UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEAM SCHIERL COMPANIES and HEARTLAND FARMS, INC., on behalf of themselves and all others similarly situated, *Plaintiffs*, v. ASPIRUS, INC. and ASPIRUS NETWORK, INC., *Defendants*.	Civil Action No. 3:22-cv-00580-jdp Hon. James D. Peterson, U.S.D.J. Hon. Anita M. Boor, U.S.M.J.

DEFENDANTS' LIMITED MOTION TO EXCLUDE ANTITRUST INJURY RELATED OPINIONS AND TESTIMONY OF PROFESSOR DAVID DRANOVE

Pursuant to the Court's February 2, 2026 Opinion and Order permitting this limited motion, Dkt. 241, Defendants Aspirus, Inc. and Aspirus Network, Inc. respectfully move for an Order excluding Professor David Dranove's opinions and testimony relating to the antitrust injury element of Plaintiffs' claims. For the reasons set forth in the accompanying Memorandum of Law, Dranove's opinions and testimony relating to antitrust injury are inadmissible under Federal Rules of Evidence 702 and 403 and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), and should be excluded.

[*Signatures appear on next page*]

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Respectfully submitted,

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Hon. Anita M. Boor, U.S.M.J.

PUBLIC REDACTED VERSION

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' LIMITED MOTION TO EXCLUDE ANTITRUST INJURY RELATED OPINIONS AND TESTIMONY OF PROFESSOR DAVID DRANOVE

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INTRODUCTION

The Court's denial of Plaintiffs' motion for class certification brings into sharper focus the inability of Plaintiffs, Team Schierl Cos. ("Team Schierl") and Heartland Farms, Inc. ("Heartland Farms"), to prove their claims. Among other things, both Plaintiffs must prove that Aspirus Network, Inc.'s ("ANI") joint contracting with limited exclusivity (the "Challenged Conduct") caused each Plaintiff to sustain an antitrust injury, namely, an injury that flows from a harm to competition.

Under Plaintiffs' theory, the Challenged Conduct caused harm in the form of elevated reimbursement rates under ANI's contracts with Plaintiffs' Network Vendors. That in turn caused Plaintiffs to pay more for medical services than they claim they would have, had ANI not engaged in the Challenged Conduct.[1] As Plaintiffs have suggested, the exclusion of Jeffrey Leitzinger's opinions means they lack evidence that Plaintiffs paid overcharges for medical services, and thus lack evidence showing that either Plaintiff sustained an antitrust injury, *i.e.*, the fact of injury. Dkt. 240, at 1-2.

There is a separate and independent failure of proof as to antitrust injury that is highlighted by the inadmissible opinions offered by Plaintiffs' other expert, Professor David Dranove. Plaintiffs must also show that the Challenged Conduct caused harm to competition. As the Seventh Circuit explained, antitrust injury requires a showing that the alleged conduct was the "cause-in-fact" of the alleged injury. In other words, "that 'but for' the violation, the injury would not have occurred." *Greater Rockford Energy & Tech. Corp. v. Shell Oil Co*., 998 F.2d 391, 395 (7th Cir. 1993). While Leitzinger failed to reliably show the fact of an injury, Dranove fails to reliably show that the Challenged Conduct was the but for cause of any claimed injury. Because evidence

[1] "Network Vendors" refers to entities that assemble networks of providers.

establishing *both* the fact of an antitrust violation *and* causation is required for antitrust injury, exclusion of Dranove's opinions is a separate and additional ground for finding antitrust injury lacking.

Dranove's opinions as they relate to the antitrust injury element of Plaintiffs' claims are inadmissible for multiple reasons. As a threshold matter, Dranove concedes that [redacted]. Yet Dranove offers no analysis or opinion whatsoever with respect to the two Network Vendors used by Team Schierl and Heartland Farms. In fact, he failed to establish a "but-for world" for *any* Network Vendor—and did not even try to do so in his Opening Report. In his Reply Report, Dranove simply offered [redacted]. Importantly, the distinction between what "would" and "could" have happened in the but-for world is not mere semantics. The Seventh Circuit and the district courts have been clear that, to prove antitrust injury, plaintiffs must prove that their injuries *would* not have occurred absent the alleged conduct. *E.g.*, *Greater Rockford*, 998 F.2d at 394. Consequently, none of Dranove's speculative possibilities would help the trier of fact determine whether Plaintiffs have met their burden of proof on this element of their claims. Fed. R. Evid. 702(a).

Dranove's antitrust injury opinions fail multiple other prongs of Rule 702. Because he offers no opinions or analysis as to how the Challenged Conduct supposedly impacted the rates negotiated by Team Schierl's and Heartland Farm's Network Vendors for the healthcare services used by their plan members, his opinions do not fit Plaintiffs' case. Fed. R. Evid. 702(a), (d). Dranove's opinions about how [redacted]

[redacted] are speculative, lack any methodology, and are not grounded in the record. *Id.* at 702(b)-(d). This speculation should be excluded because Plaintiffs cannot show how it is helpful or how it satisfies any of Rule 702's other indicia of reliability. In addition, allowing Dranove to offer expert testimony as to subjects for which he has no factual basis would also run afoul of Rule 403 by improperly misleading the jury into accepting his *ipse dixit* based on his credentials rather than any work he did in this case.

Accordingly, Dranove's opinions and testimony on antitrust injury should be excluded.[2]

BACKGROUND

Dranove provided three expert reports: (1) a March 26, 2025 Expert Report ("Dranove Opening Report"), Dkt. 198; (2) a June 11, 2025 Reply Report ("Dranove Reply Report"), Dkt. 199; and (3) a June 11, 2025 Supplemental Report, Dkt. 200.

As concerns this motion, Dranove opines that [redacted].[3] *E.g.*, Dkt. 198, ¶¶ 28-29 (Dranove Opening Rpt.). Dranove conceded [redacted]. Dkt. 246, at 261:7-15 (Dec. 3, 2025 Dep. of David Dranove ("Dranove Dep.")). Yet, he did not do so. In his Reply Report, Dranove

[2] Dranove offers other opinions that do not meet the admissibility standards set forth in *Daubert* and Federal Rules of Evidence 702 and 403. Defendants expressly reserve their challenges as to those opinions. As directed by the Court, this motion focuses only on Dranove's inadmissible causation opinions and testimony that are relevant to Plaintiffs' inability to establish antitrust injury. Dkt. 241 (permitting *Daubert* motions "relevant to plaintiffs' expert evidence of antitrust injury").

[3] For judicial economy, Defendants refer the Court to their memorandum of law and proposed findings of fact in support of their limited motion for summary judgment filed contemporaneously herewith and incorporated by reference herein for additional discussion of relevant facts.

opined that, [redacted]. Dkt. 199, ¶ 140 (Dranove Reply Rpt.). He opines that [redacted]." *Id.*

At his deposition, Dranove admitted that [redacted]. Dkt. 246, at 264:5-20 (Dranove Dep.). [redacted]." *Id.* at 275:7-10. [redacted]. *Id.* at 276:12-15 ("[redacted]"); *see also id.* at 330:7-13.

Ultimately, Dranove testified that [redacted]. *Id.* at 263:6-18, 264:21-265:18; *see id.* at 272:15-21 ("[redacted]

[redacted]").

Most relevant here, Team Schierl only ever contracted for in-network services from one Network Vendor, The Alliance, and Heartland Farms only worked with two Network Vendors, The Alliance and UnitedHealthcare ("UHC"). Defs.' Mem. of Law in Support of Summ. J. at 6. Neither Plaintiff negotiated with Defendants directly. *Id*. Yet, Dranove offers no opinions or analysis as to how, absent the Challenged Conduct, ANI and its providers would have negotiated with either The Alliance or UHC to lower reimbursement rates. Nor does Dranove opine specifically that such negotiations would have lowered reimbursement rates paid by Team Schierl or Heartland Farms for the particular healthcare services used by their plan members.

ARGUMENT

Under Federal Rule of Evidence 702 and *Daubert*, an expert may offer opinions only if "the proponent demonstrates to the court that it is more likely than not that" the opinions (a) will "help the trier of fact to understand the evidence or to determine a fact in issue," (b) "is based on sufficient facts or data," (c) "is the product of reliable principles and methods," and (d) "reflects a reliable application of the principles and methods to the facts of the case." Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592-93 (1993); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999).

The Supreme Court has instructed that, when evaluating the admissibility of expert testimony, a court must "determine whether the evidence or testimony assists the trier of fact in understanding the evidence or in determining a fact in issue. That is, the suggested scientific testimony must 'fit' the issue to which the expert is testifying." *Porter v. Whitehall Lab'ys, Inc.*, 9 F.3d 607, 616 (7th Cir. 1993); *Deimer v. Cincinnati Sub-Zero Prods., Inc.*, 58 F.3d 341, 345 (7th Cir. 1995) ("The Supreme Court stated that scientific testimony must 'fit' the issue to which the expert is testifying to the extent that it is tied to the facts of the case and will aid the jury in resolving

a factual dispute."). In addition, "[t]o satisfy the requirements of Rule 702 and *Daubert*, [an expert] need[s] to show that his conclusions were the fruit of a rigorous, objectively-verifiable approach —something more than mere speculation." *Timm v. Goodyear Dunlop Tires N. Am., Ltd.*, 932 F.3d 986, 994 (7th Cir. 2019); *Lewis v. CITGO Petroleum Corp*., 561 F.3d 698, 705 (7th Cir. 2009) (an expert's opinion "must be grounded in the scientific process and may not be merely a subjective belief or unsupported conjecture").

The Court should also be "mindful of other applicable rules" that may preclude admissibility, such as Federal Rules of Evidence 401 and 403. *Daubert*, 509 U.S. at 595; *Koehler v. Infosys Techs. Ltd.*, 628 F. Supp. 3d 835, 883 (E.D. Wis. 2022) ("Even if the expert's methodology was scientifically valid and could properly be applied to the facts at issue, a judge may exclude it for the reasons listed in Rule 403.").

In 2023, Congress and the Supreme Court amended Rule 702 to emphasize that district courts must fulfill their gatekeeper role by strictly enforcing the Rule. According to the Committee, "critical questions of the sufficiency of an expert's basis, and the application of the expert's methodology," *are questions of admissibility and not just of weight*. Fed. R. Evid. Comm. Note to 2023 Amendment. Accordingly, before a court can admit expert testimony, it must be satisfied that "the proponent," here Plaintiffs, "demonstrates . . . that it is more likely than not" that the four Rule 702 factors weigh in favor of admissibility. *Id*.; *see also Huss v. Sharkninja Operating LLC*, No. 23-cv-01435, 2025 WL 257226, at *3 (S.D. Ind. Jan. 21, 2025) ("Given the amendment to Rule 702, the Court must also determine whether the proponent has made the requisite showing under the 'more likely than not' standard.").

Dranove's causation opinions fail these standards and should be excluded.

I. Dranove's Causation Opinions Relating to Antitrust Injury Should Be Excluded Under Rule 702.

Dranove's causation opinions relating to antitrust injury should be excluded because they lack any factual basis, are not the product of any reliable methodology, and do not reflect a reliable application of any methodology to the facts of Plaintiffs' narrowed case. They are, consequently, unhelpful to the Court or trier of fact and should be excluded. Fed. R. Evid. 702(a)-(d).

As discussed more fully in Defendants' contemporaneously filed motion for summary judgment, antitrust injury is a "*necessary element* to prove an antitrust claim." *E.g.*, *Marion Healthcare, LLC v. S. Ill. Healthcare*, No. 12-cv-871, 2020 WL 1527772, at *8 (S.D. Ill. Mar. 31, 2020) (emphasis in original). To establish antitrust injury, plaintiffs must prove "with a fair degree of certainty" that their "injury *would not have occurred*" "but for" the alleged restraint. *E.g.*, *Greater Rockford*, 998 F.2d at 401 (emphasis added).

At his deposition, Dranove agreed without qualification that [redacted]." Dkt. 246, at 261:7-15 (Dranove Dep.) ("[redacted]"). In other words, as an economist, Dranove was required to assess what the competitive conditions would have been in the absence of the Challenged Conduct. *See* Dkt. 198, ¶ 156 (Dranove Opening Rpt.). Only then can one assess whether the difference between the actual and but-for world reveals the existence of anticompetitive harm or lack thereof caused by the alleged conduct. Here, that would have required Dranove to assess, for example, how ANI and its providers would have contracted with Plaintiffs' Network Vendors of choice, The Alliance and UHC, in the absence of the Challenged Conduct.

Despite recognizing the need to do so, Dranove does not establish a but-for world in his

Opening Report. For the first time in his Reply Report, Dranove offers [redacted]." Dkt. 199, ¶ 140 (Dranove Reply Rpt.) (emphasis added). But none of Dranove's musings about [redacted] help the Court or a jury determine whether Plaintiffs have proven what "*would*" have happened but for the Challenged Conduct. *See Greater Rockford*, 998 F.2d at 394; *see also In re Humira (Adalimumab) Antitrust Litig.*, 465 F. Supp. 3d 811, 843-46 (N.D. Ill. 2020) (finding, in regard to plaintiffs' failure to establish antitrust injury, that "plaintiffs' use of the word 'could' instead of 'would' [was] not merely semantic; it signal[ed] that they [did] not intend to prove that prices were going to fall but for the [challenged conduct]."), *aff'd sub nom. Mayor of Baltimore v. AbbVie Inc.*, 42 F.4th 709 (7th Cir. 2022).

Moreover, each of Dranove's "[redacted]" amount to inadmissible *ipse dixit*, and none are specific to Plaintiffs or their Network Vendors and thus do not fit the claims in this case. *Hartman v. EBSCO Indus., Inc.*, 758 F.3d 810, 819 (7th Cir. 2014) ("The testimony must 'fit the issue to which the expert is testifying [and be] tied to the facts of the case.'" (citation omitted)). In fact, Dranove makes no effort to [redacted] to ANI's negotiations with any Network Vendor, much less either of the Network Vendors used by Plaintiffs.

In his Reply Report, Dranove speculates that [redacted]." Dkt. 199, ¶ 140 (Dranove Reply Rpt.). At his deposition, Dranove conceded that [redacted]

[redacted]. Dkt. 246, at 264:5-20 (Dranove Dep.).

[redacted]e." *Id*. at 275:7-10. [redacted]. *Id*. at 263:6-18, 264:21-265:18. [redacted]. *E.g.*, Dkt. 198, ¶ 28 (Dranove Opening Rpt.). [redacted]. *Id*. at 275:16-19.

Dranove's speculation about [redacted]. *E.g.*, Dkt. 245 at 64:5-13 ([redacted]"). This testimony squarely contradicts any speculative and baseless opinion that [redacted]. Dranove should have addressed this testimony, as an expert "may not simply ignore evidence," *i.e.*, "undisputed

testimony" from witnesses, "that does not support his opinion." *Nunez v. BNSF Ry. Co.*, No. 09-cv-4037, 2012 WL 2874059, at *6 (C.D. Ill. July 13, 2012), *aff'd,* 730 F.3d 681 (7th Cir. 2013).

At bottom, Dranove's speculation about [redacted] is precisely the type of *ipse dixit* about causation that this Court routinely excludes under Rule 702. For example, in *Gilbert v. Lands' End, Inc.*, this Court excluded a causation opinion from "a board-certified dermatologist who . . . taught and practiced in the field of dermatology for more than 30 years, including at Harvard Medical School, University of Rochester School of Medicine and Dentistry, George Washington University Medical Center, and Tufts University School of Medicine," because her deposition testimony confirmed that her "general causation opinions amount[ed] to unsupported speculation, not an expert opinion supported by any acceptable scientific method." No. 19-cv-1066, 2022 WL 2643514, at *12-13 (W.D. Wis. July 8, 2022), *aff'd,* 158 F.4th 839 (7th Cir. 2025). In excluding her opinion, the Court held that the expert failed to analyze sufficient evidence specific to each plaintiff in the case to reliably opine as to the cause of each such plaintiff's medical conditions. *Id*. The expert's generalized assumptions about causation based on an incomplete record did not suffice. *Id*. This Court's decision in *Young v. Injured Patients & Families Compensation Fund* further illustrates how experts can cross the line into offering impermissible *ipse dixit*. No. 23-cv-235, 2025 WL 506615, at *3 (W.D. Wis. Feb. 11, 2025). There, this Court precluded a practicing pediatrician and clinical professor from testifying on causation because the expert's report provided no "explanation or analysis" "to connect" his speculative opinion to the plaintiff's circumstances. *Id*.; *see also Goodyear*, 932 F.3d at 994 (excluding expert opinion about causation because it was speculative and not "the fruit of a rigorous, objectively-verifiable approach").

Dranove's opinion should be excluded for the same reasons. His reports do not contain any

analysis of evidence specific to Team Schierl, Heartland Farms, the Network Vendors they used, or any other Network Vendors. Indeed, Dranove's deposition testimony confirms that [redacted]. *See, e.g.*, Dkt. 246, at 264:5-20, 263:6-18, 264:5-265:18 (Dranove Dep.). Without any such support, his opinion on the but-for world falls squarely within this Court's long line of precedent excluding an expert's "rank speculation." *E.g.*, *Moore v. Nat'l Presto Indus., Inc.*, 603 F. Supp. 3d 676, 683 (W.D. Wis. 2022) (Peterson, J.) (excluding expert opinion based on "rank speculation"); *Rogers v. K2 Sports, LLC*, 348 F. Supp. 3d 892, 897 (W.D. Wis. 2018) (same); *Sanchelima Int'l, Inc. v. Walker Stainless Equip. Co.*, No. 16-cv-644, 2018 WL 1401195, at *2-3 (W.D. Wis. Mar. 19, 2018) (Peterson, J.) (same), *aff'd,* 920 F.3d 1141 (7th Cir. 2019).

II. Dranove's Causation Opinions Relating Antitrust Injury Are Also Inadmissible Under Rule 403.

Dranove's speculation about the but-for world should be excluded for the additional reason that its probative value (if any) is substantially outweighed by the risk of misleading and confusing the jury. Fed. R. Evid. 403. Dranove is an experienced expert economist from Northwestern University who can easily give a jury the impression that his opinion about [redacted] is grounded in the facts in the case and is the product of a reliable methodology, when neither is true. *Daubert*, 509 U.S. at 595. Dranove's testimony about [redacted] can also confuse the jury as to the real issue they need to decide, which is whether Plaintiffs' alleged "injury *would* not have occurred" "but for" the alleged restraint. *Greater Rockford*, 998 F.2d at 395 (emphasis added).

CONCLUSION

For the foregoing reasons, the Court should exclude all of Dranove's opinions and testimony relating to the antitrust injury element of Plaintiffs' claims.

Dated: February 25, 2026

Respectfully submitted,

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