

STATE OF MICHIGAN  
IN THE SUPREME COURT

COMMUNITY RESOURCE CONSULTANTS,  
INC., a Michigan Corporation,

Plaintiff-Appellee,

v.

PROGRESSIVE MICHIGAN INSURANCE  
COMPANY,

Defendant-Appellant.

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**Supreme Court No. 133416**

Court of Appeals No. 269726

Ingham County Circuit Court  
No. 04-879-CK

133416  
Supp  
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**SUPPLEMENTAL BRIEF IN SUPPORT OF DEFENDANT-APPELLANT,  
PROGRESSIVE MICHIGAN INSURANCE COMPANY'S,  
APPLICATION FOR LEAVE TO APPEAL**

**PROOF OF SERVICE**

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## STATEMENT OF QUESTION PRESENTED

The “one-year back” rule precludes a claimant from recovering personal injury protection benefits for any portion of a loss incurred more than one year before the date the lawsuit was commenced. Incur has been defined as “to become liable for.” Did Defendant’s insured become liable for the medical services rendered by Plaintiff at the time the medical services were provided by Plaintiff?

Plaintiff-Appellee, Community Resource Consultants, Inc, answers “No.”

Defendant-Appellant, Progressive Michigan Insurance Company, answers, “Yes.”

## INTRODUCTION

This case involves a dispute over payment of personal injury protection (PIP) benefits for case management services provided by Plaintiff-Appellee, Community Resource Consultants, Inc., (“CRC”) to Defendant-Appellant, Progressive Michigan Insurance Company’s insured. The determinative issue in this case is whether a portion (\$19,684.64) of Plaintiff’s claimed damages were *incurred* by Defendant’s insured at the time the services were provided and, therefore, barred by the one-year back rule of the Michigan No-Fault Act, MCL 500.3145(1)

Plaintiff initiated this lawsuit on June 18, 2004. The evidence in this case conclusively demonstrates that \$19,684.64 of expenses for which Plaintiff seeks payment were for services provided to Defendant’s insured before June 18, 2003, the one-year back cutoff date. The Court of Appeals recognized that the disputed expenses were for services rendered before the one-year back cutoff date. The Court of Appeals even concluded that since they were for services rendered before the one-year back cutoff date, they were *incurred* before the one-year back cutoff date, under MCL 500.3145(1). Nevertheless, the Court of Appeals held that even though the expenses in dispute were *incurred* before June 18, 2003, an issue of material fact existed regarding the parties’ billing practices.

Subsequently, Defendant filed an application for leave to appeal with this Court, arguing that contrary to the Court of Appeals’ holding, this case involves a pure question of law, not a genuine issue of material fact. In its application for leave to appeal, Defendant urged this Court either to grant leave to appeal or, in lieu of granting leave to appeal, to enter an order reversing the judgment of the Court of Appeals for the reasons stated in the

dissenting opinion of Judge Kathleen Jansen. On September 14, 2007, this Court ordered that this matter proceed to oral argument “on whether to grant the application or take other peremptory action,” and invited the parties to file supplemental briefs. Specifically, the Court instructed the parties to address “whether, for purposes of MCL 500.3145(1), a loss is incurred at the time the treatment or services are provided, rather than at the time a bill is submitted for the treatment or services in question.”

Defendant submits that a loss is incurred at the time the treatment or services are provided and therefore, in this case, the disputed amount of Plaintiff’s claimed damages are barred by MCL 500.3145(1). This case presents a pure question of law. Defendant maintains that peremptory relief is appropriate or, in the alternative, Defendant requests this Court to grant its application for leave to appeal.

### ARGUMENT

**For purposes of MCL 500.3145(1), a loss is incurred at the time the medical treatment or services are provided and, therefore, the disputed amount of Plaintiff’s claimed damages are barred by the one-year back rule.**

Under the Michigan No-Fault Act, PIP benefits are payable to or for the benefit of an injured person. MCL 500.3112. PIP benefits include allowable expenses consisting of all reasonable charges *incurred* for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation. MCL 500.3107(1)(a). PIP benefits that are “payable for accidental bodily injury accrue not when the injury occurs but as the allowable expense, work loss or survivors’ loss is incurred.” MCL 500.3110(4). If payment is not made for allowable PIP benefits, the No-Fault Act precludes the claimant from

recovering PIP benefits for any portion of the loss *incurred* more than one-year before a lawsuit is filed. MCL 500.3145(1).

In this case, a portion of Plaintiff's claimed damages were for services rendered before June 18, 2003, the one-year back cut-off date. The issue in this case, therefore, is whether these damages were incurred at the time the services were rendered or, as Plaintiff contends, at the time a bill was submitted for the services in question.

In *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476, 485; 673 NW2d 739 (2003), the Michigan Supreme Court determined that the insurer was not required to pay the total amount of future home modifications for its insured because the expenses were not yet incurred. The Court explained that “[t]o ‘incur’ means ‘[t]o become liable or subject to, [especially] because of one’s own actions.’” *Id.* at 484 *quoting* Webster’s II New College Dictionary (2001). The insured, in *Proudfoot*, had not yet taken action to become liable for the costs of the proposed home modifications and, therefore, the expenses were not yet “incurred.”<sup>1</sup> *Id.*

Moreover, the court in *Bombalski v Auto Club Ins Ass’n*, 247 Mich App 536; 637 NW2d 251 (2001), noted that in *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 636-38; 552 NW2d 671 (1996), the court defined “incur” as “to become liable for.” *Bombalski*, 247 Mich App at 542. The *Bombalski* Court noted that Black’s Law Dictionary (7<sup>th</sup> ed), similarly

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<sup>1</sup> The *Proudfoot* Court noted, however, that “an insured could be liable for costs by various means, including paying for costs out of pocket or signing a contract for products or services.” *Proudfoot*, 469 Mich at 484 n 4. In other words, an insured has *incurred* a debt once the insured and the provider agree to a contract for products or services, even if the insured has not paid any expenses out of pocket.

defines “incur” as “[t]o suffer or bring on oneself (a liability or expense).” *Bombalski*, 247 Mich at 542. The Court further recognized that an expense is incurred when a claimant accepts medical treatment:

After quoting the definition of incur, the [*Shanafelt*] Court reasoned that ‘[o]bviously, plaintiff became liable for her medical expenses when she accepted medical treatment.’

*Bombalski*, 247 Mich App at 542 quoting *Shanafelt*, 217 Mich App at 638.

This logical conclusion that an insured incurs the expense at the time services or treatment are rendered, rather than at the time a bill is sent, is supported by basic principles of contract law.

Before a contract can be completed, there must be an offer and acceptance. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1998). An offer is defined as “the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to the bargain is invited and will conclude it.” *Id.* quoting Restatement Contracts, 2d, §24. An acceptance sufficient to create a contract “arises where the individual to whom an offer is extended manifests intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for th[at] purpose.” *Kraus v Gerrish Twp*, 205 Mich App 25, 45; 517 NW2d 756 (1994). An acceptance may be implied from acts or conduct, and performance by the offeree of the promise requested may constitute an acceptance. *See* 17A

Am Jur 2d, § 96, By act, conduct, or performance.<sup>2</sup> When there has been an offer and acceptance, a binding contract is formed. *Eerdmans*, 226 Mich App at 364.

In the context of this case, Plaintiff offered its case management services to Defendant's insured. When Defendant's insured accepted the medical services provided by Plaintiff, the insured accepted all legal consequences flowing from the offer, including liability for payment of services. In other words, a binding contract is formed when an individual accepts medical treatment or services and, consequently, the individual becomes liable for payment for the medical treatment or services. The actual time a bill is submitted is irrelevant to the determination of when the individual incurs a debt (i.e., becomes liable) for payment of medical treatment or services.

As a matter of comparison, a promise to pay an employee wages becomes binding when the employee performs the act upon which the promise is predicated:

In simplest terms, a typical employment contract can be described as a unilateral contract in which the employer promises to pay an employee wages in return for the employee's work. In essence, the employer's promise constitutes the terms of the employment agreement; the employee's action or forbearance in reliance upon the employer's promise constitutes sufficient consideration to make the promise legally binding. In such circumstances, there is no contractual requirement that the promisee do more than perform the act upon which the promise is predicated in *order to legally obligate the promisor*.

*In re Certified Question*, 432 Mich 438, 446; 443 NW2d 112 (1989).

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<sup>2</sup> See also Williston on Contracts, §6:26 Effect of performance as acceptance of bilateral or indifferent offer ("the Restatement (Second) drafters adopt the position that in the event of doubt, the offeree may choose to accept either by return promise or by rendering a return performance").

Likewise, when treatment or services are offered to or on behalf of a patient, that patient becomes legally obligated to pay for the treatment or services at the time the patient accepts the offer for the treatment or service.

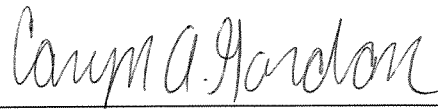
In short, for purposes of MCL 500.3145(1), a loss is incurred at the time the treatment or services are provided. Here, the Defendant's insured became liable for payment of services provided by Plaintiff when the insured accepted the Plaintiff's case management services. Under basic contract principles of law, Defendant's insured incurred a debt to Plaintiff at the time the services were rendered. Consequently, Plaintiff's disputed damages are barred by the one-year back rule because they were for services rendered to Defendant's insured before June 18, 2003, the one-year back cutoff date.

**CONCLUSION**

For all the foregoing reasons, and those set forth in the previously-filed Application for Leave to Appeal, Defendant-Appellant, PROGRESSIVE MICHIGAN INSURANCE COMPANY, respectfully requests that this Court reverse the judgments of the Ingham County Circuit Court and Court of Appeals, and order that Defendant is entitled to summary disposition in its favor.

Respectfully submitted,

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