BEAR, J., dissenting. Because I agree with the trial court's well reasoned decision, and would affirm its judgment, I respectfully dissent from the majority opinion. The issue in this case is whether an agreement by the plaintiff with a corporate predecessor and two of its employees (alleged tortfeasors) (1) to settle the plaintiff's claims against the alleged tortfeasors, (2) to covenant not to sue the alleged tortfeasors in the future and (3) to discharge the alleged tortfeasors' liability bars recovery by the plaintiff against the alleged successors to the alleged corporate tortfeasor. Like the trial court, I conclude that on the material undisputed facts of this case, recovery by the plaintiff from the alleged successors is barred. Additionally, I conclude that the result of the majority's ruling in this case is to allow the plaintiff the opportunity for an unjustified windfall recovery from the defendants, i.e., recovery in excess of what she could have recovered from the corporate predecessor on the date of the alleged negligence. Accordingly, I would affirm the judgment of the trial court.

The plaintiff, Lisa Robbins, individually and as administratrix of the estate of her deceased son, Elijah Jamal Hezekia Robbins Martin (Elijah), appeals from the summary judgment rendered by the trial court in favor of the defendants Physicians for Women's Health, LLC (Physicians), and Women's Health USA, Inc. (Women's Health).[1] On appeal, the plaintiff claims that the court erroneously concluded that the settlement agreement, entered into by the plaintiff and the corporate predecessor alleged tortfeasor, Shoreline Obstetrics and Gynecology, P.C. (Shoreline), a former defendant in this case; see footnote 1 of this opinion; and the plaintiff's covenant not to sue and discharge from liability, necessarily barred her suit for medical malpractice against the defendants on "mere continuation" or "continuity of enterprise" theories of successor liability.

The material undisputed facts of this case support my analysis of the issues presented on appeal. Accordingly, I set them forth here. Elijah was born in October, 2005, at Lawrence and Memorial Hospital. The plaintiff's obstetrician was Jonathan Levine, and her certified nurse midwife was Donna Burke-Howes, both of whom were employed by Shoreline. The plaintiff had a high-risk pregnancy, and when Elijah was born, he was transferred to Yale-New Haven Hospital, where he later died, allegedly due to negligence at or near the time of his birth. In October, 2005, neither Physicians nor Women's Health had any ownership interest in the shares or assets of Shoreline, and thus on the date of the alleged negligence they had no direct or vicarious duty to the plaintiff or to Elijah. In July, 2006, approximately nine

months after Elijah's death, Shoreline entered into a purchase of assets and sale agreement with Physicians.[2] On October 16, 2006, the plaintiff commenced suit against Levine for medical malpractice and against Physicians, Women's Health, and Lawrence and Memorial Hospital on a claim of vicarious liability for the alleged malpractice of Levine. On December 14, 2006, the plaintiff amended her complaint and added Shoreline as a defendant, also on a claim of vicarious liability. On March 7, 2007, she then added Burke-Howes as a defendant, alleging medical malpractice against her.

On July 3, 2008, Physicians and Women's Health filed their first motion for summary judgment, asserting that they could not be held liable for Elijah's death because they had no relationship with Shoreline at the time Elijah died. In opposition, the plaintiff maintained that the "mere continuation" and the "continuity of enterprise" exceptions to the general rule of successor nonliability applied to this case.[3] After consideration of the parties' arguments, the court rendered its decision denying the defendants' motion for summary judgment and concluding that there existed disputed material facts about whether the defendants were successor entities. On October 8, 2008, the plaintiff filed her third amended complaint, alleging specifically that Physicians and Women's Health, as successor entities, were liable for the medical malpractice of Levine and Burke-Howes.[4]

On December 30, 2008, in connection with a substantial monetary settlement between the plaintiff and Shoreline and Levine, the plaintiff executed a document, entitled "[c]ovenant [n]ot [t]o [s]ue."[5] In the document, the plaintiff covenanted not to sue Levine, Shoreline and, inter alia, the past, present and future agents, officers, employees, assigns, etc., of Shoreline, and she additionally agreed to discharge[6] them from liability "forever . . . ."[7] The document specifically provided, however, that it did not affect the plaintiff's claims against the defendants. The defendants, however, were not parties to the document, nor was the document signed by Levine or a representative of Shoreline; the only signatory on the document was the plaintiff.

On July 1, 2009, the defendants filed their second motion for summary judgment, asserting, inter alia, that the plaintiff's covenant not to sue Shoreline specifically discharged Shoreline from liability, and, therefore, because the defendants' alleged liability was based on a claim of successor liability, if Shoreline, their predecessor, was relieved of liability, the defendants, necessarily, also were relieved of liability. They further argued that any liability they were alleged to have to the plaintiff exclusively derived from Shoreline's liability, and, therefore, if Shoreline was relieved of liability, its successors, including the defendants, also were

relieved of liability. The trial court agreed and granted the defendants' motion for summary judgment. This appeal followed.

The plaintiff claims that the court improperly granted the defendants' motion for summary judgment. She argues that the covenant not to sue was not a release from liability, despite the discharge language contained in it, and that the parties specifically stated in the document that the plaintiff's claims against the defendants were preserved.[8] As previously set forth, however, the defendants were not parties to the document that purported to preserve the plaintiff's claims against the defendants while settling her claim with Shoreline and releasing Shoreline from all liability.

The settlement between the plaintiff and Shoreline and its employees did not occur until after the asset transaction. Thus, after the defendants purchased the assets of Shoreline, the plaintiff continued to have available to her substantial monetary remedies against Shoreline and against its employees, and the plaintiff eventually took advantage of those remedies, settled her claims against them and executed covenants not to sue them, which covenants specifically stated that Shoreline and its employees were released from all liability "forever . . . ." Because the plaintiff had substantial monetary remedies available from Shoreline and its employees, which continued to exist after the asset transaction, and because her theories of successor liability are either or both the "mere continuation" or "continuity of enterprise" of Shoreline and the defendants, e.g., variations on a one continuous enterprise theme, I conclude that she is barred from seeking damages from the defendants under either theory of successor liability. Thus, I disagree with the majority's assertion "that the undisputed evidence contained within the record does not establish that the plaintiff has failed to meet this requirement [that a case premised on the mere continuation or continuity of enterprise theories of successor liability may not be maintained when the predecessor corporation constitutes a viable source of recovery] as a matter of law." As the plaintiff, with the participation of her counsel, affirmatively acknowledged and demonstrated by her own actions when she voluntarily settled her claims against Shoreline and its employees, the amount received by the plaintiff as a result of that settlement must be, as the majority states, a "viable source of recovery to the plaintiff as a matter of law." Especially in light of the undisputed evidence that Shoreline and its employees paid the plaintiff at least $2 million in that settlement, inter alia, there was sufficient evidence before the trial court for it to conclude that there were no material issues of disputed fact and that the defendants were entitled to summary judgment as a matter of law on the issue of whether the defendants were liable to the plaintiff under either of her theories of successor liability.[9]

The long-standing rule is that a successor is not liable for the debts and obligations of its predecessor. See annot., "Liability of Successor Corporation for Injury or Damage Caused by Product Issued by Predecessor, Based on Mere Continuation or Continuity of Enterprise Exceptions to Nonliability," 13 A.L.R.6th 355 (2011). There are, however, several exceptions to this rule. Id. "The mere transfer of the assets of one corporation to another corporation or individual generally does not make the latter liable for the debts or liabilities of the first corporation except where the purchaser expressly or impliedly agrees to assume the obligations, the purchaser is merely a continuation of the selling corporation, [the companies merged] or the transaction is entered into fraudulently to escape liability." (Internal quotation marks omitted.) *Chamlink Corp.* v. *Merritt Extruder Corp.*, 96 Conn. App. 183, 187, 899 A.2d 90 (2006). "There are two theories used to determine whether the purchaser is merely a continuation of the selling corporation. Under the common law mere continuation theory, successor liability attaches when the plaintiff demonstrates the existence of a single corporation after the transfer of assets, with an identity of stock, stockholders, and directors between the successor and predecessor corporations. . . . Under the continuity of enterprise theory, a mere continuation exists if the successor maintains the same business, with the same employees doing the same jobs, under the same supervisors, working conditions, and production processes, and produces the same products for the same customers." (Citation omitted; internal quotation marks omitted.) Id., 187–88.

As explained by the trial court in this case, quoting *In re Fairchild Aircraft Corp.*, 184 B.R. 910, 920 (Bankr. W.D. Tex. 1995), vacated on other grounds, 220 B.R. 909 (Bankr. W.D. Tex. 1998), "successor liability does not create a new cause of action against the purchaser so much as it transfers the liability of the predecessor to the purchaser. . . . Thus, while successor liability may give a party an alternative entity from whom to recover, the . . . claim [does not] have an existence independent of the underlying liability of the entity that sold the assets." See also generally *Seaboard Air Line Railroad Co.* v. *Coastal Distributing Co.*, 273 F. Sup. 340, 343 (D.S.C. 1967) ("Any other rule would be both illogical and unjust. In short, if [the entity], through whom liability derives is exonerated, the only rational basis for liability against the party secondarily and derivatively liable is lost.").

In the present case, the plaintiff alleged in her complaint that the defendants were liable for the medical malpractice of Levine and Burke-Howes solely as successors to Shoreline, which was vicariously liable as the employer of Levine and Burke-Howes. She argued before the trial court that the mere continuation excep-

tion or the continuity of enterprise exception applied in this case. Even if I were to assume that there were facts sufficient to support either of these exceptions to the rule of nonliability, I, nonetheless, still would conclude that the plaintiff has no viable claim against the defendants under either theory of successor liability, she having voluntarily settled her claim against the predecessor Shoreline, discharged its liability and thus extinguished its liability. See generally *In re Fairchild Aircraft Corp.*, supra, 184 B.R. 920; *Turner* v. *Bituminous Casualty Co.*, 397 Mich. 406, 419, 244 N.W.2d 873 (1976). To the extent that the plaintiff may argue that, because of her voluntary decision to settle rather than to continue to litigate her claims against Shoreline, Levine and Burke-Howes, she did not receive a full recovery, I conclude that this is irrelevant to the analysis required under either theory of successor liability pursued by the plaintiff. Litigants are held to the consequences of their voluntary acts, including settlement. See, e.g., *Cruz* v. *Montanez*, 294 Conn. 357, 382, 984 A.2d 705 (2009); *Soracco* v. *Williams Scotsman, Inc.*, 292 Conn. 86, 97–98, 971 A.2d 1 (2009); *Histen* v. *Histen*, 98 Conn. App. 729, 734, 911 A.2d 348 (2006); *Kondrat* v. *Brookfield*, 97 Conn. App. 31, 44, 902 A.2d 718, cert. denied, 280 Conn. 926, 908 A.2d 1087 (2006); *Doherty* v. *Sullivan*, 29 Conn. App. 736, 741–42, 618 A.2d 56 (1992).

In cases of successor liability based on the mere continuation or continuity of enterprise theories, any liability of the successors necessarily is derivative of and, thus, dependent on the existence of liability of the predecessor; predecessors and successors are not automatically jointly and severally liable as are joint tortfeasors. See generally *In re Fairchild Aircraft Corp.*, supra, 184 B.R. 920; *Seaboard Air Line Railroad Co.* v. *Coastal Distributing Co.*, supra, 273 F. Sup. 343. Moreover, under either theory of successor liability, if there is a remedy available to the plaintiff from the predecessor, the plaintiff first must seek relief from the predecessor. See *Foster* v. *Cone-Blanchard Machine Co.*, 460 Mich. 696, 705–706, 597 N.W.2d 506 (1999). Furthermore, once a predecessor is discharged or otherwise relieved of liability by a plaintiff, especially where a plaintiff is a beneficiary of a settlement payment by the predecessor, the successors also are discharged and thus relieved of liability. See *Craig* v. *Oakwood Hospital*, 471 Mich. 67, 684 N.W.2d 296 (2004); *Foster* v. *Cone-Blanchard Machine Co.*, supra, 705–706. This bar, after discharge of a predecessor, to derivative liability by a successor also is applied in areas of the law not involving predecessors and successors. See *Alvarez* v. *New Haven Register, Inc.*, 249 Conn. 709, 715–16, 735 A.2d 306 (1999) ("in the absence of a specific statute, where the liability of a principal for a tort committed by his agent is predicated solely upon the doctrine of respondeat superior, a valid release of either operates to release the other"); *In re Global Crossing, Ltd., Secu-*

rities Litigation, 471 F. Sup. 2d 338, 343–46 (S.D.N.Y. 2006) (because of partial settlement that fully released board designee employees from liability, and because defendants' liability on respondeat superior claims entirely is derivative of such liability, release of board designee employees is necessarily release of employers, despite language in settlement agreement that expressly reserves all rights against nonsettling defendants, including employers); see also *Voris* v. *Molinaro*, 302 Conn. 791, 795–98, 31 A.3d 363 (2011) (settlement of predicate claim extinguishes derivative claim for loss of consortium); *Brooks* v. *Sweeney*, 299 Conn. 196, 222, 9 A.3d 347 (2010) ("[T]he plaintiff's direct liability and indemnification claims against the [defendant] towns are derivative of her claims against [the individual defendants]. In light of our conclusion that [the individual defendants] are entitled to judgment as a matter of law on all claims, the [defendant] towns also are entitled to judgment as a matter of law on the claims asserted against them."); *Duni* v. *United Technologies Corp./ Pratt & Whitney Aircraft Division*, 239 Conn. 19, 30, 682 A.2d 99 (1996) ("[i]n light of the derivative nature of the rights created under [General Statutes] § 31-306 and the public policy considerations involved, we agree with the review board that, under our workers' compensation scheme, an employee, in settling his or her claim for disability compensation, may also compromise his or her surviving dependents' rights under § 31-306"); *Gino's Pizza of East Hartford, Inc.* v. *Kaplan*, 193 Conn. 135, 142–44, 475 A.2d 305 (1984) (where third party defendant's liability derivative of defendant's liability, reversal of judgment against third party defendant benefited defendant); *Hopson* v. *St. Mary's Hospital*, 176 Conn. 485, 494, 408 A.2d 260 (1979) (because consortium action derivative of injured spouse's cause of action, consortium claim barred after suit brought by injured spouse terminated by settlement or by adverse judgment on merits).

Absent some allegation of fraud or wrongdoing, which wholly is absent from this case, a plaintiff cannot choose to pursue a remedy against a successor if there is a remedy available from the predecessor. See *Foster* v. *Cone-Blanchard Machine Co.*, supra, 460 Mich. 705–706; *Zerand-Bernal Group, Inc.* v. *Cox*, 23 F.3d 159, 163 (7th Cir. 1994) (suggesting that claims based on successor liability not viable where plaintiff "had a chance to obtain a legal remedy against the predecessor, even so limited a remedy as that afforded by the filing of a claim in bankruptcy"). This is unlike a case of joint tortfeasors, where a plaintiff can decide which of the joint tortfeasors it shall pursue and in which order it may do so, even choosing not to pursue one or more of them.

In one of the seminal cases discussing the continuity of enterprise theory of successor liability, albeit in the product liability context, the Michigan Supreme Court

explained the reasoning behind recognizing the theory: "To the injured person the problem of recovery is substantially the same, no matter what corporate process led to transfer of the first corporation and/or its assets. Whether the corporate transaction was (1) a traditional merger accompanied by exchange of stock of the two corporations, or (2) a de facto merger brought about by the purchase of one corporation's assets by part of the stock of the second, or (3) a purchase of corporate assets for cash, the injured person has the same problem, *so long as the first corporation in each case legally and/or practically becomes defunct. He has no place to turn for relief except to the second corporation*." (Emphasis added.) *Turner* v. *Bituminous Casualty Co*., supra, 397 Mich. 419. "It is an essential condition precedent to imposition of liability on a successor manufacturer under the theory of product line continuation that there be elimination by the successor of an effective remedy against the predecessor, as where a successor purchases the predecessor's assets under an agreement requiring dissolution of the predecessor. . . . The existence of insurance coverage is relevant in determining the availability of a potential remedy against the original manufacturer." 63 Am. Jur. 2d 191–92, Products Liability § 138 (2010).

In the present case, Shoreline did not "become defunct" prior to its settlement, and that of its employees, with the plaintiff for a total of at least $2 million in insurance proceeds, but it continued to exist and to have assets, including but not limited to its insurance coverage after its sale of assets to the defendants.[10]

In a decision subsequent to *Turner*, the Michigan Supreme Court explained in *Foster* v. *Cone-Blanchard Machine Co*., supra, 460 Mich. 696, that successor liability, based on the continuity of enterprise doctrine, "applies only when the transferor is no longer viable and capable of being sued . . . ." (Internal quotation marks omitted.) Id., 705. The doctrine was recognized by the courts "to provide a remedy to an injured plaintiff in those cases in which the first corporation legally and/or practically becomes defunct." (Internal quotation marks omitted.) Id. "[W]here a plaintiff has . . . successfully pursued a remedy against a predecessor, the policy concerns that underscored the adoption of the continuity of enterprise theory . . . simply are not present." Id., 706. In the present case, it is undisputed that the plaintiff pursued, and eventually received, a substantial settlement payment of at least $2 million from the predecessor Shoreline and its employees.

The Michigan Supreme Court again spoke on the issue of successor liability in *Craig* v. *Oakwood Hospital*, supra, 471 Mich. 98–99, this time in the context of a medical malpractice action, concluding that the plaintiff had failed to demonstrate any reason that the court should apply the doctrine of successor liability

in such cases.[11] The court also determined that even if it were to conclude that the doctrine could apply to such cases, the fact that the plaintiff had obtained a remedy from the predecessor *necessarily barred recovery* from the successor, whose liability solely was based on the liability of the predecessor. Id., 99. The undisputed facts of the present case should lead to the same result as in *Craig*. The plaintiff should not have the ability voluntarily to settle her claims with the predecessor and its employees for the full amount of their insurance coverage and then unilaterally be able to decide to proceed against the presumably deeper pockets of the successors on the basis of signing a covenant not to sue and discharge of liability that purports to reserve her rights to file suit against those successors.

I recognize, however, that there is some variation among our nation's courts as to whether a predecessor must be incapable of furnishing a remedy in order for there to be a viable claim against the successor. See G. Kuney, "A Taxonomy and Evaluation of Successor Liability," 6 Fla. St. U. Bus. L. Rev. 9, 45–47 (2007). "Some courts allow recovery against the successor without addressing whether . . . the predecessor dissolved. At the other end of the spectrum, some courts have held there can be no successor liability unless the predecessor is completely dissolved (regardless of whether . . . it has merely ceased ordinary business operations and exists only as a legal, not a practical, matter). Other courts consider whether the predecessor remains a viable entity capable of providing relief—if it is, then there can be no recovery against the successor; if not, then successor liability will lie. While failure of the predecessor to dissolve may not be fatal in every action for continuity of enterprise successor liability, (especially where the predecessor continues as a shell or is otherwise underfunded), the fact that the predecessor remains a viable source for recourse is. This appears to be the most rational approach, in terms of the policies underlying successor liability." Id., 45–46. In light of the factual posture of this case, including the undisputed fact that the plaintiff voluntarily settled her claims with the predecessor and its employees for at least $2 million, the full amount of their available insurance coverage, I agree with the trial court that the plaintiff is not entitled to an additional recovery from the successor defendants that, under either the mere continuation or continuity of enterprise theories advanced by the plaintiff, stand in the same shoes as Shoreline, the predecessor entity.

It is clear that if the defendants had not purchased the assets of Shoreline approximately nine months after the alleged negligence occurred, the plaintiff's recovery from Shoreline and its employees would have been limited to their assets, including their insurance coverage. There is no claim that on the date of the alleged negligence, the defendants had any ownership interest

in the shares or assets of Shoreline or owed any duty to the plaintiff or Elijah. There also are no claims by the plaintiff that Shoreline sold its assets to the defendants for an amount materially less than their fair value, that Shoreline received from the defendants for such assets materially less than their fair value, or that there were any other wrongful acts in connection with the asset transaction. Further, the plaintiff does not claim that as of the date of the alleged negligence, the defendants' purchase of Shoreline's assets in any way was foreseeable. Also, the voluntary settlement between the plaintiff, Shoreline and its employees excluded all of Shoreline's assets except the substantial proceeds of the insurance policies,[12] so the asset transaction between Shoreline and the defendants is irrelevant to and thus does not provide a basis for the plaintiff's claims against the successor defendants, and the plaintiff has not alleged any other substantive basis that would support her claims. Finally, the substantial amount agreed to by the plaintiff is a "viable source of recovery to the plaintiff as a matter of law," as the plaintiff, with the participation of her counsel, affirmatively acknowledged and demonstrated by her own actions in voluntarily settling her claims against the predecessor Shoreline and its employees.[13]

The unfortunate result of the majority's reversal of the court's decision is to open the door for the plaintiff to seek to obtain an unjustified and unnecessary windfall recovery from two defendants that were uninvolved in the alleged negligence.[14] This court and our Supreme Court have rejected efforts by other parties to obtain a windfall recovery. See, e.g., *Hees* v. *Burke Construction, Inc.*, 290 Conn. 1, 15–16, 961 A.2d 373 (2009) (holding that General Statutes § 20-429 does not preclude trial court from reducing homeowner's damages by amount left unpaid under home improvement contract, otherwise act "could be read to allow a homeowner affirmatively to obtain a free home improvement project from the contractor, rather than simply to prevent the contractor from enforcing otherwise valid claims against the homeowner"; thus, plaintiffs' position "would, in effect, award them an unwarranted windfall that the legislature could not have intended"); *Walpole Woodworkers, Inc.* v. *Manning*, 126 Conn. App. 94, 110, 11 A.3d 165, cert. granted on other grounds, 300 Conn. 940, 17 A.3d 476 (2011); *Thomas* v. *Dept. of Developmental Services*, 297 Conn. 391, 410, 999 A.2d 682 (2010); *Gormbard* v. *Zurich Ins. Co.*, 279 Conn. 808, 828–29, 904 A.2d 198 (2006).

In addition to the lack of legal foundation for the majority's ruling, just as our legislature "[does] not intend to promulgate statutes . . . that lead to absurd consequences or bizarre results"; (internal quotation marks omitted) *Hartford Courant Co.* v. *Freedom of Information Commission*, 261 Conn. 86, 101, 801 A.2d 759 (2002); this court should not ignore the lack of

economic and public policy basis for its ruling in this case. In the absence of some discernable recognized economic or public policy, on the facts of this case, the plaintiff, after receiving at least $2 million from a predecessor and its employees, plus additional settlement funds from other defendants, should not be able to claim, "not enough," and then pursue successor entities that had no relationship to the predecessor on the date of the alleged negligence. The majority's ruling may result in an increase in insurance premiums for many businesses and professional entities to protect against the unjustified, unforeseeable, random and fortuitous claims of other parties against successors acting in good faith to purchase assets, or an increase in financial exposure for entities that do not have applicable insurance coverage.

Accordingly, I respectfully dissent.

[1] Lawrence and Memorial Hospital, Jonathan Levine, Donna Burke-Howes and Shoreline Obstetrics and Gynecology, P.C., also were named defendants in this case. The plaintiff settled her claims with those defendants before summary judgment was rendered in this case. Accordingly, I refer to Physicians and Women's Health as the defendants on appeal.

[2] The exact relationship between Physicians and Women's Health cannot be ascertained from the record. The plaintiff, however, treats them as interrelated, and the defendants have not raised an issue related to this treatment. The asset transaction between Shoreline and the defendants is the sole basis alleged by the plaintiff for her claims against the defendants.

[3] In her brief to the trial court, the plaintiff argued that "[a]ll of the factors relevant to the mere continuation exception apply here" and that the "continuing enterprise doctrine" also applies, seemingly using these terms interchangeably. I note that in *Medina* v. *Unlimited Systems, LLC*, United States District Court, Docket No. 3:09cv1430 (MRK) (D. Conn. December 15, 2010), Judge Kravitz, in interpreting *Kendall* v. *Amster*, 108 Conn. App. 319, 948 A.2d 1041 (2008), and *Chamlink Corp.* v. *Merritt Extruder Corp.*, 96 Conn. App. 183, 187, 899 A.2d 90 (2006), was persuaded that Connecticut "treat[s] continuity of enterprise as [its] preferred version of the mere continuation exception, essentially defining mere continuation as continuity of enterprise." (Internal quotation marks omitted.) *Medina* v. *Unlimited Systems, LLC*, supra, Docket No. 3:09cv1430 (MRK). Although I note Judge Kravitz' interpretation of our case law, I am not persuaded that we do not recognize both the mere continuation theory and the continuity of enterprise theory as separate exceptions to the general rule of successor nonliability.

[4] The plaintiff did not specify under which exception to the general rule of successor nonliability she was pursuing her claim.

[5] The plaintiff executed a separate document, entitled "Settlement Agreement and Covenant not to sue," related to Burke-Howes and Burke-Howes' insurer, Promutual Insurance Group, also on December 30, 2008. The plaintiff and her counsel were the only signatories on that document.

[6] "'Discharge' is defined by the Merriam-Webster Dictionary as 'to relieve of a charge, load, or burden,' 'to release from an obligation' and 'to set aside.' " *Detels* v. *Detels*, 79 Conn. App. 467, 473 n.6, 830 A.2d 381 (2003).

[7] The document provides in relevant part: "In full and complete consideration of the payment by Medical Professional Mutual Insurance Company . . . and ProSelect Insurance Company of the sum of ; [the plaintiff] . . . hereby covenant[s] not to sue Jonathan Levine, M.D., Shoreline . . . Medical Professional Mutual Insurance Company . . . ProSelect Insurance Company, and their past, present, and future officers, directors, partners, stockholders, attorneys, agents, servants, employers, employees, professional corporations, medical staff, representatives, affiliates, subsidiaries, insurers, reinsurers, heirs, predecessors in interest, and assigns and all other persons, firms, or corporations with whom any of the former have been affiliated (the 'Covenantees') regarding all claims, demands, actions, suits, debts, causes of action and liabilities . . . . This covenant not to sue does not [affect] claims against the Physicians for Women's Health LLC entities, which remain defendants in the pending action.

"[The plaintiff] understand[s] and affirm[s] that by executing this covenant not to sue forever discharging the Covenantees from all claims, demands, actions, suits, debts, causes of action and liabilities of every name and nature, whether known or unknown, including, but in no way limited to [those] arising from or in any way related to or growing out of, any care and treatment rendered by any or all of the Covenantees to [the plaintiff or Elijah] . . . . It is [the plaintiff's] intent to discharge any and all such claims, demands, actions, suits, debts, causes of action and liabilities against all Covenantees, and [I] hereby acknowledge that [I] have received consideration for the discharge of all such claims, demands, actions, suits, debts, causes of action and liabilities. . . .

"[I] also understand and affirm that by executing this covenant not to sue, [I am] setting up a complete bar to any recovery at law or in equity for any and all of the claims, demands, actions, suits, debts, causes of action and liabilities against the Covenantees, and [I am] satisfied with the consideration that [I] have received in exchange for this covenant not to sue that [I] have given to all of the Covenantees. . . .

"[I] understand and acknowledge that this covenant not to sue is for the compromise of a disputed claim and that the payment referred to herein is not to be construed as an admission of liability on the part of any Covenantee. [I] agree that [I] will not disclose and our attorneys have agreed that they will not disclose to any third party the terms of this covenant not to sue or the settlement to which it relates, unless such a disclosure is required by law or is agreed to by the Covenantees."

[8] The plaintiff, however, was the sole signatory to the covenant not to sue. Neither Shoreline nor Levine executed the covenant containing the plaintiff's unilateral statement of her "right" to sue the defendants.

[9] I also disagree with the majority that the "amount of damages suffered by the plaintiff" has any relevance to the issue of whether successor liability should be imposed on the defendants, and I conclude, to the contrary, that it does not have any relevance to that issue.

[10] Although the record does not reveal the extent of the assets retained by Shoreline, the portions of the asset purchase and sale agreement available in the record indicate that there was attached to the agreement a schedule of "excluded assets" that were not part of the transfer. The exact nature of these "excluded assets," however, is not part of the record. Additionally, as part of the agreement, Physicians purchased Shoreline's assets for a specific purchase price; that price, however, also is not part of the record.

[11] Whether Connecticut would recognize the successor liability doctrine in a medical malpractice case or would follow decision of the Michigan Supreme Court in *Craig* was not raised by the plaintiff or the defendants and thus cannot be determined in the current posture of this case.

[12] When the plaintiff accepted the settlement with Shoreline and its employees and she signed the applicable covenant not to sue, she specifically agreed in the covenant not to sue "to discharge any and all such claims, demands, actions, suits, debts, causes of action and liabilities against all Covenantees, and [she] . . . acknowledge[d] that [she] . . . received consideration for the discharge of all such claims, demands, actions, suits, debts, causes of action and liabilities. . . .

"[She] also [acknowledged that she] under[stood] and affirm[ed] that by executing [the] covenant not to sue, [she was] setting up a complete bar to any recovery at law or in equity for any and all of the claims, demands, actions, suits, debts, causes of action and liabilities against the Covenantees, and [that she was] satisfied with the consideration that [she had] received in exchange for [the] covenant not to sue . . . ."

[13] I also disagree with the majority's analysis of and conclusions about the "covenant not to sue," but in light of the reasons for my determination that the defendants have no successor liability in this case, I do not discuss in any detail the covenant issues and cases set forth in the second part of the majority opinion. However, I note that because of the plaintiff's voluntary settlement with and discharge of Shoreline for the claims it now seeks to pursue against the defendants, the defendants, like Shoreline, have no liability to the plaintiff under either of the exceptions to successor nonliability advanced by her. As the plaintiff's covenant not to sue Shoreline protects it from suit, it also should protect the defendants from suit, because, according to the plaintiff, the successor defendants must stand in Shoreline's shoes because they either are mere continuations of or share a continuity of enterprise with Shoreline. Additionally, regardless of its title, it is the substance of a document that governs its interpretation and application. *McKeon* v. *Lennon*, 131 Conn. App. 585, 628–29, 27 A.3d 436, cert. denied,

303 Conn. 901, A.3d (2011). In the present case the plaintiff not only covenanted not to sue Shoreline, but she "forever discharge[ed] the Covenantees from all claims, demands, actions, suits, debts, causes of action and liabilities of every name and nature, whether known or unknown, including, but in no way limited to [those] arising from or in any way related to or growing out of, any care and treatment rendered by any or all of the Covenantees to [the plaintiff or Elijah] . . . . It is [the plaintiff's] intent to discharge any and all such claims, demands, actions, suits, debts, causes of action and liabilities against all Covenantees, and [I] hereby acknowledge that [I] have received consideration for the discharge . . . ." See footnote 6 of this opinion. "[W]e interpret contract language in accordance with a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract." (Internal quotation marks omitted.) *Santana* v. *Hartford*, 94 Conn. App. 445, 463–64, 894 A.2d 307 (2006), aff'd, 282 Conn. 19, 918 A.2d 267 (2007); see also *19 Perry Street, LLC* v. *Unionville Water Co.*, 294 Conn. 611, 623, 987 A.2d 1009 (2010).

[14] Even accepting the plaintiff's representation that the amount of any damages recovered by her from the defendants would be diminished by the total amount of the previous recoveries by the plaintiff from other sources, any such net recovery from those defendants would still be a windfall because they had no relationship with Shoreline and no duty to the plaintiff or her decedent on the date of the alleged negligence. Also, the plaintiff does not claim in connection with the asset transaction that those defendants did anything fraudulent or otherwise wrongful, so there is no direct claim against the defendants on which their liability can be based. On the basis of the facts submitted in connection with the motion for summary judgment, after having voluntarily settled with Shoreline and its employees, there is no legally cognizable basis for the plaintiff to recover anything from the defendants, and thus the plaintiff's concession that any proceeds received from other entities would be subtracted from any damages assessed against the defendants is legally meaningless in the context of this case.