

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CHARLES J. MARKEY IA Part 32
Justice

<p>AUTOONE INSURANCE COMPANY, et al.</p>	x	<p>Index Number <u>25257</u> 2008</p>
-against-		<p>Motion Date <u>June 25,</u> 2009</p>
<p>MANHATTAN HEIGHTS MEDICAL, P.C., et al.</p>	x	<p>Motion Cal. Numbers <u>4, 5 & 6</u></p> <p>Motion Seq. Nos. <u>3, 4 & 5</u></p>

The following papers numbered 1 to 8 read on (1) this motion by defendant Jean D. Miller, D.O., defendant Jean D. Miller, D.O., P.C., and defendant Acadian Medical, P.C. (collectively “the Miller defendants”) for, inter alia, an order pursuant to CPLR 3211(a)(7) dismissing the complaint against them, (2) this motion by defendant Simon Pevzner, defendant ASPG Mgmt Inc., defendant Veritas Management Corp., defendant Group Square I.S. Ltd., defendant Kritek, Inc., defendant Strob, Inc., and defendant Lokh Corp., (collectively “the Pevzner defendants”) for, inter alia, an order pursuant to CPLR 3211(a)(7) dismissing the complaint against them and (3) this motion by defendant Josh Vainer and defendant SVG Mgmt, Inc. (collectively “the Vainer defendants”) for an order dismissing the complaint against them pursuant to CPLR 3211(a)(7).

Papers Numbered

Notice of Motion - Affidavits - Exhibits.....	1-3
Answering Affidavits - Exhibits.....	4
Reply Affidavits.....	5-6
Memoranda of Law.....	7-8

Defendant Jean D. Miller, D.O., defendant Jean D. Miller, D.O., P.C., and defendant Acadian Medical, P.C. (collectively “the Miller defendants”) have moved for, inter alia, an order pursuant to CPLR 3211(a)(7) dismissing the complaint against them. Defendant Simon Pevzner, defendant ASPG Mgmt Inc., defendant Veritas Management Corp., defendant Group Square I.S. Ltd., defendant Kritek, Inc., defendant Strob, Inc., and defendant Lokh Corp., (collectively “the Pevzner defendants”) have moved for, inter alia, an order pursuant to CPLR 3211(a)(7) dismissing the complaint against them. Defendant Josh Vainer and defendant SVG Mgmt, Inc. (collectively “the Vainer defendants”) have moved for an order dismissing the complaint against them pursuant to CPLR 3211(a)(7).

The complaint alleges the following: The plaintiffs are domestic and foreign insurance companies which issue automobile policies in New York State providing benefits payable pursuant to the Comprehensive Automobile Insurance Reparations Act (the No-Fault Law) presently codified in article 51 of the Insurance Law. The plaintiffs are required by law to pay an insured’s No-Fault benefits directly to a health care provider who has been assigned his right to benefits covering medically necessary treatments and tests. Some of the defendants, termed “the Management Defendants,” are the true owners of certain medical facilities also named in the complaint and termed “the Provider Defendants.” Some of the defendants, termed “the Licensed Defendants,” hold or did hold medical licenses and fronted as the owners of the provider defendants. The licensed defendants “essentially sold the use of their names and licenses to the Management Defendants.”

There are three groups of defendants each comprised of some of the licensed defendants, provider defendants, and management defendants:

- (1) The Pevzner management group allegedly using the licenses of Dr. Miller, Dr. Mukendi, and Dr. Kadianakis (Group 1),
- (2) the Kargman management group allegedly using the licenses of Dr. Garcia, Dr. Iroku, Dr. Richie, and Dr. Chiarmonte (Group 2), and
- (3) the Drabkin/Freed management group allegedly using the licenses of Dr. Howell and Dr. Iroku (Group 3).

The following chart sets forth the three groups of defendants:

Group 1

<u>Provider Defendants</u>	<u>Licensed Defendants</u>	<u>Management Defendants</u>
Manhattan Heights Medical, PC West River Medical, PC Acadian Medical, PC Jean Miller, D.O. Lane Medical, PC	Melchias Mukendi, MD Jean Deborah Miller, DO Jean Deborah Miller, DO Kiki Kadianakis, DO	Simon Pevzner/Seymon Pevner/Seymon Pevner/Simon Pevznea, Stanislav Sorkin/Stanley Sorkin, Strob Inc., SVG MGMT, INC., Josh Vainer, ASPG MGMT Inc., Veritas Management Inc., Almas Management, Inc., Lokh Corp., Group Square, Kritek, Oleg Rubin, Bazmana Rubin & Sazha Management Corp.

Group 2

<u>Provider Defendants</u>	<u>Licensed Defendants</u>	<u>Management Defendants</u>
Dykman Med. Diag. & Tmt PC Pueblo Medical Treatment PC Nagle Medical Plaza, PC Kingsbridge Community Med PC Total Health Care Medical PC	Rafael Garcia, MD Rafael Garcia, MD Humphrey Iroku, MD Carl Richie, MD & Lawrence Chiarmonite, MD Carl Richie, MD	Dmitry Kargman, SRK Management Group Inc. & Care Plus of NY Inc., Claire Slobodsky aka Claire Slobodski, CNL Management Corp., Icon Management Inc., Espy Management Inc. & Zev Corporation

Group 3

<u>Provider Defendants</u>	<u>Licensed Defendants</u>	<u>Management Defendants</u>
Inwood Hill Medical PC Bronx Park Medical PC Healthbay Medical PC	Neal Worrell Howell MD Neal Worrell Howell MD Humphrey Iroku MD	Inessa Drabkin/Inessa Freed/Inna Freed/Inna Drabkin/Iness Drabkin, Silver Pines Management Corp., Integra CBA Co. Inc., Alexander Freed, PKH Corp., Michael Mazur Yevgeniy Ryvkin, & Lucy Rodriguez

The defendants have allegedly defrauded the plaintiff insurers by submitting bills pursuant to New York State's No-Fault Law for medical services rendered by corporations not truly owned by holders of medical licenses. On or about October 15, 2008, the plaintiffs, over 20 insurance companies, began this lawsuit asserting six causes of action, the first for common law fraud, the second for unjust enrichment, the third for a declaratory judgment

concerning fraudulent incorporation, the fourth for declaratory judgment concerning illegal fee splitting, the fifth for reimbursement based on Public Health Law § 238-a, and the sixth for a declaratory judgment concerning medical services allegedly rendered by independent contractors.

“State law mandates that professional service corporations be owned and controlled only by licensed professionals (*see*, Business Corporation Law §§ 1503[a], 1507, & 1508), and that licensed professionals render the services provided by such corporations (*see*, Business Corporation Law § 1504[a])” ([*One Beacon Ins. Group, LLC v Midland Medical Care, P.C.*, 54 AD3d 738, 740 \[2nd Dept. 2008\]](#)).

Business Corporation Law section 1503(a) provides in relevant part: “Notwithstanding any other provision of law, one or more individuals duly authorized by law to render the same professional service within the state may organize, or cause to be organized, a professional service corporation for pecuniary profit under this article for the purpose of rendering the same professional service” (*see*, [*One Beacon Ins. Group, LLC v Midland Medical Care, P.C.*, 54 AD3d 738, *supra*](#)).

Business Corporation Law section 1507 provides in relevant part: “A professional service corporation may issue shares only to individuals who are authorized by law to practice in this state a profession which such corporation is authorized to practice” (*see*, [*Sangiorgio v Sangiorgio*, 173 Misc 2d 625 \[Sup. Ct. Richmond County 1997\]](#)). State

licensing requirements prohibit non-physicians from owning or controlling medical service corporations (*see, State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313 [2005]).

Insurance Law § 5102 *et seq.* requires no-fault insurers to reimburse patients or their medical provider assignees for “basic economic loss.” However, pursuant to state regulation (11 NYCRR 65-3.16[a][12]): “A provider of health care services is not eligible for reimbursement under section 5102(a)(1) of the Insurance Law if the provider fails to meet any applicable New York State or local licensing requirement necessary to perform such service in New York or meet any applicable licensing requirement necessary to perform such service in any other state in which such service is performed.” (*see, State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, *supra*).

In *State Farm Mut. Auto. Ins. Co. v Mallela (id.)*, an action for, inter alia, a declaratory judgment brought by an insurer against defendants allegedly operating the same type of scheme allegedly involved in the case at bar, the New York Court of Appeals held that, on the basis of 11 NYCRR 65-3.16(a)(12), insurers may deny no-fault payments to fraudulently incorporated health care providers to which patients have assigned their claims. In *One Beacon Ins. Group, LLC v Midland Medical Care, P.C.* (54 AD3d at 738, *supra*), another action similar to the case at bar, the insurers sought damages for common-law fraud and unjust enrichment and a declaration that they had no obligation to pay no-fault claims submitted by fraudulent professional corporations. The Appellate Division, Second Department, affirmed the denial of a motion for summary judgment by a defendant

physician and a defendant corporation, finding that material issues of fact existed as to whether the physician's professional corporation was actually controlled by a management company owned by unlicensed individuals in violation of state law.

That branch of the motion by the Pevzner defendants seeking an order, pursuant to CPLR 3013, dismissing the complaint against them is denied. The complaint adequately provides "the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action." (*see*, CPLR 3013; [Stavisky v Koo](#), 54 AD3d 432 [2nd Dept. 2008]; [Trinity Products, Inc. v Burgess Steel LLC](#), 18 AD3d 318 [1st Dept. 2005]). The complaint makes factual, not merely conclusory, allegations. (*see*, [Serio v Rhulen](#), 24 AD3d 1092). The defendants may obtain greater specificity by serving a demand for a bill of particulars or by utilizing the many disclosure devices available under CPLR article 31 (*see*, [Serio v Rhulen](#), *id.*; [Pernet v Peabody Engineering Corp.](#), 20 AD2d 781 [1st Dept. 1964]).

That branch of the motion by the Pevzner defendants, pursuant to CPLR 3016(b), seeking dismissal of the first cause of action asserted against them, for common law fraud, is denied. Although fraud must be pleaded in "detail" (*see*, CPLR 3016[b]; [1205-15 First Ave. Associates, LLC v McDonough](#), 7 AD3d 363 [1st Dept. 1964]), "the standard is simply whether the allegations are 'set forth in sufficient detail to clearly inform a defendant with respect to the incidents complained of'" ([Caprer v Nussbaum](#), 36 AD3d 176, 202 [2nd Dept. 2006], quoting [Lanzi v Brooks](#), 43 NY2d 778, 780 [1977]). The complaint in the case at bar

meets that standard (*see, PDK Labs, Inc. v Krape*, 277 AD2d 211 [2nd Dept. 2000]). The complaint makes factual, not merely conclusory, allegations. Just recently, the New York Court of Appeals, in *Sargiss v Magarelli* (12 NY3d 527 [2009], *modifying* 50 AD3d 1117 [2nd Dept. 2008]) stated that, while “the basic facts” of the fraud allegedly perpetrated need to be sufficiently stated, they need not be elaborated in exquisite detail or accompanied by “unassailable” proof of pinpoint precision.

Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants seeking dismissal of the first cause of action asserted against them, pursuant to CPLR 3211(a)(7), are granted to the extent that the first cause of action seeks damages accruing before April 4, 2002. The Court notes initially that, as the plaintiffs concede, no cause of action for fraud by No-Fault insurers based on 11 NYCRR 65-3.16(a)(12) can be stated to recover payments made before April 4, 2002, the effective date of the regulation (*see, State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, *supra*; [*Allstate Ins. Co. v Belt Parkway Imaging, P.C.*, 33 AD3d 407 \[1st Dept. 2006\]](#); [*Metroscan Imaging, P.C. v Geico Ins. Co.*, 13 Misc 3d 35 \[App. T. 2nd Dept. 2006\]](#); [*St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, 2007 NY Slip Op. 51154\[U\]](#) [Sup. Ct., Queens County 2007] [Dollard, J.]). Otherwise, the first cause of action sufficiently states a claim for fraud (*see, One Beacon Ins. Group, LLC v Midland Medical Care, P.C.*, 54 AD3d 738, *supra*; *St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*) [action by no-fault insurer against alleged fraudulently incorporated medical corporations]).

In determining a motion brought pursuant to CPLR 3211(a)(7), the court “must afford the complaint a liberal construction, accept as true the allegations contained therein, accord the plaintiff the benefit of every favorable inference and determine only whether the facts alleged fit within any cognizable legal theory” ([1455 Washington Ave. Assoc. v Rose & Kiernan](#), 260 AD2d 770, 770-771 [3rd Dept. 1999]; [Esposito-Hilder v SFX Broadcasting Inc.](#), 236 AD2d 186 [3rd Dept. 1997]).

In order to state a cause of action for fraud, a plaintiff must allege that:

- (1) that the defendant made material representations that were false or concealed a material existing fact,
- (2) the defendant knew the representations were false and made them with the intent to deceive the plaintiff,
- (3) the plaintiff was deceived,
- (4) that the plaintiff justifiably relied on the defendant’s representations, and
- (5) that the plaintiff was injured as a result of the defendant’s representations (*see*, [Lama Holding Co. v Smith Barney](#), 88 NY2d 413 [1996]; [New York Univ. v Continental Ins. Co.](#), 87 NY2d 308 [1995]; [Watson v Pascal](#), 27 AD3d 459 [2nd Dept. 2006]; [Cerabono v Price](#), 7 AD3d 479 [2nd Dept. 2004], *appeal denied*, 4 NY3d 704 [2005]; [New York City Transit Authority v Morris J. Eisen, P.C.](#), 276 AD2d 78 [1st Dept. 2000]; [American Home Assur. Co. v Gemma Const. Co., Inc.](#), 275 AD2d 616 [1st Dept. 2005]; [Swersky v Dreyer & Traub](#), 219 AD2d 321 [1st Dept. 1996], *appeal withdrawn*, 89 NY2d 983 [1997]).

In the case at bar, the plaintiffs have adequately alleged that the defendants with the requisite intent and scienter concealed material facts and made material misrepresentations concerning the provider defendants' status as legal professional service corporations and in reliance on the material misrepresentations and concealments the plaintiffs made "substantial payments" to the provider defendants (*see, St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*). A medical corporation fraudulently incorporated under Business Corporation Law section 1507, moreover, has no right to reimbursement by insurers under the No-Fault Law and its implementing regulations for medical services rendered (*see, State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, *supra*). The complaint adequately alleges fraud in the incorporation and operation of the Provider Defendants with the complicity of the Management Defendants and Licensed Defendants.

That branch of the motion by the Pevzner defendants requesting dismissal of the plaintiffs' first cause of action to the extent that it seeks punitive damages is granted (*see, St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*) Punitive damages will not be awarded unless the fraud "is aimed at the public generally, is gross, and involves high moral culpability." ([Kelly v Defoe Corp.](#), 223 AD2d 529 [2nd Dept. 1996]; *see, Ross v Louise Wise Services, Inc.*, 8 NY3d 478, 489-490 [2007] [punitive damages were not available in a claim of adoption fraud or concealment claim in light of lack of malicious and vindictive intent], *modifying* 28 AD3d 272 [1st Dept. 2006]; [Crispino v Greenpoint Mtge.](#)

[Corp., 2 AD3d 478 \[2nd Dept. 2003\]](#)). In the case at bar, the alleged tortfeasors directed their conduct at No-Fault insurers, not the public generally.

Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants seeking, pursuant to CPLR 3211(a)(7), dismissal of the second cause of action, for unjust enrichment, are granted to the extent that the second cause of action seeks damages accruing before April 4, 2002. The plaintiffs cannot successfully state a cause of action for unjust enrichment based on 11 NYCRR 65-3.16(a)(12) to recover payments made before April 4, 2002, the effective date of the regulation (*see, State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, *supra*; *Allstate Ins. Co. v Belt Parkway Imaging, P.C.*, 33 AD3d 407, *supra*; *St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*). Otherwise, the complaint adequately states a cause of action for unjust enrichment (*see, One Beacon Ins. Group, LLC v Midland Medical Care, P.C.*, 54 AD3d 738, *supra*; *St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*). “A cause of action for unjust enrichment arises when one party possesses money or obtains a benefit that in equity and good conscience they should not have obtained or possessed because it rightfully belongs to another” ([Mente v Wenzel](#), 178 AD2d 705, 706 [3rd Dept. 1991], *appeal denied in part & dismissed in part*, 82 NY2d 843 [1993]; *see, Strong v Strong*, 277 AD2d 533 [3rd Dept. 2000]). The plaintiffs, in the case at bar, have adequately alleged that the defendants fraudulently obtained no-fault payments from them which they were not obligated to pay under the No-Fault Law and its implementing regulations.

That branch of the motion by the Pevzner defendants requesting dismissal of the first and second causes of action to the extent that they seek damages for payments made before April 4, 2002 is granted. No cause of action for fraud or unjust enrichment lies to recover payments made by the carriers before April 4, 2002, the effective date of 11 NYCRR 65-3.16(a)(12) (*see, State Farm Mut. Auto. Ins. Co. v Mallela*, 4 NY3d 313, *supra*; *Allstate Ins. Co. v Belt Parkway Imaging, P.C.*, 33 AD3d 407, *supra*; *St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*.)

Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants seeking, pursuant to CPLR 3211(a)(7), dismissal of the third cause of action for a declaratory judgment concerning alleged fraudulent incorporation, are denied (*see, One Beacon Ins. Group, LLC v Midland Medical Care, P.C.*, 54 AD3d 738, *supra*; *St. Paul Travelers Ins. Co. v Nandi*, 2007 WL 1662050, *supra*). The plaintiffs allege that the provider defendants have not withdrawn outstanding claims for payment and, on some claims, have begun suit or arbitration even as the plaintiffs continue to deny an obligation to make payment because of alleged fraudulent incorporation. This action, which seeks a judgment declaring that the plaintiffs are “under no obligation to pay any of the no-fault claims of the Provider Defendants, past, present, or future,” presents a justiciable controversy appropriate for declaratory relief (*see, Buller v Goldberg*, 40 AD3d 333 [1st Dept. 2007]; [*Long Island Lighting Co. v Allianz Underwriters Ins. Co.*, 35 AD3d 253 \[1st Dept. 2006\]](#)).

appeal dismissed, 9 NY3d 10003 [2007], *cited with approval* in [Liberty Mut. Ins. Co. v. Lone Star Industries, Inc.](#), 290 Conn. 767, 814-816, 967 A.2d 1, 31-32 [2009]).

Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants, pursuant to CPLR 3211(a)(7), seeking dismissal of the fourth cause of action, for a declaratory judgment concerning alleged illegal fee-splitting, are denied. A licensed physician is generally prohibited from sharing fees with non-physicians (*see*, Education Law § 6530[19]; 8 NYCRR 29.1[b][4]; [A.T. Medical, P.C. v State Farm Mut. Ins. Co.](#), 10 Misc 3d 568 [NYC Civ. Ct. Queens County 2005] [Culley, J.] [improperly licensed provider]). The plaintiffs have adequately alleged that the licensed defendants have engaged in unlawful fee-splitting with the management defendants.

Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants seeking, pursuant to CPLR 3211(a)(7), dismissal of the fifth cause of action, for reimbursement, are granted. Public Health Law section 238-a(1)(a), “Prohibition of financial arrangements and referrals,” provides: “A practitioner authorized to order clinical laboratory services, pharmacy services, radiation therapy services, physical therapy services or x-ray or imaging services may not make a referral for such services to a health care provider authorized to provide such services where such practitioner or immediate family member of such practitioner has a financial relationship with such health care provider” (*see*, [Ozone Park Medical Diagnostic Associates v Allstate Ins. Co.](#), 180 Misc 2d 105 [App. T. 2nd Dept. 1999]; [Stand-Up MRI of the Bronx v General Assur. Ins.](#),

[10 Misc 3d 551 \[Dist. Ct. Suffolk County 2005\]](#). The statute, in essence, prohibits a medical doctor from ordering specified medical services from an entity in which he or an immediate family member has a financial interest. The plaintiffs cannot successfully invoke the statute against “management defendants [who] control the referral of patients to the medical providers.”

Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants requesting, pursuant to CPLR 3211(a)(7), dismissal of the sixth cause of action, for a declaratory judgment regarding the medical services provided by allegedly independent contractors, are denied. The complaint alleges that “the persons who provided health care services for some or all of the Provider Defendants were not employees of the Provider Defendants, but were independent contractors.” “[W]here a billing provider seeks to recover no-fault benefits for services which were not rendered by it or its employees, but rather by a treating provider who is an independent contractor, it is not a ‘provider’ of the medical services rendered within the meaning of 11 NYCRR 65.15(j)(1) [now 11 NYCRR 65-3.11(a)] and is, therefore, not entitled to recover ‘direct payment’ of assigned no-fault benefits from the defendant insurer” ([Rockaway Blvd. Medical P.C. v Progressive Ins.](#), 9 Misc 3d 52, 54 [App. T. 2nd Dept. 2005]). The complaint adequately states a cause of action for a judgment declaring that the plaintiff insurers have no obligation to pay for services billed by the provider defendants, but rendered by independent contractors.

Those branches of the motions by the Miller defendants and Pevzner defendants seeking, pursuant to CPLR 3024, that the plaintiffs serve a more definite statement are denied. The complaint is sufficiently specific for the defendants to frame a response (*see*, CPLR 3024[a]; [Della Villa v Constantino](#), 246 AD2d 867 [3rd Dept. 1998]; [Mirage Rest., Inc. v Majestic Chevrolet, Inc.](#), 75 AD2d 808 [2nd Dept. 1980]).

That branch of the motion by the Miller defendants seeking severance of mis-joined parties and discontinuing the claims against them is granted to the extent that the court orders the severance of the causes of action against each group of defendants denominated herein as Group 1, Group 2, and Group 3. The causes of action asserted against Group 1 shall continue under this index number. Two separate index numbers shall be purchased for Group 2 and Group 3, and two separate actions shall be maintained against Group 2 and Group 3.

CPLR 1002, “Permissive joinder of parties,” allows the combination of parties as plaintiffs or defendants subject to the conditions that (1) the claims must arise from “the same transaction, occurrence, or series of transactions or occurrences,” and (2) a common question of law or fact is presented (*see*, [Stewart Tenants Corp. v Square Industries, Inc.](#), 269 AD2d 246 [1st Dept. 2000]). It is true that CPLR 1002 and its predecessor under the Civil Practice Act have been given an expansive application (*see*, *Akely v Kinnicutt*, 238 NY 466 [1924]; [Hempstead General Hosp. v Liberty Mut. Ins. Co.](#), 134 AD2d 569 [2nd Dept. 1987]; Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B,

CPLR 1002; 3 Weinstein-Korn-Miller, NY Civ Prac ¶ 1002.05). One text even states that: “If there is a rational connection between the parties and causes of action, CPLR 1002 is satisfied” (3 Weinstein-Korn-Miller, NY Civ Prac ¶ 1002.05).

However, in the case at bar, each group of defendants operated separately from the other groups, and the plaintiffs did not demonstrate that there is a logical connection between the activities of each that suffices to meet the “same transaction . . . or series of transactions” requirement (*see, [Mount Sinai Hosp. v Motor Vehicle Accident Indemnification Corp.](#), 291 AD2d 536, 536 [2nd Dept. 2002]* [“The Supreme Court providently exercised its discretion in severing the remaining five causes of action, asserting claims on behalf of five unrelated assignees, involved in accidents on five different dates, with no common contract of insurance and no relation or similarity to each other, other than the fact that the no-fault benefits were not paid”]).

The Court notes that combining the multitude of claims by the numerous plaintiffs against three different groups of defendants is likely to cause juror confusion (*see, [Poole v Allstate Ins. Co.](#), 20 AD3d 581 [3rd Dept.], *lv. to appeal denied*, 5 NY3d 830 [2005]* [severance required in action brought against insurer by assignee of 47 no-fault claims to recover unpaid no-fault benefits for medical services he allegedly provided to 47 different patients]; *[Radiology Resource Network, P.C. v Fireman’s Fund Ins. Co.](#), 12 AD3d 185 [1st Dept. 2004]* [insurer’s motion to sever claims into separate actions properly granted in action brought by medical services provider against insurer to recover on 68 claims for no-fault

insurance benefits that provider had been assigned by 68 assignors]; [Andrew Carothers, M.D., P.C. v GEICO Indem. Co., 14 Misc 3d 92 \[App. T. 2nd Dept. 2007\]](#). Finally, although “[m]isjoinder of parties is not a ground for dismissal of an action,” (CPLR 1003), the Court has the authority to order severances (*see*, CPLR 1002 & 1003).

In sum, upon the foregoing papers, the following branches of the motions are granted in whole or in part:

1. Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants requesting dismissal of the first cause of action asserted against them pursuant to CPLR 3211(a)(7) are granted to the extent that the first cause of action seeks damages accruing before April 4, 2002;

2. That branch of the motion by the Pevzner defendants seeking dismissal of the plaintiffs’ first cause of action to the extent that it seeks punitive damages is granted;

3. Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants, pursuant to CPLR 3211(a)(7), seeking dismissal of the second cause of action are granted to the extent that the second cause of action seeks damages accruing before April 4, 2002;

4. That branch of the motion by the Pevzner defendants, requesting dismissal of the first and second causes of action to the extent that they seek damages for payments made before April 4, 2002 is granted;

5. Those branches of the motions by the Miller defendants, the Pevzner defendants, and the Vainer defendants, pursuant to CPLR 3211(a)(7), seeking dismissal of the fifth cause of action are granted; and, finally,

6. That branch of the motion by the Miller defendants seeking severance of mis-joined parties and discontinuing the claims against them is granted to the extent that the Court orders the severance of the causes of action against each group of defendants denominated above as Group 1, Group 2, and Group 3. The causes of action asserted against Group 1 shall continue under this index number. Two separate index numbers shall be purchased for Group 2 and Group 3, and two separate actions shall be maintained against Group 2 and Group 3, i.e., a separate action and index number for Group 2 and separate ones for Group 3.

The plaintiffs are directed to serve separate amended complaints within 40 days of the service of a copy of this order, bearing the date stamp of receipt by the Clerk, with notice of entry.

The remaining branches of the motions are all denied.

The foregoing constitutes the decision and order of the Court.

Hon. Charles J. Markey
Justice, Supreme Court, Queens County

Dated: July 31, 2009
Long Island City, New York

Appearances:

For the Plaintiffs: John E. McCormack, P.C., 41 Hilton Ave., Hempstead, NY 11550

For Defendants Bronx Park Medical, P.C., Inwood Hill Medical P.C., Dr. Noel Worrell Howell, Alexander Freed, Innessa Drabkin, Silver Pines Management Corp., Integra CBA Co., Inc., PKH Corp., and Michael Mazur: Lifshutz & Lifshutz, P.C., by Gary Burgoon, 501 Fifth Ave., suite 506, NY, NY 10017

For Defendant Healthbay Medical, P.C.: George T. Lewis, Jr., P.C., 485 Underhill Blvd., suite 101, Syosset, NY 11791

For Defendants Jean D. Miller, D.O., Jean Miller, D.O., P.C., and Acadian Medical P.C.: Kern Augustine Conroy & Schoppman, P.C., by Douglas M. Nadjari, Esq., 1325 Franklin Ave., Garden City, NY 11530

For Defendants Josh Vainer and SVG MGMT., Inc.: Matthew J. Conroy & Associates, P.C., by Matthew J. Conroy and Maria Campese Diglio, Esqs., 350 Old Country Road, suite 106, Garden City, NY 11530

For Defendants Simon Pevzner, ASPG MGNT., Inc., Veritas Management Corp., Group Square I.S. Ltd., Kritek, Inc., Strob, Inc., and Lokh Corp.: Schlam Stone Dolan, LLP, by Thomas A. Kissane and Samuel L. Butt, Esqs., 26 Broadway, NY, NY 10004

Other Defendants are either Pro Se and/or have not appeared.