

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: NORTSHORE UNIVERSITY
HEALTHSYSTEM ANTITRUST
LITIGATION

No. 07-cv-04446
Hon. Edmond E. Chang

**DECLARATION OF MARVIN A. MILLER IN SUPPORT OF THE CLASS'S
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF PROPOSED
SETTLEMENT, APPROVAL OF THE FORM AND MANNER OF NOTICE TO THE
CLASS, AND PROPOSED SCHEDULE FOR A FAIRNESS HEARING**

I, Marvin A. Miller, declare as follows:

1. I am a member of the Illinois and New York state bars and an attorney at Miller Law LLC. I make this Declaration based on my personal knowledge and if called as a witness, I would be competent to testify and would testify to the facts stated herein.

2. I make this Declaration in support of the Class's motion for preliminary approval of the proposed all-cash \$55 million settlement of this complex antitrust class action and for approval of the forms of notices to be disseminated to the Class and proposed schedule for a fairness hearing.

INTRODUCTION

3. The genesis of this antitrust class action was the merger of Evanston and Glenbrook hospitals with Highland Park Hospital, the purpose of which was to increase the market power of these hospitals in Chicago's northern suburbs. Four years after the merger, the Federal Trade Commission ("FTC") brought an action to challenge the merger and concluded that the merger violated the antitrust laws but did not provide damages to payors for hospital services.

4. In order to recover damages for the overcharges paid by patients and their insurers, this consolidated class action was commenced on August 7, 2007.

5. On June 24, 2008, Judge Lefkow, the judge previously assigned to this case, appointed me and Mary Jane Fait Interim Co-Lead Counsel. ECF 117-2.¹ On July 16, 2013, this Court reaffirmed that Order. See ECF 548.

6. On December 10, 2013, the Court certified a Class of direct purchasers of inpatient and hospital-based outpatient services. *In re Evanston Northwestern Corporation Antitrust Litig.*, No. 07-cv-04446, 2013 WL 6490152 (N.D. Ill. Dec. 10, 2013).

7. Intense work to develop the factual basis for the claims began with my firm taking the lead and assisted by others. We also took the lead in the extensive motion practice which continued over the many years of this case. The details of our efforts are set forth below. (commencing at ¶15).

8. With the assistance of former U. S. District Judge Wayne Andersen (retired), the Class Representative and the Class reached an agreement in principle with NorthShore to settle the case for an all-cash payment of \$55,000,000. NorthShore has already deposited that amount into an escrow account. This all-cash agreement was reached on November 17, 2023. The parties continued to negotiate the remaining terms which concluded on December 13, 2023, less than one month before the jury trial was to commence on January 9, 2024. See Exhibit A to Pls' Unopposed Motion for Preliminary Approval of Proposed Settlement, a true and correct copy of the executed Settlement Agreement dated December 13, 2023.

¹ Ms. Fait subsequently separated from Wolf Haldenstein. On August 22, 2013, Ms. Fait notified the Court of her new address and affirmed her continued representation of the Class in this case. ECF 552. Ms. Fait later withdrew her appearance from this case and the Court granted her motion to withdraw as an attorney from this case. See ECF 1108.

9. Despite the risks associated with prosecuting this complex case, including issues related to class certification and numerous defenses asserted by NorthShore, we prosecuted this case on a contingency-fee basis and made a significant monetary and time investment with the real possibility of an unsuccessful outcome and no fee of any kind. Indeed, since this case's inception in 2007, there were no obvious indications that a settlement was possible, or that the litigation would be successful. As an example, the parties' previous mediation conducted by Magistrate Judge Denlow—more than a decade ago—failed and did not result in settlement. ECF 488.

10. The Class did not gain as great an advantage from the prior FTC proceedings that found the merger to be anticompetitive as might have been expected. The depositions and trial testimony from the FTC proceedings were not directly admissible at the trial of this case. Moreover, the Class's ability to rely upon the FTC findings and judgment is unclear, as is its helpfulness even if it could be relied upon. Rather than allowing a prior judgment regarding the same antitrust violation to have collateral estoppel effect, 15 U.S.C. § 16(a) only allows it to be considered as *prima facie* evidence. Thus, rather than foreclosing litigation of elements of the underlying cause of action, the prior findings merely become rebuttable evidence at best.

11. The Court might have decided to preclude the Class from presenting the FTC findings to the jury as evidence. The parties filed cross motions *in limine* regarding the use of this evidence which are *sub judice*. While the Class seeks to use this evidence, Defendant argues that the Class has not fulfilled the requirements for its introduction as *prima facie* evidence, and that the evidence is more prejudicial than probative.

12. The Class faced Winston & Strawn, a highly regarded defense litigation law firm with a national presence. In addition to representing NorthShore in this case, Winston & Strawn also represented NorthShore in the FTC proceeding regarding the merger between NorthShore and

Highland Park Hospital. Winston & Strawn's representation of NorthShore in the FTC proceeding gave NorthShore an advantage, *i.e.*, previous experience and familiarity with some of the issues in the Class's action for damages.

13. The substantial risks that the Class faced are illustrated by the recent *Opana* antitrust trial in this District. In *Opana*, which went to a jury trial in this district in 2022, Judge Leinenweber did not allow the plaintiffs to introduce a prior FTC proceeding which found that one of the *Opana* defendants violated the antitrust laws based on the same conduct challenged in that case. The jury ultimately rendered a verdict in favor of Endo, the defendant that tried the case to verdict. After the jury rendered its decision, see *In re Opana ER Antitrust Litig.*, 14-cv-10150, at ECF No. 1005 (N.D. Ill. July 1, 2022), plaintiffs filed a post-trial motion for judgment as a matter of law or for a new trial. *Id.* at ECF No. 1048. Shortly after plaintiffs filed their post-trial motion, Endo declared bankruptcy and filed a notice of suggestion of bankruptcy and automatic stay of proceedings in *Opana*, substantially reducing any chances of a meaningful appeal or post-verdict settlement. *Id.* at ECF No. 1064

14. The risks that the Class faced are further demonstrated by *Sidibe v. Sutter Health*, 12-cv-4854 (N.D. Cal.). In *Sutter*, the plaintiffs, on behalf of a class, brought monopolization claims alleging violations of the antitrust laws against a California hospital system and healthcare provider. See *id.* at ECF 204. In March 2022, after a month-long jury trial, the jury returned a verdict for the defense. The plaintiffs appealed the jury verdict to the Ninth Circuit and are still awaiting adjudication of the appeal.

15. The following timeline illustrates the factual background, litigation timeline, and the efforts and resources committed and spent to achieve the all-cash settlement for the benefit of the Class:

Factual Background

- On January 1, 2000, NorthShore merged with Highland Park Hospital. Prior to the merger, NorthShore consisted of only Evanston and Glenbrook Hospitals.
- In February 2004, the FTC filed a complaint challenging the merger. The FTC alleged that the merger violated the Clayton Act “by substantially lessening competition for general acute care inpatient hospital services in the ‘area directly proximate to the three [NorthShore] hospitals and contiguous geographic areas in northeast Cook County and southeast Lake County, Illinois.’” *Messner v. NorthShore University HealthSystem*, 669 F.3d 802, 809 (7th Cir. 2012). After an eight-week trial, on October 20, 2005, an Administrative Law Judge found the merger anticompetitive. *In the Matter of Evanston Northwestern Healthcare Corp.*, No. 9315, 2005 WL 2845790 (F.T.C. Oct. 20, 2005). NorthShore appealed the decision to the full FTC, which affirmed the ALJ on August 6, 2007. *In the Matter of Evanston Northwestern Healthcare Corp.*, 2007 WL 2286195 (F.T.C. Aug. 6, 2007).

Timeline of Events Before Judge Lefkow

- August 7, 2007 – The original class action complaint, on behalf of Jeffrey Porter, for damages and injunctive relief under the federal antitrust laws against Evanston Northwestern Healthcare Corporation (“ENH”) is filed. See *In re NorthShore University HealthSystem Antitrust Litig.*, 1:07-cv-04446 (N.D. Ill.), at ECF 1. The case was filed as a class action on behalf of all persons and entities that purchased healthcare services directly from NorthShore. The Plaintiffs alleged that NorthShore illegally monopolized the healthcare services market and used its leverage to artificially inflate

prices paid by the plaintiffs and the proposed class in violation of Section 2 of the Sherman Act and Section 7 of the Clayton Act.

- Additional complaints, on behalf of additional Plaintiffs, including on behalf of Painters District Council No. 30 Health & Welfare Fund (“Painters”), are filed. These cases were consolidated with the original complaint.²
- December 19, 2007 – NorthShore files a motion to dismiss Plaintiffs’ Consolidated Amended Class Action Complaint. ECF 32.
- May 29, 2008 – Judge Lefkow denies NorthShore’s motion to dismiss. ECF 77.
- On June 24, 2008 – Marvin Miller and Mary Jane Fait were named Interim Co-Lead Counsel. ECF 117.
- February 13, 2009 – Plaintiffs file motion for class certification. ECF Nos. 240-242. Co-Lead Counsel participated in extensive briefing and argument, worked with the Plaintiffs’ class certification expert, Dr. David Dranove, and opposed the opinions of NorthShore’s expert, Dr. Monica Noether, including seeking to exclude her opinions as unreliable.
- February 23, 2010 – Judge Lefkow held a half-day testimonial hearing on class certification. ECF 358.

² The Painters suit was filed on May 5, 2008, and consolidated with this case on June 12, 2008. ECF 94.

On December 18, 2007, Plaintiff Jeffrey Porter voluntarily dismissed his claims without prejudice. See ECF Nos. 29-30. On April 24, 2008, Plaintiffs Gerald and Noreen Lekas voluntarily dismissed their claims without prejudice. See ECF Nos. 60-63.

On March 31, 2018, the Court determined that “the hospital-based outpatient services component of the class definition must be removed.” *In re NorthShore University HealthSystem Antitrust Litig.*, No. 07-cv-4446, 2018 WL 2383098, at *5 (N.D. Ill. Mar. 31, 2018). As a consequence, individual Plaintiffs Amit Berkowitz, Steven Messner, and Harry Lahmeyer can no longer act as class representatives because they did not purchase inpatient services. *Id.*

- March 30, 2010 - Judge Lefkow issues an opinion which found NorthShore's expert Dr. Noether unreliable, but which nevertheless relied on her opinion to deny class certification. ECF 384. *See also In re Evanston Northwestern Healthcare Corp. Antitrust Litig.*, 268 F.R.D. 56 (N.D. Ill. 2010), *vacated sub nom. Messner v. NorthShore University HealthSystem*, 669 F.3d 802 (7th Cir. 2012).

Timeline of Events in the Seventh Circuit

- April 12, 2010 – Plaintiffs file a Rule 23(f) petition for leave to appeal the district court's decision denying class certification, arguing that the decision raised an important question of law in light of the Seventh Circuit's decision in *American Honda Motor Co. v. Allen*, 600 F.3d 813 (7th Cir. 2010), and that the district court erred in find that common questions did not predominate. *Messner, et al v. Northshore University HealthSystem*, No. 10-8015, at ECF 1 (7th Cir. Apr. 12, 2010).
- April 23, 2010 – NorthShore opposes the petition. ECF 6.
- April 30, 2010 – Plaintiffs seek leave to file a reply memorandum in support of their petition. ECF 7.
- June 10, 2010 – The United States Court of Appeals for the Seventh Circuit grants Plaintiffs' petition for permission to appeal pursuant to Federal Rule of Civil Procedure 23(f). ECF 10.
- August 2, 2010 – Plaintiffs file a brief in support of their appeal of the district court order denying Plaintiffs' motion for class certification. *See Messner v. NorthShore University HealthSystem*, No. 10-2514, at ECF 13 (7th. Cir. Aug. 2, 2010).
- September 1, 2010 – NorthShore files its opposition to Plaintiffs' Seventh Circuit appeal. ECF 31.

- September 15, 2010 – Plaintiffs file a reply in support of their Seventh Circuit appeal. ECF 32.
- February 8, 2011 – The Seventh Circuit hears oral argument on the Plaintiffs’ appeal pursuant to Federal Rule of Civil Procedure 23(f).
- January 13, 2012 – The Seventh Circuit Court of Appeals vacates Judge Lefkow’s order denying the Plaintiffs’ motion for class certification and holds: “The district court based its denial of class certification on two critical errors: (1) a misapplication of Rule 23(b)(3)’s predominance standard; and (2) an erroneous belief that Dranove’s DID methodology would be valid only if NorthShore’s contracts with insurers uniformly increased prices across all services.” *Messner*, 669 F.3d at 822. The Seventh Circuit also rejected the Defendant’s argument that “a number of class members could not have been harmed by its [NorthShore’s] post-merger price increases” and found that “[i]n light of Dranove’s analysis indicating that Blue Cross and its policyholders suffered losses of \$110 million as a result of the merger...Blue Cross probably would be within its rights if it chose to rethink its position” to opt out of the class. *Id.* at 822, 824, Fn. 13.
- January 27, 2012 – NorthShore files a petition for rehearing in the Seventh Circuit. ECF 47.
- February 17, 2012 – Plaintiffs file their answer to NorthShore’s petition for rehearing. ECF 49.
- February 28, 2012 – The panel denies NorthShore’s petition for rehearing. ECF 51.
- March 7, 2012 – The Seventh Circuit issues a mandate returning the case to this Court. ECF 52.

Timeline of Events after Reassignment to the Honorable Edmond Chang

- January 7, 2011 (during the pendency of the interlocutory appeal) – Pursuant to an Executive Committee Order entered on December 23, 2010, this case was selected for reassignment to this Court’s calendar, effective on Monday, January 10, 2011. ECF 439. At the time of reassignment to this Court, the parties had already engaged in discovery, but a significant amount of discovery, including twenty-two depositions, remained to be conducted after the disposition of the appeal. The appeal superseded the latest discovery scheduling order. ECF 446. Miller Law attorneys first-chaired ten of the remaining eleven fact depositions, as well as all of the remaining expert depositions, and played a major role in reviewing the almost two million pages of documents produced by NorthShore, and in formulating and responding to written discovery.
- April 4, 2012 – Plaintiffs file motion for entry of order certifying class in accordance with the Seventh Circuit’s Opinion. ECF 478.
- July 12, 2012 – NorthShore files an opposition to Plaintiffs’ motion for class certification and submits the expert report of Dale Yamamoto in support of its opposition. ECF 491.
- July 23, 2012 – Plaintiffs file a motion to strike the expert report of NorthShore’s expert, Dale Yamamoto, as untimely. ECF 502.
- July 27, 2012 – NorthShore files a response to Plaintiffs’ motion to strike the expert report of Dale Yamamoto. ECF 504.
- August 1, 2012 – Plaintiffs file a reply in support of their motion to strike the expert report of Dale Yamamoto. ECF 505.

- August 3, 2012 – The Court denies Plaintiffs’ motion to strike the expert report of Dale Yamamoto and permits Plaintiffs a 21-day discovery period on Yamamoto’s opinions. ECF 506.
- December 10, 2013 – The Court grants Plaintiffs’ renewed motion for class certification. ECF 587 and *In re Evanston Northwestern Corp. Antitrust Litig.*, No. 07- cv-04446, 2013 WL 6490152 (N.D. Ill. Dec. 10, 2013).
- December 5, 2014 – Class notice issues.
- March 2, 2015 – NorthShore moves to compel arbitration against forty-three Managed Care Organizations (MCOs). ECF Nos. 641-648, 742.
- April 1, 2015 – A second Class notice issues.
- April 10, 2015 – Defendant files a motion for summary judgment by application of the statute of limitations. ECF Nos. 675-678.
- April 24, 2015 – Plaintiffs file an opposed motion for additional time and discovery to respond to Defendant’s motion for summary judgment. ECF Nos. 680- 682.
- May 28, 2015 – The Court grants Plaintiffs’ motion to defer summary judgment briefing and to take discovery on the statute of limitations and denies Defendant’s motion for summary judgment without prejudice. The court also permitted NorthShore to update its motion “to address the Court’s take on the substantive law—including *Berkey*—and refile after the close of fact discovery.” ECF 708.
- July 16, 2015 – The Court extends the deadline for fact discovery from July 31, 2015 to November 30, 2015 for the limited purposes of MCO-related discovery and third-party discovery. ECF 747.

- September 4, 2015 – The Court grants Defendant’s motion to compel arbitration as to ten entities and denies Defendant’s motion as to thirty-three entities. ECF 742.
- October 15, 2015 – Defendant files a motion for reconsideration of the September 4, 2015 order denying, in part, Defendant’s motion to compel arbitration. Specifically, Defendant’s sought reconsideration of the Court’s Order exempting from arbitration six MCOs which were acquired by MCOs that were compelled to arbitrate by the Court’s earlier order. ECF Nos. 749-750.
- November 17, 2015 – The Court grants NorthShore’s motion for reconsideration as to six MCOs because “[r]ather than respond in substance to the reconsideration motion, each of the corporate entities targeted by the motion did not oppose the motion or took no position on it, as communicated through Class Counsel.” See ECF 754.
- December 11, 2015 – NorthShore files its motion for leave to file additional motions to compel arbitration against the self-funded members of the Class despite the passing of the deadline to file such motions. ECF Nos. 762-766.
- January 6, 2016 – Defendant files its renewed motion for summary judgment by application of the statute of limitations. ECF Nos. 773-780.
- March 29, 2016 – The Court denies NorthShore’s motion for leave to file additional motions to compel arbitration, holding that that Defendant “failed to establish diligence and good cause for modifying the scheduling order” in “this long-running antitrust case.” See ECF 812.

- July 28, 2016 – The Class serves the merits expert reports of Dr. William Vogt and Dr. Russell Lamb.³ The Class subsequently served the merits expert report of Dr. Patrick Romano on January 25, 2017, in response to NorthShore naming a quality-of-care expert.
- September 9, 2016 – NorthShore’s motion for summary judgment based on the statute of limitations is denied in large part and granted to exclude the first six weeks of the Class Period. ECF 842.
- May 10, 2017 – NorthShore files a combined motion for summary judgment and to exclude Plaintiffs’ three merits experts (Dr. Vogt, Dr. Lamb, and Dr. Romano) (ECF 898), a memorandum in support of these motions (ECF 899), and its statement of undisputed facts in support of its motion for summary judgment (ECF 900). On the same day, NorthShore also filed a motion to decertify the Class (ECF 896).
- June 21, 2017 – Plaintiffs file a combined motion for summary judgment and to exclude the opinions of NorthShore’s three merits experts (Dr. Willig, Ms. Guerin-Calvert, and Dr. Meyer) (ECF 911), along with a combined memorandum of law in support of its motion for summary judgment and *Daubert* motions and response in opposition to NorthShore’s motion for summary judgment and *Daubert* motions. On the same day, Plaintiffs also file Plaintiffs’ statement of material facts (ECF 913),⁴ Plaintiffs’ statement of additional facts (ECF 914), Plaintiffs’ opposition to NorthShore’s corrected statement of undisputed material facts in support of its motion for summary

³ The Class could not use its expert, Dr. Dranove, at class certification because he had developed a conflict. Moreover, because of data issues, Dr. Dranove had never conducted a full empirical analysis of the Class’s injury or damages claims.

⁴ On June 29, 2017, Plaintiffs filed a corrected statement of material facts. See ECF 929.

judgment (ECF 909),⁵ and Plaintiffs' opposition to NorthShore's motion to decertify the class (ECF 917).

- July 7, 2017 – NorthShore files a reply memorandum in support of its motion to decertify the Class. ECF Nos. 935 and 946.
- July 14, 2017 – NorthShore files a response to Plaintiffs' statement of additional facts (ECF 940), NorthShore's statement of additional material facts in opposition to Plaintiffs' motion for summary judgment (ECF 941), NorthShore's reply in support of its motion for summary judgment and *Daubert* motions and opposition to Plaintiffs' motion for summary judgment and *Daubert* motions (ECF Nos. 944 and 950).
- August 1, 2017 – Plaintiffs file a reply memorandum of law in support of its motion for summary judgment and *Daubert* motions (ECF Nos. 953 and 977) and Plaintiffs' response to NorthShore's statement of additional material facts in opposition to Plaintiffs' motion for summary judgment (ECF Nos. 957 and 976). Cross motions for summary judgment, *Daubert* motions, and NorthShore's motion to decertify are fully briefed.
- December 6, 2017 - The Court orders the parties to file a joint "Response to Inquiry" with respect to the direct-purchaser issue as to the Plaintiff Painters Fund and the contract between NorthShore and Blue Cross Blue Shield through which Painters Fund's covered participants received services. ECF 981.

⁵ On June 29, 2017, Plaintiffs filed a corrected opposition to Defendant's corrected statement of undisputed material facts in support of its motion for summary judgment. See Exhibit A at ECF 931.

- December 8, 2017 - Pursuant to the Court's December 6, 2017 Order (ECF 981), the parties file a thirteen page joint response to the Court's inquiry concerning the Plaintiff Painters Fund. ECF 985.
- March 31, 2018 - The Court issues an Order addressing Defendant's "threshold argument" that "the class should be decertified because Plaintiffs have no evidence to support defining a market for hospital-based outpatient services and none of the Plaintiffs were direct purchasers of inpatient services from NorthShore." *In re NorthShore University HealthSystem*, 2018 WL 2383098, at *3. The court held that Plaintiffs were required to define a relevant market for outpatient services. As a consequence, the Court held that "the hospital-based outpatient services component of the class definition must be removed." *Id.* at *5. The Court further determined that because outpatient services were now excluded from the Class, Plaintiffs were left without an adequate class representative because the individual plaintiffs did not purchase inpatient services. *Id.* at *5-8. Additionally, the Court further found that because the Painters Fund, a self-insured entity, did not have a contract with Blue Cross Blue Shield, Painters was an indirect, rather than a direct, purchaser. *Id.* The Court permitted Plaintiffs to locate another representative because "this problem should be surmountable by Plaintiffs' counsel" and "[t]he Court then will be in a position to issue a decision on the other pending motions (including NorthShore's argument that the predominance standard is no longer met)." *Id.* at *1. The Court further ordered the Plaintiffs to file a motion to substitute a class representative by May 7, 2018, and "[i]f the Court approves the proposed substitute, then the Court will be in a position to reinstate and to decide the remaining motions." *Id.* at *8.

- April 17, 2018 – Because of NorthShore’s delay in responding to potential class representatives’ requests for their medical and billing records, the Court grants the Plaintiffs’ request to extend the deadline for Plaintiffs to file a motion to substitute a class representative from May 7, 2018 to June 18, 2018. ECF Nos. 994 and 999.
- May 11, 2018 – Plaintiff Painters District Council No. 30 Health & Welfare Fund files a Motion to Reconsider the Court’s Order of March 31, 2018. See ECF 996.
- June 18, 2018 – Plaintiff Class files a motion to add David Freedman and Melissa Diamond as named plaintiffs and class representatives, and to amend the Consolidated Class Action Complaint (ECF 224) by interlineation. ECF 1004.
- June 28, 2018 – The Court grants Plaintiffs’ motion to add David Freedman and Melissa Diamond⁶ as Plaintiffs and Class Representatives with the caveat that the defense may assert their inadequacy if appropriate. ECF 1008.
- June to July 2018 – Defendant takes written discovery of Mr. Freedman and Ms. Diamond.
- September 12, 2018 – Defendant deposes Mr. Freedman.
- October 3, 2018 – Defendant files supplemental motions for summary judgment individually against David Freedman and to decertify. ECF 1021. The parties brief these motions.
- March 29, 2019 – The Court denies the Plaintiff Class’s motion for reconsideration, and also denies Defendant’s targeted motion for decertification and summary judgment individually against Plaintiff Freedman. The Court further holds that “[i]n a separate

⁶ On August 29, 2018, the Class voluntarily dismissed Melissa Diamond’s claims without prejudice. ECF 1015.

order under advisement, the Court will address the remaining issues in Northshore's renewed motion for decertification (ECF 896) and renewed motion for summary judgment and *Daubert* motions (ECF 898), as well as now-Freedman's cross-motion for summary judgment (ECF 911)." ECF 1064.

- June 5, 2020 – NorthShore files a six-page motion to consider supplemental authority. See ECF 1090.
- June 22, 2020 – The Class files a five-page response to Defendant's submission of supplemental authority. ECF 1094.
- March 2, 2021 – The Class files a five-page motion for leave to consider supplemental authority. ECF 1103.
- March 9, 2021 – NorthShore files a three-page opposition to Plaintiffs' motion to consider supplemental authority. See ECF 1105.
- December 15, 2022 – NorthShore files a motion for leave to substitute expert witness. ECF 1133.
- December 19, 2022 – The Class files a partial opposition to NorthShore's motion for leave to substitute expert witness. ECF 1134.
- January 3, 2023 – NorthShore files a reply in support of motion for leave to substitute expert witness. ECF 1136.
- February 20, 2023 – The Court issues an opinion largely denying the remainder of the parties' cross-motions for summary judgment, *Daubert* motions, and NorthShore's motion for decertification. The Court grants summary judgment against NorthShore on its quality-of-care defense and grants the Class's motion to exclude the opinions of

NorthShore's quality-of-care expert, Dr. Gregg Meyer. *See In re NorthShore University HealthSystem Antitrust Litig.*, 657 F. Supp. 3d 1077 (N.D. Ill. 2023).

- March 6, 2023 – NorthShore files a petition for leave to appeal pursuant to Rule 23(f) in the Seventh Circuit. *See NorthShore University HealthSystem v. David Freedman*, 23-8004 (7th Cir.), ECF 1.
- March 16, 2023 – The Class files a response in opposition to NorthShore's petition for leave to appeal pursuant to Rule 23(f). *Id.* at ECF 6.
- March 27, 2023 – NorthShore files a reply in support of petition for leave to appeal pursuant to Rule 23(f). *Id.* at ECF 12.
- March 30, 2023 – The Seventh Circuit denies NorthShore's petition for permission to appeal. *Id.* at ECF 14.
- July 3, 2023 – The Class files a motion to enforce the Court's February 20, 2023 Memorandum Opinion & Order and exclude those portions of Jonathan Orszag's subsequently tendered opinions regarding quality-of-care. ECF 1160.
- August 4, 2023 – NorthShore files an opposition to the Class's motion to exclude Jonathan Orszag's opinions regarding quality of care. ECF 1169.
- August 18, 2023 – The Class files a reply in support of its motion to enforce the Court's February 20, 2023 Memorandum Opinion & Order and exclude those portions of Jonathan Orszag's subsequently tendered opinions regarding quality-of-care. ECF 1170.
- October 16, 2023 – The Class files the parties' proposed joint pretrial order. The parties also file twenty-seven motions *in limine* and proposed pretrial stipulations. ECF Nos. 1174-1187.

- October 30, 2023 – The parties file their responses on the motions *in limine*.
- November 8, 2023 – The parties file their replies on the motions *in limine*.
- November 17, 2023 – The parties reach a settlement in principle.
- December 13, 2023 – The parties sign a settlement agreement and file a statement that a proposed settlement had been reached. ECF 1229.

16. Throughout the course of this litigation, my firm kept files documenting all time spent litigating this matter, including tasks performed and expenses incurred. I also requested that the other firms and attorneys who were counsel of record do the same. In that regard, each firm was required to submit time and expense reports.

17. Consistent with the percentage of the fund method, Lead Counsel seeks fees equal to 1/3 of the \$55,000,000 Settlement Amount of (\$18,333.333). Through December 31, 2023, counsel has spent at least 25,823.9 hours, with a lodestar value of at least \$14,523,435.30, and at least \$4,166,825.46 in costs reasonably expended or incurred on this litigation representing Plaintiff in this litigation, all at risk.⁷

18. While always at risk of not being compensated, Plaintiffs and Lead Counsel took on this complex litigation and committed considerable resources to achieve substantial benefits for the Class. Such work performed included, but was not limited to:

- Interviewing potential named plaintiffs;
- Drafting and filing complaints and amended complaints after conducting extensive legal research and factual investigation of NorthShore’s merger with Highland Park Hospital;

⁷ The information here is based on Miller Law’s data. Certain firms are gathering their information for hours, lodestar values, and expenses. Their information will be included in the motion for an award of attorneys’ fees and reimbursement of expenses and supplemented if necessary.

- Preparing and serving initial disclosures;
- Preparing and serving interrogatories;
- Preparing and serving several sets of requests for production;
- Preparing and serving seventy-two requests for admission on NorthShore;
- Responding to NorthShore’s voluminous discovery requests, including at minimum, sixty Requests for Admission, multiple Requests for Production—including NorthShore’s production requests directed specifically to Painters District Council No. 30 Health & Welfare Fund and David Freedman, and Interrogatories propounded by NorthShore;
- Engaging in third-party discovery;
- Participating in discovery-related motion practice conducted by Magistrate Judge Denlow;
- Extensively reviewing the almost two million pages of documents produced in this matter to prepare for depositions, briefing, and trial;
- Developing the factual record by engaging in factual investigation;
- Formulating a litigation strategy through legal research and factual investigation;
- Preparing for and deposing eleven fact witnesses;
- Reviewing and analyzing almost 1,500 pages of opinions from NorthShore’s experts;
- Preparing for and deposing all six of NorthShore’s experts,⁸ including Dr. Meyer twice;

⁸ The depositions of Ms. Guerin-Calvert, Mr. Orszag, Dr. Willig, and Dr. Meyer required counsel for the Plaintiff Class to travel across the country to depose them.

- Preparing the Plaintiff Class’s four experts for their depositions—several of whom were deposed on multiple occasions—and defending their depositions;
- Preparing for and defending several class representatives’ depositions, including the depositions of three different representatives of Painters District Council No. 30 Health & Welfare Fund and the deposition of David Freedman, the sole class representative at the time the all-cash settlement was achieved for the benefit of the Class;
- Preparing the initial class certification papers;
- Preparing for the testimonial hearing on class certification conducted by Judge Lefkow, including preparing Plaintiffs’ expert economist, Dr. David Dranove;
- Preparing Plaintiffs’ successful petition for permission to appeal the District Court’s order denying Plaintiffs’ initial motion for class certification and all related papers;
- Preparing for oral argument in the Seventh Circuit on Plaintiffs’ appeal of the District Court’s order denying Plaintiffs’ initial motion for class certification;
- Drafting Plaintiffs’ successful motion and related papers to certify the class in accordance with the Seventh Circuit opinion;
- Drafting Plaintiffs’ response to NorthShore’s motion to compel arbitration against forty-three Managed Care Organizations (MCOs), which included the review and analysis of almost 1,000 pages of agreements between MCOs and NorthShore;
- Drafting an opposition to defeat NorthShore’s motion for reconsideration of the September 4, 2015 order denying, in part, Defendant’s additional motions to compel arbitration;

- Largely defeating NorthShore’s motion contending that the statute of limitations barred the entire case;
- Attending the *NorthShore-Advocate* merger proceeding, *Federal Trade Commission v. Advocate Health Care et al.*, 15-cv-11473, in this District before Judge Alonso to monitor the testimony of NorthShore’s executives, including NorthShore’s former longtime CEO, who was also a key witness in this case, and gathering useful admissions for this proceeding;
- Extensively briefing cross-motions for summary judgment and *Daubert* motions, as well as a motion to decertify the Class filed by NorthShore. Hundreds of pages of briefs, and thousands of pages of exhibits, were submitted by each side;
- Obtaining summary judgment against NorthShore—on one of its central defenses—and successfully moving to exclude the opinions of NorthShore’s quality-of-care expert, Dr. Gregg Meyer;
- Drafting an opposition to defeat NorthShore’s Rule 23(f) petition to the Seventh Circuit;
- Preparing a mediation statement for the parties’ July 2023 mediation with former Judge Andersen (retired);
- Engaging in an in-person mediation taking most of a day with Judge Andersen (retired), and numerous subsequent telephonic negotiations and in-person session enabled by Judge Andersen;
- Extensively reviewing and analyzing the prolonged factual record, as well as the relevant legal issues, to prepare our case for trial. Further trial preparation included: designating deposition testimony; reviewing and identifying exhibits; lodging

objections to NorthShore's deposition designations and exhibits; researching jury instructions; drafting preliminary and substantive jury instructions; researching and drafting proposed verdict slip; and drafting *voir dire* questions;

- Issuing and successfully serving trial subpoenas on key witnesses, including Mark Neaman, NorthShore's former longtime CEO;
- Preparing and filing the proposed joint pretrial order;
- Preparing fourteen motions *in limine* to streamline issues for trial;
- Responding to NorthShore's thirteen motions *in limine*;
- Preparing for the final pretrial conference;
- Engaging in numerous meet and confers and working diligently with NorthShore to attempt to reach consensus on jury instructions and other evidentiary issues in advance of the final pretrial conference and impending trial;
- Retaining a trial graphics vendor to create demonstratives for trial;
- Retaining and working with a trial hot seat vendor to prepare videotaped deposition testimony for trial;
- Working with a jury consultant to survey juror attitudes in preparation for trial;
- Engaging in intensive and protracted settlement negotiations since 2012 and ultimately securing settlement—less than two months before trial—with the assistance of former federal Judge Wayne Andersen as mediator;
- Working closely with a nationally recognized claims, notice, and settlement administrator to prepare notice to the Litigation Class, after the Court granted Plaintiff's motion for class certification;

- Continuing to work with the claims, notice, and settlement administrator—after the parties reached settlement—regarding notice to the Settlement Class; and
- Preparing and assisting in the formulation of a Class Notice Plan, (a true and correct copy of the Elaine Pang Declaration with Notice Plan is attached as Exhibit C to Pls’ Unopposed Motion for Preliminary Approval of Proposed Settlement), including the claim form, and Memorandum in Support of Preliminary Approval.

19. As Lead Counsel, I and Miller Law attorneys also ensured an efficient and effective prosecution of this action to minimize expense and fees. We accomplished this by, among other things:

- Supervising all pretrial proceedings;
- Supervising and preparing pleadings, motions, briefs, discovery, objections to discovery, subpoenas, trial preparation materials, mediation statements, and Class notice;
- Acting as a spokesperson for the Settlement Class at hearings, pretrial conferences, and meetings with NorthShore;
- Negotiating and entering into several stipulations with defense counsel relating to trial;
- Conducting and coordinating the efficient examination of witnesses and preparing the Class Plaintiffs for their depositions and defending them;
- Coordinating the activities of counsel of record for the benefit of the Plaintiff Class and implementing procedures to ensure that Class Counsel met all court deadlines in this case;
- Collecting time and expense reports from counsel of record for the Class;

- Retaining and consulting with economic and quality-of-care experts;
- Retaining and consulting with graphics vendors;
- Delegating assignments among counsel of record for the Class;
- Negotiating and securing the all-cash \$55 million settlement;
- Preparing the Settlement Agreement and accompanying exhibits;
- Developing, in consultation with the economics expert, the Plan of Allocation;
- Retaining the services of the Escrow Agent and the Notice and Claims Administrator; and
- Preparing the Notices to be disseminated to the Class and working closely with the Notice and Claims Administrator to develop a Notice Plan.

20. I also have knowledge concerning the efforts and work performed by David Freedman.

21. David Freedman assisted greatly in the prosecution of this case and to secure the settlement for the benefit of the Class. After the Court held that none of the other class representatives were adequate, Mr. Freedman stepped up and assumed the responsibility of sole class representative. Since his entry, Mr. Freedman made himself fully available to class counsel to assist in the prosecution of this case. He produced documents, provided verified responses to NorthShore's interrogatories, prepared for and sat for a deposition, and carefully monitored the proceedings.

22. Moreover, Mr. Freedman was prepared for and committed to attend and testify at trial.

23. Mr. Freedman stepped forward, risking his reputation and subjected himself to public scrutiny on behalf of the Class. For his efforts, Lead Counsel requests that he receive an incentive award.

24. Mr. Freedman also agreed to an attorneys' fees award in the amount of 1/3 of the Settlement Amount based upon the percentage-of-the-fund method and the further financial relief requested.

25. Lead Counsel's motion for an award of attorneys' fees, reimbursement of expenses to date, and incentive an award for the Class Representative will be filed shortly in order for members of the Class to have the opportunity to review and consider the relief that will be requested for final approval. See *McDonough v. Toys "R" Us, Inc.*, 834 F. Supp. 2d 329 (E.D. Pa. 2011). To the extent there is a need to provide further updates, Lead Counsel will do so in connection with submission of the motion papers scheduled to be submitted per this Court's prior order.

I declare under penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct. Executed January 17, 2024, in Chicago, Illinois.

s/Marvin A. Miller
Marvin A. Miller