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September 18, 2023

The Honorable Hector Gonzalez, U.S.D.J.
United States District Court
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.*, Case No. 2:22-cv-04040

Dear Judge Gonzalez:

We represent the Plaintiff, Long Island Anesthesiology PLLC (LIA), and write in response to Defendant UnitedHealthcare Insurance Company of New York's (United) July 14 letter (Dkt 23) attaching a recent decision out of the New York State Supreme Court, Albany County, in the matter of *Joseph v. Corso*, Index No. 902227-2022. For the reasons that follow, Plaintiff respectfully submits that the decision rendered in *Joseph* is not dispositive of any of the issues raised in Defendants' motions to dismiss.

In *Joseph*, the court found that the New York Surprise Bill Law does not apply to the Empire Plan and that UnitedHealthcare does not control the Empire Plan's coverage or reimbursement decisions.[1] United's July 14 letter argues that if the Empire Plan is, in fact, subject to the federal No Surprises Act, then LIA's antitrust claim here necessarily fails. This is incorrect.

The Complaint in the instant matter alleges both pre- and post-NSA anticompetitive conduct. LIA alleges that United, aided by MultiPlan, is motivated to drive down reimbursement rates to competitively hobble out-of-network anesthesia providers for the benefit of OptumCare, a United affiliate that provides anesthesia services in direct competition with LIA. (Complaint ¶¶140-51.)

United achieves this goal, through its role as administrator of the Empire Plan, by abusing its monopsony power pressuring out-of-network providers to accept artificially low in-network rates and engaging in inappropriate denial and underpayment practices. (Complaint ¶ 92). This predates and is wholly untethered to United's post-NSA practices, and will not necessarily stop as a result of a judicial determination that the Empire Plan is not subject to the New York Surprise Bill Law.

In addition, LIA also alleges post-NSA anticompetitive conduct that is unimpacted by the *Joseph* decision. For example, LIA alleges that since the NSA went into effect, United has engaged MultiPlan in a scheme to frustrate the NSA's 30-day negotiation period by having MultiPlan make

[1] On August 14, Plaintiffs in the *Joseph* litigation filed a notice of appeal (NYSCEF Doc. No. 99.)

extremely low, and entirely unsupported, opening offers in every out-of-network claim, and then demanding that the practice respond, with data supporting its position, in time periods as short as 45-minutes after receiving the offer (Complaint ¶¶ 118-33.) At United's behest, MultiPlan then threatens the practice that failure to timely respond will be treated as a bad faith refusal to negotiate, causing the practice to lose its ability to challenge the reimbursement rate (*Id.*) This concerted conduct is part of a coordinated strategy between United and MultiPlan to reduce reimbursement rates.[2]

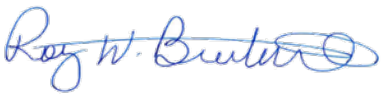
And, since surprise bills that arise from services provided to Empire Plan must be submitted to the NSA pursuant to the decision in *Joseph*, LIA's allegations of the post-NSA conduct described above are only magnified.

Accordingly, LIA believes that that the Complaint more than adequately pleads the existence of actual market power, an anticompetitive scheme, a conspiracy between Defendants to carry out that scheme, and the existence of antitrust injury, which is unrelated to the decision in *Joseph*.

To the extent the Court believes it would be helpful, Plaintiff welcomes the opportunity to make an additional submission to the Court on this issue.

Respectfully yours,

HARRIS BEACH PLLC



Roy W. Breitenbach

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