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September 26, 2022

The Honorable Hector Gonzalez, U.S.D.J.
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *Long Island Anesthesiologists PLLC v. UnitedHealthcare Insurance Company of New York et al.*, No. 2:22-cv-04040, Request for Pre-Motion Conference

Dear Judge Gonzalez:

I write on behalf of Defendants UnitedHealthcare Insurance Company of New York (United) and MultiPlan, Inc. to request a pre-motion conference for their planned motion to stay discovery pending the Court's resolution of their forthcoming motions to dismiss.[1] Defendants have conferred with LIA's counsel to prepare the required Case Management Plan (*see* Dkt. No. 22), but the parties disagree about when discovery should begin.

A stay of discovery pending rulings on the motions to dismiss is warranted. In its 209-paragraph, five-count complaint, LIA alleges various state and federal antitrust claims. That is precisely the type of complex antitrust action that courts in the Eastern District of New York have recognized should be tested on the pleadings before the parties get to discovery. *See, e.g.*, *In re Air Cargo Shipping Servs., Antitrust Litig.*, No. 06-MD-1775 (JG) (VVP), 2009 U.S. Dist. LEXIS 97365, at *62–63 (E.D.N.Y. Aug. 21, 2009) ("[I]n the antitrust setting[,] it is clear that the law now requires, before defendants are forced to bear the potentially enormous expense of discovery, that plaintiffs allege facts that raise a reasonable expectation that discovery will reveal evidence of the alleged antitrust violation."); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007) ("[I]t is only by taking care to require allegations that reach the level suggesting [an antitrust violation] that we can hope to avoid the potentially enormous expense of discovery in cases with no 'reasonably founded hope that the [discovery] process will reveal relevant evidence.'").

As explained below, Defendants should not be forced to shoulder the burden and expense of discovery when there is a substantial likelihood that each of LIA's claims will fail on the pleadings.

[1] Defendants will file their motions to dismiss by October 10, 2022 in accordance with the Court's September 12, 2022 text order.

I. GOOD CAUSE EXISTS TO STAY DISCOVERY PENDING DECISIONS ON DEFENDANTS' FORTHCOMING MOTIONS TO DISMISS.

A "[d]istrict [c]ourt has broad discretion to stay proceedings as an incident to its power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). That power specifically includes the discretion to stay discovery in the "interests of fairness, economy, and efficiency[.]" *Telesca v. Long Island Hous. P'ship*, No. 05-5509 (ADS) (ETB), 2006 U.S. Dist. LEXIS 24311, at *7 (E.D.N.Y. Apr. 27, 2006).

Under Federal Rule of Civil Procedure 26(c), a district court may stay discovery during the pendency of a motion to dismiss for "good cause shown." *Chesney v. Valley Stream Union Free Sch. Dist. No. 24*, 236 F.R.D. 113, 115 (E.D.N.Y. 2006), *aff'd*, 498 F. App'x 19 (Fed. Cir. 2012). Courts in the Second Circuit have recognized that a dispositive motion that "appear[s] to have substantial grounds" demonstrates good cause. *Chrysler Capital Corp. v. Century Power Corp.*, 137 F.R.D. 209, 211 (S.D.N.Y. 1991); *see also Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (holding that good cause for discovery stay exists where dispositive motion with "substantial arguments for dismissal" has been filed). In analyzing whether to stay discovery pending resolution of a dispositive motion, district courts consider: (1) "whether the defendant has made a strong showing that the plaintiff's claim is unmeritorious;" (2) "the breadth of discovery and the burden of responding to it;" and (3) "the risk of unfair prejudice to the party opposing the stay." *Chesney*, 236 F.R.D. at 115. Here, each of those factors supports a stay of discovery.

A. *Defendants have established substantial grounds for dismissal of the Complaint.*

As Defendants explained in their pre-motion letters regarding their forthcoming motions to dismiss (Dkt. Nos. 20, 21), there are multiple grounds for dismissal of LIA's Complaint, including that this Court should dismiss (or alternatively stay) this case on *Colorado River* and *Burford* abstention grounds. *See generally* Dkt. No. 21. The parties should not dive head-first into discovery before this Court determines whether it should stay its hand in favor of the proceedings in the New York Supreme Court. *See id.* at 1–2. In their motions to dismiss, Defendants will expand on the arguments identified in their pre-motion letters, including that LIA's claims lack plausibility, fail to satisfy the rule of reason, and fail to allege either Defendant's power in a properly defined relevant market. Those "substantial grounds" for dismissal support a stay. *Chrysler Capital Corp.*, 137 F.R.D. at 211. "Because [LIA's] complaint is deficient under Rule 8, [it] is not entitled to discovery, cabined or otherwise." *Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009).

B. *The breadth and burden of discovery weigh in favor of a stay.*

The "breadth" and "burden" of discovery in antitrust cases are significant. *Chesney*, 236 F.R.D. at 115. As the Supreme Court cautioned in *Twombly*, "proceeding to antitrust discovery can be expensive," so courts "'must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed.'" *Twombly*, 550 U.S. at 558 (citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984) (superseded by statute

on other grounds) ("[T]he costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the plaintiffs can construct a claim from the events related in the complaint")). Consistent with those principles, courts in the Second Circuit have recognized that "antitrust cases may be dismissed under Rule 12(b)(6) on the face of the complaint, without any opportunity for discovery." *Emigra Grp., LLC v. Fragomen, Del Rey, Bernsen & Loewy, LLP*, 612 F. Supp. 2d 330, 345 (S.D.N.Y. 2009); *see also Twombly*, 550 U.S. at 558 (explaining that a complaint's "basic deficienc[ies] should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court" (citation omitted)). A pause of a few months will avoid costly discovery while the Court analyzes the "basic deficienc[ies]" of the Complaint. *Id.*

C. *A stay of discovery pending resolution of the motions to dismiss would not unfairly prejudice LIA.*

A stay of discovery pending resolution of the motions to dismiss would pose no "risk of unfair prejudice" to LIA. *Chesney*, 236 F.R.D. at 115. As the parties have outlined in their Civil Case Management Plan, they agree that a one-year period for fact discovery is appropriate; they disagree only about when that period should start. *See* Dkt. No. 22 at ¶ 1. In light of the "substantial grounds" for dismissal and the complexities and costs inherent in antitrust discovery, the one-year period for fact discovery should be stayed pending the Court's decisions on Defendants' motions to dismiss. *Chrysler Capital Corp.*, 137 F.R.D. at 211.

For all those reasons, Defendants respectfully request that this Court stay all discovery deadlines until the Court rules on Defendants' forthcoming motions to dismiss.

Respectfully,

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