

NYU Hospitals Ctr. v Concert Health Plan
2013 NY Slip Op 33141(U)
October 31, 2013
Sup Ct, New York County
Docket Number: 113904/2010
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C. Justice

PART 46

Index Number : 113904/2010
NYU HOSPITALS
vs.
CONCERT HEALTH PLAN
SEQUENCE NUMBER : 002
OTHER RELIEFS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 4, were read on this motion to/for quash subpoenas

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). <u>1</u>
Answering Affidavits — Exhibits _____	No(s). <u>2, 4</u>
Replying Affidavits _____	No(s). <u>3</u>

Upon the foregoing papers, it is ordered that ~~this motion is~~ :

The court grants plaintiff's motion to quash subpoenas and for a protective order to the extent set forth in the accompanying decision and the accompanying stipulation dated 3/19/13 and otherwise denies plaintiff's motion. (C.P.L.R. §§ 2304, 3101(c) and (d)(2), 3103(a).

FILED
NOV 14 2013
NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 10/31/13

Lucy Billings, J.S.C.
LUCY BILLINGS

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x

NYU HOSPITALS CENTER - TISCH,
Plaintiff

Index No. 113904/2010

- against -

DECISION AND ORDER

CONCERT HEALTH PLAN,
Defendant

FILED

-----NOV 14 2013

LUCY BILLINGS, J.S.C.:

**NEW YORK
COUNTY CLERK'S OFFICE**

Plaintiff has moved to quash the subpoenas ad testificandum served by defendant to depose both nonparty Mark Tabak, the Chief Executive Officer (CEO) of nonparty MultiPlan, Inc., and MultiPlan, Inc., and the subpoenas duces tecum served by defendant on nonparty Marcy Feller, the Executive Vice President and General Counsel of MultiPlan as well as on Tabak and Multiplan. C.P.L.R. § 2304. Request # 11 of the subpoena duces tecum, which is identical for all three witnesses, seeks an affidavit Feller provided to plaintiff. Plaintiff's attorney claims that, because she prepared the affidavit to support plaintiff's anticipated motion for summary judgment, the affidavit is privileged work product or protected material prepared for litigation. C.P.L.R. § 3101(c) and (d)(2).

Defendant seeks the affidavit to prepare for defendant's depositions of Feller, to which plaintiff has withdrawn its objection, and Tabak. Plaintiff still seeks to quash the subpoena ad testificandum for Feller, however, of which the

subpoena duces tecum is a part, to the extent of prohibiting defendant from questioning Feller as well as any other deposition witness from Multiplan regarding the preparation of the affidavit Feller executed for plaintiff's attorney. C.P.L.R. §§ 2304, 3101(c), 3103(a).

Plaintiff has not indicated it expects to serve its motion for summary judgment before Feller's deposition. See, e.g., Drizin v. Sprint Corp., 3 A.D.3d 388, 389-90 (1st Dep't 2004). Therefore, at this anticipatory juncture, the current draft of Feller's affidavit well may be modified to comport with her deposition testimony, before her affidavit is used to support a summary judgment motion, or may be entirely supplanted by her testimony and not be used at all for such a motion.

I. COMMUNICATIONS BETWEEN FELLER AND DEFENDANT

In any event, before September 17, 2012, when defendant served the subpoenas, defendant's corporate attorney discussed with Feller many issues relevant to this action. They included (1) the contract between MultiPlan and plaintiff, as well as contracts between MultiPlan and other health care providers; (2) the separate corporate status of Multiplan and Private HealthCare Systems, Inc. (PHCS), as distinct business entities; (3) defendant's access to PHCS's network and lack of access to MultiPlan's network; and (4) whether defendant was a third party beneficiary of any contract between MultiPlan and plaintiff. Regarding the second and third points, Feller executed an affidavit on August 16, 2012, for defendant's attorney.

Regarding the fourth point, Feller responded that defendant's attorney would learn "her position on this" issue from the affidavit she had prepared with plaintiff's attorney. Aff. of Paul Farahvar ¶ 8 (Mar. 21, 2013).

Feller thus demonstrated, at least to defendant's attorney, an expectation that the affidavit she prepared with plaintiff's attorney was not confidential and that it would be accessible to defendant. In her discussion of all the issues listed above with defendant's attorney she did not indicate to him that any of her communications with plaintiff's attorney were confidential. Plaintiff has not presented any further affidavit by Feller or other evidence that her expectation was not as she indicated to defendant's attorney or that plaintiff's attorney cautioned Feller to keep the contents of their communications and the affidavit they prepared confidential.

Only after Feller's discussion with defendant's attorney, did plaintiff's attorney instruct Feller simply to notify the attorney if Feller was served with a subpoena, because plaintiff would move to quash the subpoena. Even this instruction did not specifically relate to the affidavit they prepared or their communications or caution Feller to keep the contents of either confidential.

II. THE SUBPOENA'S REQUEST FOR FELLER'S AFFIDAVIT

A. The Protections

Work product derives from an attorney's professional skills and judgment; includes the attorney's analysis of legal

principles, her legal opinions, and her strategic decisions; and is narrowly construed. Spectrum Sys. Intl. Corp. v. Chemical Bank, 78 N.Y.2d 371, 377 (1991); Hudson Ins. Co. v. Oppenheim, 72 A.D.3d 489, 490 (1st Dep't 2010); Veras Inv. Partners, LLC v. Akin Gump Strauss Hauer & Feld LLP, 52 A.D.3d 370, 374 (1st Dep't 2008); Brooklyn Union Gas Co. v. American Home Assur. Co., 23 A.D.3d 190, 191 (1st Dep't 2005). The work product privilege protects against the disclosure of factual information and observations only by the attorney, as they may be clothed with the attorney's mental impressions and personal beliefs, but not facts or observations from a nonparty. Beach v. Touradji Capital Mgt., L.P., 99 A.D.3d 167, 170 (1st Dep't 2012); Netherby Ltd. v. G.V. Trademark Invs., Ltd., 261 A.D.2d 161 (1st Dep't 1999); Eisic Trading Corp. v. Somerset Marine, Inc., 212 A.D.2d 451 (1st Dep't 1995).

The facts recounted by Feller do not become privileged work product merely because plaintiff's attorney compiled them. Brooklyn Union Gas Co. v. American Home Assur. Co., 23 A.D.3d at 191; Netherby Ltd. v. G.V. Trademark Invs., Ltd., 261 A.D.2d 161; Salzer v. Farm Family Life Ins. Co., 280 A.D.2d 844, 846 (3d Dep't 2001). Only if Feller's affidavit revealed the impressions, beliefs, or directions of plaintiff's attorney conveyed to Feller, would that part of the affidavit be privileged. Beach v. Touradji Capital Mgt., L.P., 99 A.D.3d at 171; Salzer v. Farm Family Life Ins. Co., 280 A.D.2d at 846.

Material prepared for litigation includes material obtained

through investigation, such as the witness' statement obtained from Feller. Although this protection also is construed narrowly, unlike the work product privilege, C.P.L.R. § 3101(c); Hudson Ins. Co. v. Oppenheim, 72 A.D.3d at 490, this protection is not absolute. People v. Kozlowski, 11 N.Y.3d 223, 244 (2008); Spectrum Sys. Intl. Corp. v. Chemical Bank, 78 N.Y.2d at 377; Rosario v. North Gen. Hosp., 40 A.D.3d 323 (1st Dep't 2007); Rojas v. New York City Tr. Auth., 276 A.D.2d 684 (2d Dep't 2000). It is subject to disclosure upon a showing of substantial need for the material and undue hardship in obtaining the material by other means. C.P.L.R. § 3101(d)(2); Spectrum Sys. Intl. Corp. v. Chemical Bank, 78 N.Y.2d at 377; Beach v. Touradji Capital Mgt., L.P., 99 A.D.3d at 171; Drizin v. Sprint Corp., 3 A.D.3d at 390; Lamitie v. Emerson Elec. Co.-White Rodgers Div., 208 A.D.2d 1081, 1082 (3d Dep't 1994). If defendant satisfies this standard, and the material's probative value outweighs the protection, the material is subject to disclosure after redaction of any work product. Smith v. City of New York, 49 A.D.3d 400, 401 (1st Dep't 2008).

B. Waiver of the Work Product Privilege

A party or its attorney may waive the privilege attached to the attorney's work product. The readily acknowledged intention of plaintiff's attorney to serve Feller's affidavit to support its upcoming motion already shows the attorney's intention not to maintain the affidavit's confidentiality. If this future intent is an insufficient showing, however, Feller's discussion with

defendant's corporate attorney independently demonstrates that neither Feller nor plaintiff's attorney sought to maintain the confidentiality of any of the information discussed. People v. Kozlowski, 11 N.Y.3d at 246; Netherby Ltd. v. G.V. Trademark Invs., Ltd., 261 A.D.2d 161; Bluebird Partners, L.P v. First Fidelity Bank, 248 A.D.2d 219, 225 (1st Dep't 1998); Eisic Trading Corp. v. Somerset Marine, Inc., 212 A.D.2d 451.

Feller discussed with defendant's attorney the subjects of her communications with plaintiff's attorney and the contents of the affidavit executed for plaintiff. No affidavit from either Feller or plaintiff's attorney indicates that, by engaging in that discussion, Feller was contravening cautionary instructions from plaintiff's attorney to keep the affidavit's contents confidential. People v. Kozlowski, 11 N.Y.3d at 246; Bluebird Partners, L.P v. First Fidelity Bank, 248 A.D.2d at 225. The uncontroverted content of Feller's discussion with defendant's attorney thus shows a waiver of any work product privilege to be claimed by plaintiff or its attorney covering the affidavit executed for plaintiff.

C. Overcoming the Protection of Material Prepared for Litigation

Feller's discussion with defendant's attorney also shows, however, that, insofar as Feller directed him to learn from that affidavit about her position on whether defendant was a third party beneficiary of any contract between MultiPlan and plaintiff, defendant may obtain this information only from that source. C.P.L.R. § 3101(d)(2); People v. Kozlowski, 11 N.Y.3d at

244; Beach v. Touradji Capital Mgt., L.P., 99 A.D.3d at 171; Drizin v. Sprint Corp., 3 A.D.3d at 390; Lamitie v. Emerson Elec. Co.-White Rodgers Div., 208 A.D.2d at 1082. In sum, defendant already interviewed Feller, tried to obtain information that would assist defendant in its defense or counterclaims, and obtained only part of what it sought. While defendant might question Feller regarding her position on the third party beneficiary issue at her deposition, neither Feller nor plaintiff provides the least assurance that Feller's response would not be the same, directing defendant to her affidavit, and that plaintiff would not object to any question seeking the affidavit's contents. See People v. Kozlowski, 11 N.Y.3d at 245; Yasnogordsky v. City of New York, 281 A.D.2d 541 (2d Dep't 2001).

Plaintiff, of course, is free to move for summary judgment at any time. C.P.L.R. § 3212(a). As long as plaintiff does not, however, to allow a withholding of Feller's affidavit until after Feller has been deposed only would entitle defendant to supplemental disclosure to inquire regarding the affidavit's contents that depart from Feller's deposition testimony and that plaintiff nevertheless relies on. C.P.L.R. § 3101(h). E.g., Curbean v. Kibel, 12 A.D.3d 206, 207 (1st Dep't 2004); Colicchio v. City of New York, 181 A.D.2d 528, 529 (1st Dep't 1992). If her affidavit is consistent with her testimony, plaintiff will have lost no advantage from the litigation preparation by plaintiff's attorney. Under all these circumstances, since the purpose of the protection afforded to material prepared for

litigation is to protect the effectiveness of an attorney's litigation preparation, defendant has overcome the protection ordinarily attached to nonparty witness statements obtained by a party's attorney through her investigation. E.g., Yasnogordsky v. City of New York, 281 A.D.2d 541.

D. The Absence of Work Product in the Affidavit

With the parties' consent, the court has reviewed in camera the affidavit Feller executed for plaintiff. Although Feller is an attorney, she is not plaintiff's attorney and is also a high level corporate officer of both MultiPlan and PHCS. She did not prepare her affidavit acting as an attorney for plaintiff or even for nonparty MultiPlan. Plimpton v. Massachusetts Mut. Life Ins. Co., 50 A.D.3d 532, 533 (1st Dep't 2008); Brooklyn Union Gas Co. v. American Home Assur. Co., 23 A.D.3d at 191; Salzer v. Farm Family Life Ins. Co., 280 A.D.2d at 846. Nevertheless, if, as she describes, her affidavit sets forth whether defendant was a third party beneficiary of any contract, albeit her position on this issue, not the position of plaintiff's attorney, since this issue is a legal one, it is enough to suggest that the affidavit might reveal a position that originated with or was shared by plaintiff's attorney.

Yet Feller's affidavit merely sets forth the facts regarding her corporate positions, corporate facts about the two corporations, and other facts known by this witness and relevant to this action. Although plaintiff's own descriptions regarding the affidavit's contents are unrevealing, plaintiff itself

consistently describes Feller's affidavit as including only factual material: "facts about contractual relationships and the corporate relationship of PHCS, MultiPlan, NYU, and the defendant," rather than litigation strategy or legal theory, analysis, or opinions. Transcript of Proceedings at 7 (Feb. 5, 2013). See C.P.L.R. § 3101(d)(2); People v. Kozlowski, 11 N.Y.3d at 245; Aetna Cas. & Sur. Co. v. Certain Underwriters at Lloyd's, 262 A.D.2d 367, 368 (1st Dep't 1999); Netherby Ltd. v. G.V. Trademark Invs., Ltd., 261 A.D.2d 161; Eisic Trading Corp. v. Somerset Marine, Inc., 212 A.D.2d 451.

The likelihood that plaintiff's attorney may have compiled in Feller's affidavit only those facts reported by Feller that plaintiff's attorney found supportive of plaintiff's position in this action is not enough to transform those facts into trial preparation materials. First, plaintiff's attorney never expressly confirms that she culled away unfavorable facts reported by Feller. To be privileged, nevertheless, the affidavit must reveal either the attorney's "opinion work product" or "mental impressions, opinions, or legal theories" the attorney formulated from her interviews with Feller. People v. Kozlowski, 11 N.Y.3d at 245. See C.P.L.R. § 3101(c) and (d)(2). To meet this standard, any compilation of favorable facts from favorable and unfavorable facts at minimum must reveal why the attorney concluded that the included facts supported plaintiff's litigation position. Nothing in Feller's affidavit indicates that legal training was required to compile her statements, which

relate to the course of business conducted by MultiPlan and PHCS. Plimpton v. Massachusetts Mut. Life Ins. Co., 50 A.D.3d at 533; Rosario v. North Gen. Hosp., 40 A.D.3d at 324; Netherby Ltd. v. G.V. Trademark Invs., Ltd., 261 A.D.2d 161; Eisic Trading Corp. v. Somerset Marine, Inc., 212 A.D.2d 451. See C.P.L.R. § 3101(d)(2); People v. Kozlowski, 11 N.Y.3d at 245. Nor does her affidavit reveal any legal advice or recommendations or any other thought processes unique to an attorney. Brooklyn Union Gas Co. v. American Home Assur. Co., 23 A.D.3d at 191; Aetna Cas. & Sur. Co. v. Certain Underwriters at Lloyd's, 262 A.D.2d at 368.

Twice in her affidavit, Feller does briefly state a basic legal conclusion, although neither conclusion uniquely "reflects a lawyer's learning and professional skills," such as legal analysis, theory, or strategy. Plimpton v. Massachusetts Mut. Life Ins. Co., 50 A.D.3d at 533. See Brooklyn Union Gas Co. v. American Home Assur. Co., 23 A.D.3d at 191; Aetna Cas. & Sur. Co. v. Certain Underwriters at Lloyd's, 262 A.D.2d at 368; ACWOO Intl. Steel Corp. v. Frenkel & Co., 165 A.D.2d 752, 753 (1st Dep't 1990). The first, in the first clause of the second sentence of ¶ 8, reiterates a legal conclusion that plaintiff's attorney sets forth in her ex parte letter to the court enclosing and summarizing the affidavit. While this legal conclusion is uncomplicated and unsurprising, and it may be Feller's own legal conclusion and not necessarily the thinking of plaintiff's attorney, in an abundance of caution, the court grants plaintiff's motion to quash this one clause, beginning with

"MultiPlan" and continuing up to "PHCS," so that "PHCS" is not redacted. Even if this conclusion is neither the work product nor the trial preparation material of plaintiff's attorney, because it is so basic and unsurprising, withholding it will not unduly prejudice defendant.

As Feller recounts in the affidavit, she already has imparted to defendant's representative the affidavit's second legal conclusion, in the second sentence of ¶ 27, summarizing an exhibit that Feller again refers to in that paragraph's final sentence. Therefore any privilege that might attach to this conclusion has been waived. People v. Kozlowski, 11 N.Y.3d at 246; Netherby Ltd. v. G.V. Trademark Invs., Ltd., 261 A.D.2d 161; Bluebird Partners, L.P v. First Fidelity Bank, 248 A.D.2d at 225; Eisic Trading Corp. v. Somerset Marine, Inc., 212 A.D.2d 451. Unlike the first legal conclusion discussed above, nothing in any event suggests that Feller derived this conclusion from work product or trial preparation by plaintiff's attorney.

III. THE SUBPOENA'S REQUEST FOR DOCUMENTS OTHER THAN FELLER'S AFFIDAVIT

Pursuant to the parties' stipulation executed March 19, 2013, plaintiff withdraws its motion insofar as it seeks to quash the subpoena duces tecum's requests ## 1, 7, and 20, and defendant withdraws the subpoena duces tecum's requests ## 10 and 12 in full and requests ## 2 and 5 insofar as they seek documents MultiPlan already has produced to defendant. As plaintiff has not shown why the remainder of documents encompassed by requests ## 2 and 5 are protected from disclosure, the court denies

plaintiff's motion to quash the remainder of those two requests. At the hearing on plaintiff's motion February 5, 2013, defendant also stipulated on the record that defendant withdrew the subpoena duces tecum's requests ## 13 and 14 that sought documents reflecting communications between plaintiff's attorney and Feller regarding the preparation of Feller's affidavit, including its non-final drafts. Tr. at 5, 27 (Feb. 5, 2013). See C.P.L.R. § 2104.

The court grants plaintiff's motion to quash the subpoena duces tecum's requests ## 16-19 for documents that directly relate to communications regarding a settlement agreement between plaintiff and MultiPlan, to remedy underpayment of claims by insurers in PHCS, before the agreement was executed. The settlement itself, in which plaintiff, MultiPlan, or both obtained a benefit impacting insurers in PHCS, and any documents that directly relate to communications regarding the settlement's interpretation, application, implementation, or enforcement, after the agreement was executed, may be relevant or useful to this action. The settlement and any subsequent interpretive or implementing communications may indicate a relationship between plaintiff and PHCS insurers or between MultiPlan and PHCS insurers, a network to which defendant has access, and thus a basis on which plaintiff claims defendant is obligated to plaintiff. Because defendant seeks the settlement not as evidence of plaintiff's liability or defendant's nonliability in this action, but as evidence of rights and liabilities between

plaintiff and nonparties, to understand plaintiff's basis for claiming defendant's liability, C.P.L.R. § 4547 does not prohibit disclosure of the settlement or related documents. Matter of Midland Ins. Co., 87 A.D.3d 487, 491 (1st Dep't 2011); American Re-Ins. Co. v. United States Fid. & Guar. Co., 19 A.D.3d 103, 104 (1st Dep't 2005). Plaintiff has not claimed that these documents are confidential, a claim that would not necessarily limit their disclosure to defendant in any event. See Masterwear Corp. v. Bernard, 3 A.D.3d 305, 307-308 (1st Dep't 2004).

Defendant has not shown, however, how communications leading up to the final settlement may be relevant or lead to relevant evidence other than the settlement itself. If those communications do not reflect positions embodied in the settlement, then the communications likely reflect positions that were abandoned or rejected. See Veras Inv. Partners, LLC v. Akin Gump Strauss Hauer & Feld LLP, 52 A.D.3d at 374. Defendant claims that an understanding of the dispute that precipitated the settlement may assist in understanding how the dispute was settled, but fails to explain why the settlement itself would not provide the best understanding of the dispute's resolution or why the parties' motivations or reasons for the settlement are potentially relevant. If the settlement terms are ambiguous, defendant may depose the knowledgeable witnesses regarding any ambiguity. Insofar as the negotiations leading up to the settlement that increased reimbursement of claims to plaintiff by PHCS insurers reflect potentially relevant contracts that

plaintiff has not produced, defendant may request them.

IV. THE SUBPOENAS AD TESTIFICANDUM TO DEPOSE BOTH CEO TABAK AND MULTIPLAN

Plaintiff moves to quash either the subpoena ad testificandum to depose MultiPlan's CEO Mark Tabak or the subpoena ad testificandum to depose the corporation MultiPlan, claiming defendant is not entitled to both depositions. MultiPlan may designate who will appear for the corporation at its deposition. C.P.L.R. §§ 3106(d), 3107; Colicchio v. City of New York, 181 A.D.2d at 529. Plaintiff also is entitled to depose particular officers of the corporation, such as CEO Tabak and Executive Vice President and General Counsel Feller. C.P.L.R. § 3106(d). Both Tabak and Feller are witnesses competent to testify regarding facts relevant to plaintiff's claims or defendant's defenses or counterclaims. White v. Tutor Time, 71 A.D.3d 761 (2d Dep't 2012). See Colicchio v. City of New York, 181 A.D.2d at 529. Tabak signed a contract that plaintiff relies on to support its claims. Feller has provided affidavits delineating the relationships between plaintiff and MultiPlan, MultiPlan and PHCS, defendant and MultiPlan, and defendant and PHCS and among defendant, MultiPlan, and plaintiff. If MultiPlan designates Tabak or Feller as its witness, then plaintiff may depose only Tabak and Feller. If MultiPlan designates another witness, then plaintiff may depose that other witness, Tabak, and Feller.

In conjunction with defendant's stipulation withdrawing its requests for documents reflecting communications with plaintiff's

attorney regarding the preparation of Feller's affidavit, defendant also stipulated to refrain from questioning Feller regarding the preparation of her affidavit. Tr. at 12-13 (Feb. 5, 2013). See C.P.L.R. § 2104. Plaintiff seeks to prohibit similar questioning of other deposition witnesses from MultiPlan. Defendant shall not seek to obtain from other witnesses what it may not obtain from Feller and thus shall refrain from questioning Tabak or any other deposition witness whom MultiPlan produces as to communications with plaintiff's attorney regarding the preparation of Feller's affidavit.

Nor shall defendant seek to obtain from MultiPlan's witnesses the information sought through the subpoena duces tecum's document requests that the court has quashed. Defendant thus shall refrain from questioning these witnesses regarding communications leading up to the settlement between plaintiff and MultiPlan to remedy underpayment of claims by insurers in PHCS.

V. CONCLUSION

As explained above, the court grants plaintiff's motion to quash the subpoenas ad testificandum served by defendant to depose nonparties Marcy Feller, Mark Tabak, and MultiPlan, Inc., only to the extent of prohibiting defendant from questioning these witnesses as follows. Defendant shall refrain from questioning them as to communications (1) with plaintiff's attorney regarding the preparation of Feller's affidavit provided to plaintiff and (2) leading up to the settlement agreement between plaintiff and MultiPlan to remedy underpayment of claims

by insurers in nonparty Private HealthCare Systems, Inc., before the settlement was executed. C.P.L.R. §§ 2304, 3101(c), 3103(a).

The court grants plaintiff's motion to quash the subpoenas duces tecum served by defendant on these witnesses only to the following extent. C.P.L.R. §§ 2304, 3101(c) and (d)(2), 3103(a). Before producing the affidavit Feller provided to plaintiff sought by request # 11 of the subpoenas duces tecum, plaintiff may redact the first clause of the second sentence of ¶ 8, beginning with "MultiPlan" and continuing up to "PHCS," so that "PHCS" is not redacted. The court grants the motion to quash requests ## 13-14 of the subpoenas duces tecum and requests ## 16-19 only insofar as the documents requested directly relate to communications leading up to a settlement agreement between plaintiff and MultiPlan, to remedy underpayment of claims by insurers in PHCS, before the agreement was executed. Plaintiff shall produce the settlement agreement itself and any documents that directly relate to communications regarding the settlement's interpretation, application, implementation, or enforcement, after the agreement was executed. The court otherwise denies plaintiff's motion, except insofar as defendant has stipulated to withdraw specified requests in the subpoenas duces tecum.

DATED: October 31, 2013

FILED

NOV 14 2013

NEW YORK
COUNTY CLERK'S OFFICE

Lucy Billings

LUCY BILLINGS. J.S.C.

LUCY BILLINGS
J.S.C.