UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

filed on December 16, 2024

Docket no. 24 cv 9778-UA_ Jury trial requested

Appellant/Plaintiff

Dr. Richard Cordero, Esq.

-vs-

Respondents/defendants in their official and individual capacities (see identifying information on page SDNY:5§D below)

1A. The Secretary of Health and Human Services (HHS);

the respective directors/heads/top officers of:

2A. the HHS Departmental Appeals Board

3A. the HHS Medicare Operations Division

4A. the HHS Medicare Appeals Council

5A. the Office of Medicare Hearings and Appeals (OMHA) Headquarters

6A. the OMHA Centralized Docketing

7A. David Eng, Esq.; 8A. John Colter; 9A. Jon Dorman; 10A. Dr. Sherese Warren; 11A. Erin Brown; 12A. Andrenna Taylor Jones; 13A. James "Jim" Griepentrog;

14A. ALJ Dean Yanohira and 15A. Legal Assistant Deniese Elosh, both in OMHA Phoenix Field Office, AZ

16A. ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA

1B. Health Insurance Plan of Greater New York (HIP);

2B. EmblemHealth;

3B. EmblemHealth President and CEO Karen Ignagni;

4B. the Director of EmblemHealth Grievance and Appeals Department

HIP and/or EmblemHealth officers:

5B. Sean Hillegass; 6B. Stephanie Macialek; 7B. Melissa Cipolla. 8B. Shelly Bergstrom; 9B. Dr. Sandra Rivera-Luciano,

10B. The Director of EmblemHealth Quality Risk Management Department

COMPLAINT
and
appeal
from the final decision
of
Medicare Appeals
Council
No. M-23-386;
M-23-2791,
M-23-3216, and
M-23-32151; and

OMHA Appeal No.
3-108 1720 5455

Medicare Id. #
8G24-KQ8-WV67

ECAPE Id. E1021112;

EmblemHealth Id. #
K405 191 5001

Health Insurance Plan of Greater Newy York (HIP) and EmblemHealth cases 1063 8576 et al.
and
motions for default judgment,
judgment on the pleadings,
and summary judgment

[1] The Council stated in its decision that it has consolidated these M-# cases under M-23-386.

11B. Maximus Federal Services

12B. The President of Maximus Federal Services

13B. The CEO of Maximus Federal Services

14B. The Director of the Medical Managed Care & PACE Reconsideration Project at Maximus Federal Services

15B. John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior

16B. John Doe and Jane Doe, who are EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., to Plaintiff's detriment

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A. The court's basis of jurisdiction

1. This court has jurisdiction under 28 U.S.C. §1331 to determine the federal questions of this case involving the Social Security Act, in general, and its Medicare provisions, in particular; as well as the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq.

2. This is an appeal from the decision of the Medicare Appeals Council [hereinafter the Council]. In its decision, the Council informs appellant Dr. Richard Cordero, Esq. (herein also plaintiff and referred to as Plaintiff) of his right under 42 U.S.C. §1395w-22(g)(5), which he is exercising in this action. It provides that :

"An enrollee with a Medicare+Choice plan of a Medicare+Choice[2] organization under this part [such as plaintiff Dr. Cordero, who is enrolled in a Medicare Advantage plan offered by defendant EmblemHealth] who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay [, as Dr. Cordero believes,] is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, [as it is in this case by admission of the Council in its decision,] the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the organization shall be entitled to be parties to that judicial review.…
https://uscode.house.gov/download/download.shtml

3. This court has supplemental jurisdiction under 28 U.S.C. §1367 to hear and determine „all other claims that are so related to claims in this action within [the above-mentioned] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution".

B. Venue of this case

4. Venue is proper in the U.S. District Court for the Southern District of New York

[2] A note above §1395w–21 provides as follows: "References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201of Pub. L. 108–173, set out as a note under section 1395w–21 of this title."

under 28 U.S.C. §1391 because the requirements are met that it sets forth in:

> (b)(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred,…
>
> (e)(1) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred,…, or (C) the plaintiff resides….; id.

5. Since Plaintiff resides in the jurisdictional area of this court, venue is also proper under §1852(g)(5) of the Social Security Act, 42 U.S.C. §1395w-22(g)(5).

C. Information about Plaintiff

6. Plaintiff Dr. Richard Cordero, Esq., holds a Ph.D. in law from the University of Cambridge in the United Kingdom; an advanced degree in law from La Sorbonne in Paris; and a Master in Business Administration from the University of Michigan; and is admitted to the New York State bar, where he is in good standing. He resides at 2165 Bruckner Blvd., Bronx New York City, NY 10472; telephone no. (718)827-9521; Dr.Richard.Cordero_Esq@verizon.net.

D. Contact information about Defendants and other served officers

	A	B
1.	The Secretary U.S. Department of Health and Human Services c/o: General Counsel	Health Insurance Plan of Greater New York 55 Water Street New York, NY 10041-8190 press@emblemhealth.com

	200 Independence Avenue, S.W Washington, D.C. 20201 [by registered or certified mail]	
2.	The Director HHS Departmental Appeals Board, MS 6127 330 Independence Avenue Cohen Building Room G-644 Washington, DC 20201 tel. (202)565-0100 toll free: (866)365-8204	EmblemHealth 55 Water Street New York, NY 10041-8190 press@emblemhealth.com
3.	The Director Medicare Operations Division - Departmental Appeals Board U.S. Dept. of Health and Human Services 330 Independence Ave., S.W. Washington, D.C. 20201 OS DAB MOD Hotline (HHS/DAB) tel.: (202)565-0100; (866)365-8204 fax: (202)565-0227 DABMODHotline@hhs.gov	Ms. Karen Ignagni President and CEO EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (877)344-7364 press@emblemhealth.com
4.	The Director Medicare Appeals Council (MAC) 330 Independence Avenue Cohen Building Room G-644 Washington, DC 20201 tel. (202)565-0100 toll free: (866)365-8204	The Director Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-0617
5.	The Director Office of Medicare Hearings and Appeals (OMHA) Headquarters 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Medicare.Appeals@hhs.gov	Mr. Sean Hillegass Supervisor, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-0617 SHillegass@EmblemHealth.com
6.	The Director OMHA Centralized Docketing 1001 Lakeside Avenue, Suite 930 Cleveland, OH 44114-2316 tel. (866)236-5089 Medicare.Appeals@hhs.gov	Ms. Stefanie Macialek Specialist, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190

		tel. (646)447-6109 Stefanie.Macialek@emblemhealth.com
7.	David Eng, Esq. Lead Attorney Advisor Medicare Operations Division - Program Operations Branch U.S. Dept. of Health and Human Services - Departmental Appeals Board 330 Independence Ave., S.W. Washington, D.C. 20201 OS DAB MOD Hotline (HHS/DAB) tel.: (202)565-0100; (866)365-8204 fax: (202)565-0227 DABMODHotline@hhs.gov	Ms. Melissa Cipolla Senior Specialist, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-7026 M_Cipolla@emblemhealth.com
8.	Mr. John Colter, ARL FO Supervisor of Legal Administrative Specialists U.S. Dept. of Health and Human Services Departmental Appeals Board 330 Independence Ave., S.W. Washington, D.C. 20201 tel. (571)457-7290 John.Colter@hhs.gov	Ms. Shelly Bergstrom Quality Risk Management EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (631)844-2691 SBergstrom@emblemhealth.com
9.	Mr. Jon Dorman Director Appeals Policy and Operations Division Office of Medicare Hearings and Appeals Arlington Field Office Presidential Tower 2550 S Clark St, Suite 3001 Arlington, VA 22202-3926 Jon.Dorman@hhs.gov	Dr. Sandra Rivera-Luciano Medical Director EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (631)844-2691
10.	Dr. Sherese Warren, DrPH, MPA Director, Central Operations Office of Medicare Hearings and Appeals 1001 Lakeside Avenue, Suite 930 Cleveland, OH 44114-2316 Office Phone: (216)462.4090 Work Cell: (216)401.6648 Sherese.Warren@hhs.gov	The Director Quality Risk Management EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-7026
11.	Erin Brown, Esq. Senior Legal Supervisor	Maximus Federal Services 3750 Monroe Avenue, Suite 702

	OMHA Headquarters 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Erin.Brown@hhs.gov	Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
12.	Andrenna Taylor Jones, Esq. Senior Attorney Advisor Appeals Operations Branch Appeals Policy and Operations Division, Headquarters Office of Medicare Hearings and Appeals 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Medicare.Appeals@hhs.gov	The President Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
13.	Mr. James "Jim" Griepentrog Legal Administrative Specialist US Dept. of Health and Human Services Office of Medicare Hearings and Appeals Arlington Field Office Presidential Tower 2550 S Clark St, Suite 3001 Arlington, VA 22202-3926 tel. (571)457-7200 (Main) toll free (866)231-3087, Desk Phone: (571)457-7262 "CU-04" or (571)457-7290 (JC) fax (703)603-1812 "Attn Jim G or SLAS/Pool" James.Griepentrog@hhs.gov	The CEO Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
14.	ALJ Dean Yanohira OMHA Phoenix Field Office 230 N. 1st Avenue, Suite 302 Phoenix, AZ 85003-1706 tel.: (833)636-1476 tel. (602)603-8609 fax (602)379-3038 and -3039	The Director Office of the Project Director Medicare Managed Care & PACE Reconsideration Project Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
15.	Legal Assistant Deniese Elosh OMHA Phoenix Field Office 230 N. 1st Avenue, Suite 302 Phoenix, AZ 85003-1706	John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated

	tel.: (833)636-1476 tel. (602)603-8609 fax (602)379-3038 and -3039	disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior.
16.	ALJ Loranzo Fleming OMHA Atlanta Field Office, GA Atlanta Field Office, 2nd Floor 77 Forsyth Street SW Atlanta, GA 30303 tel.: (470)633-3500 direct tel.: (470)633-3424 fax: (404)332-9566 toll free: (833)636-1474	John Doe and Jane Doe, who are HIP and/or EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., such as those listed in SDNY:12§3 below to Plaintiff's detriment.
17.	Merrick Garland, Esq. U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 tel. (202)514-2000	Damian Williams, Esq. United States Attorney for SDNY Civil Division 86 Chambers Street, 3rd Floor New York, NY 10007 tel. (212)637-2800 https://www.justice.gov/usao-sdny U.S. Attorney's Office for SDNY Main Office 26 Federal Plaza, 37th Floor New York, NY 10278 tel. (212)637-2200

E. Statement of claims

1. Date and place of occurrence

7. On September 8, 2021, Plaintiff Dr. Cordero was eating chocolate in his office when the crown in tooth #19 (hereinafter the crown) together with the post (a spike-like structure to which the crown tapers) that affixes it to the root of the tooth came out. Whatever little had been there of the walls of the tooth in which the crown was nested broke off. There remained only the root of the tooth -whose top part was at the gum level, thus leaving a gap between the adjacent teeth, and

whose apex sat in the bone of the lower jaw.

8. Within the hour, Plaintiff called his health insurance company, EmblemHealth of Greater New York (Emblem) to find out what to do. He dialed the Customer Service number on the back of the Emblem membership card, i.e., 1(855)283-2146. He landed at Emblem's call center in The Philippines. The representative who picked up the phone on a recorded line did not have the faintest idea how to answer the obvious question: "What treatment will Emblem cover to deal with the crown that came out stuck on a piece of chocolate?[3]"

9. The representative kept putting Plaintiff on hold while she typed an email for her supervisor and waited for an emailed reply. Upon realizing that this so-called "Customer Service" was not working at all, Plaintiff asked to speak with the supervisor. The supervisor who came to the phone would be the first of 19 Emblem SUPERVISORS to deal with this problem on recorded lines, emails, letters, and the briefs[4], which only Plaintiff, but no other party, wrote and filed. That is

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[3] Eventually, Plaintiff would learn from the dentists at NYU College of Dentistry that the detail about the chocolate was meaningful, for it most probably indicated that the root of the tooth in which the crown post was inserted had cracked so that it no longer tightly gripped the post, whose top part is the crown. As a result, the single piece that they formed could easily come out stuck on gooey chocolate. The root would not grip another post+crown. It could not be salvaged. It had to be extracted and a base for another crown had to be constructed with bone powder.

[4] Brief for the fair hearing: **http://Judicial-Discipline-Reform.org/ALJ/22-5-21**DrRCordero_Statement_on_Appeal.pdf.

Brief for the appeal to the Medicare Appeals Council: http://Judicial-Discipline-Reform.org/ALJ/**22-10-26**DrRCordero-Medicare_Appeals_Council.pdf; see also its supplements: http://Judicial-Discipline-Reform.org/ALJ/**23-3-11**DrRCordero_supp_brief-Medicare_Appeals_Council.pdf and http://Judicial-Discipline-Reform.org/ALJ/**23-3-27**DrRCordero_efiled_faxed_supp_brief.pdf.

how this concrete, contemporaneously documented, case started more than three years ago.

2. This case and public animosity after the UnitedHealhcare CEO murder

10. The evidence in the record and that which may be added to it through discovery will illustrate how the largest health insurance agency in the U.S. government with over 67 million insureds, Medicare, together with one of the largest health insurance companies with over 3 million insureds, Emblem, and a company that reviews healthcare denial decisions to perform a reconsideration, Maximus Federal Services (Maximus), engage in conduct that the whole nation has been familiarized with since the murder of UnitedHealthcare CEO Brian Thomson on December 4, 2024, in New York City: "deny, delay, defend".

11. Plaintiff Dr. Cordero will argue not only to this court and the jury in this case, but also to the lawyers that will defend the suspected murderer, the press, social media, the jury pool, and the online amateur sleuths. He will tell them that while the suspect may not win his freedom, they can use this case to save his objective: to expose the healthcare industry's abusive claim evasion tactics that constitute its modus operandi: "delay, deny, defend".

12. By its reaction to the murder of the CEO, the national public, including the jury pool here in NY City, has shown that it is already outraged as a result of so many people having experienced pain and suffering and reckless indifference to them when seeking healthcare in their personal cases. This case can expose the inner workings of a vast industry with different types of entities and officers. Through

complicit coordination, those at the top level of the industry pursue their corporate and individual greed through the lack of training of, and supervision and control over, those at lower levels, whose incompetence, unaccountability, and lack of sense of responsibility towards the insureds are sought after or tolerated.

13. This deeper exposure of the healthcare industry can turn this into a test case through self-reinforcing cycles: The case better informs the public, who becomes more gravely outraged; so, the case becomes a rallying point for ever more people to tell their story of abuse by the healthcare industry, whereby a more informed and outraged public energizes another self-reinforcing cycle: Many of those who will hear those stories will jump to their feet with tears in their eyes as they scream, "That happened to *me too!*" They will ask to tell their story. The media and universities may find it in their interest to respond positively to the request that they hold at their media stations and auditoriums unprecedented citizens hearings where people can tell their story in person or online to the national public.

14. Only an ever more informed and outraged public can by joining forces grow strong enough to compel principled and opportunistic politicians to impose on the healthcare industry transformative transparency, accountability, and liability.

15. This is how a murder can be responsibly and imaginatively used to reform an industry and give a better life to so many people.

3. Emblem supervisors who unceremoniously passed Plaintiff to each other like a hot potato

1. Ms. Jessica (Jessie) Ebeng in The Philippines; tel. (877)344-7364
2. Nick Edwards in The Philippines; tel. (877)344-7364, ext. 19467; n_enopia@emblemhealth.com
3. Kevin Buttler in The Philippines
4. Chris Osorno in The Philippines; (877)344-7364, ext. 19479; k_osorno@emblemhealth.com
5. Eps G. in The Philippines; (877)344-7364, ext. 17913
6. Joseph Sanches Lomocso in The Philippines; j_lomocso@emblemhealth.com
7. Sergio Diaz, DentaQuest; tel. (844)776-8749; reference # 2021 0035 6184
8. Supervisor Joan in The Philippines, (877)444-9961, who at Dr. Cordero's request transferred his call to the U.S.
9. Susan S. in Emblem's "New York Ship"; tel. (800)447-8255
10. Tamika Simpson in the NY Ship; tel. (800)447-8255
11. Thomas Gray in the NY Ship; tel. (800)447-8255
12. Melissa Cipolla, Sr. Specialist, Grievance and Appeals Department; tel. (646)447-7026
13. Sean Hillegass, Supervisor at the Grievance and Appeals Department; tel. (646)447-0617
14. Ms. Darwin Quipit Arcilla, ref. 112 096 55
15. May E. in The Philippines
16. Shelley Bergstrom, Quality Risk Management; tel. (631)844-2691
17. Sandy Yang, Specialist, Grievance and Appeals Department; tel. (646)447-4380
18. Murugan Sudalai; letter of March 15, 2022,
19. Stephanie Macialek, Specialist, Grievance and Appeals Department; tel. (646)447-6109

4. Links to Plaintiff's briefs

16. The only briefs written and filed in this case are those by plaintiff Dr. Cordero. Neither Emblem nor Maximus wrote and filed any briefs. Dr. Cordero's briefs and

supporting documents are incorporated herein by reference as though they were fully set out:

1) http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf

2) http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero_motion_recuse_ALJDYanohira.pdf

3) http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_motion_recuse_ALJLFleming.pdf

4) http://Judicial-Discipline-Reform.org/ALJ/**22-8-24**ALJL Fleming-DrRCordero.pdf

5) http://Judicial-Discipline-Reform.org/ALJ/DrRCordero-Form DAB-101 filled out

6) http://Judicial-Discipline-Reform.org/ALJ/**22-10-26**DrRCordero-Medicare_Appeals_Council.pdf

7) http://Judicial-Discipline-Reform.org/ALJ/**23-3-11**DrRCordero_supp_brief-Medicare_Appeals_Council.pdf

9) http://Judicial-Discipline-Reform.org/ALJ/**23-3-27**DrRCordero_efiled_faxed_supp_brief.pdf

10) http://Judicial-Discipline-Reform.org/ALJ/**23-3-28** Dkt M-23-3216.pdf

11) http://Judicial-Discipline-Reform.org/ALJ/**23-8-28**DrRCordero_class_action_v_Medicare.pdf

12) http://Judicial-Discipline-Reform.org/ALJ/DrRCordero_OMHA_Council_**emails**.pdf

17. The above files have been combined and their pages numbered consecutively in the file at:

13) http://www.Judicial-Discipline-Reform.org/ALJ/**24-12-15**DrRCordero-v-MedAppCouncil_record.pdf

18. The combination file is around 31 MB in size, nevertheless, it is downloadable; otherwise, download its individual component files, if need be, by copying a link, pasting it in the search box of your browser, and pressing "Enter".

5. Concise statement of facts and summary of the argument

19. Plaintiff Dr. Cordero had the crown of a tooth fall out. For months health insurer Emblem represented that its rules controlled coverage. After Plaintiff provided a certificate of medical necessity, Emblem denied coverage and alleged that only Medicare rules controlled, even failing to coordinate benefits with Medicaid. Thereby it disavowed its own advertised coverage, engaging in false advertisement, breach of contract, fraud, and unfair surprise.

20. Emblem and medical reviewer Maximus withheld the latter's confirmation of denial to make Plaintiff miss the deadline to demand a fair hearing. Plaintiff demanded a hearing. Emblem contacted the ALJ ex parte to inquire about the ALJ's decision of the hearing, although not even its date had yet been fixed, thus treating the outcome of the hearing as a done deal. Maximus filed with the ALJ ex parte an alleged „case file“, of which it provided no copy to Plaintiff.

21. Plaintiff requested a copy of the alleged "case file". The ALJ assistant filed a complaint against Plaintiff with the Federal Protective Services of Homeland Security, as if Plaintiff were a terrorist! An investigator even called Plaintiff to initiate the investigation of the complaint.

22. Plaintiff moved to recuse the ALJ for whom the complaining legal assistant worked. The ALJ had a boilerplate denial rubberstamped with his signature and mailed to Plaintiff. Subsequently, the ALJ sent another boilerplate with his rubberstamped signature, this time reversing his denial and granting the recusal motion. Neither boilerplate discussed Plaintiff's statement of facts or memorandum of law. Both were unreasoned, arbitrary, and capricious fiats, the perfunctory and irresponsible excercise of abuse of process and power.

23. Plaintiff filed a brief for the fair hearing. Neither Emblem nor Maximus filed any answer; Maximus did not even attend the hearing. Plaintiff moved for judgment by default. The newly assigned ALJ would not even discuss it. Instead, he limited the hearing to what he percieved as the Defendants' issue. Thereby the ALJ disregarded the issues raised by Plaintiff in his brief and his right as Plaintiff to raise the issues for the hearing. The ALJ, not Emblem, debated Plaintiff throughout the hearing, advocating for both Defendants; and denied coverage. The ALJ tolerated and participated in a hearing by ambush where he and Defendants unfairly surprised Plaintiff about the matters to be dealt with, not to mention who would appear as 'opposing counsel'.

24. Plaintiff appealed to the Medicare Appeals Council. Since Defendants had not produced any brief or evidence requested by Plaintiff in discovery, Plaintiff moved for judgment by default. Instead, Medicare on their behalf tried to pass off as discovery the very briefs, letters, and emails that Plaintiff had composed and exchanged with Defendants from the start of this case.[5]

25. The Council had 90 days to issue its decision. It failed to do so. Plaintiff called, faxed, and emailed tens of officers to find out the reasonf for the delay in deciding, the status of the appeal, and the likely date of a decision. But they engaged in a coordinated effort to wear Plaintiff down through silence and delay.

26. Plaintiff kept emailing daily up to 30 officials of HHS, its Departmental Appeals

[5] http://Judicial-Discipline-Reform.org/ALJ/23-3-11DrRCordero_supp_brief-**Medicare_Appeals_Council**.pdf

Board, the Medicare Appeals Council, the Office of Hearings and Appeals, Emblem, and Maximus[6] (cf. SDNY:5§D above), but nobody would even acknowledge receipt of them, though Plaintiff sent them in two years more than 11,000 emails! There is probable cause to believe that if Plaintiff had not persisted in such burdensome, time-consuming, and frustrating effort, the Council would have evaded its duty to decide the appeal so as to spare Medicare's network members Emblem and Maximus any accountability and liability. The Council proceeded in bad faith to delay its decision, the injury to Plaintiff notwithstanding.

27. The Council denied Plaintiff his right to process, for "justice delayed is justice denied".

28. During those years, the Council has shown reckless indifference to the pain and suffering that Plaintiff has let it know that he was experiencing and continues to experience. This is attested to by doctors finding the recommended treatment for the tooth whose crown fell out a medical necessity in accordance with commonly accepted standards of medical care. That pain and suffering has now become a permanent injury, as discussed below in the statement of injuries.

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[6] Medicare.Appeals@hhs.gov, Sherese.Warren@hhs.gov, erin.brown@hhs.gov, Kathy.Greene@hhs.gov, Robin.Decker-Une@hhs.gov, OSDABImmediateOffice@hhs.gov, OSOMHAATLECAPE@hhs.gov, OSOMHAHearingTechSupport@hhs.gov, DABMODHotline@hhs.gov, notifications@dab.efile.hhs.gov, appeals@dab.efile.hhs.gov, James.Griepentrog@hhs.gov, Jon.Dorman@hhs.gov, john.colter@hhs.gov, erin.nugent@hhs.gov, Darryl.Holloway@hhs.gov, Rajda.Nachampassak@hhs.gov, dawn.kos@hhs.gov, alethia.wimberly@hhs.gov, hillary.didona@hhs.gov, James.Brown@hhs.gov, leslie.mcdonald@hhs.gov, Carlton.Drew@hhs.gov, beau.rightsell@hhs.gov, amy.porter@hhs.gov, medicareappeal@maximus.com, SHillegass@emblemhealth.com, CManalansan@emblemhealth.com, lcampos@emblemhealth.com, EHCommunications@emblemhealth.com, esosa@emblemhealth.com, SBergstrom@emblemhealth.com, sdambrosio@emblemhealth.com,

29. Defendants Emblem and Maximus resorted to their "delay, deny" tactics of abusive claim evasion at the four levels of Medicare administrative appeal provided for under 42 U.S.C. §1395w-22(g), namely, determination, reconsideration, fair hearing, and Medicare Appeals Council. Neither filed a brief responsive to Plaintiff's. Maximus did not even appear at the fair hearing. Consequently, Defendants cannot "defend" in this fifth level appeal to a district court for judicial review because they waived their right to file any pleadings.

30. Defendants must be held to have admitted the statements of facts and contentions of law set forth by Plaintiff in his briefs. There is no legitimate dispute as to them. They stand uncontested and no longer contestable. Defendants forfeited their right to contest them.

31. Hence, Plaintiff requests judgment by default under FRCP 55, judgment on the pleadings under FRCP 12(c), and summary judgment under FRCP 56; and the grant of the relief requested on SDNY:46§P below.

F. The decision on appeal is misleading from its first paragraph

32. *The Wall Street Journal* published on 9 July 2024, an article titled "Insurers Pocketed $50 Billion From Medicare for Diseases No Doctor Treated"[7]. The sheer incompetence and suspect connivance of Medicare exposed by that title and the data in the article lend credence to the criticism of Medicare made in this brief.

33. The decision herein on appeal of the Medicare Appeals Council of 17 October

[7] https://www.wsj.com/health/healthcare/medicare-health-insurance-diagnosis-payments-b4d99a5d?%20mod=Searchresults_pos1&page=1

2024 (hereinafter the Decision) states on page 1 paragraph 1 that:

> Appellant made a "request for pre-authorization to the Medicare Advantage (MA) plan (Plan) to cover dental services, specifically: a guided tissue regeneration compression (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D60S7), abutment supported case metal crown (D6202), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066)".

34. That statement is false. Appellant/Plaintiff Dr. Cordero never made such request. It should be quite obvious that Plaintiff, who is not a dentist or even a doctor of medicine, could hardly have had the knowledge to make such a technically phrased request, which even includes medical coding.

35. It would be equally false to assert that the Emblem people with whom Plaintiff was forced to speak on the phone for months ever made such a highly technical request for pre-authorization of medical treatment coverage.

36. The request that Plaintiff made to Emblem from the moment the crown on tooth # 19 came out on September 8, 2021, and he called its Customer Service number, i.e., 1(877)344-7364, on the back of his Emblem member card, was phrased in layman terms: 'a crown came off one of my teeth and I would like to know what to do to repair it and what Emblem will cover'.

37. This is a key issue because when Plaintiff called Emblem, he landed repeatedly in its call center in The Philippines (the Emblem Philippine people).

38. It would not be accurate to refer to the Emblem people with whom Plaintiff was forced to deal as „officers“, for that term would mask the sheer poor training, incompentence, and lack of sense of responsibility exhibited by even the supervisors with whom Plaintiff was forced to deal: 19 of them! See the list at SDNY:12§33 above.

39. None of the supervisors took ownership of the case. They passed Plaintiff from one to the other to the other: Poorly trained and incompetent, they would stop with reckless irresponsibility dealing with him, thus forcing him to start all over again with yet another supervisor, whether in The Philippines or in Emblem‘s SHIP center in the U.S. (State Health Insurance Program).

40. There is objective evidence supporting the above statements, to wit, the more than 50 hours of recorded phone conversations that Plaintiff had with the Emblem people.

41. Those recordings are so damning for Emblem that it failed to produce a single one of them in response to Plaintiff’s request during discovery in preparation for the fair hearing and the appeal to the Medicare Appeals Council.

G. False statements by the Council concerning coverage

42. The Council states on Decision, page 2, that "the appellant presents no argument that the dental services requested are covered by Medicare or the Plan".

43. For months after Plaintiff called Emblem on September 8, 2021, Emblem via its Customer Service call center in The Philippines never even mentioned Medicare as having anything to do with the coverage of treatment for the fallen-out crown.

44. It is patently unreasonable to expect insureds to know more about coverage and its limitations than the Customer Service representatives supposedly trained to provide information on coverage to the insureds.

45. Plaintiff did argue in its brief to the Council itself[8] what Emblem had advertised in layman's terms in the advertisement "EmblemHealth Enhanced Care (Medicaid) Member Benefits -Covered by EmblemHealth -All Members, Customer Services, tel. (855)283-2146":

> We believe that providing you with good dental care is important to your overall health care. EmblemHealth members must choose a dentist in the DentaQuest Network for preventive and restorative dental care such as routine checkups, X-rays, fillings, root canals, **crowns and more**. If you need help finding a dentist, call DentaQuest Customer Service at 1-844-776-8748, Monday through Friday, 8 am to 5 pm, for the most up-to date network information. [**bold** emphasis added]
>
> You can also go to a dental clinic that is run by an academic dental center without a referral [as did Plaintiff when he went to NYU College of Dentistry]. Call EmblemHealth Customer Service at 1- 855-283-2146 for a list of academic dental centers near you. Call your dentist right away to schedule appointments for you and all other enrolled

[8] http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-**Medicare_Appeals_Council**.pdf >

family members. Just show your dentist your member ID Card.

46. Likewise, in his appellate brief[9] to the Council, Plaintiff also discussed how Medicaid covered dental services:

> 8. In the same vein, the "2021 Evidence of Coverage for EmblemHealth VIP Dual or EmblemHealth VIP Dual Select – Chapter 4. Benefits Chart (what is covered)" (Exhibit 22-4-8 EH Hillegass-DrRCordero) provides as follows in pertinent part:
>
> > page 114: "Members who qualify for Medicare and Medicaid are known as "dual eligibles." As a dual eligible member, you are eligible for benefits under both the federal Medicare Program and the New York State Medicaid Program. The Original Medicare and supplemental benefits you receive as a member of this plan are listed in Section 2.1."
> >
> > page 118. "Dental. Medicaid covers preventive, prophylactic and other dental care, services, supplies, routine exams, prophylaxis, **oral orthotic appliances** required to alleviate a serious health condition, including one which affects employability." [**bold** emphasis added]

47. Emblem's people in The Philippines never mentioned Medicare rules, never mind that they were coverage determinative, much less anything about 'medical codes'. When Emblem advertised that it covered "crown and more", a prospective insured

[9] Fn8 > MApCouncil:6¶8

was entitled to interpret those them expansively. The correctness of such interpretation is provided by precisely the Emblem member ID card, which states "Comprehensive Dental" (see a photo of it at id. >alj:5

48. Contract law principles provide that terms and statements are interpreted against the party that offers them and in favor of the party who receives them.

49. Also, contract law principles provide that when a layperson reads a provision written by an expert for laypeople, the layperson is entitled to interpret them according to their customary meaning among laypeople. The burden is on the expert to alert her laypeople audience to any specialized meaning that the provision may have. The expert cannot abuse her superior knowledge to induce laypeople into error. By so doing, the expert commits fraud by misleading laypeople.

50. After the "delay" for more than three months and the time-consuming and frustrating hassle of dealing with Emblem Customer Service did not cause Plaintiff to abandon his claim, Emblem resorted to a sleight of hand to pull Medicare rules out of thin air as an excuse to implement its second abusive claim evasion tactic: "deny".

H. Council disregarded bias & due process violations by the ALJ appealed from

1. Maximus filed ex parte an alleged “case file” that it never served on Plaintiff

51. Neither Emblem nor Maximus produced to Plaintiff a single piece of evidence requested during discovery.

52. By contrast, Maximus filed with the Office of Medicare Hearings and Appeals (OMHA) Field Office in Phoenix, AZ, (OMHA Phoenix) an alleged “case file” that it

never served on Plaintiff in preparation for the fair hearing initially assigned to that Office.

53. The administrative law judge (ALJ) in OMHA Phoenix assigned to the fair hearing requested by Plaintiff was ALJ Dean Yanohira. His Legal Assistant was Deniese Elosh. In the course of her calling Plaintiff to agree on a hearing date, Plaintiff inquired how ALJ Yanohira would prepare for the hearing since neither Emblem nor Maximus had served him with their briefs. Legal Assistant Elosh blurted that ALJ would read 'the case file of Maximus'. What "case file", asked Plaintiff, since none had been served on him?

54. Plaintiff requested that Legal Assistant Elosh send him a copy of the alleged “case file”. She said that she would have to discuss the request with ALJ Yanohira.

55. Plaintiff had to call her and others in the Phoenix Office (tel. (602)603-8609) and (833)636-14760) several times and leave voice mail on her answering machine to restate his request and make sure that the date for the fair hearing would not be set until he had received a copy of the alleged “case file” and had had time to review it.[10]

I. Defamatory complaint against Plaintiff to the Federal Protective Service

56. On Tuesday, May 17, 2022, Plaintiff received a phone call from Inspector Cory Hogan (tel. (602)514-7130) at the Federal Protective Service of Homeland Security. The Inspector informed him that Legal Assistant Elosh had filed a

[10] http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_**Statement_on_Appeal**.pdf >Part I

complaint against him with his office because Plaintiff had made multiple phone calls to her and was harassing her.[11] The complaint was taken so seriously that it was being investigated…as if Plaintiff were a terrorist threatening a U.S. officer! After a discussion with Plaintiff, Investigator Hogan realized the baseless and arbitrary nature of the complaint. So much so that he agreed to cause his supervisor to get Plaintiff a copy of the "case file" that Legal Assistant Elosh had said Maximus had filed with her superior, ALJ Yanohira.

57. There is every reason to believe that before taking such a momentous action, Legal Assistant Elosh discussed the matter with ALJ Yanohira and received his consent. So, when Plaintiff complained in writing (id.) to the ALJ about his Assistant and petitioned him for his recusal, ALJ Yanohira did not even address the issue. He had somebody rubberstamp his signature on a boilerplate denying the petition to recuse himself.

58. The complaint filed by Legal Assistant Elosh constituted a humiliating and defamatory abuse of process and power.

59. Plaintiff is gravely anguished by the possibility that whenever he may try to enter an airport, a federal building, such as a U.S. courthouse, or any social activity where guests are vetted, his name may appear in a database for having engaged in conduct that motivated federal officers to complain about him for threatening them and prompted other officers to investigate him.

60. This possibility is all the more realistic by the fact that although Plaintiff

[11] Id.

complained about Legal Assistant Elosh and ALJ Yanohira to the Council, the latter did not even acknowledge reciept of his complaint. That makes reasonable to conclude that the Council took no action to clear Plaintiff Dr. Cordero's name by having it removed from any database of potential terrorists or people otherwise threatening violence.

61. The fact is that when eventually ALJ Yanohira vacated his denial and recused himself, he did it by having once more his signature rubberstamped on another boilerplate, which, of course, did not mention the complaint against Plaintiff filed by his Legal Assistant Elosh with the Federal Protective Services. In fact, in footnote 2 of its Decision, the Council wrote: "When later withdrawing from the matter, the ALJ did not specify what "recent events" led the ALJ to withdraw."

62. ALJ Yanohira hid behind a generic, meaningless, one-size-fit-all boilerplate the reasons for first denying Plaintiff's recusal motion and for subsequently reversing himself and granting it. That is how he avoided explaining his conduct.

63. The Council hid similarly: It did not even acknowledge receipt of Plaintiff Dr. Cordero's complaint to it against ALJ Yanohira and his Legal Assistant Elosh.

64. From its failure to acknowledge receipt it is reasonable to infer that the Medicare Appeals Council did not bother to investigate why ALJ Yanohira had behaved as he did, for "he who cannot do the lesser cannot do the more".

65. ALJ Yanohira's colleague who wrote the Decision on behalf of the Council was Administrative Appeals Judge Vanessa M. Hunte. She could not find any report of any such investigation, if she looked for it at all.

66. But if AAJ Hunte found it, she would not dare reveal its existence, which would have made it subject to discovery, not to mention that she would have revealed herself as the one who lifted the black robe of complicity used to cover up the abuse of power of her colleagues.

67. Thereby the Council through her held ALJ Yanohira unaccountable.

68. As a result of the Council's partiality to cover for one of its own, ALJ Yanohira is free to treat other fair hearing petitioners as he treated Plaintiff:

    a. tolerating ex parte communications from Medicare-related parties;

    b. uncritically admitting into the "case" more than 2,000 pages that had never been served on the fair hearing petitioner so that they were unilaterally and self-servingly turned into "case files";

    c. allowing his legal assistants to retaliate against petitioners who assert their rights to due process;

    d. allowing his assistants to abuse their access to agencies such as the Federal Protective Services, which can ruin a person's reputation;

    e. dealing with petitioners perfunctorily and irresponsibly through boiler-plates that disregard statements of facts and arguments of law; etc.

69. Likewise, the Council and its officers condoned the filing of a humiliating and defamatory complaint against Plaintiff Dr. Cordero by Legal Assistant Elosh and those who aided and abetted her.

70. Unaccountability is the hallmark of absolute power, and just as "power corrupts, absolute power corrupts absolutely".

71. The above illustrates how the Council and its officers, with no regard for due process, engage in "delay", and if the petitioner/appellant/insured does not abandon his claims, proceed to "deny".

J. Coordination allows Defendants to operate a racketeering organization

72. Plaintiff prevailed in having the fair hearing transferred from OMHA Phoenix, AZ, to OMHA Atlanta, GA.

73. The ALJ in OMHA Atlanta and the Medicare Appeals Council limited themselves to alleging that the Medicare rules were dispositive of Plaintiff's claim. They would not take into account "the totality of circumstances", such as those abuses of power and process and conduct in bad faith and illegal described above.

74. Emblem and Maximus rely on the assurance that if an insured survives their "delay, deny" abusive claim evasion tactics, and still is persistent enough to demand a fair hearing and even appeal from the ALJ's decision, the Council will come to their rescue by merely:

    a. holding that the Medicare rules do not cover the claim;

    b. pretending to ignore that on the very same day Plaintiff called for the first time about his fallen-out crown, Emblem had actual or imputed knowledge of what the Medicare rules covered or not covered concerning that claim;

    c. disregarding Emblem's own advertisement and evidence of coverage;

    d. not giving any weight to Emblem's failure to discharge its duty to coordinate benefits with Medicaid;

    e. not even mentioning Emblem's and Maximus's coordinated withholding of

the reconsideration negative decision to make the insured miss the deadline for requesting a fair hearing;

f. paying no attention to their failure to provide discovery;

g. not even discussing Maximus's filing with the ALJ of an alleged "case file" without serving it on Plaintiff;

h. not being shocked by the burying in the more than 2,000 pages of that alleged "case file" of a note by Legal Assistant Elosh to ALJ Yanohira that Emblem had called to ask about the decision on the fair hearing at a time when the hearing's date had not even been set.

75. All of the above statements and similar ones found in Plaintiff's briefs stand uncontroverted by Emblem and Maximus. It is not in this third appeal after the appeals to an ALJ and the Council that they can conveniently contest them in a brief or at oral argument.

76. The Council rubberstamped a decision with a template tenor. By so doing, it protected the interests of Medicare in retaining in, and attracting to, its network ever more medical services and equipment providers. The Council wanted to avoid by all means giving the impression that if insureds sue Medicare network members, they will be held accountable:

a. to their advertisements on coverage;

b. their own rules providing extra coverage above what Medicare does;

c. their contracts with the insureds;

d. to the insureds' reasonable expectations based on the assumption that the

network member is acting in good faith;

e. for showing reckless indifference to a plaintiff who let them know that he was in pain and suffering;

f. for failing their duty under 42 U.S.C. §1395w-22(g)(3)(A)(i) to proceed expeditiously 'to prevent seriously jeopardizing the health of the enrollee or the enrollee's ability to regain maximum function';

g. for engaging in a "pattern of racketeering" as defined in the Racketeer Influenced and Corrupt Organizations Act (RICO) at 18 U.S.C. §1961(a)(5), namely, 'two racketeering acts committed within 10 years';

h. for failing their employment life cycle duty to properly hire, train, supervise, control, and promote or terminate its employees to ensure that they serve the insureds in accordance with generally accepted standards of medical care; etc.

77. Medicare itself has that membership life cycle duty with respect to its network members.

78. Medicare failed to discharge that duty with respect to Emblem and Maximus.

79. The Council held Medicare as well as Emblem and Maximus unaccountable.

80. Consequently, the Council's Decision should be reversed and the relief requested below granted.

K. CD produced by Council to Plaintiff contained only his own materials

81. Neither Emblem nor Maximus ever filed a brief responsive to Plaintiff's briefs for

the fair hearing or the appeal to the Council[4].

82. Nor did they produce a single piece of evidence requested by Plaintiff.

83. The Council produced to Plaintiff a CD on February 15, 2023, belatedly, after the 90 days for it to decide the appeal filed on October 28, 2022, had passed.

84. That CD consisted of the very materials that Plaintiff had submitted to Emblem, Maximus, and OMHA.

85. The phone recordings that the CD contained were not two-party conversations, but rather the recorded messages that Plaintiff had left them as voice mail!

86. The Council knew that because it either listened to the sound files to determine which ones to include on the CD or because by the time it wrote its Decision on October 17, 2024, it had received Plaintiff's supplemental brief of March 11, 2023,[12] complaining about it. Since it was the Council that prepared that CD, actual knowledge of its contents is imputed to it.

87. Consequently, the Council proceeded in bad faith when it alleged in its Decision that Plaintiff had received discovery on a CD. It deceptively tried to pass off Plaintiff's own materials for the discovery that he had requested repeatedly but never received. It engaged in racketeering to protect Emblem and Maximus.

L. Delay, deny to wear down the insured and cause him to abandon his claim

88. Plaintiff's statements show that the conduct of Emblem's people when they pass

[12] http://Judicial-Discipline-Reform.org/ALJ/23-3-11DrRCordero_**supp_brief-Medicare_Appeals_Council**.pdf

an insured from one supervisor to the other and to the other and so on (SDNY:12§3 above), constitutes Emblem's institutionalized way of doing business: Those supervisors were not rogue employees; rather, they are the face and body of Emblem. They make up what Emblem is. They were implementing Emblem's first abusive claim evasion tactic: "delay, delay, delay".

89. Their purpose is to drag out the claim for coverage for so long, raise so many obstacles, disrupt the insured's life so profoundly, and cause so much frustration, that he, sick, old, and financially exhausted, will be worn out. Then he will abandon his claim.

90. Their pattern of conduct started to manifest itself with the first level Emblem people in The Philippines that picked up the phone when Plaintiff called Emblem's so-called Customer Service at (877)344-7364.

91. These phone picker uppers did not have the faintest idea how to answer Plaintiff's question about what to do with the crown that had fallen out of tooth # 19. Hence, they would put Plaintiff on hold every time he asked a question so that they could write an email to their supervisors to describe to them Plaintiff's question.

92. This means that the first level phone picker uppers did not have access to a floor supervisor or manager.

93. One clear reason for this is that many, if not all, phone picker uppers worked from home, not in a building that houses Emblem's offices in The Philippines.

94. It is in the self-interest of the phone picker uppers to make up all sorts of excuses

not to put callers in direct contact with their supervisors: The more the phone picker uppers connect callers and supervisors directly to each other, the more they inevitably reveal that they do not have answers to the questions of yet another caller.

95. It is reasonable to infer from their work setup that such revelation would put their job with Emblem at risk, i.e., the job of the phone picker uppers because they have not learned enough to know the answers; and that of the supervisors because they have not taught them sufficiently well for them to figure out the answers based on the information that they have. This deficiency in critical thinking may be traced back to how the Philippine educational system in the grades educates children.

96. Critical thinking allows jurors to draw inferences from the facts known to them even before they become jurors, making them 'peers of the parties'; the verbal statements and body language of the parties at the tables and the witnesses on the stand; and the physical evidence introduced at trial.

97. No wonder it was so exasperating and time-consuming for Plaintiff to prevail upon phone picker uppers to stop emailing their supervisors and transfer his call to whomever was the supervisor at the time.

98. Soon Plaintiff realized that it was a total waste of time to speak with the first level Emblem Philippine people. Consequently, he would systematically ask to be transferred to a supervisor.

99. The supervisors did not know what to do either. So, they told Plaintiff that they

would have to do some "research" to find out what to do.

100. The supervisors never mentioned that the "research" that they had to do was on anything other than Emblem's own advertisement and evidence of coverage.

101. The supervisors never mentioned that they had to do "research" on Medicare rules.

102. Nor did they mention anything about Medicaid, let alone about "Medicaid COB", for they did not know what "COB" meant. It means "Coordination of Benefits". Of course, they did not know with what Medicaid had to be coordinated, how, and to what extent.

103. The supervisors never mentioned anything remotely similar to the above-quoted (SDNY:18¶32 above) technical description, which includes even medical coding, of 'the requested pre-authorization' for treating tooth # 19 after its crown fell out.

104. The recorded phone conversations between Plaintiff and Emblem people would bear that out, which explains why Emblem never produced them during discovery.

105. When the Philippine supervisors could not find out what Emblem would cover to deal with the fallen-out crown, they would stop communicating with Plaintiff.

106. After a cost-benefit analysis it is highly likely that Emblem has determined that it is not cost-effective to try to teach their Philippine people to think critically, or learn anything other than the basic.

107. That analysis may be confirmed by the very high employee turnover that Emblem has to deal with. Why spend an enormous amount of money to properly train people for months on end given that after only a very short time on the job they

will suffer under crushing intellectual demands and quit?

108. Emblem's Customer Service in The Philippines is staffed with people who are neither trained to deal, nor intellectually capable of dealing, with the problems that insureds bring to them.

109. For one thing, the Emblem Philippine people are required to repeat the question that an insured asks of them in order to obtain confirmation from the insured that they understood the question.

110. That requirement shows that Emblem itself does not trust their capacity to even understand what insureds are talking about.

111. This explains why Emblem Philippine people so often appear to be reading from a script when speaking with an insured while disregarding what the insured is asking or saying. If taken off-script by the questions of an insured, they do not know what to say. They repeat the script or ask a supervisor. It is as exasperating as a conversation with a person whom you can hear but who cannot hear you.

112. This may also explain why the Emblem Philippine people either do not have the authority to solve the problem that the insured brings to them or do not feel confident in exercising that authority.

113. The Emblem Philippine supervisors did not have a direct phone extension.

114. The Emblem Philippine supervisors did not return the phone call messages that Plaintiff left on their general voice mailbox.

115. The Emblem Philippine supervisors did not return the messages for them that Plaintiff would leave with the first level telephone picker uppers.

116. If a supervisor transferred the case to another supervisor, the latter did not know anything about the case either.

117. If a previous supervisor wrote notes on Plaintiff's chart -forget about a phone picker upper doing so-, the next supervisor would not have read it, either because it was poorly written or because he or she was not competent enough to understand what was going on or responsible enough to make the effort to understand.

118. After all, "*why sweat it?!*" It is not as if any higher supervisor were listening, or would listen, in on the conversation to realize what was happening and hold anybody accountable. Having supervisors listen in would cost too much.

119. After being dropped by the latest supervisor, Plaintiff had to begin all over again with another supervisor…after wrestling with phone picker uppers to have his call transferred while hearing in the background dogs barking, chickens crowing, and children crying or adults laughing or talking all at the same time. Oh, life in the countryside is so convivial with fowl and folks around!

120. This unaccountability on which phone picker uppers and supervisors alike can rely accounts for the fact that for them callers are nothing but a transient nuisance. Inconsequentially, they can be dropped and forgotten if they demand reliable information….or simply information.

121. Since they are unsupervised and thus held unaccountable, the Philippine people do whatever they want. They are a ship cast onto the ocean and forgotten by the Emblem U.S. captains.

122. After a while, Plaintiff refused to deal with the Emblem Philippine people. He

requested to be transferred to the Emblem people in the U.S.

123. It took the Philippine people far more than an hour just to get connected to somebody in the U.S. to whom to transfer Plaintiff. After a shockingly long time, he found somebody in the U.S. who would deal with him. It was not a great improvement, except for the absence of domestic animals' noise.

124. This indicates that Emblem's Customer Service call center in The Philippines is not in constant contact with their counterparts, much less their superiors, in the U.S. The Philippines call center is in practice left to its own devices by Emblem officers in the U.S.

125. Running a call center with phone picker uppers in The Philippines, some of whom have been elevated to supervisors, may cost a pittance of what it costs in the U.S. But what they offer is only a mockery of Customer Service.

126. It follows that Emblem Customer Service call center in The Philippines is a sham. Its purpose is to pretend to satisfy the Medicare requirement that its network members have such a Service, at least in name and appearance.

127. Medicare knows, and by exercising due diligence in supervising and controlling would know, that such a Customer Service is a sham.

128. Plaintiff would not give up his demand for an answer to his question about crown repair coverage even after months of Emblem's "delay, delay, delay". So, Emblem implemented its second claim evasion tactic: On December 12, 2021, it denied Plaintiff's claim. Like a poker player, it pulled out from under its sleeve the excuse that Medicare did not cover the repair of tooth # 19 after its crown fell out.

129. It is not possible that nobody in Emblem knew what Medicare did or did not cover, or with due diligence could have found out during Plaintiff's first call.

130. The evidence shows that Emblem's delay was in bad faith. It was part of a racketeering scheme to wear Plaintiff down and cause him to abandon his claim without Emblem having to issue yet another denial and enter it on its records…assuming it keeps such records.

131. Emblem, Maximus, and Medicare must know it. But how many sick, old, and law-ignorant insureds are going to survive four levels of appeal and still have the stamina to climb to the fifth level to appeal to a U.S. district court for judicial review of the administrative proceedings below?

132. Insureds are likely scared away from appealing to a district court by the specter of what awaits them there: A hypertechnical, protracted, and unaffordable battle with an army of corporate lawyers determined to crush the insureds with the third and merciless tactic of abusive claim evasion: "defend".

M. Defendants are barred from defending against what they failed to contest

133. Neither Emblem nor Maximus wrote and filed any brief for either the fair hearing or the appeal to the Medicare Appeals Council.

134. Neither contradicted any of the statements of facts or arguments of law made by Plaintiff in his briefs[4 above] for the hearing and the appeal to the Council.

135. Those statements and arguments stand uncontested as a matter of fact, and they should be held no longer objectionable as a matter of law.

136. Emblem and Maximus waived their right to object to Plaintiff's statements and

arguments by failing to exercise it below.

137. Emblem and Maximus must be deemed to have admitted Plaintiff's statements of facts and arguments of law.

138. Emblem and Maximus are barred by laches from mounting any defense in this court.

139. Emblem and Maximus are estopped from contesting those facts and arguments in another lawsuit.

140. Defendants' "delay, deny" tactics were implemented through misrepresentations intended to conceal the real motive of claim evasion of an otherwise payable claim. They have injured Plaintiff through deprivation of coverage while securing for themselves the benefit of saving money through breach of contract and unlawful conduct. The essential requirements for a charge of fraud are satisfied.

141. As a result, Defendants come into this court with dirty hands.

142. The court should not wash Defendants' hands by allowing them to file the brief that they failed to file twice below and that they would file in this court to implement the third tactic of abusive claim evasion: "defend".

143. Defendants' dirty hands would make any brief filed by them dirty and appealable to the circuit court.

144. The Defendants have coordinated their deprivation under color of law of Plaintiff's civil right to due process, including:

    a. his right to notice, not only of any charges brought against him, but also of the defenses to his charges against an opposing party so that the he may

not be ambushed by that party's unfair surprises before the adjudicator;

b. his right to discovery to avoid an unfavorable judgment through concealment of evidence; and

c. his right to administrative adjudication free of bias and partiality resulting from connivance between an adminstrator and those supervised and controlled by it.

N. Denial of due process has consumed Plaintiff's effort, time, and money

145. The court is justified in drawing from the illegal handling of the Maximus's alleged “case file” the inference that it contains evidence that Maximus intended to use and used ex parte to influence OMHA in its favor while concealing from Plaintiff evidence that incriminated it in illegal and unethical conduct.

146. Indeed, Maximus filed more than 2,000 pages ex parte with the OMHA Phoenix Field Office. Those pages contain irrelevant and repetitive materials as well as materials that Emblem did not submit to Plaintiff or to its own Customer Service supervisors. Eventually, at least 19 supervisors (SDNY:12§3 above) dealt with Appellant for months without ever making reference to those materials because the supervisors were either poorly trained, incompetent, or lacked any sense of responsibility to take ownership of the medical problem that Appellant had brought to their attention in order to find the extent of coverage by Emblem.

147. The Maximus's alleged “case file” was a slapped-together job done by Emblem and Maximus at a convenient time for them only and filed with the OMHA Phoenix.

148. Its purpose was to influence ex parte OMHA Phoenix in favor of Maximus and Emblem, inducing the ALJ to conclude that 'If the file submitted by Maximus is so voluminous, it must provide ample support for the outcome of its reconsideration confirming Emblem's denial of coverage'.

149. Moreover, the "case file" served to bury in it a single page bearing a note from OMHA Phoenix Deniese Elosh, legal assistant to the administrative law judge assigned to conduct the fair hearing there, ALJ Dean Yanohira.

150. Legal Assistant Elosh noted a call from Emblem Legal Department asking the judge what the decision of the fair hearing was, the very hearing that Emblem was supposed to attend and whose date had not even been fixed! They knew that the hearing was rigged.

151. In spite of Plaintiff's objections, the Maximus's alleged “case file” remained in the appeals process:

152. While discussing the possible dates for the fair hearing, Legal Assistant Elosh blurted that there was a record. Plaintiff was shocked. He asked that she send him a copy of it. What she did was file a complaint against Plaintiff with the Federal Protective Service…as if Plaintiff were a terrorist threatening her. Her complaint was so serious that Investigator Cory Hogan called Plaintiff. Upon discussing with Plaintiff the circumstances of the complaint, the investigator realized that it was so baseless that not only did he drop it, but also prevailed upon Legal Assistant Elosh to send Plaintiff a copy of the Maximus's alleged “case file”.

153. Plaintiff moved ALJ Yanohira to recuse himself[13]. The ALJ denied the motion by having a form rubberstamped that did not discuss either the basis of either the motion or the denial. See Medicare Appeals Council (the Council) Decision, page 6 footnote 2.

154. Plaintiff appealed to the Council. The latter never responded. But ALJ Yanohira reversed his denial and recused himself by having yet another form rubberstamped, where he did not discuss the reasons for his reversal. Upon Plaintiff's demand, the fair hearing was transferred from the OMHA Field Office in Phoenix to that in Atlanta, Georgia (OMHA Atlanta).

155. However, the Maximus's alleged "case file" was also transferred to OMHA Atlanta. In spite of Plaintiff's objections, it was relied upon by ALJ Loranzo Fleming during the fair hearing and as support for his decision.

156. ALJ Fleming did so despite failing to even discuss Plaintiff's motion to find both Emblem and Maximus in default for never having filed a brief for the hearing, whereby they deprived Plaintiff of advanced notice of what their position was on the matter at hand.

157. Maximus did not even bother to attend the fair hearing.

158. By Emblem and Maximus failing to file an answer to Plaintiff's brief[14] for the hearing, but nevertheless Emblem stating its position at the hearing, Emblem

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[13] http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero_**motion_recuse_ALJDYanohira.pdf**

[14] http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_**Statement_on_Appeal.**pdf

committed unfair surprise upon Plaintiff.

159. The alleged “case file” entered by Maximus ex parte in the OMHA Phoenix, and thus illegally, which it never served on Plaintiff, did not address Plaintiff's brief for the hearing in OMHA Atlanta at all.

O. ALJ Fleming argued for Defendants at the hearing, forfeiting his impartiality

160. ALJ Fleming failed to find Emblem and Maximus in default for failure to file a responsive brief, which Plaintiff had requested him to do.[10 above]

161. He would not even discuss Plaintiff's default motion.

162. By contrast, ALJ Fleming relied on the alleged “case file” filed ex parte by Maximus, which it never served on Plaintiff.

163. Maximus's alleged “case file” did not address Plaintiff's brief at all.

164. In reliance on Maximus's "case file", ALJ Fleming engaged throughout the hearing in a debate with Plaintiff where he argued the case for Emblem and Maximus as their advocates.

165. By allowing Emblem, which had filed no brief, to make a statement, ALJ Fleming tolerated an impermissible hearing by ambush that relied on Emblem's unfair surprise on Plaintiff.

166. As advocate for Emblem and Maximus, ALJ Fleming forfeited his impartiality and acted unfairly toward Plaintiff.

167. ALJ Fleming had prejudged the outcome of the hearing and did not come to it with an open mind. He had already made up his mind. The recording of the

hearing bears this out.

168. ALJ Fleming's bias is all the more manifest because he failed to discuss any of the issues that Plaintiff had raised in his brief. He was impervious to the fact that from the beginning the 19 Emblem supervisors (SDNY:12§3 supra) had discussed Plaintiff's request for treatment only under Emblem's advertisement and evidence of coverage. They did not even mention Medicare regulations, never mind those of Medicaid.

169. As a matter of fact, practically none of them knew what "D-SNP" on the front side of the Emblem member ID card received by Plaintiff meant -dual Medicare and Medicaid benefits for members on the Special Need Plan-.

170. They were not aware that on its front side the card states "Comprehensive Dental". Of course, they ignored the nature and extent of such comprehensiveness.

171. Nor did they know that also on its front side the ID card states "Medicaid COB may apply". They did not even know where to search for its meaning. Plaintiff found out that it means "Medicaid Coordination of Benefits may apply". But the supervisors did not know what benefits were supposed to be coordinated and to what extent.

172. The above statements are facts that the more than 50 hours of recorded phone conversations with the 19 supervisors can prove. This explains why Emblem failed to produce in discovery a single one of those recordings.

173. Emblem withheld the proof of Plaintiff's assertions in violation of discovery.

174. ALJ Fleming and the Medicare Appeals Council condoned such violation'

175. They violated Plaintiff's due process right by withholding the means needed for his defense.

176. Abusing his power, ALJ limited the hearing to what benefited Emblem and Maximus, that is, an arbitrary limitation of the hearing to Medicare rules, with no regard for the interaction of Plaintiff with the 19 Emblem supervisors; Emblem's advertisement and evidence of coverage; and the need to coordinate with Medicaid.

177. ALJ Fleming blatantly disregarded the foundational principle of due process: It is the plaintiff who gives notice of the charges. The defendant must defend against them, and do so timely, rather than when it is most convenient to itself. The defendant does not pick and choose what charges it wants to defend against and what charges it simply wants to disregard with impunity.

178. When a defendant disregards a charge, it admits to it and waives any defense. It loses the opportunity to defend against it.

179. ALJ treated Plaintiff with disrespect, as described in the motion for him to recuse himself or be disqualified.[15]

180. ALJ Fleming denied Plaintiff due process of law.

181. By adopting ALJ Fleming's decision, the Council:

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[15] http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_**motion_recuse_ALJLFleming**.pdf

a. failed to find Emblem and Maximus in default;

b. condoned their withholding of evidence;

c. allowed the entry of an alleged “case file” ex parte;

d. tolerated the abuse of that “case file” to bury an incriminating communication of Emblem with the OMHA Phoenix to find out how the ALJ there had decided the hearing at a time when not even its date had been set;

e. condoned ALJ Fleming's partiality and unfairness, and consequent denial of due process to Plaintiff.

P. Injuries caused Plaintiff by Defendants

1. Defendants disregarded Plaintiff's pain: permanent consequences

182. The Defendants, in their official and personal capacities, have implemented against Plaintiff Dr. Cordero their "delay, deny, defend" tactics intended to wear him down and force him to abandon his claim for insurance coverage of the treatment determined by doctors to be a medical necessity.

183. The Defendants had the duty to deal fairly and impartially with him and his grievances.

184. That duty was all the more acute because he told them that he was in pain and suffering: As a result of the falling out of the crown of tooth #19, he was repeatedly biting his tongue and chewing his left cheek. This problem became acute so that he was afraid to eat, for it would not be a moment of pleasure, but rather a cause of apprehension and suffering.

185. Due to avoiding that side of the mouth and chewing food only on his right side of the mouth, his jaws were becoming misalinged. That in itself was causing pain.

186. A thick scar resulting from repeatedly chewing his left cheek has formed, namely, a lineal keloid.

187. Since the missing crown did not offer resistence to the tooth above it, the latter was growing down, that is, supra eruption was occurring. The prospect that when he would open his mouth he would look like a freak to other people made him anxious all the time.

188. Defendants have kept Plaintiff suffering for weeks and months and years and they knew it: They have been informed thereof in writing by:

    a. the doctors at the NYU College of Dentistry and his Primary Care Physician who considered treating the problems arising from the falling out of the tooth #19 crown a matter of medical necessity that required the extraction of the root, curettage, reconstruction of the base with bone powder, and the implant of a post+crown; and

    b. panoramic and individual X-rays, which have shown that there is a large area of infection under what remains of tooth # 19, to wit, its root, and that the infection keeps spreading to the adjacent teeth so that the infection has to be removed through the surgical procedure of curettage, to wit, accessing the jaw bone through the mouth and scraping the infected bone area.

189. Precisely because the infection under the root of tooth # 19 has spread, once the root is extracted, the curettage will have to be more extensive. Doctors have

warned Plaintiff that the extraction and the curettage will provoke copious hemorrhage. In the midst of so much blood, it will be difficult to ascertain the depth that they have reached with the scraping instruments. Consequently, there is the risk that they might sever the mental nerve, which runs thereunder from below the left ear to the middle of the chin. If the mental nerve were severed, Plaintiff would permanently lose sensitivity on the left side of his face. That is a most frightening prospect.

190. Meantime, the gum around tooth #19 keeps creeping up and over what is left of the tooth. That is soft and thin tissue. If Plaintiff were to eat on that side of his mouth, the pressure would crush that tissue and cause it to bleed. In fact, the doctors have noticed that pressing down that tissue with a dental instrument has caused it to bleed. The bleeding of tissue in the mouth increases the probability of the tissue becoming a focus of infection.

191. Defendants' implementation of their "delay, deny" tactics has caused an inordinate amount of time to go by without treatment for Plaintiff's # 19 tooth problem. They have allowed the problem to fester. It has now become untreatable, unless the doctors and Plaintiff were willing to assume considerable risk of causing irreversible and grave injury.

192. Defendants have indisputably been aware that they have failed to act for an unjustifiably long amount of time. Indeed, Plaintiff filed his appeal from the decision of the ALJ to the Medicare Appeals Council on October 28, 2022. Social Security Act §1869, codified to 42 U.S.C. §1395ff, imposes on the Council this duty:

(2) Departmental Appeals Board review

(A) In general

The Departmental Appeals Board of the Department of Health and Human Services **shall** conduct and conclude a review of the decision on a hearing described in paragraph (1) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed. [**bold** emphasis added]

193. In his voice mails and emails, Plaintiff informed the Council that his calls were going straight to voice mail, where he would record messages to no avail, for nobody would call him back.

194. Plaintiff was sending emails daily to up to 30 officers (cf. SDNY:**Error! Bookmark not defined.**fn[6]; SDNY:5§D above)…in two years more than 11,000 emails![16]

195. Plaintiff kept emailing those officers until the Council must have realized that he would not allow it to wear him down and cause him to abandon the appeal.

196. Finally, the Council moved from its abusive claim evasion "delay" tactic on to its "deny" tactic by issuing on October 17, 2024, its Decision, which denies coverage of the treatment prescribed by the doctors for tooth # 19.

197. This collective unresponsiveness and contemptuous disregard of repeated requests for information and action provide probable cause to believe that it was the product of complicit coordination among Defendants.

198. Indeed, it is not by mere coincidence that up to 30 officers, never mind

[16] See the file at http://Judicial-Discipline-Reform.org/ALJ/23-8-28DrRCordero_**class_action_v_Medicare**.pdf

individuals, for two years received daily emails requesting them to discharge their duty or cause others to do so, but they decided independently from each other to do nothing, not even scream in exasperation by emailing: '*STOP SENDING ME THIS EMAIL!!!* I've got nothing to do with it. I forwarded it to X@Y.Z, who is in charge of this matter."

199. Rather, these officers have coordinated their response, some issuing the order and all executing it: 'Say nothing, do nothing…other than delay'.

200. Defendants operate as a coordinated organization, a racketeering and corrupt one.

Q. Relief requested

201. Defendants have engaged in conduct that foreseeably would prolong Plaintiff Dr. Cordero's physical pain; inflict emotional distress on him; defame him, and deprive him of due process. They have acted intentionally, for "people are deemed to intend the foreseeable consequences of their conduct".

202. By coordinating their conduct, they have acted more beneficially for themselves and injurious to Plaintiff and others. So, they have acted fraudulently. They form a corrupt organization that engages in racketeering.

203. For the injury that they have caused Plaintiff, he demands compensation for him and a change in Defendants' conduct that may benefit the public at large.

204. Therefore, Plaintiff Dr. Cordero respectfully requests that the court grant him the following relief:

a. reverse the decisions of the Council and of ALJ Loranzo Fleming;

b. enter default judgment, judgment on the pleadings, and/or summary judgment against Defendants and in favor of Plaintiff;

c. order the Defendants to pay Plaintiff jointly and severally:

1) damages in the amount of $1,000,000; if the court orders to proceed to trial and to that end engage in discovery, this amount may be revised upward in light of the nature, extent, and gravity of Defendants' abuse of power and process, and other forms of illegality that may be revealed, and further damages and costs caused; the amount may also be revised upward if there is a need to appeal to the U.S. Court of Appeals for the Second Circuit or this appeal is removed in whole or in part to state court;

2) punitive damages;

3) treble damages;

4) damages for pain and suffering;

5) reasonable attorney's fee for his work prosecuting this case for years;

6) reimbursement of his expenses and court costs;

d. as to the file concerning the complaint filed by Legal Assistant Deniese Elosh at OMHA Phoenix, AZ, against Plaintiff, order the Federal Protective Services, Homeland Security, the Council, Emblem, Maximus, all other Defendants, and all other entities and persons in possession of that file, to

release it to Plaintiff and to the court under seal so that it does not become part of the public file;

e. hold that Legal Assistant Elosh and those who acted with her as principals or accessories humiliated and defamed Plaintiff and are liable to him;

f. order the removal of Plaintiff's name from the watch list and similar lists of the Federal Protective Services, Homeland Security, and all other similar agencies;

g. order Defendants to enter into a binding agreement with the court and Plaintiff to change their conduct in the public interest in concrete, realistic, quantifiable, and verifiable ways through research, publications, and education, and that such agreement be supervised by the court, Plaintiff, and one or more public interest entities, whether in existence currently or to be created for that purpose and attached to a highly competent and esteemed university or school;

h. award all other relief that to the court may appear just and fair.

Dated: 15 December 2024

/s/ Dr. Richard Cordero, Esq.

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