

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION**

UNITED HEALTHCARE SERVICES INC.,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 4:26-CV-60-DJH
)	
CONCORD COMPANY OF TENNESSEE,)	
PLLC,)	
)	
Defendant.)	

CONCORD COMPANY OF TENNESSEE PLLC’S OPPOSITION TO UNITED HEALTHCARE SERVICES, INC.’S MOTION FOR LEAVE TO SUBMIT A SURREPLY

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INTRODUCTION

Defendant Concord Company of Tennessee, PLLC (“Concord” or “Defendant”), by and through its undersigned counsel, hereby submits the within brief in opposition to Plaintiff United Healthcare Services, Inc.’s Motion for Leave to Submit a Surreply to Defendant’s Motion to Dismiss.

ARGUMENT

United claims that “Concord raises entirely new arguments on reply regarding subject-matter jurisdiction.” Proposed Reply Br. at 1. This is false. All that Concord did was discuss and distinguish the Supreme Court’s decision in *Grable and Sons Metal Prods. Inc. v. Darue Engineering and Manufacturing*, 545 U.S. 308, 314 (2005). *Grable* was cited by United in its opposition brief to rebut Concord’s argument that there is no subject matter jurisdiction in this case. It was entirely proper to address United’s unfounded reliance on *Grable* in a Reply Brief. This is not a “new argument.”

United is also misstating the holding of *UnitedHealthcare of Pennsylvania, Inc. v. NorthStar Anesthesia of Pennsylvania, LLC*, No. 25-7187, 2026 WL 1145885 (E.D. Pa. Apr. 28, 2026). The *NorthStar* court was clear that United’s claim did not “necessarily raise” a federal issue because the parties agreed, *as a matter of law*, that the NSA does not apply to federal claims:

We disagree a federal issue is necessarily raised in UnitedHealthcare’s common law fraud claim. UnitedHealthcare argues that the question of whether NorthStar’s false attestation “constitutes fraud” necessarily requires our *construction* of the No Surprises Act. But *there is no dispute that the Act does not apply to Medicare, Medicaid, and other federal insurance programs*. UnitedHealthcare’s common law claim does not necessarily depend on a resolution of the No Surprises Act. *Id.* at *7 (emphasis added).

The same is true here. Concord agrees that, *as a matter of law*, the NSA does not apply to federal Medicare claims. There is “no dispute” about federal law. *Id.* What the parties disagree about is whether United plausibly pleaded fraud based on the factual allegations in the Complaint since the documents it cites do not say what United claims they say. No “construction” of the NSA is necessary to evaluate those factual allegations. *Id.*

Moreover, United has no response to the *NorthStar* Court’s alternative finding that United also failed the third prong of the test for jurisdiction under *Grable* because the “fraud claim does not fall within the narrow category of claims raising substantial federal issues.” *Id.* at *8. This was an independent ground for the *NorthStar* Court’s dismissal (*id.*), and it was specifically raised in Concord’s Reply Brief at 13. On this point, the court emphasized that “a claim is more likely to be substantial if it presents a pure question of law, the resolution of which will govern numerous federal cases.” 2026 WL 1145885, at * 8 (internal quotations omitted). This case, like *Northstar*, is a “[f]act-bound and specific situation.” *Id.*

CONCLUSION

Given the foregoing, Concord believes that United’s proposed Surreply will not assist the Court in resolving the Motion to Dismiss but has no objection to the Court considering it for what it is worth.

In the alternative, as the underlying Motion at issue is Concord’s application to dismiss the Complaint, should the Court grant United’s request for leave to file a Surreply, Defendant similarly requests leave to file a response thereto.

Respectfully submitted,

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CALDWELL & BERKOWITZ, P.C.

/s/ Chad E. Wallace

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CERTIFICATE OF SERVICE

It is hereby certified that on May 28, 2026, the foregoing was electronically filed with the clerk of the court by using the ECF system which will send an electronic copy to all counsel of record. A copy will also be mailed to:

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ORDER

On Motion of the Plaintiff, United Healthcare Services, Inc., for Leave to Submit a Surreply to Defendant’s Motion to Dismiss and this Court being fully advised;

IT IS HEREBY ORDERED that Plaintiff’s Motion for Leave to Submit a Surreply to Defendant’s Motion to Dismiss is denied.

IN THE ALTERNATIVE, IT IS HEREBY ORDERED that Defendant Concord Company of Tennessee, PLLC, is granted leave to file a response to Plaintiff’s Surreply.

Tendered By:

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