

3. Additionally, because these practices have traditionally been independent of any hospital, referring provider, or health plan, they have been able to recommend the best course of medical treatment for their patients free of any outside influence or conflict of interest.

4. They are also small enough to innovate nimbly. In summary, these small, freestanding, single specialty medical practices are the very essence of American capitalism.

5. As we explain in detail below, Neurological Surgery is a prime example of this small, freestanding, single specialty medical practice. Founded over three decades ago, it has focused on providing high quality neurosurgery care to patients throughout the New York metropolitan area. Owned by its physician providers, it traditionally has been independent of any hospital or health plan. Through hard work providing excellent care, Neurological Surgery has become the most innovative, high quality neurosurgery providers in the metropolitan area.

6. Unfortunately for Neurological Surgery and other freestanding surgery practices in the New York metropolitan area, Empire – one of the largest managed care organizations and health plans in the area– has embarked on a campaign of illegal and anti-competitive actions that directly target these practices, and are designed to strangle and, ultimately, force these freestanding neurosurgical practices out of business.

7. The means that Empire has employed to carry out their illegal and anti-competitive scheme is their knowing and intentional dramatic lowering of reimbursement rates to levels that are far below the costs of these practices to provide services. Putting it starkly, Empire is imposing shockingly low reimbursement rates on neurosurgery practices, including Neurological Surgery that they know are fake and manipulated.

8. Empire's illegal and anti-competitive actions have already significantly harmed Neurological Surgery and other freestanding neurological surgery practices in the New York

metropolitan area. If allowed to continue unchecked, Empire's actions will cause a substantial and unreasonable harm to competition in the metropolitan area. This will result in decreased output and quality of neurosurgery and other surgical services, higher prices, longer wait times, and loss of consumer choice. As we explain in detail below, this is precisely Empire's desired result, because the driving out of freestanding neurosurgery practices enables them to reap anti-competitive benefits through the use of these fake and manipulated reimbursement rates.

9. As we also explain in detail below, nothing more than greed motivates Empire's actions. While Empire is drastically cutting its reimbursement rates to neurosurgery (and other freestanding medical specialty practices), it is certainly not passing these "savings" on to its customers. Upon information and belief, for 2021, Empire has demanded premium increases from its commercial customers in excess of 15%. It sought average premium increases from the New York State Department of Financial Services for its individual and small group plans of more than 16% in 2021 (although the State granted far smaller increases),

10. During this same period, Empire's revenues and profits have dramatically increased. In January 2021, Empire's parent, Anthem, Inc., reported operating revenue of \$31.5 billion in the fourth quarter of 2020, an increase of \$4.4 billion, or 16.2 percent, from the fourth quarter 2019. Its benefit expense ratio was 88.9% in fourth quarter 2020, a decrease of 10 basis points from fourth quarter 2019. Operating cash flow was \$3.8 billion in fourth quarter 2020, an increase of \$2.5 billion over fourth quarter 2019.¹

11. As Empire is fully aware of, its dramatic lowering of reimbursement rates is forcing many freestanding neurosurgical practices to leave the market. As we explain in detail

¹ <https://www.businesswire.com/news/home/20210127005298/en/Anthem-Reports-Fourth-Quarter-and-Full-Year-2020-Results> (accessed Apr. 7, 2021).

below, this is causing significant harm to patients through the decreased availability of neurosurgical services, and reduced quality.

12. While Empire is dramatically lowering neurosurgery reimbursement rates across the board, it is well aware that the freestanding neurosurgery practices are withstanding the worst of this decrease. This is because hospital-based neurosurgery groups are largely immune to decreased reimbursement rates because of the hospitals' other revenue sources.

13. Indeed, as discussed in detail below, for every \$1 in direct reimbursement that hospitals receive from providing neurosurgery services, the hospitals receive \$14 in additional ancillary revenue generated from those neurosurgery services. Thus, as Empire is well aware, the hospitals can tolerate – and even accept – an artificial lowering of this \$1 in direct neurosurgery reimbursement to as low as 10¢, as long as the \$14 in ancillary reimbursement is preserved.

14. The hospitals can use this \$14 to help defray the high costs of providing neurosurgery services; while the freestanding practices such as Neurological Surgery are forced, pay these ever-increasing costs out of the 10¢ of direct reimbursement.

15. As a result, Neurological Surgery and other freestanding practices are falling further and further behind financially because of the dramatically declining reimbursement rates, which no longer even remotely reflect the high costs of providing neurosurgery care. Empire is well aware of this fact and, indeed, intends for it to occur so that it can drive the freestanding neurosurgery practices out of business.

16. The departure of freestanding neurosurgical (and other surgical) practices from the market is also decreasing competition among Empire and other major managed care companies in the New York market. This is because freestanding surgical practices fiercely

advocate for their patients, educate their patients about improper insurance practices, and expose the fact that many health plans currently offer illusory benefits and minimal coverage in many cases.

17. When freestanding practices education patients practices in these ways, the patients put pressure on the health plans to innovate, improve their offerings, and change their ways. This significantly promotes competition among health plans in the market for purchasing health plan benefits. Elimination of freestanding surgical practice will grind this competition to a halt, and thus greatly harm the individual and corporate purchasers of health plan benefits.

18. As set forth in greater detail below, Empire's actions – particularly the systematic lowering of reimbursement rates for neurosurgery services, resulting in utterly fake and manipulated rates — has unreasonably restrained and damaged competition in the market for these services in violation of Section 1 of the Sherman Act., 15 U.S.C. § 1, and the New York State Donnelly Act, General Business Law §§ 340, *et seq.*

19. Through this lawsuit, Neurological Surgery seeks a declaration that Empire's actions in imposing these fake and manipulated reimbursement rates are illegal, a permanent injunction preventing Empire from continuing these anti-competitive practices, and compensatory damages for the financial harm Neurological Surgery has suffered because of Empire's anticompetitive actions. Neurological Surgery also seeks an award of attorneys' fees and such other and further relief as the Court may deem just and proper.

PARTIES

Plaintiff

20. Neurological Surgery Practice of Long Island, PLLC is a New York professional service limited liability corporation with its principal place of business located at 100 Merrick Road, Suite 128W, Rockville Centre, New York.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.