

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

UNITED HEALTHCARE SERVICES,
INC.; UNITEDHEALTHCARE
INSURANCE COMPANY; AND UMR,
INC.,

Plaintiffs,

v.

HOSPITAL PHYSICIAN SERVICES
SOUTHEAST, P.C.; INPHYNET
PRIMARY CARE PHYSICIANS
SOUTHEAST, P.C.; AND REDMOND
ANESTHESIA & PAIN TREATMENT,
P.C.,

Defendants.

Civil Action No. 1:23-cv-05221-JPB

**DECLARATION OF GREG JACOB IN SUPPORT OF UNITED'S
RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS
THE AMENDED COMPLAINT**

I, Greg Jacob, declare and state as follows:

1. I am a partner of O'Melveny & Myers LLP and I represent Plaintiffs United HealthCare Services, Inc., UnitedHealthcare Insurance Company; and UMR, Inc. (collectively, "United") in the above-captioned matter. I am licensed and authorized to practice law in the District of Columbia and Virginia and admitted to practice *pro hac vice* in the U.S. District Court for the Northern District of Georgia. I submit this declaration in support of United's Response In

Opposition To Defendants' Motion to Dismiss the Amended Complaint. I have personal knowledge of the matters set forth in this declaration, and if called to testify to the facts below, I could and would do so competently.

2. On January 23, 2024, on behalf of United, I sent a letter to Mr. Kent Bristow. A true and correct copy of that letter is attached hereto as **Exhibit A**.

3. On January 29, 2024, counsel for Plaintiffs sent a letter on behalf of Mr. Bristow in response to my January 23, 2024 letter. A true and correct copy of Plaintiffs' response letter is attached hereto as **Exhibit B**.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on February 22, 2024 in Washington, D.C.

/s/ Greg Jacob
Greg Jacob

Exhibit A



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January 23, 2024

Greg Jacob
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gjacob@omm.com

VIA EMAIL AND FEDEX

Kent Bristow
Senior Vice President, Revenue Mgmt.
TeamHealth Holdings, Inc.
265 Brookview Centre Way, Suite 203
Knoxville, TN 37919

James W. Cobb
Cameron B. Roberts
CAPLAN COBB LLC
75 Fourteenth Street, NE, Suite 2700
Atlanta, Georgia 30309

Re: United Healthcare Services, Inc. v. Hospital Physician Services Southeast P.C.

Dear Mr. Bristow,

We represent United Healthcare Services, Inc., UnitedHealthcare Insurance Company, and UMR Inc. (collectively, "United") in the above captioned litigation—*United Healthcare Services Inc., et al. v. Hospital Physician Services Southeast, P.C. et al.*, Case No. 1:23-cv-05221-JPB—which is currently pending in the Northern District of Georgia (the "Georgia lawsuit"). You recently signed a declaration in support of Defendants' Motion to Dismiss the Complaint, ECF No. 23 ("Motion to Dismiss"), which I attach for your reference (the "Bristow Decl.>").

In paragraph 8 of your declaration you state that: "[p]resently, the Georgia Medical Groups¹ have no intent to take legal action against United regarding the Litigation Medical Claims." Bristow Decl. ¶ 8, ECF 23-1. This statement is repeated in Defendants' Motion to Dismiss in support of the argument that there is no controversy between United and the Georgia Medical Groups. See Motion to Dismiss at 13–14. Relying on your statements, Defendants claim that "any proffered controversy between the Georgia Medical Groups and United is 'conjectural' and 'hypothetical' rather than 'real and immediate.'" *Id.* at 14.

It is of course preferable to United to be able to resolve the ongoing dispute between the parties concerning the legally required standard for payment of claims without further litigation. It is essential to United's role as an administrator of ERISA-governed health benefit plans and payor of claims that United have certainty that it should be adjudicating plan benefits by applying plan terms, rather than some state common law standard that is external to the plans.

TeamHealth threatened United in 2019 that "[w]e've gotten really good at the litigation route and have a template to file in every state for every contract," and that [f]or every UHG termination,

¹ Your declaration uses the term "Georgia Medical Groups" to refer to the Defendants in the Georgia Lawsuit—Hospital Physician Services Southeast, P.C., Inphynet Primary Care Physicians Southeast, P.C., and Redmond Anesthesia & Pain Treatment, P.C.



we'll file a TeamHealth lawsuit." For the last several years, TeamHealth has doggedly been making good on those threats, filing eleven lawsuits against United since 2019, including two new lawsuits that it filed in Florida in November 2023. And as you are aware, two of the Georgia Defendants were parties to one of the TeamHealth contracts that United terminated by letter dated July 9, 2019. TeamHealth has already filed lawsuits against United in four of the six states in which that set of contracts was terminated, and it is untenable for United to continue to adjudicate claims in Georgia under the continued threat that where United has adjudicated health plan benefits consistent with plan terms, TeamHealth will sue United asserting that it should instead have paid the claims in accordance with a state common law standard external to the plans.

Based on the declaration in support of Defendants' Motion to Dismiss the Complaint, it appears that TeamHealth may be willing to retract its prior threats and forswear challenging United's adjudication of the claims at issue in the Georgia lawsuit using common law theories. If that is the case, we ask that that you memorialize this understanding by executing the attached declaration on the Georgia Defendants' behalf, affirming that Georgia Defendants will not sue United Healthcare or any United affiliates using state common law causes of action to seek increased payments on any of the claims at issue in the Georgia lawsuit.² By executing the declaration, the Georgia Defendants would retain the right to bring (with appropriate patient authorization) administrative appeals challenging plan benefit determinations or ERISA benefit claims in federal court, which are designed to enforce ERISA's bedrock requirement that health plan benefit claims be adjudicated in accordance with plan terms.

We respectfully request that you respond to this letter by noon on January 26, 2024. If we do not receive a response by that date, we will assume that you are unwilling to execute the attached declaration. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Greg Jacob".

Greg Jacob

² The Georgia Lawsuit involves claims for medical services rendered by the Georgia Medical Group in Georgia for (i) out-of-network emergency services provided to United's members prior to January 1, 2022 and (ii) claims for out-of-network non-emergency services provided to United's members on or after January 1, 2022.

Exhibit B



SENDER'S E-MAIL: jfineberg@lashgoldberg.com
REPLY TO MIAMI OFFICE

January 29, 2024

VIA EMAIL

Greg Jacob
O'Melveny & Myers LLP
1625 Eye Street NW
Washington, D.C. 20006
gjacob@omm.com

Re: United Healthcare Services, Inc. v. Hospital Physician Services Southeast P.C.

Dear Mr. Jacob:

We write in response to your January 23, 2024 letter to Kent Bristow (“Letter”). In the Letter, you reference a declaration (“Declaration”) that Mr. Bristow executed in support of Defendants’ Motion to Dismiss for Lack of Subject-Matter Jurisdiction (“Motion”) in the above-captioned case.¹ As you acknowledge, Mr. Bristow attested in his Declaration that “[p]resently, the Georgia Medical Groups have no intent to take legal action against United regarding the Litigation Medical Claims.”² (Decl. ¶ 8.) As Defendants explain in the Motion, this reality poses an insurmountable hurdle to United’s effort to obtain declaratory relief. Under longstanding, well-established law, the courts of the United States are not constitutionally empowered to render advisory opinions or otherwise adjudicate hypothetical disputes. Put simply, the Court has no subject-matter jurisdiction and must dismiss this case.

Apparently recognizing this reality, you now ask Mr. Bristow to “memorialize this understanding by executing the attached declaration ... affirming that [the Georgia Medical Groups] will not sue [United] using state common law causes of action to seek increased payments on any of the claims at issue in the Georgia lawsuit....” (Letter at 2.) Mr. Bristow will respectfully decline that invitation for several reasons:

¹ The Motion is ECF No. 23. The Declaration is ECF No. 23-1.

² The “Georgia Medical Groups” are the Defendants in the above-captioned matter. The “Litigation Medical Claims” are defined in ¶ 6 of the Declaration. They include “(a) out-of-network emergency services provided by the Georgia Medical Groups to United’s members prior to January 1, 2022 in Georgia, and (b) claims for out-of-network non-emergency services provided to United’s members at out-of-network facilities on or after January 1, 2022 in Georgia.”

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January 29, 2024

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First, there is no need for an additional sworn statement because Mr. Bristow's existing Declaration is clear and unambiguous. Mr. Bristow attests that "[p]resently, the Georgia Medical Groups have no intent to take legal action against United regarding the Litigation Medical Claims." That statement means precisely what it says: **presently**, the Georgia Medical Groups do not intend to sue United regarding the Litigation Medical Claims. If Mr. Bristow had meant to declare that the Georgia Medical Groups were making an ironclad commitment to **never** sue United, he would have done so.

Second, your request for the Georgia Medical Groups to commit to never suing United is entirely unreasonable. As Mr. Bristow explains, "TeamHealth-affiliated medical groups ... are selective and deliberate about whether and when to take legal action against Insurers." (Decl. ¶ 10.) These decisions are influenced by a variety of external factors, including market conditions in a given geography. Thus, Mr. Bristow's statement should be understood for what it plainly is: an expression of present intent based on the current status quo. Of course, should conditions change at some point in the future, it is possible that intentions could change in response. But all of this is purely speculative, and it serves only to highlight that any perceived dispute between the Georgia Medical Groups and United is "conjectural, hypothetical, or contingent," rather than "real and immediate." *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1347 (11th Cir. 1999).

Third, we suspect your Letter is not a good faith attempt to resolve a dispute between the parties, but rather is an effort to manufacture a record you can use to support United's eventual response to the Georgia Medical Groups' upcoming motion to dismiss the Amended Complaint. In other words, we expect that United will argue to the Court that the Georgia Medical Groups' refusal to commit to never suing, irrespective of whatever unforeseen circumstances may materialize in the future, somehow suggests that there is a present, justiciable controversy for the Court to resolve. While United is free to make whatever arguments it deems appropriate, we note that such a position would reflect a gross misstatement of the governing legal standard.

Finally, you state that "[i]t is of course preferable to United to be able to resolve the ongoing dispute between the parties concerning the legally required standard for payment of claims without further litigation." (Letter at 1.) We note once again that there is, in fact, no "ongoing dispute between the parties," because the Georgia Medical Groups do not presently intend to sue United regarding reimbursement amounts on the claims that United has put at issue in this lawsuit, and they have given no indication to the contrary. And while we certainly appreciate United's expressed preference to avoid further litigation, that sentiment is belied by United's actions to date. Notably, United initiated this case without making any pre-suit effort to discuss the issues raised or otherwise ascertain whether the Georgia Medical Groups intended to sue it. If United sincerely wishes to avoid unnecessary litigation, then it should drop its meritless lawsuit.

Sincerely,

LASHGOLDBERG LLP

/s/ Justin C. Fineberg**Justin C. Fineberg**

January 29, 2024
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cc: All Counsel