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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

<p>PREMIER SURGICAL PAVILION, LLC, Plaintiff, v. HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY, Defendant.</p>	<p><i>Document filed electronically</i> Case No.: 2:18-cv-14912 Civil Action COMPLAINT AND JURY DEMAND</p>
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Plaintiff Premier Surgical Pavilion, LLC (“PSP”) for its Complaint against Horizon Blue Cross Blue Shield of New Jersey (“Horizon”), states as follows:

THE PARTIES

1. PSP is a limited liability company formed in the State of Delaware. PSP operates as an ambulatory surgical center and is located at 145 Roseville Ave., Newark, NJ 07107.
2. Upon information and belief, Horizon is a licensee of the Blue Cross and Blue Shield Association (the “BCBA”), with its principal place of business located at 3 Penn Plaza, Newark, NJ 07105.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under the laws of the United States, 28 U.S.C. § 1331, over this civil action encompassing violations of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132.

4. Venue is proper in this Court under 28 U.S.C. § 1331(b) and 29 U.S.C. § 1132(e)(2) because Horizon resides in this district and because a substantial part of the events giving rise to this action occurred in this district.

FACTS RELEVANT TO ALL CLAIMS

5. Horizon is engaged in the business of providing health insurance coverage, administration of health benefits plans and related services.

6. Under the terms of certain of Horizon's policies, patients who are covered under plans that Horizon administers are entitled to payment from Horizon for a portion of the cost of services obtained from providers who are not participants in Horizon's network.

7. PSP began operation in or around March 2012 as an ambulatory surgical center, in the business of providing ambulatory surgical services to patients. An ambulatory surgical center is a facility at which outpatient surgeries are performed, which means that the surgeries performed at PSP never require the patient to stay overnight.

8. PSP is not a participating provider in Horizon's network. This means that Horizon does not have a contract with Horizon setting forth the terms under which Horizon will make payment to PSP for services that PSP provides to patients who are covered under plans that Horizon administers. Rather, PSP, as an out-of-network provider with respect to Horizon, provides services to patients whose Horizon policies allow them to receive services from providers who do not participate in Horizon's network.

9. When a patient who is covered under a plan that Horizon administers seeks to receive services at PSP, PSP initiates telephone communication with Horizon concerning the patient's insurance coverage. The topics that PSP will discuss with Horizon include the existence, nature and extent of the patient's out-of-network coverage; whether specific procedures are

covered under the applicable insurance policy; the amounts of applicable co-payments and deductibles; whether the patient has satisfied applicable requirements for authorizations or referrals, such as authorizations from Horizon or referrals from a primary care physician, without which (when required) PSP will not go forward with a procedure; and other issues concerning the patient's insurance coverage.

10. PSP requires that every patient who is to undergo a procedure at PSP sign a form which provides for the assignment of insurance benefits. Under the terms of the assignment of benefits, each Horizon insured assigns to PSP benefits to which the patient is entitled under the applicable Horizon insurance policy, including (but not limited to) the right to receive directly from Horizon payments to which the patient is entitled under the terms of the policy.

11. Shortly after providing medical services to a patient who is covered under a plan that Horizon administers, PSP submits to Horizon a claim for reimbursement. As a matter of course, Horizon accepts the claim forms (and other claims materials) that PSP submits directly to Horizon.

12. Horizon will also process claims on behalf of other licensees of the BCBA. Specifically, PSP submits to Horizon a claim for reimbursement for patients who are insured by another licensee of the BCBA. As a matter of course under these circumstances, Horizon accepts the claim forms, that PSP submits directly to Horizon.

13. After submissions of claims, PSP will often engage with Horizon in extensive correspondence and telephone communication concerning the status of the claims.

14. In or around June 2018, PSP received notice (the "Notice") that it was identified as a member of a class in a Class Action Lawsuit filed in the United States District Court for the District of New Jersey captioned *Barbara Edwards, in her capacity as Trustee in Bankruptcy of*

Roxbury Surgical Center, LLC f/d/b/a Roxbury Open MRI and Surgery Center, and North Jersey Ambulatory Surgery Center, LLC, individually and on behalf of all others similarly situated v. Horizon Blue Cross Blue Shield of New Jersey, Case No. 2:08-cv-06160-KM-MAH (the “Class Action Lawsuit”).

15. Pursuant to the Notice it received, PSP was advised that, from approximately October 2004 through December 2014, Horizon used an allowance formula developed by a company called Navigant Consulting, Inc. (the “Navigant Allowance”) to set reimbursement levels for claims under certain large group health insurance plans and self-insured plans (collectively, the “Plans”).

16. The Notice further provided that the class representative had agreed to settle the Class Action Lawsuit with Horizon, and allowed identified class members to elect to opt out of the settlement.

17. After receiving the Notice, PSP submitted a letter to elect to opt out of the settlement.

18. Thereafter, on June 29, 2018, the Court entered a Final Approval Order and Judgment as to the settlement, which also identified PSP as an entity that opted out of the settlement.

19. The Notice indicated that certain claims submitted by PSP on behalf of certain Horizon insured (the “Navigant Insured”) to Horizon were priced pursuant to the Navigant Allowance. Upon information and belief, the reimbursements calculated pursuant to the Navigant Allowance were significantly lower than reimbursements issued to PSP pursuant to Horizon’s other programs.

20. Upon information and belief, Horizon has an obligation pursuant to the Plans to calculate reimbursements to PSP using the usual and customary rates ("UCR"). Upon information and belief, by way of its use of the Navigant Allowance, Horizon failed to comply with the terms of the Plans by systematically making UCR determinations that reduced the amount allowable under its contract in violation of applicable law.

COUNT ONE

(Claim For Benefits Under ERISA § 502(a)(1)(B))

21. PSP repeats, re-alleges, and restates all statements made above, as if stated herein at length.

22. Horizon is the administrator for the Plans, which are organized and existing under the provisions of ERISA. The Navigant Insured are participants and beneficiaries and beneficiaries of the Plans.

23. As administrator, Horizon had discretionary authority or control to determine benefits, coverage, pricing and general administration of the Plans.

24. Pursuant to ERISA § 502(a)(1)(B), "a participant or beneficiary may bring an action to recover benefits due to him under the terms of the plan, to enforce rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

25. By way of its valid assignments of benefits, PSP is a beneficiary within the meaning of ERISA § 502(a)(1)(B), and therefore, is permitted to bring this action against Horizon, who insures and/or administers the Plans.

26. In order to receive payment for the services it performed, in accordance with ERISA claims procedures and guidelines, PSP properly submitted the claims for reimbursement for services provided to the Navigant Insured.

27. By way of its use of the Navigant Allowance, Horizon has not tendered the proper payment, and therefore, is improperly withholding benefits due to PSP. Horizon has breached the terms of the Plans, by yielding claim determinations that has had the effect of reimbursing PSP less than the prescribed percentage in the Plans, without any basis to do so.

28. PSP exhausted internal remedies to resolve this issue. However, even if the Court concludes that PSP did not exhaust all available remedies, PSP to is nevertheless excused from exhausting these additional remedies because PSP's continued efforts will prove to be futile.

29. PSP has been denied meaningful access to a full and fair review of its claims under ERISA, as well as the Plans' administrative procedures and remedies. It would be futile for PSP to seek assistance from Horizon, at this point, since Horizon's internal administrative remedies are certain to yield a claim determination that is not in accordance with the Plan.

30. Thus, as an assignee and beneficiary of the Navigant Insured under 29 U.S.C. § 1132(a)(1)(B), PSP is categorically entitled to bring this action to enforce the terms of the Plans and collective insurance benefits due.

31. Based on the Defendants' failure to pay for services rendered, and Horizon's inability to follow proper claims processing procedures and regulations, PSP seeks damages pursuant to ERISA.

32. Additionally, PSP seeks an award of pre-judgment interest on the claim to compensate PSP for the unjustifiable delay in issuing benefits for covered services and an award of reasonable attorneys' fees and costs.

COUNT TWO

(Claim For Breach of Fiduciary Duty Under ERISA § 502(a)(2))

33. PSP repeats, re-alleges, and restates all statements made above, as if stated herein at length.

34. Pursuant to 29 U.S.C. § 1132(a)(2), “a civil action may be brought ... by a participant, beneficiary or fiduciary for appropriate relief under Section 1109 of this title,” which imposes liability for breach of fiduciary duty. Section 502(a)(2) of ERISA authorizes a cause of action for breach of that duty.

35. Horizon had discretionary authority or control to determine benefits, coverage, pricing and general administration of the Plans.

36. Horizon’s responsibilities listed above are inherently fiduciary functions that must be carried out in accordance with the documents and instruments governing the Plans, and not in a manner in which Horizon acted.

37. By engaging in the conduct described herein, Horizon failed to act with the care, skill, and diligence that a prudent plan administrator would use in similar circumstances, of like character.

38. Horizon did not act as a prudent plan administrator and breached the fiduciary duties when Horizon failed to manage the Plans’ assets appropriately and withheld benefits rightfully owed to PSP.

39. Furthermore, as an ERISA fiduciary, Horizon obligated to disclose material information to participants and beneficiaries, and each have a duty not to mislead a plan participant and/or beneficiaries.

40. Horizon is obligated to make decisions in the interest of Plan participants and beneficiaries. However, Horizon appeared to have served its own interest rather than the Plans' beneficiaries maximizing its own profit rather than issuing benefits.

41. As a direct and proximate result of Horizon's actions, PSP has been damaged and is entitled to relief under ERISA.

WHEREFORE, PSP requests judgment in its favor as and against Horizon as follows:

- A. For all damages allowed for under ERISA;
- B. For monetary damages;
- C. Declaring that Horizon has violated its fiduciary duties including the duties of loyalty and care to PSP, and awarding appropriate relief, including civil penalties, restitution, interest, declaratory and injunctive relief to PSP, and removing Horizon as a fiduciary which has systemically breached its fiduciary obligations;
- D. Declaring that Horizon has breached the terms of applicable contracts of insurance and awarding unpaid benefits to PSP;
- E. Declaring that Horizon has breached the terms of beneficiaries' plans by lowering reimbursement in undisclosed and unauthorized ways, and awarding monetary, declaratory and injunctive relief to remedy such breaches;
- F. Enjoining Horizon from violating state laws and ordering remedial and monetary relief for its past violations of state law;
- G. Declaring that Horizon has violated its disclosure obligations under ERISA and the federal common law, including under 29 U.S.C. § 1024(b)(4), for which PSP is entitled to statutory penalties, injunctive, declaratory and other equitable relief;

- H. Declaring that Horizon has violated federal claims procedures, and awarding PSP declaratory and injunctive relief to remedy such violations;
- I. Awarding PSP the costs and disbursements of this action, including reasonable counsel fees, costs and expenses in amounts to be determined by the Court;
- J. Awarding interest and costs of suit; and
- K. Granting such other and further relief as is just and proper.

Dated: October 12, 2018

EVAN SAMPSON, ESQUIRE
Attorney for Plaintiff,
Premier Surgical Pavilion, LLC

By: /s/ Evan Sampson
EVAN SAMPSON

JURY DEMAND

PSP hereby requests a trial by jury on all issues so triable.

Dated: October 12, 2018

EVAN SAMPSON, ESQUIRE
Attorney for Plaintiff,
Premier Surgical Pavilion, LLC

By: /s/ Evan Sampson
EVAN SAMPSON