

25-1167

United States Court of Appeals For the Second Circuit

LONG ISLAND ANESTHESIOLOGISTS PLLC,

Plaintiff-Appellant,

-v-

UNITEDHEALTHCARE INSURANCE COMPANY OF NEW YORK, INC., *as*
Program Administrator for the Empire Plan Medical/Surgical Program,
and MULTIPLAN INC.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Eastern District of New York

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
PRELIMINARY STATEMENT.....	1
ARGUMENT	2
I. LIA HAD ARTICLE III AND ANTITRUST STANDING TO ASSERT ITS CLAIMS	2
II. LIA HAS PLAUSIBLY ALLEGED A VIOLATION OF SECTION 1 OF THE SHERMAN ACT.....	9
III. LIA HAS PLAUSIBLY ALLEGED SECTION 2 MONOPSONY CLAIMS	15
IV. IN THE ALTERNATIVE, THE COURT SHOULD MODIFY THE DECISION AND ORDER TO GRANT LIA LEAVE TO AMEND THE COMPLAINT.....	19
V. THE DISTRICT COURT PROPERLY REJECTED DEFENDANTS’ ISSUE PRECLUSION ARGUMENT.....	21
CONCLUSION.....	25
CERTIFICATE OF COMPLIANCE.....	26

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Allen v. McCurry</i> , 449 U.S. 90 (1980).....	22
<i>Anderson News, LLC v. Am. Media, Inc.</i> , 680 F.3d 162 (2d Cir. 2012)	10
<i>Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters</i> , 459 U.S. 519 (1983).....	16
<i>Atlantic Richfield Co. v. USA Petroleum Co.</i> , 495 U.S. 328 (1990).....	8
<i>Block v. First Blood Assocs.</i> , 988 F.2d 344 (2d Cir.1993)	20
<i>Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.</i> , 429 U.S. 477 (1977).....	3, 7
<i>Cayuga Nation v. Tanner</i> , 6 F.4th 361 (2d Cir. 2021).....	21
<i>Colwell & Salmon Commc'ns, Inc. v. ArborMed Corp.</i> , No. 1:10-CV-01137, 2011 WL 2516926 (N.D.N.Y. June 23, 2011).....	20
<i>Compass, Inc. v. Real Estate Bd. of N.Y.</i> , 21-cv-2195 (AJN), 2022 WL 992628 (S.D.N.Y. Mar. 31, 2022).....	10
<i>Concord Assocs., L.P. v. Ent. Props. Tr.</i> , No. 12 Civ. 1667(ER), 2014 WL 1396524 (S.D.N.Y. April 9, 2014), <i>aff'd</i> , 817 F.3d 46 (2d Cir. 2016)	14
<i>Daniel v. Am. Bd. of Emergency Med.</i> , 428 F.3d 408 (2d. Cir. 2005)	3

<i>Fineman v. Armstrong World Indus.</i> , 980 F.2d 171 (3d Cir. 1992)	12
<i>George Haug Co. v. Rolls Royce Motor Cars Inc.</i> , 148 F.3d 136 (2d Cir.1998)	19
<i>Hosp. Bldg. Co. v. Trs. of Rex Hosp.</i> , 425 U.S. 738 (1976).....	19
<i>Indium Corp. of Am. v. Semi-Alloys, Inc.</i> , 566 F. Supp. 1344 (N.D.N.Y. 1983)	19
<i>Interoceanica Corp. v. Sound Pilots, Inc.</i> , 107 F.3d 86 (2d Cir. 1997)	22
<i>IQ Dental Supply, Inc. v. Henry Schein, Inc.</i> , 924 F.3d 57 (2d Cir. 2019)	3, 6
<i>Joseph v. Corso</i> , 2023 WL 12011473, 2023 N.Y. Slip Op. 34755(U) (N.Y. Sup. Ct., July 13, 2023), affirmed on appeal in <i>Joseph v.</i> <i>Corso</i> , 233 A.D.3d 104 (3d Dept. 2024)	21, 23
<i>Kirtsaeng v. John Wiley & Sons, Inc.</i> , 568 U.S. 519 (2013).....	8
<i>Knevelbaard Dairies v. Kraft Foods, Inc.</i> , 232 F.3d 979 (9th Cir.2000).....	16
<i>McKithen v. Brown</i> , 481 F.3d 89 (2d Cir. 2007)	22
<i>In re Musical Instruments & Equip. Antitrust Litig.</i> , 798 F.3d 1186 (9th Cir. 2015).....	13
<i>N. Pac. Ry. Co. v. United States</i> , 356 U.S. 1 (1958).....	15, 16
<i>NCAA v. Bd. of Regents of Univ. of Okla.</i> , 468 U.S. 85 (1984).....	8

<i>Port Dock & stone Corp. v. Oldcastle Northeast</i> , 507 F.3d 117 (2d. Cir. 2007)	3
<i>Presque Isle Colon & Rectal Surgery v. Highmark Health</i> , 391 F. Supp. 3d 485 (W.D. Pa. 2019).....	6, 7, 16
<i>Proctor v. LeClaire</i> , 715 F.3d 402 (2d Cir. 2013)	22
<i>Republic of Ecuador v. Chevron Corp.</i> , 638 F.3d 384 (2d Cir.2011)	22, 23
<i>Scuderi-Hunter v. Merklen</i> , No. 23-542, 2024 WL 1005793 (2d Cir. Mar. 8, 2024).....	21
<i>St. Bernard Gen. Hosp., Inc. v. Hosp. Serv. Ass’n</i> , 712 F.2d 978 (5th Cir.1983).....	19
<i>Starr v. Sony BMG Music Ent.</i> , 592 F.3d 314 (2d Cir. 2010)	10, 12
<i>Tiller v. Atlantic Coast Line R. Co.</i> , 323 U.S. 574 (1945).....	20
<i>United States v. Topco Assocs., Inc.</i> , 405 U.S. 596 (1972).....	10
<i>US Airways, Inc. v. Sabre Holdings Corp.</i> , 105 F. Supp. 3d 265 (S.D.N.Y. 2015), <i>aff’d</i> , 938 F.3d 43 (2d Cir. 2019).....	15
<i>W. Penn Allegheny Health Sys., Inc. v. UPMC</i> , 627 F.3d 85 (3d Cir. 2010)	12, 18
<i>Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.</i> , 549 U.S. 312 (2007).....	16
Statutes	
15 U.S.C. § 15	23
Federal No Suprises Act.....	23, 24

New York Surprise Bill Law	23
Sherman Act Section 1	9, 12, 15
Sherman Act Section 2	15, 19
Other Authorities	
Wright & Miller, 5 <i>Federal Practice & Procedure</i> § 1350 (1969).....	19
1 Areeda & Hovenkamp, <i>Antitrust Law</i> ¶ 100, p. 4 (3d ed. 2006).....	8
Roger D. Blair & John E. Lopatka, <i>Predatory Buying and the Antitrust Laws</i> , 2008 Utah L.Rev. 415.....	18
United States Constitution Article III.....	2

PRELIMINARY STATEMENT

Defendant UnitedHealthcare Insurance Company of New York, Inc. (“United”), with the help of Defendant Multiplan, Inc. (“MPI”), has used its market power to force out-of-network anesthesia practices in the New York Metropolitan area to accept dramatically low reimbursement rates for medically necessary services rendered to Empire Plan patients, while making it impossible to challenge or negotiate these rates. Yet, Defendants argue that this is not the type of anticompetitive action that antitrust laws are intended to prevent.

But as the result of the actions of United and MPI, Plaintiff Long Island Anesthesiologists, PLLC (“LIA”) and other similarly situated independent anesthesia groups in the New York Metropolitan area have had reimbursement rates cut by more than 80% for medically necessary anesthesia services, causing independent anesthesiology practices to sell their practices to hospitals, cut staff, and implement hiring freezes, leading directly to a decrease in the quality of medical care and an increase in waiting times for medically necessary services and procedures.

Despite the negative impact on consumers and competitors alike,

Defendants argue that this is not the type of injury redressable under antitrust laws. Indeed, the Hobson's choice created by the combined efforts of United and MPI that lead to a decrease of revenue to anesthesiology practices in the New York Metropolitan area at unabsorbable levels is just "normal business dealings" according to Defendants (Resp Br at 32, n 4). But the allegations in this case fit comfortably into the case law surrounding antitrust injury in the medical field.

Accordingly, for the reasons set forth below and in LIA's opening brief, this Court should reverse the district court order or modify the order to allow LIA to move to amend its pleading.

ARGUMENT

I.

LIA HAD ARTICLE III AND ANTITRUST STANDING TO ASSERT ITS CLAIMS

The District Court incorrectly held that LIA did not have standing to assert its claims. LIA pleaded that United and MPI engaged in anticompetitive practices that have injured the anesthesia practices in the relevant market and consumers of medically necessary anesthesia services.

The party asserting that it has an antitrust injury must “identify[] the practice complained of and the reasons such a practice is or might be anticompetitive,” *Port Dock & stone Corp. v. Oldcastle Northeast*, 507 F.3d 117, 122 (2d. Cir. 2007), identify the actual injury the plaintiff alleges, see *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 486 (1977), and demonstrate that its injury is “of the type the antitrust laws were intended to prevent and that flows from that which makes [or might make] defendants’ acts unlawful.” *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 438 (2d. Cir. 2005) (internal quotation marks omitted).

With respect to the first factor, anticompetitive practices, United argues that LIA only alleged harm to “a handful of market participants,” and that the experience of two additional anesthesiology practices does not allege a wider harm to competition (Resp Br at 18-19, 22). But the bar for a showing of anticompetitive practices “is a low one,” *IQ Dental Supply, Inc. v. Henry Schein, Inc.*, 924 F.3d 57, 63 (2d Cir. 2019), and LIA surpassed it.

United frames LIA’s pleading as alleging that only two other anesthesia providers have been harmed by Defendants’ actions, but LIA

merely provided specific examples of other anesthesia providers affected by Defendants' actions to allege a wider impact on the market as a whole. Indeed, LIA alleged that the anesthesia providers cited are exclusive providers to hospitals in the relevant area, leading to market-wide effects (JA-638). Moreover, LIA pleaded that the Empire Plan, which United administers, covers over 1.2 million New Yorkers, and explained the wider impact on any private anesthesia practice, which are unable to choose their patients and cannot effectively avoid the low reimbursement rates. They also alleged wider harm to cost, quality, and output.

United argues that the alleged harm to the cost, quality, and output of anesthesia services is "tenuous and implausible," and, again claims that market exclusion is necessary for LIA to have antitrust standing (Resp Br at 20-21). This is inaccurate.

LIA cited concrete examples of the impact that is already being had on cost, quality, and output. LIA cited LIAP's Chief Operating Officer, who testified that the financial stress from Defendants' actions had caused it to lose talent, having lost more than 10% of its physician staff due to financial stress, and commence divestiture of its interventional pain management operation (JA-637). Further, LIA explained that LIAP

is the exclusive anesthesia provider to five hospitals on Long Island where there are no alternative anesthesia resources for those hospitals to turn to for staff and that, as a result of LIAP's inability to service these hospitals on the reimbursement rates as they stand, there has been a shortage at these hospitals, leading to shuttered operating rooms and procedure rooms and lengthened wait times for patients as a result (JA-638). LIAP was also forced to join NYU-Langone Health and end its over 50-year history of being an independent medical practice to stay afloat (JA-638).

NYCA's President raised similar concerns, noting that the precipitous decrease in Empire Plan reimbursement was unabsorbable and that, since it lost over 12% of its overall revenue due to Empire Plan reimbursement, it has had to cut staff, eliminate sites of service, and suspend new hires (JA-639). These impacts are not "tenuous and implausible," they are happening.

United also claims that the cases LIA cites referencing similar harm—a shortage of anesthesiologists, shuttered operating rooms, and longer patient wait times—are distinguishable because those cases involved exclusion from the market by a competitor, and LIA need be

excluded from the marketplace to show an antitrust injury (Resp Br at 22-24).

None of these cases set forth some stringent rule that a Plaintiff must wait to be completely excluded from the market to allege an injury. Antitrust standing does not require the plaintiff to meet such a high threshold of injury. Instead, assuming that LIA is operating in a market affected by anticompetitive conduct, “the question of actual injury becomes whether [LIA] is worse off than it would be if the market were free of anticompetitive forces.” *IQ Dental Supply, Inc.*, 924 F.3d at 64. That is all that is required. LIA has established this much.

LIA has also pleaded “something more.” LIA alleged that United was working in concert with MPI to depress the ability of independent private practices to combat the low reimbursement rates by flooding them with communications to burden the practices’ ability to routinely bill and providing increasingly unreasonable response times (JA-626-627). Although not identical to the “something more” in *Presque Isle Colon & Rectal Surgery v. Highmark Health*, 391 F. Supp. 3d 485 (W.D. Pa. 2019), the amended complaint alleges that defendants’ actions are designed to drive LIA and similarly situated private, independent

anesthesia practices out of business, cause them to sell their practices to hospitals, or go in-network (JA-640-641). This would drive business to OptumCare, United's sister company. LIA also alleged a horizontal conspiracy to suppress reimbursement payments, wherein United, through MPI, could coordinate with competitors to cause virtually all insurers to offer low reimbursement rates, eliminating competition and forcing private, independent anesthesia providers to accept the lower rates (JA-627-635). Taken as true, as allegations must be on a motion to dismiss, these allegations constitute "something more."

Ultimately, what the *Presque* court and the district court here acknowledged is that the "something more" analysis is a way of determining whether the injury is of the type that the antitrust laws were designed to protect—allegations of depressed reimbursement rates on their own do not generally establish more than harm to earnings. But LIA pleaded an injury of the type that the antitrust laws were meant to protect.

As United points out "[t]he antitrust laws . . . were enacted for the protection of competition, not competitors." *Brunswick Corp.*, 429 U.S. at 489 (1977) (internal quotation marks and emphasis omitted). Thus, "[t]he

antitrust injury requirement ensures that a plaintiff can recover only if the loss stems from a competition-*reducing* aspect or effect of the defendant's behavior." *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 344 (1990) (emphasis in original). LIA pleaded that the lowered reimbursement rates will be unabsorbable for anesthesia practices in the New York Metropolitan area, leading to layoffs of anesthesiologists, closing of practices, a lack of new talent, and shuttered operating rooms. This is a direct decrease in competition within the market which has a negative impact on consumers.

The point of antitrust laws is the protection of consumers. *See Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 539 (2013) (“ ‘[T]he principal objective of antitrust policy is to maximize consumer welfare by encouraging firms to behave competitively.’ ” (alteration in original) (quoting 1 Areeda & Hovenkamp, *Antitrust Law* ¶ 100, p. 4 (3d ed. 2006)); *NCAA v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 106-107 (1984) (“Congress designed the Sherman Act as a consumer welfare prescription.” (internal quotation marks omitted)). Because Defendants’ actions harm competition, which will ultimately harm consumers, it is the type of injury the antitrust laws were designed to combat.

II.

LIA HAS PLAUSIBLY ALLEGED A VIOLATION OF SECTION 1 OF THE SHERMAN ACT

United argues that LIA did not plead a violation of Section 1 of the Sherman Act because United and MPI are not horizontal competitors. But LIA pleaded that Defendants engaged in a horizontal conspiracy to suppress reimbursement payments.

Specifically, the amended complaint alleges that Defendants enacted an anticompetitive price coordination scheme in which United, through MPI, could tacitly coordinate with competitors across the industry to offer predatorily low reimbursement rates (JA-651). The price coordination scheme caused virtually all insurers to offer similarly low reimbursement rates, thus eliminating competition and forcing anesthesia providers to accept the lower rates with no recourse. LIA alleged that these actions are part of Defendants' scheme to drive Plaintiff and other anesthesia providers out of business, cause them to sell their practices to hospitals, or force them in-network (JA-651).

This fits with the definition of a horizontal conspiracy, which is a conspiracy between competitors at the same level of the market structure. *United States v. Topco Assocs., Inc.*, 405 U.S. 596, 608 (1972);

see also Anderson News, LLC v. Am. Media, Inc., 680 F.3d 162, 183 (2d Cir. 2012). The facts alleged “must reveal a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement.” *Anderson News*, 680 F.3d at 183. This requires allegations of “direct or circumstantial evidence that reasonably tends to prove . . . a conscious commitment to a common scheme designed to achieve an unlawful objective.” *Id.* at 184; *see also Compass, Inc. v. Real Estate Bd. of N.Y.*, 21-cv-2195 (AJN), 2022 WL 992628, at *3 (S.D.N.Y. Mar. 31, 2022). LIA must “only allege ‘enough factual matter (taken as true) to suggest that an agreement was made.’” *Starr v. Sony BMG Music Ent.*, 592 F.3d 314, 321 (2d Cir. 2010); *Compass*, 2022 WL 992628, at *3 .

United argues that a horizontal conspiracy was not alleged in the amended complaint because the allegations in the amended complaint do not arise from United and MPI’s operation and ownership of PPO’s, which they claim have no connection to the market for medically necessary anesthesiology services (Resp Br at 28-30). But PPOs contract with health providers to establish agreed-upon rates and compete with commercial health insurance payers to secure contracts with medical providers (JA-628). Competition among and between PPOs and

commercial health insurance payers plays a crucial role in the market for medically necessary anesthesia services (JA-628-629). Suppressing the reimbursement rates for out-of-network anesthesiologists helps United and MPI dictate lower contractual rates for providers.

United also argues that no “meeting of the minds” was pleaded in the amended complaint (Resp Br at 30-33). But LIA pleaded that United and MPI had a conscious commitment to a common scheme designed to achieve an unlawful objective. Specifically, that United engaged MPI to enact a price coordination scheme to anticompetitively suppress reimbursement rates (JA-629-635). It alleged that MPI embarked on a strategy to sell analytic tools designed to reprice out-of-network claims for health plan payers at reimbursement rates below the customary and reasonable amount (JA-633). MPI charges its health care payer customers a fee based on the difference between the original and repriced claim amounts (JA-630). As a result, MPI is motivated to recommend the lowest reimbursement price possible, since it increases the fee that MPI charges to payers. MPI has clearly stated its motives: to reduce reimbursements to physician practices, in some cases more than 80% (JA-631). In most cases, MPI’s repriced amount is accepted by the payer

because almost all major health payers use MPI to reprice their out-of-network claim, yielding virtually identical repricing amounts, leaving providers little alternative but to accept them (JA-630).

MPI approached United about United's out-of-network reimbursements, which it deemed too high. (JA-650). United entered the arrangement because it knew that MPI was entering into similar arrangements with its major competitors, and therefore providers would have no choice but to accept these lower rates. (JA-650). Likewise, MPI, when entering the arrangement with United, knew that it was facilitating a price coordination scheme among competitors. Because of the extensive reimbursement data from all major market competitors through MPI, United was able to dramatically reduce reimbursement levels to out-of-market anesthesia providers below competitive levels and thereby reduce output and quality. *See, e.g., Starr*, 592 F.3d at 325; *Fineman v. Armstrong World Indus.*, 980 F.2d 171, 214 (3d Cir. 1992). Under such circumstances, "it is certainly plausible that paying [LIA] depressed reimbursement rates unreasonably restrain[s] trade" and constitutes antitrust injury. *W. Penn Allegheny Health Sys., Inc. v. UPMC*, 627 F.3d 85, 104 (3d Cir. 2010). The key issue in a Section 1 claim

is the concerted restraint of trade, no matter what configuration the conspiracy takes. *See In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1192 (9th Cir. 2015).

United also argues that LIA fails the rule of reason, arguing it did not establish a relevant market or harm to competition because United and MPI do not compete in the market for provision of medically necessary anesthesia services (Resp Br at 34-37). But the amended complaint alleges actual adverse effects on competition in the relevant market regarding the delivery of medically necessary anesthesia services to patients in the NY metropolitan area.

The relevant product market is “the provision of medically necessary anesthesia services to patients.” (JA-644). Part of this market are hospital-based anesthesia practices that provide the medically necessary anesthesia services to patients, patients who need the anesthesia services, and payers, like United, who reimburse the practices for the medically necessary anesthesia services provided to their enrollees. United participates in the market as a payer who reimburses anesthesia practices for the medically necessary anesthesia services provided.

The geographic market pleaded in the amended complaint is the New York metropolitan area insofar as “most patients are willing to travel, under the best of circumstances, only about 30 minutes for health care services.” (JA-646). “Courts generally measure a market’s geographic scope, the ‘area of effective competition,’ by determining the area in which the seller operates and where consumers can turn, as a practical matter, for supply of the relevant product.” (*Concord Assocs., L.P. v. Ent. Props. Tr.*, No. 12 Civ. 1667(ER), 2014 WL 1396524, at *16 (S.D.N.Y. April 9, 2014) (quotation omitted), *aff’d*, 817 F.3d 46 (2d Cir. 2016)). The geographic area reflects that consumers—Long Island residents—will not travel beyond the NY metropolitan area and will not participate in any broader state market.

United has a significant share of the market in the New York area. Depending on the health plan product involved, United’s market share is as high as 66%, and, as administrator of the Empire Plan which provides coverage for over 1.2 million public employees in New York, it represents a significant payer of reimbursement for anesthesia services in the New York metropolitan area. (JA-647). LIA and other similarly situated anesthesia practices receive approximately 40% of their revenue from the

Empire Plan. (JA-647). In any event, because LIA pleaded an actual adverse effect on competition by showing increased prices, reduced quality, or reduced outputs, it did not need to plead “market power” plus “some other ground for believing that the challenged behavior could harm competition in the market, such as the inherent anticompetitive nature of the defendant’s behavior.” *US Airways, Inc. v. Sabre Holdings Corp.*, 105 F. Supp. 3d 265, 280–81 (S.D.N.Y. 2015), *aff’d*, 938 F.3d 43 (2d Cir. 2019).

Accordingly, LIA plausibly alleged its Section 1 claims.

III.

LIA HAS PLAUSIBLY ALLEGED SECTION 2 MONOPSONY CLAIMS

United argues that to allege a monopsony claim, LIA needed to claim predatory pricing—claiming that setting prices too high was Congress’s concern when enacting antitrust laws, not too low (Resp Br at 39-40), and that LIA should have pleaded a monopoly claim instead of monopsony (Resp Br at 40). Both contentions are incorrect.

First, the Supreme Court’s references to the goals of achieving “the lowest prices, the highest quality and the greatest material progress,” *N. Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958), and of “assur[ing]

customers the benefits of price competition,” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 538 (1983), “do not mean that conspiracies among buyers to depress acquisition prices are tolerated. Every precedent in the field makes clear that the interaction of competitive forces, not price-rigging, is what will benefit consumers.” *Knevelbaard Dairies v. Kraft Foods, Inc.*, 232 F.3d 979 (9th Cir.2000).

Second, the complaint properly alleges monopsony and attempted monopsony claims, rather than monopoly—although they share the same elements that must be pleaded. A monopsony is a monopoly, but on the “buy side” of the market, in which one consumer is able to dictate conditions in the given market based on its dominant position. *See Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, 549 U.S. 312, 320 (2007) (“a monopsony is to the buy side of the market what a monopoly is to the sell side and is sometimes colloquially called a ‘buyer’s monopoly’”). Health insurers are considered “buyers” of doctors’ services. *Presque Isle Colon & Rectal Surgery v. Highmark Health*, 391 F. Supp. 3d 485, 494 n 7 (W.D. Pa. 2019). United is one of the largest healthcare payers in New York and, as administrator of the health insurance that

all local government employers offer to their employees and which covers over 1.2 million New Yorkers as one of the largest employer-sponsored group health insurance programs in the United States, it exercises buy-side control of the market.

Here, the complaint alleges that United has substantial monopsony power. United makes coverage and benefits determinations for the Empire Plan's written terms and uses plan assets to pay benefits for covered healthcare expenses (JA-611). United is responsible for establishing a network of participating providers, establishing reimbursement rates, processing and paying claims from both participating and non-participating providers, and ensuring compliance with the requirements of the Empire Plan (JA-612). United is the entity that financially benefits by keeping out-of-network reimbursement rates as low as possible (JA-612-613).

It also operates its own health benefits and insurance plans (JA-608). The amended complaint alleges that United has significant market control in New York including 26% of the combined (all products) market in the NY-NJ-PA Metropolitan Statistical Area (JA-609), while another study found that United's market share of non-governmental plans in the

NYC market was 33.8% in 2022 (JA-610). United's control over the Empire Plan's rates thus allows it even greater control over reimbursement rates in the market for medically necessary anesthesia services than it would have on its own.

The amended complaint also alleges that United paid depressed reimbursement rates, not as a result of independent decisionmaking, but pursuant to a conspiracy with MPI. As the Third Circuit found in *W. Penn Allegheny Health Sys., Inc.*, in these circumstances, “it is certainly plausible that paying . . . depressed reimbursement rates unreasonably restrained trade” insofar as “[s]uch shortchanging poses competitive threats similar to those posed by conspiracies among buyers to fix prices, . . ., and other restraints that result in artificially depressed payments to suppliers—namely, suboptimal output, reduced quality, allocative inefficiencies, and (given the reductions in output) higher prices for consumers in the long run.” 627 F.3d at 104 (internal citation omitted); see Roger D. Blair & John E. Lopatka, *Predatory Buying and the Antitrust Laws*, 2008 Utah L.Rev. 415, 415 (observing that the “exercise of monopsony power . . . misallocates resources and thereby reduces social welfare”); see also *St. Bernard Gen. Hosp., Inc. v. Hosp.*

Serv. Ass'n, 712 F.2d 978, 985–87 (5th Cir.1983) (prima facie antitrust violation shown where insurer that was controlled by participating hospitals limited reimbursements paid to non-participating hospitals).

Accordingly, LIA plausibly alleged Section 2 monopsony claims.

IV.

IN THE ALTERNATIVE, THE COURT SHOULD MODIFY THE DECISION AND ORDER TO GRANT LIA LEAVE TO AMEND THE COMPLAINT

United argues that LIA should not be permitted to amend its complaint because it already had one opportunity at amendment. But “[i]n antitrust cases in particular, the Supreme Court has stated that ‘dismissals prior to giving the plaintiff ample opportunity for discovery should be granted very sparingly.’” *George Haug Co. v. Rolls Royce Motor Cars Inc.*, 148 F.3d 136, 139 (2d Cir.1998) (quoting *Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S. 738, 746 (1976)). Even where a court is doubtful that a plaintiff will be able to allege a sufficient set of facts, the proper procedure in an antitrust action is to allow the party to amend. *See Indium Corp. of Am. v. Semi-Alloys, Inc.*, 566 F. Supp. 1344, 1354 (N.D.N.Y. 1983); *see also* Wright & Miller, *5 Federal Practice & Procedure* § 1350 at 553–54 (1969).

United also argues that it would be prejudiced by amendment, but

prejudice only results where the amended pleading would “require the opponent to expend significant additional resources to conduct discovery and prepare for trial [or] significantly delay the resolution of the dispute.” *Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir.1993). United does not allege any of these aspects of prejudice but simply complains that it already defended against allegations by LIA. But that is not the standard.

LIA should be allowed a chance to further amend its complaint in accordance with usual practice. *See Colwell & Salmon Commc’ns, Inc. v. ArborMed Corp.*, No. 1:10-CV-01137, 2011 WL 2516926, at *2 (N.D.N.Y. June 23, 2011); *see also Tiller v. Atlantic Coast Line R. Co.*, 323 U.S. 574, 581 (1945) (allowing an amendment where both the original Complaint and amended Complaint “related to the same general conduct, transaction and occurrence” which gave rise to the cause of action). The court abused its discretion by failing to grant LIA a chance to amend.

V.

**THE DISTRICT COURT PROPERLY REJECTED DEFENDANTS' ISSUE
PRECLUSION ARGUMENT**

United asks the Court to find an additional basis for affirmance, one that the district court correctly rejected below: issue preclusion. Specifically, United contends that the New York Supreme Court decision, *Joseph v. Corso*, 2023 WL 12011473, 2023 N.Y. Slip Op. 34755(U) (N.Y. Sup. Ct., July 13, 2023), affirmed on appeal in *Joseph v. Corso*, 233 A.D.3d 104 (3d Dept. 2024), is preclusive of the antitrust claims in this case. As LIA argued below, and the district court correctly concluded, Defendants failed to prove that the same issue was actually litigated and decided in *Corso* that they are arguing is precluded here.

“Issue preclusion, also referred to as collateral estoppel, bars ‘successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to [a] prior judgment.’” *Cayuga Nation v. Tanner*, 6 F.4th 361, 374 (2d Cir. 2021). “[A] federal court may be bound to recognize the claim- and issue-preclusive effects of a state-court judgment.” *Scuderi-Hunter v. Merklen*, No. 23-542, 2024 WL 1005793, at *2 (2d Cir. Mar. 8, 2024) (internal quotation marks omitted).

Issue preclusion bars litigation of an issue when

(1) the identical issue was raised in a previous proceeding; (2) the issue was actually litigated and decided in the previous proceeding; (3) the party had a full and fair opportunity to litigate the issue; and (4) the resolution of the issue was necessary to support a valid and final judgment on the merits.

Proctor v. LeClaire, 715 F.3d 402, 414 (2d Cir. 2013). The party seeking to invoke issue preclusion has the burden of proving that “the identical issue was raised in a previous proceeding.” *Republic of Ecuador v. Chevron Corp.*, 638 F.3d 384, 400 (2d Cir.2011) (quotation marks omitted). “If the issues are not identical, there is no collateral estoppel.” *Id.* (quotation marks and alteration omitted).

If a party is not shown to have had a full and fair opportunity to litigate the issue, he or she is not precluded from litigating it in a subsequent case. *See, e.g., Allen v. McCurry*, 449 U.S. 90, 101 (1980). Similarly, issue preclusion is inappropriate if “the issue in question” was not “actually and necessarily decided in a prior proceeding.” *McKithen v. Brown*, 481 F.3d 89, 105 (2d Cir. 2007) (internal quotation marks omitted); *see, e.g., Interoceanica Corp. v. Sound Pilots, Inc.*, 107 F.3d 86, 92 (2d Cir. 1997) (defense not barred by collateral estoppel where it was “not ‘actually litigated and decided’ in the previous proceeding and

certainly was not ‘necessary to support a valid and final judgment on the merits’ ”).

United’s argument fails at the first step of the issue preclusion analysis—United has not proven that “the identical issue was raised in a previous proceeding.” *Republic of Ecuador*, 638 F.3d at 400.

First, it would be impossible for the identical issue to be decided in the *Corso* action because New York state courts lack competent jurisdiction to decide federal antitrust claims, *see* 15 U.S.C. § 15. Second, United argues that the *Corso* decisions held that the Empire Plan’s decision to apply the federal No Surprises Act instead of the New York Surprise Bill Law, and this holding is preclusive of LIA’s claims here (Resp Br at 42-43). The issue actually and necessarily decided in the state court action was whether United could, and did, control the Empire Plan’s decision to follow the federal No Surprises Act. But LIA’s claims are not predicated upon the Empire Plan’s decision to follow the No Surprises Act instead of New York’s Surprise Bill Law. Instead, the amended complaint suggests that the enactment of the No Surprises Act presented an opportunity for United to push for dramatically lower reimbursement rates insofar as this was the explanation which United

provided for cutting reimbursements by over 80%. (JA-619). It is immaterial which specific entity determined that the No Surprises Act was applicable, because the No Surprises Act merely created the opportunity upon which Defendants' unlawful scheme was able to be applied to the Empire Plan.

Because United did not prove that there has been any factual determination as to these allegations, issue preclusion is inapplicable.

CONCLUSION

The district court's decision dismissing Plaintiff's complaint should be reversed or modified to allow Plaintiff the opportunity to amend its pleading.

November 3, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with Federal Rule of Appellate Procedure 32(a)(7)(B) and Local Rule 32.1(a)(4)(A) because it is proportionately spaced, has a typeface of 14 points, and contains 4,554 words, not counting the words excepted by Federal Rule of Appellate Procedure 32(f).

November 3, 2025

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