lockard, and Bell, caused Fayette to secure substantial secured financing and unsecured debt that the hospital could not afford. White, Michalek, Lockard and Bell's bad business decisions only worsened the plight of the hospital.
- All of the foregoing greatly threatened White and Bell's career, and reputation in the local community. Thus, White, Michalek and Bell, as early as 2014, sought to find a short-term solution in the way of a scapegoat such that their individual reputations would go unscathed and the hospital could continue to operate – albeit at another entities expense – and then, when that entity could no longer absorb the unmitigated losses that White, Michalek, Lockard and Bell intended to inflict on it, place the blame of the hospital's ultimate collapse on its short term savior.
- *Enter Plaintiffs.*

6. Siskin is an Indiana limited liability corporation with its principal place of business in Indianapolis, Indiana. Siskin is a healthcare provider that provides emergency department physician staffing to Fayette. Siskin is a sister company of Cardinal, an Indiana limited liability company. The parent company to both entities is OPYS Physician Services ("OPYS" or "OPYS Physicians").

7. OPYS is the holding company for Cardinal, Siskin and various other subsidiaries serving substantially similar clientele in a substantially similar manner. OPYS, through itself and various subsidiaries such as Cardinal and Siskin, provides hospital-based physician staffing and management to emergency departments, hospitalists, and urgent care centers. It is a physician owned and operated group practice that utilizes only the highest performing, accomplished and

trained physicians. OPYS, and its subsidiaries, has spent years developing a trusted brand for hospitals, and emergency rooms, in Indiana. Combined with the desired and retained physicians, OPYS, and its subsidiaries, will provide fully staffed ER and hospitalist programs.

8. On information and belief, because White, Michalek, Lockard and Bell knew and understood that the economic climate in the healthcare community in Fayette, as well as the bad business decisions they made, would make it impossible for the hospital to survive during the period from 2015 through 2017, White, Michalek, Lockard and Bell needed to find a "partner" that would finance its ER operations during this time.

9. Accordingly, White, Michalek and Bell induced Cardinal into an agreement, executed on or about March 27, 2015, by which Cardinal would provide to Fayette from June 1, 2015 through February 28, 2017,[3] *inter alia*:

- Physicians, continuously, twenty-four hours daily, seven days per week, to perform services as Emergency Physicians;
- A medical director, continuously, seven days per week, to perform such medical director services.

10. While Cardinal successfully provided such services, without any complaint, as it always does to the greater Indiana community, White, Michalek, Lockard and Bell, from the beginning of the relationship and prior to the execution of the contract, had concocted a scheme such that they would obtain critical physician and medical services in a manner that would benefit White, Michalek, Lockard and Bell, but would critically harm, Plaintiffs.

11. As early as 2014, White, Michalek and Bell commenced negotiations concerning the services that Fayette needed from Cardinal and the manner in which Cardinal would be

[3] After this initial term, the term of the contract would automatically renew for twelve month periods absent written notification of non-renewal by either of the parties. The parties did permit the contract to renew one time.

compensated by Fayette, and as early as 2014, White and Bell had already started to concoct their scheme to formulate a situation where they would receive medical services for Fayette's emergency room for nominal to zero cost to Fayette. White, Michalek, Lockard and Bell did so because they needed a bailout for the economic conditions in the healthcare field that they predicted, but could not navigate and their bad business decisions – such as overleveraging the hospital with debts that it could not repay. More to the point, White, Michalek, Lockard and Bell did so such that the public would not discover that they had put the public health and safety at risk with their bad business decisions and acumen.

12. While Cardinal received the right to "bill and collect any professional fees and charges for services rendered" by its Physicians, White, Michalek, Lockard and Bell acknowledged that these billings would not fully compensate Cardinal for the costs and expenses of staffing Fayette's emergency room. Thus, Fayette agreed to pay Cardinal an annual subsidy paid on a monthly basis.

13. The subsidy had been a critical component of the contract, and without it, White, Michalek, Lockard, and Bell understood that Cardinal could not afford to engage in the agreement contemplated. The risk of incorrect projections – and indeed, fraud – would be too high.

14. The parties understood and agreed that the subsidy would be predicated upon the difference between Cardinal's practice expenses (including the cost of physician staff wages, fees paid to locums companies, fees paid for medical scribes[4], administrative expenses, and the agreed upon 11 percent management fee) (collectively, "Practice Expenses") and its projected practice revenues from professional collections attributable to physician services provided under the agreement ("Practice Revenue").

[4] For the entire course of the contractual relationship, not a single Scribe has been paid. The Scribe has cost $20.25 per hour and run twelve to sixteen hours per day, and has been provided for the entire course of the contract.

15. The Practice Revenue was initially calculated based on data provided exclusively by White and White's CFO, at the time Michalek, including what they claimed to believe – albeit a fabrication of their current state of mind – the anticipated volume of patients and collections (revenue) attributable to emergency room patients.

16. White and White's CFO, at the time Debra Michalek, guaranteed Fayette would provide 15,000 emergency room patients per year with an agreed upon collection rate of $92.26 per emergency room patient, providing an estimated practice revenue of $1,383,941.72 and Practice Expenses in the amount of $2,087,101.15; the monthly subsidy, approximately, amounted to $59,000 per month. White and White's CFO, at the time Debra Michalek, indeed, made representations of 20,000 patient volume projections – albeit inclusive of urgent care and ER – and collection rate per patient projections of $98 plus as their expectation.

17. At the time White and Debra Michalek provided that figure, the underlying data that they had in their possession concerning the trends in Fayette's annual patient volume and, upon information and belief, collection rate per patient made exceedingly clear that they did not (and could not) believe their own representations to Cardinal. White, Michalek, Lockard and Bell concealed from Cardinal such underlying data during the period under which the contract had been under negotiations, only disclosing some of it in 2017.

18. To mitigate against incorrect projections, within the contract, the parties negotiated for a readjustment provision whereby the "parties agree to re-evaluate the subsidy quarterly" and "adjust based upon demonstrated volume, revenue, and practice expenses." However, White Lockard, Michalek, and Bell knew full well that the billing information required to disprove their fraudulent representation concerning Practice Revenue (i.e., volume and revenue per patient) would not be available for many quarters once the contract commenced, and had no intention of

permitting Cardinal to exercise such provision. White, Michalek, Lockard and Bell, of course, would not permit the readjustment provision because they would undercut the value of their fraud.

19. Unsurprisingly, by White's own admission in an email on or about Nov 30, 2017, during the contract period volumes never reached 15,000. Per White himself, in 2016 volumes did not break 14,000, and in 2017, did not even reach 13,000, yet White rejected requests for subsidy adjustment. Compounding matters, Practice Expenses increased dramatically during the initial contract period, which had been well known within the medical community, but through this date, despite substantial documentation being provided by Cardinal, White and Bell have pretended to need further documentation to support this incontrovertible fact.

20. However, despite consistent requests, White, Lockard, Michalek and Bell refused for June 1, 2015 through December 31, 2017 to exercise the readjustment provision and "revaluate based upon demonstrated volume, revenue and practice expenses." Rather, White, Michalek, Lockard and Bell fermented an "audit" issue whereby they demanded additional information concerning "practice expenses." This had been a stall and delay tactic to avoid payment, and as discussed below, continues to be the "excuse" – albeit knowingly false – as to the reason that Bell, Michalek, Lockard and White failed to fulfill their financial obligations.

21. White, Michalek, Lockard and Bell had within their possession the volume information demonstrating that, at all times, it had been below 15,000 volume; as well as the information that the doctors billing rates had been above the $160 per hour agreed; as well as the information about the number of hours the doctor worked at a rate of, on average, $195 per hour. White, Michalek, Lockard and Bell, similarly, understood that the payor mix had changed to more Medicare and Medicaid (and less private insurance) – and White recently conceded the same in a defamatory interview given to the Connersville local paper – thus, reducing the collection rates.

White, Michalek, Lockard, and Bell did not need anything other than that which they already knew and understood to fund the readjustment, however, they failed to do so and never intended to do so.

22. White, Michalek, Lockard and Bell never intended to readjust the subsidy at the time the contract was executed, or any time during the initial term of the contract. That, first, would have undercut their initial fraud, and second, at the time the agreement was entered, they understood that the billing provider would never have been able to provide data in a manner timely enough to allow for quarterly readjustments of the subsidy amount, yet led Cardinal to believe that the same data would be available for it to have such quarterly reconciliations. More fundamentally, however, White, Michalek, Lockard and Bell knew that Fayette could not afford to fund the subsidy, if appropriately readjusted, and instead, sought to use Plaintiffs as a bailout so that the hospital could continue to operate during the timeframe that Plaintiffs financed its operations, and, thus, conceal from the public the remarkable harm caused by White and his Chief Financial Officers' financial mistakes that predated any relationship with the Plaintiffs for which the Plaintiffs had been secretly chosen by White, Michalek and Bell as a scapegoat for their bad business decisions.

23. Jim Thomas, Dan Parker, Joel Long, Sandra Cates, Dr. Gabor Tolnay, Dr. Ryan Minnich, Christy Gibson, Melissa Matney, and Wende Shipley (collectively "the Board") constituted the Board of Directors of Fayette, and, on information and belief, the Board, at all relevant times, had been made aware of all the information that had been in the possession of White, Michalek, Lockard and Bell. However, on information and belief, the Board did not disclose such information, and provided substantial assistance and aid in actively concealing such information from the Plaintiffs.

24. Had Cardinal known, as White, Lockard, Michalek and Bell did, at the time it executed the agreement that Fayette had drastically overprojected the volume of patient visits per year as well as the reasonably expected revenue per patient, Cardinal would not have entered into the contract with Fayette.

25. Had Cardinal known, as White, Michalek, Lockard and Bell did, at the time it executed the agreement that Fayette had no intention to permit Cardinal to exercise the readjustment provision, it would not have entered the contract with Fayette.

26. With continuous substantial shortfalls between the Practice Revenue and the Practice Expenses – an expected result of White, Lockard, Michalek and Bell's fraud – and no ability to reconcile and readjust the subsidy, Cardinal had to pursue a series of unfavorable financing transactions with hard-money lenders and merchant cash advance providers so as to continue to fund the Practice Expenses to finance the doctors that worked at Fayette. This remarkably expensive money coupled with the steady losses from the worsening difference in Practice Revenue and Practice Expenses, left Cardinal in dire financial situation, and Cardinal made the same clear to White and Bell. Among other reasons, the hard money loans had been taken to finance the doctors salaries because Cardinal did not want any hit to the "goodwill" that it built in the local medical community and did not want to have trouble recruiting good doctors in that community that would not work for an organization that did not fund them.

27. Despite all of the foregoing, White and Bell, far from readjusting and making up the years of shortfall, moved to the next part of their plan. White and Bell recognized that Plaintiffs soon would no longer have the financial capacity to bail them out, and their bad business decisions thus would be exposed. Thus, White and Bell responded to Cardinal's demand for readjustment and remuneration in 2018 by failing, entirely, to pay any monthly subsidy whatsoever for the

months of July, August and September, resulting in financial hardship to Plaintiffs that, in turn, made it such they could not fund certain doctors' contracts.[5] Once such economic harm had been done, White and Bell, with the substantial assistance of ESS and Envision – direct competitors to Plaintiffs – took advantage of the situation and poached numerous doctors introduced by Plaintiffs for use at the Fayette hospital (including but not limited to Dr. Maga, Dr. Baldwin, Dr. Sharma, Dr. Gill and Dr. Thompson). Plaintiffs' liquidity crisis caused such doctors concerns that enabled them to be poached. ESS and Envision picked up market share in the recruiting market through access to such doctors.

28. Defendants, in addition to attempting to poaching close to thirty doctors introduced by Plaintiffs to them (i.e., taking advantage of the liquidity crisis it caused), have contacted (and, upon information and belief, caused ESS and Envision to contact) the Plaintiffs' locums company – Mint Physicians – to access supplemental ("backup") doctors that the Plaintiffs had secured for Fayette. Such poaching efforts are ongoing and continuous.

29. Remarkably, the Board, on information and belief, approved all of the foregoing misconduct (after concealing critical information to assist the executives inducing Plaintiffs into a fiscally untenable contract). The Board had been complicit at all relevant times in the misdeeds of the Fayette executives named in this Complaint.

30. In a final indignity, now, after causing remarkable economic harms to the Plaintiffs, White and Bell have concocted a fantasy that they have run consistently in the local Indiana media. Namely, that the Plaintiffs left the hospital for no reason and the Defendants have not financed the

[5] White and Bell, from April 2018 – September 2018, brought in their own nurse practitioners and saw patients in the ER that Siskin physicians were contractually entitled to, and promised to refund the loss in volume as a component of the subsidy attributable to that during that same time frame that it had been happening. However, White and Bell have failed to do so, and upon information and belief, never intended to do so, and never had the means to do so; *see infra*.

contract because the Plaintiffs have failed to substantiate the amounts that are due and owed. Nothing could be further from the truth, and worse, the false and defamatory statements made by White have caused actual and presumed harm to the Plaintiffs. Nothing could be more damaging to the good will of a business than a broadside attack on their business practices in the local economy in which they are doing business by a known figure in that community; and those are exactly the tactics employed by White, with the complicity and knowledge of Bell.

31. By way of one example, on October 4, 2018, Fayette's CEO recently defamed Siskin and OPYS in the local Indiana media (including Indiana Economic Digest), providing an interview that resulted in publication in various local news and trade publications, stating: "The hospital recently changed the company providing physicians in the emergency room. 'We are a tightly regulated, and in our contract we have the obligation that when we are spending our dollars, we know where those dollars are going and what they are used for,' White said. 'We are at a point of expiration as to what they estimate the cost being, to us wanting full financial understanding of why those costs got to that point.' **Not being able to address that, he said the former service stepped away from the hospital. Documentation must be presented before payment and both sides did not come to an agreement after several months of negotiations."**

32. On October 31, 2018, in various local media, White stated: "I am not going to continue paying very long to something that I cannot prove or the auditors cannot verify…" "Every year we have a group of auditors come in to the payments, the way we make payments, the way we send out checks, and the way we pay our bills… It is my belief that we raise the rates without having the proof in the pudding as to what increased those rates…" "The ER rates doubled, and by August the hospital still not received information it is entitled to under the contract of having full, not estimated, numbers, but actual numbers that tie dollars to what we're paying them."

33. The problem with the foregoing statements is that they are demonstrably false and inconsistent.

34. As late as June 21, 2018, White conceded in correspondence to OPYS:

> In order to keep the lines of communications open, I wanted to personally notify you that the hospital was unable to release sufficient invoice payment to OPYS for tomorrow's Physician payroll. This is due to several factors, notably the delayed receipt of Medicare Disproportionate Share dollars and the initial effects of EHR Conversion that occurred last month.
>
> As you are likely aware, we are slated to open our 46-bed North Star Recovery units in less than two weeks. With this unit, we expect a rapid increase in cashflow. We want you to understand that we are committed to OPYS and its physicians. We will be reviewing our financial standing on a daily basis in order to get everything caught up as soon as possible.
>
> We appreciate the patience and dedication you have shown to our facility and hope to continue in a positive direction with you in the future.
>
> Sincerely,
>
> Randy White.

A true and correct copy of this letter is attached at Exhibit A.

35. The physicians, generally, while receiving this letter, had been unmoved, conveying to OPYS that it was OPYS' responsibility to fund their salaries, and the hospitals failures to fund OPYS appropriately did not impact their feelings towards OPYS at that time. Indiana healthcare is a tightly knit community, and accordingly, such a loss of goodwill with good doctors had significant impact on OPYS fiscally.

36. The foregoing series of frauds, cover-ups, thefts and "blame the victim" styled

defamation in the local media has threatened the very existence of one of Indiana's most critical healthcare businesses, serving the most critical function – providing excellent doctors for hospitals that need them to service their population.

Parties

37. Siskin is an Indiana limited liability corporation with its principal place of business in Indianapolis, Indiana.

38. OPYS is the holding company for Cardinal, Siskin and various other subsidiaries serving substantially similar clientele in a substantially similar manner. OPYS is also an Indiana corporation with its principal place of business in Indianapolis, Indiana.

39. On information and belief, Fayette is an Indiana corporation with its principal place of business in Connersville, Indiana. Fayette owns and operates a hospital in Connersville and, according to its website, provides "health care services to the entire Whitewater Valley and the surrounding area."

40. Randy White is the CEO of Fayette and is a resident of Indiana from 2010 through present.

41. Sam Bell-Jent is the VP of Finance and CFO of Fayette and is a resident of Ohio, working in Indiana. Prior to her role as CFO, she held other high ranking positions within White's organization, including Controller. Sam Bell-Jent assumed the role on or about the first quarter of 2017.

42. Debra Michalek had been the former Chief Financial Officer of Fayette and is or was a resident of Indiana, and worked in Indiana during relevant times. Debra Michalek occupied the position during 2014.

43. Dennis G. Lockard had been the former Chief Financial Officer of Fayette and is a resident of Indiana. Lockard occupied the position from 2015 through 2017, and hired Bell during that time period, to serve as his Controller. Lockard complained about White, including White's mismanagement, and attempted to take control of the CEO position; Lockard was then fired because of that.

44. Envision, according to its website, "is a family of healthcare companies focused on delivering high quality healthcare to patients in their homes, in the hospital and in between."

45. ESS, according to its website, "has been providing custom tailored management and staffing for emergency department, hospitalist, and hybrid programs since 2001. We specialize in low and mid-volume facilities in rural settings across a dozen states."

46. The Board, upon information and belief, resides in Indiana. The Board at all times had the traditional responsibilities and duties of a Board of Directors, with the caveat that because Fayette had been insolvent at all relevant times, the Board had fiduciary duties to creditors as opposed to shareholders of the hospital under the prevailing law. Such duties include the duty to act with due care, and the duty to avoid acting in their self-interest with split loyalties. As discussed, the Board acted to protect Fayette to the detriment of the Plaintiffs and aided and abetted their fraud, acted in concerted effort to intentionally interfere with Plaintiffs' contracts with their doctors, and substantially participated, and provided assistance and needed approvals, for all of the conduct described in this Complaint.

Jurisdiction and Venue

47. Venue is appropriate in this Court pursuant to Trial Rule 75(A)(1) because at least one of the individual defendants resides in Fayette County.

48. This Court has jurisdiction over the Defendants because the individual

defendants are (or were at relevant times) residents of Indiana and have engaged in acts or omissions in this State resulting in damages to Plaintiffs. Further, this Court has jurisdiction over Envision and ESS because they do business in the State of Indiana and this lawsuit arises out of specific actions taken by them in Indiana as alleged herein.

Background

49. Regional hospitals, like Fayette, often turn to outside healthcare providers, like Siskin, to provide twenty-four hour, seven-day a week physician coverage for their emergency room departments. Before establishing its relationship with Cardinal in 2015, Fayette had struggled to find consistent, high-quality physician staffing of its emergency room.

White, Michalek, Lockard and Bell's Reputational Exposure

50. On information and belief, Randy White, Michalek, Lockard and Sam Bell's zeal to protect their reputation within the local Indiana community know no bounds; and, for that reason, they engaged in the series of frauds, conspiracies, and libel comprising this action.

51. On information and belief, prior to their relationship with Plaintiffs, because of their high-ranking status in the Indiana healthcare community, White, Michalek, Lockard and Bell came into possession of information concerning changes in the local healthcare community and engaged in certain financing transactions that collectively made clear that the Fayette hospital system that they had been tasked to run and protect for the benefit of the local community would, inevitably, fail.[6]

[6] In a trade publication, as early as 2011, White wrote: "We're struggling mightily to meet the needs of the community and to give a big breadth of services… With the declining payor mix and with bad debts mounting, we have to look at all efficiencies and think outside the box as much as we can to stay viable and to stay open." The article continues that White intended to "spread the pain" to "staffing" companies that provided physician and non-physician services to their ER, among other departments within the hospital. *See*, http://www.ih-mag.com/healthcare/1245-fayette-regional-health-system.html.

52. White, Lockard, Michalek and Bell concealed such information from the remainder of the local Indiana healthcare community until they could hatch a scheme to protect their reputations – in that, finding a manner to keep the hospital working for the time being and then, ultimately, a scapegoat for its failure. White, Michalek, Lockard and Bell would need to find a savior, and then a scapegoat.

53. On information and belief, the facts that had been known to White and Bell, but concealed from the general community are:

- White, Michalek, Lockard and Bell made clear behind closed doors that they understood that changes in the local economy would result in fewer jobs that would provide private health insurance, leaving many in the Fayette community reliant on Medicaid and Medicare.
- White, Michalek, Lockard and Bell made clear behind closed doors that they understood this would result in a lower "collection" rate for services provided to patients at Fayette Regional Hospital.
- White, Michalek, Lockard and Bell (and other members of the Fayette hospital c-suite at their direction) committed to volumes of 15,000 per year to Plaintiffs, in the agreement discussed above, however, from 2013 through 2015, they made statements (among other manifestations) that made clear their internal projections for patient volume would not exceed 15,000 in the years between 2015 and 2017 – when they committed to OPYS it would – and that their internal projections showed patient volumes per year most likely to stagnate around 13,000.
- White, Michalek, Lockard and Bell made clear behind closed doors that they understood that the cost of healthcare services would, similarly, be rising.

- White, Michalek, Lockard and Bell anticipated that all of the foregoing would result in what White recently noted in an October 4, 2018 article amounts to "a perfect storm, a poorer, sicker community that has a very high Medicaid and Medicare reimbursement, losing revenue on what is at best a break-even proposition, you have decreasing cash flow…"
- Despite their predictions, and understandings of the root causes of the fiscal disaster on the horizon, White, Michalek, Lockard and Bell could not come up with a solution to save Fayette Regional Hospital.
- Compounding matters, during his time as CEO and President of Fayette Regional Hospital, White, with the approval and assistance of his CFO, caused Fayette to secure substantial secured financing and unsecured debt that the hospital could not afford. White and his Chief Financial Officers' and Controllers bad business decisions only worsened the plight of the hospital.
- All of the foregoing greatly threatened White, Michalek, Lockard and Bell's careers and reputations in the local community. Thus, White, Michalek and Bell, as early as 2014, sought to find a short-term solution in the way of a savior such that their individual reputations would go unscathed and the hospital could continue to operate – albeit at another entities expense – and then, when that entity could no longer absorb the unmitigated losses that White and his Chief Financial Officers and Controllers intended to inflict on it, place the blame of the hospital's ultimate collapse on its short term savior; now a scapegoat.

White and Michalek's Fraud

54. During 2014, Cardinal engaged in negotiations with White and Michalek concerning providing doctors and non-physician healthcare professionals to provide care in, among other departments, Fayette's emergency room.

55. The negotiations centered largely on the pricing surrounding the physicians and non-physicians. The parties agreed that the pricing would be distilled in a subsidy that would be calculated based upon the difference in projections for Practice Expenses and Practice Revenue, with Fayette responsible for the difference between the two.

56. Ultimately, the parties agreed that Practice Expense would be cost of physician staff wages, fees paid to locums companies[7], fees paid for medical scribes,[8] administrative expenses, and agreed upon eleven percent management fee.

57. Ultimately, the parties agreed that Practice Revenue would be calculated as the expected revenue per patient in the emergency room multiplied by expected volume of patients in the emergency room.

58. Because Practice Revenue and Practice Expense would, inevitably, be projections, the parties discussed and agreed to a readjustment provision that would be applicable and invoked on a quarterly basis during the period of the contract (which the parties agreed to be three years from the date of execution with automatic one year renewals absent cancellation by either party).

[7] Locums companies are implied within the recruiting costs component of Practice Expense definition within the Agreement, and Cardinal had been led to believe that such costs would be financed. Fayette never had any intention of funding them.

[8] The hospital agreed, in writing, to finance fifty percent of the medical scribe cost, however, never funded any of it, and never had any intention of funding them.

59. However, during the negotiations, White and Michalek knowingly and consistently provided inflated volumes such that they would undercut the subsidy that Fayette would be paying Siskin and Cardinal during the course of the contract.

60. On or about August 28, 2014, White and Michalek informed Cardinal that the correct volume is 15,000. At this time, White and Michalek had been well aware that Fayette would not produce such volumes, as they had internal documentation demonstrating the downward trend in volume for its emergency rooms for the prior years. Such documentation was concealed from Cardinal until 2017.

61. On or about September 11, 2014, Plaintiffs reviewed documentation with an ER Physician detail sheet that calculated "conservative" average patient payment of $98.85. However, upon information and belief, Volume and Payor Mix had been a known drastic overstatement by White and Michalek and resulted in incorrect practice collection amounts.

62. On or about November 5, 2014, White and Michalek provided documentation that contended Fayette would have annual patient volume of 20,000 (albeit inclusive of the ER and urgent care facility). White and Michalek understood at this time that figure would represent a substantial increase in volume, and, as stated earlier, Fayette was experiencing a downward trend in volume in the years preceding the contract's execution such that this statement represented a false representation, made with malice.

63. On or about December 4, 2014, White and Michalek provided documentation that contended Fayette would have annual patient volume of 20,000 (albeit inclusive of the ER and urgent care facility). White and Michalek understood at this time that figure would represent a substantial increase in volume, and, as stated earlier, Fayette was experiencing a downward trend

in volume in the years preceding the contracts execution such that this statement represented a false representation, made with malice.

64. At or around this same time, White and Michalek misrepresented the "payor mix." A payor mix in the medical field describes the mix of payment sources from which the hospital receives payment. The high-end payor mix would be comprised of premier insurance carriers, such as Blue Cross / Blue Shield, by way of example. The lower-end payor mix would be comprised of largely Medicaid, Medicare, and Self-Pay, by way of example. The payor mix is known to be directly correlated to the expected revenue per patient, in that, the high end payor mix would result in higher revenue per patient and the low end payor mix would result in lower revenue per patient. In projecting revenues, the payor mix is critical.

65. Because of declining industry in Connersville, Indiana, the payor mix would decline during the contract period. While such information had been known and available to White, Lockard, Michalek and Bell, that group steadfastly represented that the payor mix would remain consistent and that no known changes in the community would impact the payor mix.

66. The foregoing *merely* represents a sample of the specific lies from White, Michalek, Lockard and Bell concerning the volume and payor mix – and, by extension, revenue per patient—upon which Cardinal relied in calculating its practice revenue.

67. Indeed, because it had been so confident that the annual patient volume would equal or exceed 15,000, and the collection / revenue per patient would exceed the negotiated for amount (ultimately, $92.26) based on that which it had been told by Fayette, Cardinal agreed to reduce its hourly rate for its doctors from $180 to $160.[9]

[9] Adding color to the extent of Cardinal's concession, a local competitor to Fayette – Reid Health, operating a hospital in Richmond, Indiana – is advertising positions for healthcare professional for $240 per hour, with an additional $50,000 signing bonus, and $100,000 for student loan relief.

68. Ultimately, as discussed within, the result of the misconceptions caused by White, Michalek, Lockard and Bell's frauds about Fayette's collection/revenue per patient and the volume of patients expected during the course of negotiations resulted in a significant shortfall between the projected subsidy and that which would be required to make up the differential between the Practice Revenue and Practice Expense.

69. Additionally, during the course of negotiations, Cardinal was misled about a "fail safe" that the agreement, purportedly, would have for the benefit of Cardinal. However, at no time, did Fayette intend to permit that fail safe to benefit Cardinal.

70. The parties discussed a readjustment and/or reevaluation provision whereby if it turned out that the parties projections had been incorrect, the parties would be able, on a quarterly basis, to "true-up" by paying each other the difference in the real distinction between Practice Expenses and Practice Revenue (i.e., volume and revenue per patient).

71. However, White, Michalek, Lockard, and Bell understood, whereas Cardinal did not, that it would take multiple quarters for the billing service selected by them – discussed below – to provide volumes and collection rates on patients such that a reconciliation would be possible. Thus, it would be impossible for Fayette – White, Michalek, Lockard and Bell – to seriously intend to permit reconciliations that it knew would be impossible.

72. On information and belief, White, Michalek, Lockard, and Bell did not have any intention to permit the exercise of the readjustment and reevaluation provisions for the subsidy because, first, it would undercut their prior frauds with relation to the Practice Revenue, and second, would be impossible under the data flow from the billing servicer.

73. The Board shared the same understandings as Fayette's executives, and, upon information and belief, approved the concealment, misleading statements and manifestations of misleading conduct, as well as outright deceptive practices by White, Michalek, Lockard and Bell.

74. As a direct result of its beliefs (caused by White and Michalek's misrepresentations) concerning volumes, patient revenues, and the readjustment provisions, in March 2015, Cardinal entered into an Agreement for Physician Services Emergency Department with Fayette (the "Agreement"). A true and correct copy of the Agreement is attached at Exhibit B.

75. In August 2016, Cardinal assigned the Agreement to Siskin, and informed Fayette of the assignment. Fayette, through an email from its Vice President and CFO, Sam Bell Jent, acknowledged and agreed to the assignment.

The Agreement

76. Under the Agreement, Cardinal agreed to "provide physicians … continuously, twenty-four hours daily, seven days per week, to perform services as Emergency Physicians" at Fayette. Agreement, § 1.1. Cardinal also agreed to provide a Medical Director responsible for "leadership, planning, organization, staffing, coordination, and evaluation for emergency department activities." Agreement, § 1.2 & Ex. C.

77. As consideration for its services, Cardinal received the right to "bill and collect any professional fees and charges for services rendered" by its Physicians. Agreement, § 3.2. Fayette acknowledged, however, that these billings would not fully compensate Cardinal for the costs and expenses of staffing Fayette's emergency room. Thus, Fayette agreed to pay Cardinal a monthly subsidy of $59,723 (the "Subsidy"). Agreement, § 3.1 & Ex. B.

78. As outlined in Exhibit B of the Agreement, Fayette represented to Cardinal that its annual patient volume was 15,000. Agreement, Ex. B. Based on this volume, and an agreed upon

collection rate of $92.26 per emergency room patient, Fayette and Cardinal assumed that Cardinal would generate $1,383,941.72 in "Practice Revenue" each year. *Id.*

79. The parties further assumed that Cardinal would incur $1,401,600 in physician salary expense, plus another $478,671 in practice expenses. *Id.* The parties also factored in a margin of 11% Cardinal would need to realize on expenses it would incur. *Id.* These expenses, totaling $2,087,100, would exceed practice revenue by $703,159, resulting in Fayette agreeing to pay a subsidy of $59,723 per month to Cardinal. *Id.*

80. Fayette further agreed "to re-evaluate the subsidy quarterly, and adjust based upon demonstrated volume, revenue, and practice expenses." Agreement, Ex. B.

White and Bell "String Plaintiffs' Along" With Lies and Fraud in the Execution

81. Cardinal and Siskin satisfied their obligations under the Agreement by providing high-quality emergency room physician services on a 24/7 basis.[10]

82. However, patient volumes have been lower than the 15,000 represented by Fayette. For the period June 1, 2015 through December 31, 2017, the actual number of patient visits to Fayette's emergency room were 3,828 lower than Fayette represented in the Agreement. Moreover, Siskin's actual collection rate per patient was $86.15, approximately $6 lower than the figure used to calculate the Subsidy. Siskin experienced higher expenses as well. For example, the parties assumed Siskin would secure physician services at a rate of $160 per hour, but the actual hourly cost for physician services has been more than $190 per hour for each year.

[10] Fayette cannot dispute this fact. Fayette continues to poach some, and has tried to poach, all of the medical staff introduced to it by Siskin and OPYS. Another component of Fayette's inpatient-care facility is still staffed by OPYS, OPYS and Siskin are "best in class" within their industry and profession, and White, Bell, Lockard and Michalek know it and manifest that they know it through their conduct.

83. Because demonstrated actual volume, revenue, and practice expenses were different than those set forth in Exhibit B of the Agreement, Siskin made numerous demands that White, Lockard, Michalek and Bell fulfill the contractual obligation to adjust the Subsidy.

84. Despite these numerous demands, Bell, Lockard, Michalek and White did not do so. However, Bell, Lockard, Michalek and White did not outright state that Fayette would not fund the subsidy either. Instead, on information and belief, Bell, Lockard, Michalek and White commenced a new part of the scheme.

85. On information and belief, White and his Chief Financial Officers and Controllers recognized that had they outright failed to provide the subsidy, Plaintiffs would withdraw from the agreement, the hospital would fail without Plaintiffs funding the emergency room at their expense, and White, Michalek, Lockard and Bell's poor business acumen would be exposed to the local community. White and his Chief Financial Officers and Controllers would do whatever it took to avoid that. Thus, they needed to string Plaintiffs along into believing if they stayed the course, and continued to fund the Practice Expenses for the hospital, and endure steady losses for doing so, Plaintiffs would ultimately be compensated.

86. White, Michalek, Lockard and Bell, thus, did not tell Plaintiffs that they would never be paid – their actual intention – but instead fermented an argument that the Plaintiffs had not provided sufficient information to justify the readjustment to the Subsidy. Nothing could be further from the truth.

87. White, Michalek, Lockard and Bell had internal records and information about the woefully insufficient patient volume, discussed *supra*.

88. White, Michalek, Lockard and Bell had internal records and access to physician sources concerning the cost of the physicians to staff the hospital as well, as well as the number of hours that the physicians worked within the hospital.

89. White, Michalek, Lockard and Bell similarly understood the change in payor mix, and the attendant adverse change in payor mix, as recently conceded by White in the media.

90. White, Michalek, Lockard and Bell, additionally, understood the heightened cost of recruiting (included in the Practice Expense), as they recently articulated in the media that they understood the increase demand for recruitment of doctors in the Indiana region – increase demand with no change in supply clearly results in a higher cost. And, of course, Plaintiffs provided them with this information, in detail.

91. Despite all of this, Plaintiffs permitted White, Michalek, Lockard and Bell to assume consistency in costs of recruitment and payor mix / collection rate per patient from the date of the Agreement through 2016, 2017 and even 2018. Thus, in making its requests for readjustment, it only used information concerning the increase in costs due to doctors increase in hourly wage and the decrease in volume; neither had ever been disputed.

92. Without taking into consideration the collection rate per patient and increase in recruiting expenses, and only taking into account the volume decrease and increase in doctor compensation, Siskin has been underpaid by *at least* $1,478,907.34 for the period June 1, 2015 to December 31, 2017.

93. Rather than fund that amount, White and Bell engaged in consistent exchanges with the Plaintiffs during 2016 and 2017 seeking additional information to verify certain practice expenses that had nothing to do with the rates paid to doctors, and that, the parties all knew would only result in higher subsidy payments.

94. White and Bell did this, not because they needed the information – White and Bell knew that they were receiving discounts by Plaintiffs treating all variables but the volume and doctor salaries as flat – but because they wanted to ferment a reason to not fund the subsidy while keeping their "savior", the Plaintiffs, from terminating the contract. In reality, they did not want to pay and could not pay their bills.

95. In the beginning of 2018, when the contract was set to terminate, however, curiously, White and Bell changed their tune about increasing the payments. During the period between January 1, 2018 and June 30, 2018, Bell and White, upon demand from Siskin, started to finance the monthly subsidy at approximately $102,000.

96. As per emails from Bell, on or about February 26, 2018, Bell approximated that the invoices should be $102,153.58 because of the ER Staffing, Volume Analysis and Wage Subsidy for that period.

97. Accordingly, at all times, it is clear that Bell had sufficient information needed to determine that the subsidy should be substantially increased yet pretended not to have sufficient information during 2015, 2016 and 2017, leaving the Plaintiffs in dire financial straits while White and his Chief Financial Officers and Controllers looked, by all outward accounts, to be running a successful rural medical center; their only goal, of course, to preserve their own reputation.

98. Such figure ($102,153.58), by White and Bell's own written admission, had been readjusted upward from the prior subsidy in an amount that doubled the prior subsidy to account for the shortfalls in projected revenue and increase practice expenses that had been plaguing OPYS and Siskin for the entire contract period. However, despite their concessions, White and Bell never readjusted the subsidy for the period from June 1, 2015 through December 31, 2017.

99. White and Bell merely provided the increase in subsidy so that Plaintiffs would continue to finance their hospital while White and Bell considered and planned their next move to protect their own reputations in the Indiana medical community.

Bell Concedes A Liquidity Crisis; White Fabricates A Solution to String Plaintiffs Along

100. During 2018, White and Bell finally make clear that all the prior requests for further documentation and failures to fund the subsidy in accordance with the readjustment provision of the agreement had been a pretext for the fact that their bad business decisions and failure to appropriately navigate the Indiana local healthcare community – despite anticipating all the problems that they faced years before they faced them – made it so the hospital had no cash flow.

101. In April 11, 2018, Plaintiffs' CFO, Tim Balasia, writes to Bell that he hopes to receive his subsidy check after their visit that day. The following day Bell writes, for the first time, that she did not have the funds for the subsidy payment to be paid. At that time, Bell says nothing about needing further information to verify the amount requested and only notes that she did not have the money available to pay the subsidy. During this same exchange, Bell, out of frustration seemingly, concedes that she had not paid other vendors for months.

102. On May 8, 2018, Bell concedes that she had not paid employee benefits and other physician groups that have not been paid for months. Once again, there is no mention of any deficiency in documentation or that the subsidy is not owed.

103. In a text message exchange between Bell and Plaintiffs on May 17, 2018, Bell informs Plaintiffs, in response to an inquiry about late payments, that Fayette is negative $149,000 and cannot fund the subsidy payment.

104. On or about June 13, 2018, Bell tells Plaintiffs, in response to their request for payments due, "I cannot provide any assistance this week. I simply cannot give you what I do not have."

105. On or about July 17, 2018, Plaintiffs email Bell and White concerning payment of invoices, seeking subsidy payments for June and July, and they respond that after analyzing cash flow, Bell and White cannot fund anything, and will not be able to provide any further updates until the following week.

106. On or about August 29, 2018, Plaintiffs email Bell and White concerning payment of invoices, seeking subsidy amounts for June and July, and Bell responds that they are "in agreement" that it is appropriate for the subsidy amount to constitute $102,331, which is double the amount in the original Agreement.

107. During the time period that this back and forth between Plaintiffs and White and Bell occurred, White and Bell, through their representatives, continuously withheld the amounts due and owing for 2015 – 2017 subsidies, under the readjustment period, as well as the June – August, 2018 payments. However, White and Bell fermented a negotiation with Plaintiffs whereby they sought to receive more and more information concerning irrelevant variables in the calculation, such as ancillary recruiting expenses and insurance costs, (which they knew had gone up; which Plaintiffs had conceded would be flat and, which concession would inure to the benefit of the hospital because it would result in a lower subsidy) and did so in order to avoid paying the higher subsidy that they had, at this point, conceded should be paid.

108. Instructively, Bell writes on September 12, 2018, after withholding millions in subsidy during the 2015 – 2017 period and not funding any subsidy since June 2018: "In reviewing your Fayette contract review 2015 – 2017 document (attached), I think we need to step back and

remember the basics. All of the "projected" numbers in the original agreement were for the most part historical numbers that were simply used as a guide for a starting base on the monthly subsidy. Those projected numbers serve no other purpose. That starting base of $58,596.62 was to be re-evaluated quarterly and replaced with 'actual' numbers. NOT projected, NOT estimates, NOT averages, but true actual numbers."

109. Remarkably, White and his Chief Financial Officers and Controllers never had any intention of moving off the "projected" numbers – the fraudulent figures provided in 2014 to induce the 2015 contract. Rather, their intention had been to "project" any amount that the hospital could afford for several years, and then, when the hospital could no longer afford it, blame Plaintiffs – their mark – for "walking away" from the hospital, as if somehow, the Plaintiffs could absorb millions in losses in 2015 – 2017, where the subsidy readjustment never occurred, and then work for free in 2018, as Bell demanded.

110. Still, as late as June 21, 2018, White wrote in correspondence to OPYS Physicians:

> In order to keep the lines of communications open, I wanted to personally notify you that the hospital was unable to release sufficient invoice payment to OPYS for tomorrow's Physician payroll. This is due to several factors, notably the delayed receipt of Medicare Disproportionate Share dollars and the initial effects of EHR Conversion that occurred last month.
>
> As you are likely aware, we are slated to open our 46-bed North Star Recovery units in less than two weeks. With this unit, we expect a rapid increase in cashflow. We want you to understand that we are committed to OPYS and its physicians. We will be reviewing our financial standing on a daily basis in order to get everything caught up as soon as possible.

> We appreciate the patience and dedication you have shown to our facility and hope to continue in a positive direction with you in the future.
>
> Sincerely,
>
> Randy White.

Ex. A.

111. On information and belief, the Board had been aware and approved the conduct of its Executives to "string along" the Plaintiffs such that Plaintiffs would remain in an untenable fiscal arrangement under the guise of ultimately having their rights recognized and payments made pursuant to the subsidy readjustment provisions.

White and Bell Loot and Defame Plaintiffs While Trying to Hide Behind A Corporate Bankruptcy

112. Upon information and belief, on or about May or June 2018, White and Bell determined their next move to protect their reputation. White and Bell would turn their savior, Plaintiffs, into the villain and scapegoat for the healthcare disaster on the horizon.

113. On information and belief, White and Bell's plan can be best summarized as follows:

- Starve the Plaintiff of all revenue while compelling them to staff the hospital at their cost;
- When they cannot fund their operations and doctors because of this financial withholding by White and Bell, work with ESS and Envision to poach all the doctors that had been introduced into Fayette;
- File for Chapter 11 bankruptcy protection, as for the Fayette hospital, to avoid any corporate exposure and recourse by the Plaintiffs, as a consequence of the automatic stay;

- Defame Plaintiffs in the media to further weaken them and harm their brand, while also blaming them, exclusively, for the hospital's downfall, thus, scapegoating Plaintiffs and shirking the blame off White and Bell's bad business decisions and onto Plaintiffs in the eyes of the Indiana public at a time when, hopefully, all of the prior conduct had so weakened the Plaintiffs that they could not defend themselves in a three front war – media, litigation, and business theft of their doctors.

114. Rather, in addition to failing to adjust the Subsidy, White and Bell caused the hospital to fail to pay the Subsidy *at all* for the months of July, August and September 2018. Siskin again made numerous demands that Fayette cure its contractual breaches and pay the Subsidy. Siskin could not continue to staff Fayette's emergency room, and provide high-quality service to Fayette's patients, without receiving any compensation for its services. Siskin told White and Bell that the mistakes made in the original contract concerning projections (now, known to be fraud) in the volumes, collections per patient, and failure to readjust the "projections" that underpin the woefully insufficient subsidy noted in the contract (approximately $50,000) would cause Siskin to be unable to make payroll and essentially put Siskin out of business. White and Bell refused to pay the Subsidy and offered no justification whatsoever for Fayette's failure to do so. Instead, White and Bell, despite conceding that historical volumes, patient revenue and practice expenses for the contract period justified a far higher subsidy than received for the entire contract period, recanted that position and started a "fishing expedition" for data from OPYS and Siskin so as to stall and delay payment such that they could make other arrangements for Fayette's emergency room staffing.

115. Unsurprisingly, given Fayette's repeated failure to pay Siskin for its services, Siskin informed Fayette that it would no longer perform services under the Agreement if Fayette did not

cure its contractual breaches and pay the Subsidy (on that same date, Bell responds that she is not in any position to pay any funds to Siskin). Fayette again failed to cure, and Siskin terminated the Agreement due to Fayette's many material breaches.

116. Remarkably, Bell stated at this point that non-payment would not result in a justification for Plaintiffs to stop staffing the emergency rooms – apparently attempting to convert Plaintiffs into "involuntary servitude."

117. Fayette, Bell and White owe Siskin $204,662 for the unpaid July and August 2018 Subsidy payments, and a pro-rated Subsidy payment of $47,754.56 for September 2018. In addition, Siskin is owed further compensation for 2018 due to Fayette's refusal to adjust the Subsidy.

118. While they failed to make any payments, and stalled and delayed through their "data fishing expedition," White and Bell then replaced Siskin by "poaching" (i.e., hiring on or contracting with physicians Siskin was using to staff Fayette's emergency room). Under section 1.3 of the Agreement, Fayette must pay Siskin $28,000 for any physician Fayette hires who had been referred or assigned by Siskin to Fayette during the term of the Agreement.

119. In addition, in all of their contracts with physicians, including the physicians recruited to work at Fayette, Plaintiffs enter into various restrictive covenants with the physicians, including:

> Physician shall not, during the term of this Agreement and for a period of one year after termination or expiration of this Agreement, directly or indirectly provide any Physician Services rendered under this Agreement within any facility located within a thirty (30) mile radius of Facility… In addition, during the term of the Agreement and for a period of one year after termination or expiration of this Agreement, Physician shall not own, manage, lease, staff, or otherwise participate in the operation of any business or facility within a thirty (30) mile radius of Facility that provides any service that is also offered by Facility or a Facility affiliate, including but not limited to emergency medicine service… During the term of this Agreement and upon termination or expiration thereof, Physician will not use or disclose for his benefit any

> Confidential Information of the Company or Facility to any person or entity…. Confidential information includes, but is not limited to, data, forms, reports, systems or other materials containing confidential information specific to Facility, knowledge Physician obtained from Company or Facility during the course of providing Physician Services such as knowledge about patient lists or long or short term plans, prospective hospital materials designed or used to expand the client base, computer software or other methodology used to assign clients to providers, provider manuals used to instruct the providers on efficient provisions of Physician Services, or forms used in the provision of Physician Services, billing or record keeping, and computer software or other methodology used to perform utilization management, quality assurance, quality improvement or similar activities. Confidential information also includes knowledge or data in negotiations for contracts to provide medical services…

120. These agreements further prescribe that the restrictive covenants "shall survive the expiration or termination of this Agreement."

121. Despite these contractual restrictions, White and Bell enlisted the help of ESS and Envision to recruit the doctors that had previously been staffed at Fayette's hospital by Plaintiffs, after depriving the Plaintiffs of the liquidity that it needed to pay the doctors.

122. Doing so, of course, resulted in the hospital maintaining the doctors, ESS and Envision picking up Plaintiffs' market share, and the Plaintiffs losing substantial revenue and goodwill in the marketplace. White and Bell's conduct, with the substantial assistance of Lockard and Michalek, as well as ESS and Envision, poses a serious financial threats to Plaintiffs.

123. When Envision was contracted to succeed Siskin as the new physician staffing provider for the Fayette emergency room, it reached out to Plaintiffs to inquire about the legal impediments to it contacting doctors that had been placed at Fayette by Plaintiffs, as well as to understand the financial condition of Plaintiffs in view of their deteriorating relationship with Fayette. Plaintiffs made the contractual restrictions described above known to Envision, as well as the financial strain it had been under (and would continue to suffer) if these restrictions were

breached by Fayette and Plaintiffs' physicians. Envision was made aware of, and secured copies of, both the Agreement and Plaintiffs' physician contracts.

124. Similarly, ESS took over as the physician staffing provider for the Fayette emergency room in October 2018. On October 15, 2018, ESS representative Rebecca Brown reached out to Plaintiffs to inquire about the legal impediments to it contacting doctors that had been placed at Fayette by Plaintiffs, as well as to understand the financial condition of Plaintiffs in view of their deteriorating relationship with Fayette. Through counsel, Plaintiffs responded by phone, and also in writing:

> Rebecca,
>
> Thank you for your call. Siskin Physicians' arrangements with its independent contractor physicians are confidential and we are not willing or able to disclose their terms to any third parties, including ESS. That said, we can confirm that Siskin's contract with Fayette Regional Health System provides that in the event Fayette or any of its business partners engages any physician Siskin introduced to Fayette to provide emergency department physician services at Fayette within two years of the termination of Siskin's contract with Fayette, Fayette is required to pay Siskin a placement fee in the amount of $28,000 for each such physician it engages. It's my understanding that to date, Fayette has not paid Siskin any placement fees. We're prepared to actively enforce the terms of Siskin's agreement with Fayette and any third party that works in concert with Fayette to induce a doctor to provide emergency department physician services at Fayette in violation of the terms of such agreement.

125. Following this exchange, ESS was made aware of, and secured copies of, both the Agreement and Plaintiffs' physician contracts.

126. In the face of this knowledge, ESS and Envision worked with defendants to continuously call <u>all</u> the physicians that had been staffed in their hospitals, despite knowledge of their business (and, contractual) relationship with Plaintiffs. ESS and Envision were successful in recruiting several of Plaintiffs' physicians away from Plaintiffs, including Dr. Sharma, Dr.

Maga, Dr. Gill, Dr. Thompson, and Dr. Baldwin. These physicians, but for defendants' tortious interference with their contracts with Plaintiffs, would have been placed at other hospital by Plaintiffs. The result of such conduct has been, and will be, that the roster of doctors that Cardinal, Siskin, and OPYS, at large, have available to fill their obligations to existing and future customers will be depleted. Depleting the quality physicians with which OPYS has developed relationships is to destroy OPYS, itself. In doing so, White and Bell have also knowingly provided propriety information concerning the physician rosters maintained by Plaintiffs to ESS and Envision; enhancing the advantage that they have given Plaintiffs' competitors already by hatching the scheme that deprived Plaintiffs of the liquidity needed to fund their operations and recruited medical professionals. In carrying out the illegal poaching, White, Bell, ESS, and Envision similarly, engaged in illegality, including the use of theft of Plaintiffs' proprietary information, and the comingling of State grants that should have been used for their specified purpose, but instead, upon information and belief, have been used to finance the physicians that have been poached, illegally, from the Plaintiff.

127. On or about April 2018 through September 15, 2018, White and Bell, similarly, have "brought in" their own nursing staff – nursing practitioners – for Siskin's physicians which is disallowed under the contract. When confronted by Siskin in regards to this matter, Bell and White unquestionably and unequivocally promised to provide a credit and payment, within the subsidy calculation, for the lost volume attributable to this nurse practitioner "swap out." The credit should amount to approximately 15 patients per day, five days per week from April 2018 through September 2018.

128. On information and belief, the Board had been aware of, and approved, the foregoing conduct, including the failure to finance any subsidy payments during June, 2018

through present and the subsequent effort – knowing that Defendants had caused a liquidity crisis at Plaintiffs – to work with Plaintiffs' direct competitors to poach their assets – Plaintiffs' doctor roster.

129. In a final blow, Fayette's CEO recently has engaged in a press campaign to defame Plaintiffs in the local Indiana media:

- On October 4, 2018, providing an interview that resulted in publication in various local news and trade publications, stating: "The hospital recently changed the company providing physicians in the emergency room. 'We are a tightly regulated, and in our contract we have the obligation that when we are spending our dollars, we know where those dollars are going and what they are used for,' White said. "We are at a point of expiration as to what they estimate the cost being, to us wanting full financial understanding of why those costs got to that point.' **Not being able to address that, he said the former service stepped away from the hospital. Documentation must be presented before payment and both sides did not come to an agreement after several months of negotiations."**
- On October 31, 2018, in various local media, White stated: "I am not going to continue paying very long to something that I cannot prove or the auditors cannot verify…" "Every year we have a group of auditors come in to the payments, the way we make payments, the way we send out checks, and the way we pay our bills… It is my belief that we raise the rates without having the proof in the pudding as to what increased those rates…" "The ER rates doubled, and by August the hospital still not received information it is entitled to under the contract of having

full, not estimated, numbers, but actual numbers that tie dollars to what we're paying them."

130. However, these statements are demonstrably and knowingly false. White had articulated in earlier correspondence the reasons that he could not finance the OPYS physician payroll in his June 21, 2018 correspondence to OPYS, and promised that he would, in the future, to "get everything caught up as soon as possible."

131. Upon information and belief, all of the foregoing statements to the local media by White had been approved by the Board.

132. On or about October 2018, after Fayette had been sued in this Court for its misdeeds, alongside its CEO, Randy White, it sought bankruptcy protection. In the days preceding, White and Bell had still been telling the Plaintiffs that they would be paid their subsidy.

133. The results of the foregoing acts are far from limited to the amounts clearly due because of the failure to fund any subsidy in the third quarter of 2018, and the failure to readjust the subsidy for the entire contract period.

134. Defendants' conduct has resulted in a lack of liquidity that would have paid for the doctors that Cardinal and ultimately Siskin had been required to pay, and rather than simply not funding the physicians, Siskin did whatever it could do to find the funds to finance the doctors salaries.

135. However, because of the hole in its balance sheet and income statement created by the foregoing frauds and thefts by Defendants, Siskin needed to fund its physicians at Fayette with merchant cash advances, a type of factoring agreement where its future receipts are sold at a significant discount.

136. Under that financing regime/tranche to recoup the approximately $1,800,000 not paid under the subsidy (exclusive of the variables that Plaintiffs "called" flat when, in reality, they would have inured to a higher subsidy readjustment to Plaintiffs), the financing that Siskin and Cardinal had been required to pursue to finance the doctors working in Fayette (along with other operational expenses that it had and could not fund because of the frauds by Fayette) cost in excess of $3,000,000.

137. Even with its best efforts, Siskin could not pay certain doctors, and because of that, has and continues to lose credibility and goodwill within the local healthcare community. The "fake news" perpetrated by White further underscores the harm done to Plaintiffs' goodwill.

138. The frauds, poaching and thefts, by Defendants, discussed herein have left Siskin, Cardinal and their corporate parent, OPYS, and affiliate entities, in a state of fiscal weakness. Given the high quality doctors and management services provided by OPYS and its affiliates, including Siskin and Cardinal, none of this should have occurred.

COUNT I

(Fraud as for White, Michalek, Lockard and Bell)

139. Siskin and OPYS allege and incorporate by reference the allegations in the paragraphs above.

140. Defendants White, Michalek, Lockard and Bell misrepresented to Siskin and OPYS that their data supported a projection that annual patient volume for the ER was 15,000 patient visits, along with the misrepresentation that the readjustment provision would be honored and that its data supported a projection that anticipated collection / revenue rate per patient payment, first of approximately $98, and then, $92, as detailed more fully above. Such representations were

false, constituted a misrepresentation of then existing fact, and were made by Defendants knowingly or with reckless disregard for the truth.

141. Defendants White, Michalek, Lockard, and Bell misrepresented to Plaintiffs that they had the intention of readjusting the subsidy for the period in 2015 – 2017, as well as funding the third quarter of 2018, however, they did not have the intention, nor the means to do so. Defendants did this to protect their reputation within the Indiana healthcare community such that they could use Plaintiffs to finance Fayette's operations until the Plaintiffs could no longer do so, and then blame the Plaintiffs publicly for the failure of the hospital – when it had been White and Bell's business failures – and contemporaneously cozying up to Envision and ESS to poach all the doctors introduced by Plaintiffs to the Fayette healthcare system.

142. Defendants White, Michalek, Lockard, and Bell similarly engaged in numerous other manifestations and statements that represented false statements of then existing fact, as discussed within this detailed Complaint.

143. Siskin and OPYS reasonably and detrimentally relied on Defendants White, Michalek, Lockard and Bell's false representations of then existing facts by entering into the Agreement.

144. Plaintiffs reasonably and detrimentally relied on Defendants White, Michalek, Lockard and Bell's false representations of then existing facts by not terminating the Agreement during the initial term, and by agreeing to remain subject to the Agreement from January 1, 2018 through its September, 2018 termination.

145. As a result of Defendants' fraud, Siskin and OPYS has been damaged in an amount to be proven at trial but in no event less than $3,000,000, along with the substantial harm done to the goodwill of OPYS Holdings, Inc., and its subsidiaries.

COUNT II

(Defamation as for White)

146. Siskin and OPYS allege and incorporate by reference the allegations in the paragraphs above.

147. On October 4, 2018, in a various local media Fayette CEO an interview, stating: "The hospital recently changed the company providing physicians in the emergency room. 'We are a tightly regulated, and in our contract we have the obligation that when we are spending our dollars, we know where those dollars are going and what they are used for,' White said. "We are at a point of expiration as to what they estimate the cost being, to us wanting full financial understanding of why those costs got to that point.' **Not being able to address that, he said the former service stepped away from the hospital. Documentation must be presented before payment and both sides did not come to an agreement after several months of negotiations."**

148. On October 31, 2018, in various local media, White stated: "I am not going to continue paying very long to something that I cannot prove or the auditors cannot verify…" "Every year we have a group of auditors come in to the payments, the way we make payments, the way we send out checks, and the way we pay our bills… It is my belief that we raise the rates without having the proof in the pudding as to what increased those rates…" "The ER rates doubled, and by August the hospital still not received information it is entitled to under the contract of having full, not estimated, numbers, but actual numbers that tie dollars to what we're paying them."

149. As proven within, these statements are utterly false and so brazen that the October 31, 2018 false statement made after the initial suit for defamation had been filed against White.

150. These statements were made maliciously and published in various Indiana media outlets.

151. These statements regarding Siskin's and OPYS' performance as a physician staffing company, are defamatory *per se.*

152. Siskin and OPYS have been damaged by White defamatory statements in an amount to be proven at trial.

COUNT III

(Tortious Interference With Business)

153. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

154. Siskin, Cardinal and OPYS have a valid business relationship with the doctors that they recruit and staff at various hospitals including and particularly with the doctors that it staffed at Fayette.

155. Defendants had knowledge of such relationships.

156. By their actions and omissions, including their efforts to poach the doctors and interfering with OPYS, Siskin and Cardinal's ability to finance their salaries, Defendants have intentionally and with malice interfered with that business relationship. In carrying out the poaching, White, Bell, ESS, and Envision, similarly, engaged in illegality, including the use of theft of Plaintiffs' proprietary information, and the comingling of State grants that should have been used for their specified purpose, but instead, upon information and belief, have been used to finance the physicians that have been poached, illegally, from the Plaintiff.

157. No justification exists for the interference with that business relationship. In particular, ESS and Envision engaged in their tortious conduct exclusively for the purpose of

interfering with Plaintiffs' valuable business relations, and using confidential information they procured improperly from Plaintiffs' physicians and Fayette. At the time they engaged in their "poaching" conduct, ESS and Envision had each, respectively, already secured a contract with Fayette and had resources available to fulfill their contractual obligations to staff Fayette's emergency room. Thus, they had no need to poach doctors from Plaintiffs, and did so for the sole purpose of depriving Plaintiffs of their doctors, their most prized assets, to economically harm them.

158. OPYS, Siskin and Cardinal have been harmed, substantially, by the efforts to poach and interference with the ability to finance the doctors salaries in an amount to be proven at trial, inclusive of the damages caused by their inability to staff other emergency rooms and hospitals that they would have otherwise been able to staff had their recruitment and roster not been interfered with maliciously by Defendants, and inclusive of the loss to goodwill and going concern value of the Plaintiffs..

COUNT IV

(Permanent Injunction)

159. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

160. Defendants have intentionally, maliciously, and in violation of contractual agreements sought to "poach" every doctor that had been provided to Fayette by Siskin, or Cardinal.

161. This has resulted in contractual violations as to Siskin and tortious interference with OPYS, Siskin and Cardinal's business relationships with the doctors on their roster. The doctors are Cardinal, Siskin, and OPYS's business.

162. White continues to defame Plaintiffs.

163. For these claims, Siskin and OPYS ought to prevail as trial.

164. Absent injunctive relief, Defendants will continue to attempt to steal the doctors from OPYS, Siskin and Cardinal, and without such doctors, OPYS, Siskin and Cardinal will be unable to perform its essential function of staffing emergency rooms.

165. The overall Indiana community is benefitted by having its emergency rooms staffed.

166. No harm would be caused to Defendants by not poaching the doctors on the OPYS, Siskin, and Cardinal roster, nor would any harm be caused by preventing false and defamatory statements from being published.

167. For the foregoing reasons, and to prevent the irreparable harm that would occur absent OPYS, Siskin and Cardinal having the business relationship with its most material assets – its doctor roster, a permanent injunction should be entered preventing Defendants from contacting any and all doctors that have been placed there, at any time, by Siskin or Cardinal, or otherwise defaming Plaintiffs; fundamentally harming their good will in the local healthcare community, and further a permanent injunction should be entered preventing Defendants from defaming the Plaintiffs.

COUNT V

(Unjust Enrichment)

168. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

169. Defendants have been unjustly enriched by, among other things, salaries, fees, revenues and profits.

170. Defendants would not have had, among other things, salaries, fees, revenues and profits for the entire time that they had a relationship with the Plaintiffs but for the business torts that have been described in this Complaint.

171. Principles of good conscious, equity and fairness require that the Defendants are disgorged of their ill-gotten gains from, among other things, the frauds in the inducement, frauds in the execution, intentional interference with business relationships and unfair competitive methods employed by them.

172. Defendants, thus, should be required to return all ill-gotten gains to the Plaintiffs because absent the business torts discussed within the Plaintiffs would be in possession of such benefits.

CAUSE VI

(Fraudulent Concealment)

173. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

174. As discussed above, Defendants concealed or failed to disclose material facts (i.e., patient volumes, payor mix, changes in local healthcare community) within their knowledge to the Plaintiffs.

175. Defendants had a duty to disclose that fact, and a continuing duty to supplement their failure to provide truthful information – a duty that they failed to fulfill.

176. Defendants knew the Plaintiffs were ignorant of the facts withheld and the Plaintiffs did not have an equal opportunity to discover the truth.

177. Defendants intended to induce the plaintiff to take some action by concealing or failing to disclose the fact.

178. Plaintiffs relied on the Defendants' nondisclosure.

179. Plaintiffs were injured as a result of acting without that knowledge at an amount to be proven at trial but not less than $3,000,000 plus the loss in goodwill and going concern value to Plaintiffs, which are currently estimated to be substantial.

CAUSE VII

(Aiding and Abetting Fraud as for the Board)

180. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

181. Indiana recognizes a common law claim for aiding and abetting fraud.

182. The Board's duties include maintaining strong communication with the chief executive officer and high-level executives, formulating the company's business strategy, representing management and the Board to the general public and the corporate stakeholders, and maintaining corporate integrity.

183. In the event that a corporation is insolvent, the Board's duties shift to the corporate creditors, such as the Plaintiffs, and among such duties, of course, is to accurately and truthfully represent the state of corporate affairs, finances, and intentions with respect to the Plaintiff. The Board failed to maintain the corporate integrity and espoused all the misstatements of material facts and concealments by White, Michalek, Lockard, and Bell-Jent.

184. On information and belief, the Board had actual knowledge of the frauds and concealments discussed *supra*.

185. Notwithstanding this knowledge, the Board substantially assisted in the frauds and concealments, as discussed, in detail, within.

186. As a direct and proximate result of the Board's conduct, Plaintiffs have been

damaged in an amount to be proven at trial.

CAUSE VIII

(Breach of Fiduciary Duty as for White, Michalek, Lockard, Bell-Jent and the Board)

187. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

188. The Board, along with the corporate executive defendants, owed fiduciary duties to the Plaintiffs because of the corporate insolvency of Defendant Fayette.

189. By their acts and omissions, the Board, along with the corporate executive defendants, breached their fiduciary duties.

190. Such breaches, as discussed within, have caused damage to the Plaintiffs in an amount to be determined at trial.

CAUSE IX

(Tortious Interference with Contract as for White, Bell-Jent, ESS and Envision

191. Siskin, Cardinal and OPYS allege and incorporate by reference the allegations in the paragraphs above.

192. Plaintiffs' had contractual relationships with their Physicians, on the one hand, and Fayette, on the other, both of which had been enforceable and contained restrictions on third parties hiring physicians that contracted with Plaintiffs, or alternatively, had been placed by Plaintiffs at Fayette.

193. As discussed above, Defendants sought out and gained knowledge of both such contracts, including and particularly, the restrictive covenants that precluded them from contracting such physicians to work for them, and/or at Fayette.

194. By their actions and omissions, including their efforts to poach the doctors and interfering with OPYS, Siskin and Cardinal's ability to finance their salaries, Defendants have intentionally and with malice interfered with that business relationship. In carrying out the poaching, White, Bell, ESS, and Envision, similarly, engaged in illegality, including the theft of Plaintiffs' proprietary information, and the comingling of State grants that should have been used for their specified purpose, but instead, upon information and belief, has been used to finance the physicians that have been poached, illegally, from the Plaintiff.

195. No justification exists for the interference with that business relationship. In particular, ESS and Envision engaged in their tortious conduct exclusively for the purpose of interfering with Plaintiffs' valuable business relations, and using confidential information they procured improperly from Plaintiffs' physicians and Fayette. At the time they engaged in their "poaching" conduct, ESS and Envision had each, respectively, already secured a contract with Fayette and had resources available to fulfill their contractual obligations to staff Fayette's emergency room. Thus, they had no need to poach doctors from Plaintiffs, and did so for the sole purpose of depriving Plaintiffs of their doctors, their most prized assets, to economically harm them.

196. OPYS, Siskin and Cardinal have been harmed, substantially, by the efforts to poach and interference with the ability to finance the doctors salaries in an amount to be proven at trial, inclusive of the damages caused by their inability to staff other emergency rooms and hospitals that they would have otherwise been able to staff had their recruitment and roster not been interfered with maliciously by Defendants, and inclusive of the loss to goodwill and going concern value of the Plaintiffs..

WHEREFORE, Siskin and OPYS request that the Court:

A. Enter judgment in Siskin's and OPYS' favor;

B. Award Siskin and OPYS damages according to proof;

C. Award Siskin and OPYS treble damages;

D. Award Siskin and OPYS their attorneys' fees and costs;

E. Punitive and exemplary damages;

F. Pre-judgment and Post-judgment interest; and

G. Award Siskin and OPYS all other appropriate relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

/s/ Ryan Hurley

Ryan Hurley (#24956-49)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204
Tel: 317-237-0300
Fax: 317-237-1000
Ryan.Hurley@FaegreBD.com

David Graff
Matthew Silverstein
Graff Silverstein LLP
dgraff@graffsilversteinllp.com
msilverstein@graffsilversteinllp.com

Adam G. Forrest
27 North Eighth Street
Richmond, IN 47374
765.962.7527
www.bbkcc.com

Attorneys for Plaintiffs Siskin Physicians, LLC and OPYS Holding, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this matter.

/s/ *Ryan Hurley*