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SEALED SUPPLEMENT

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

C.A. No. 22-2577

(D.N.J. Civ. No. 3-22-cv-01748)

[Filed December 14, 2022]

HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY

v.

SPEECH & LANGUAGE CENTER, LLC; ET AL.
Chryssoula Marinos Arsenis, Appellant

Present: JORDAN, SHWARTZ, and SCIRICA, Circuit Judges

Submitted are:

(1) By the Clerk for possible dismissal due to a jurisdictional defect;

(2) Appellant's response;

(3) Appellee's response

(4) Appellant's motion to stay remand order in the District Court pending appeal; and

(5) Appellant's motion to seal

in the above-captioned case.

Respectfully,

Clerk

ORDER

This appeal is dismissed for lack of appellate jurisdiction. Our jurisdiction over a District Court's order remanding a removed case to state court is constrained by 28 U.S.C. § 1447(d), which provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." The District Court remanded this matter for lack of subject-matter jurisdiction. This type of "routine" jurisdictional determination falls within the prohibition of appellate review under § 1447(d). See Feidt v. Owens Corning Fiberglas Corp., 153 F.3d 124, 128 (3d Cir. 1998). Appellant's motion to stay remand is denied. Appellant's motion to file exhibit 2 under seal is granted; that exhibit will be sealed for 25 years. See 3d Cir. L.A.R. Misc. 106.1(c).

By the Court,

s/ Kent A. Jordan
Circuit Judge

Dated: December 14, 2022

kr/cc: Chryssoula Marinos Arsenis
Patricia A. Lee, Esq.

[SEAL]

A True Copy:
/s/ Patricia S. Dodszuweit
Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

APPENDIX B

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 22-1748 (MAS) (DEA)

[Filed August 22, 2022]

HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY,	)
Plaintiff,	)
v.	)
SPEECH & LANGUAGE CENTER, LLC *et al.*,	)
Defendants.	)

MEMORANDUM OPINION

SHIPP, District Judge

This matter comes before the Court on Horizon Blue Cross Blue Shield of New Jersey's ("Horizon Blue") Motion to Remand. (ECF No. 12.) Defendants Chryssoula Arsenis ("Arsenis") and Speech & Language Center, LLC ("Speech & Language," and collectively,

"Defendants") opposed the Motion (ECF Nos. 16-19),[1] and Horizon Blue responded (ECF No. 20).[2] The Court has carefully considered the parties' submissions and decides the matter without oral argument under Local Civil Rule 78.1. For the reasons below, the Court grants Horizon Blue's Motion.

I. BACKGROUND

This is a case about alleged healthcare fraud and an attempt to avoid the consequences of that fraud. In 2014, Horizon Blue sued Defendants in state court alleging that they engaged in a pattern of fraudulent billing for speech testing and therapy services. (*See* Notice of Removal *14-15, ECF No. 1.)[3] Arsenis is a speech pathologist who owned and operated Speech & Language in Warren, New Jersey. (*Id.* at *17-18.) Horizon Blue is an insurance provider that entered into an agreement with Arsenis in January 2007 to pay insurance claims submitted by Defendants for healthcare services to patients. (*Id.* at *21.) From at

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[1] Arsenis may proceed pro se in federal court. But Speech & Language, a corporation, may not. *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.").

[2] In April 2022, the Court *sue sponte* issued an Order to Show Cause as to why this case should not be remanded to state court for lack of subject matter jurisdiction and because removal was untimely. (ECF No. 8.) Arsenis responded. (ECF No. 13.)

[3] Page numbers preceded by an asterisk refer to the page number atop the ECF header.

least 2009 through 2013, Defendants submitted numerous insurance claims to Horizon Blue and its affiliates to receive payment for speech therapy services it provided to various patients. *(Id.* at *22.) At some point, Horizon Blue realized that Defendants were submitting inflated or fraudulent bills that were impossible or implausible to perform (such as billing between 45 hours and 99 hours of services in one day) or that were for medically unnecessary services. (*Id.* at *27-28.) When Horizon Blue audited Defendants, the paperwork did not check out, either. (*Id.* at *28.) Worse yet, Horizon Blue's investigation revealed that Defendants' patients, many of whom were interviewed, undermined the accuracy of Defendants' billing practices. (*Id.*) In all, Horizon Blue and its affiliates claim to have paid Defendants over $6.5 million in unentitled payments. (*Id.* at *29.)

To recover for its losses, in 2014, Horizon Blue sued Defendants in state court, alleging that they violated the New Jersey Insurance Fraud Protection Act ("IFPA"), as well as other causes of action including fraud, breach of contract, unjust enrichment, and negligent misrepresentation. (*Id.* at *32-39.) After years of litigation, in August 2019, the parties agreed on settlement terms. *See Horizon Blue Cross Blue Shield of N.J. v. Speech & Language Ctr., LLC*, No. 19-1353, 2020 WL 7383560, at *2 (N.J. Super. Ct. App. Div. Dec. 16, 2020). But before the ink on the settlement agreement was dry, Arsenis refused to execute the documents or make her obligatory payments. *Id.* Horizon Blue moved the state court to enforce its rights, which the court granted. (Lee Cert., Ex. B, ECF No. 12-6.) After an appeal, on January 27,

2022, the state court ruled in favor of Horizon Blue to enforce its settlement rights. (Lee Cert., Ex. A, ECF No. 12-5.) Not ready to give up the fight, Arsenis removed the action to federal court on March 29, 2022. (Notice of Removal (citing 28 U.S.C. §§ 1331, 1441, 1446(d)).)

The nearly decade-long state court action thus arrived before this Court. Given the seemingly improper removal, the Court issued an Order to Show Cause. (See OTSC, ECF No. 8.) Horizon Blue moved for remand, as well, claiming the matter is neither properly before the Court nor timely removed. (Pl.'s Mot. to Remand, ECF No. 12.) After the parties submitted a series of briefing and exhibits (ECF Nos. 13, 16-20), Horizon Blue's Motion is now before the Court.

II. LEGAL STANDARD

For a federal court to hear a case, it must have diversity or federal question jurisdiction over the issue. *See* 28 U.S.C. §§ 1331, 1332; *In re Morrissey*, 717 F.2d 100, 102 (3d Cir. 1983) ("United States district courts are courts of limited jurisdiction and Congress, as allowed by the Constitution, must expressly grant them the power and authority to hear and decide cases."). The federal removal statute, 28 U.S.C. § 1441, states that unless "otherwise expressly provided by Act of Congress, any civil action brought in a [s]tate court of which the district courts of the United States have original jurisdiction, may be removed . . . to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). A plaintiff can move to remand a case

removed to a federal court where the court lacks subject matter jurisdiction. *Id.* § 1447(c).

The removal statute "is to be strictly construed against removal" to honor Congressional intent. *Samuel-Basset v. Kia Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004); *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1985) ("Because lack of jurisdiction would make any decree in the case void and the continuation of the litigation in federal court futile, the removal statute should be strictly construed and all doubts should be resolved in favor of remand."). Thus, a district court has the authority to remand a case that was removed to federal court if "at any time before final judgment it appears the district court lacks subject matter jurisdiction . . . ." 28 U.S.C. § 1447(c). To defeat a motion to remand, a defendant bears the burden of demonstrating the federal court's jurisdiction. *Abels*, 770 F.2d at 29.

III. DISCUSSION

Horizon Blue launches a dual-fronted attack on the removal of this case, contending that the Court lacks subject matter jurisdiction and removal was untimely. The Court considers each removal defect in turn.

A. The Court Lacks Subject Matter Jurisdiction

Federal courts are courts of limited jurisdiction. *G. W. v. Ringwood Bd. of Educ.*, 28 F.4th 465, 468 (3d Cir. 2022). To invoke subject matter jurisdiction on removal, a defendant must demonstrate that the case falls within the Court's diversity jurisdiction or federal question jurisdiction. *See* 28 U.S.C. §§ 1331, 1332.

From what the Court can glean from Arsenis's Notice of Removal and subsequent briefing, she attempts to punch a ticket to federal court through both avenues. (*See generally* Notice of Removal; Resp. to OTSC, ECF No. 13-1.) Starting with diversity jurisdiction, the Court need not dwell long. Diversity jurisdiction requires complete diversity between plaintiffs and defendants, meaning they must be "citizens of different [s]tates." 28 U.S.C. § 1332(a)(1). Here, Horizon Blue maintains its principal place of business in New Jersey; Arsenis resides in New Jersey, as well. (Notice of Removal *17-18. *See* 28 U.S.C. 1332(c)(1) ("[A] corporation shall be deemed to be a citizen of any [s]tate by which it has been incorporated and of the [s]tate where it has its principal place of business[.]").) Thus, this pathway to the federal court fails.

Next, Arsenis attempts to invoke the Court's federal question jurisdiction. Federal courts have original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. For removal to be proper on the basis of federal question jurisdiction, "a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." *Voltz v. Somerset Cnty. Jail*, No. 20-13695, 2021 WL 1986459, at *2 (D.N.J. May 18, 2021) (citation omitted). For a case to arise under federal law, the well-pleaded complaint must contain a question arising under federal law. *See Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 808 (1986). The original complaint in this case, filed in September 2014, alleges only state law claims: insurance fraud, common law fraud, breach of contract,

unjust enrichment, and negligent misrepresentation. (Notice of Removal *32-39.) And even if the Court examines the January 2022 order Arsenis attempts to remove, it is premised on enforcing settlement terms arising from the original litigation for fraudulent billing. (Notice of Removal *10.)

To avoid the inevitable fate of being remanded, Arsenis alleges that the Employee Retirement Income Security Act of 1974 ("ERISA") preempts state law, apparently allowing her to remove this case at any time. (Defs.' Opp'n Br. 3.) Not so. For one, it is settled law that insurers can bring state law fraud claims against healthcare providers in state court without being preempted by ERISA. *Horizon Blue Cross Blue Shield of N.J. v. E. Brunswick Surgery Ctr.*, 623 F. Supp. 2d 568, 574 (D.N.J. 2009) ("[C]ourts . . . permit[] health care plans, such as [p]laintiff, to assert claims for common law fraud and claims pursuant to []IFPA in state court."). Moreover, this case arises out of fraud and breach of contract, not on the application or interpretation of an ERISA plan. Thus, preemption does not apply and remand is appropriate.[4]

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[4] For Section 502(a) of ERISA to apply, invoking "complete preemption," the removing party must show that (1) the plaintiff could have brought the action under Section 502(a) of ERISA and (2) no independent legal duty supports the plaintiff's claim. *Caggiano v. Prudential Ins. Co. of Am.*, No. 20-7979, 2021 WL 1050166, at *3 (D.N.J. Mar. 19, 2021). Horizon Blue brought its claims for fraud and breach of contract, outside of ERISA, defeating any argument that complete preemption applies.

B. Removal was Untimely

In any event, removal was about eight years too late. (*See generally* Notice of Removal.) The removal statute allows a defendant, with consent of all other defendants in the action, to remove an action within thirty days of being served the pleadings or other documents providing notice of the suit. 28 U.S.C. § 1446(b).[5] The 30-day deadline is mandatory, may not be extended by judicial order, and requires all defendants to join in the request.[6] *Balestrieri*, 544 F. Supp. at 529 (citing, among others, *Sun Oil Co. of Pa. v. Dep't of Lab. and Indus.*, 365 F. Supp. 1403, 1406 (E.D. Pa. 1973)).

Here, even by Arsenis's calculations, the state court suit "commenced" over seven years ago and she received timely service.[7] (Notice of Removal *3.) So, the

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[5] The removal statute provides the following limitation:

> [t]he petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.

Balestrieri v. Bell Asbestos Mines, Ltd., 544 F. Supp. 528, 529 (E.D. Pa. 1982); *see also* 28 U.S.C. § 1446(b).

[6] Because Speech & Language can neither proceed prose in federal court nor be represented by a non-lawyer, it is dubious that it consented to removal. In any event, the Court need not reach that conundrum because removal was improper.

[7] The state court complaint is file-stamped as of September 11, 2014. (Notice of Removal *14.) But Arsenis claims the state suit commenced in February 2015. (*Id.* at *3.) This is a discrepancy

30-day limitation came and went years ago. *See* 28 U.S.C. § 1446(b). Nor is Arsenis correct that challenging the state court's jurisdiction "is not subject to the [t]hirty-[d]ay time limit," inferring that removal can take place at any time. (Defs.' Opp'n Br. 17.) The Court already rejected Arsenis's preemption argument and, in any event, the state court found it had subject matter jurisdiction over this case and the Court will not disturb that ruling. (Notice of Removal *55 (Defendants raising the affirmative defense of lack of subject matter jurisdiction in state court).) The Court's conclusion is buttressed by a Congressional mandate to "strictly construe[] against removal" and resolve "all doubts . . . in favor of remand." *Boyer v. Snap-on Tools Corp.*, 913 F.2d 108, 111 (3d Cir. 1990) (citation omitted).

Arsenis's removal was procedurally improper and the Court lacks subject matter jurisdiction.[8] The Court therefore remands this matter to state court.

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without difference, however, because either timeline grossly exceeds the 30-day removal window.

[8] Although a muddled argument, Arsenis appears to contend that the Court should start the removal clock from January 27, 2022—the date that the state court issued its order on Horizon Blue's right to enforce the settlement terms. (Defs.' Opp'n Br. 2.) To be sure, even if that was the law (which it is not), removal was still untimely. (*See* Notice of Removal *10.) After that order issued, Arsenis waited over 60 days to file for removal. (*See generally* Notice of Removal.) Thus, no matter how it is sliced, the removal ship has sailed.

IV. CONCLUSION

Defendants' removal fails because the Court lacks subject matter jurisdiction and the case was untimely removed. Thus, the Court remands this action to state court.

/s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 22-1748 (MAS) (DEA)

[Filed August 22, 2022]

HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY,	)
Plaintiff,	)
v.	)
SPEECH & LANGUAGE CENTER, LLC *et al.*,	)
Defendants.	)

ORDER

This matter comes before the Court on Horizon Blue Cross Blue Shield of New Jersey's ("Horizon Blue") Motion to Remand. (ECF No. 12.) Defendants Chryssoula Arsenis ("Arsenis") and Speech & Language Center, LLC ("Speech & Language," and collectively, "Defendants") opposed the Motion (ECF Nos. 16-19), and Horizon Blue responded (ECF No. 20). The Court has carefully considered the parties' submissions and decides the matter without oral argument under Local Civil Rule 78.1. For the reasons set forth in the

accompanying Memorandum Opinion, and other good cause shown,

IT IS, on this 22nd day of August 2022, **ORDERED** that:

1. Horizon Blue's Motion to Remand (ECF No. 12) is **GRANTED.**

2. The Clerk of the Court shall remand this matter to the New Jersey Superior Court, Somerset County, Law Division.

/s/ Michael A. Shipp
MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

APPENDIX D

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 22-2577

(D.N.J. No. 3-22-cv-01748)

[Filed January 5, 2023]

HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY	)
v.	)
SPEECH & LANGUAGE CENTER, LLC; CHRYSSOULA MARINOS ARSENIS; JOHN DOES 1-10; ABC CORPS 1-10 Chryssoula Marinos Arsenis, Appellant	)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, and SCIRICA,* Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the

* Judge Scirica's vote is limited to panel rehearing only.

judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is DENIED.

BY THE COURT

s/ Kent A. Jordan
Circuit Judge

DATED: January 5, 2023

kr/cc: Chryssoula Marinos Arsenis
Patricia A. Lee, Esq.

APPENDIX E

Case: 22-2577

This transcript was exported on Mar 29, 2023 - view latest version here.

a_66_20 (Completed 03/28/23)
Transcript by Rev.com

[p. 1]

A-66-20 Horizon Blue Cross Blue Shield of New Jersey v. Speech & Language Center, LLC (085263)
Is the clause in the settlement agreement, which provides that settlement payments are non-dischargeable in bankruptcy, void as against public policy in New Jersey?

Watch the **Oral Argument Video for A-66-20**
Listen to the **Oral Argument Audio for A-66-20**

- Certification granted: May 25, 2021
- Posted: May 26, 2021
- Argued: Nov. 30, 2021
- Dismissed as improvidently granted: Dec. 7, 2021

Justice Patterson (00:00:00):
Counsel, can we have appearances in Horizon Blue Cross Blue Shield of New Jersey versus Speech and Language Center?

Michael Confusione (00:00:08):
Good morning, your honors. Michael Confusione of Hegge and Confusione on behalf of the petitioners.

Justice Patterson (00:00:11):
Thank you.

Michael Confusione (00:00:12):
Thank you.

Patricia Lee (00:00:14):
Good morning, Justices. My name is Patricia Lee. I'm with the law firm of Connell Foley. I'm representing the plaintiff respondent, Horizon Blue Cross Blue Shield of New Jersey.

Justice Patterson (00:00:23):
Thank you, counsel. Mr. Confusione.

Michael Confusione (00:00:27):
Thank you for hearing the case this morning. I appreciate it. I rely, of course, on the supplemental brief that I filed with the court. I'd like to ask for two minutes of rebuttal, if I may.

Justice Patterson (00:00:37):
Mm-hmm.

Michael Confusione (00:00:40):
Looking at the court's actual order, it's a very narrow issue on whether or not a agreement that settlement payments are going to be non-dischargeable and bankruptcy violates... His void essentially is against public policy. I guess I would say a couple things to start.

[p. 2]

(00:00:58):
When we say void is against public policy under New Jersey, the first thing I would say is New Jersey law, of course, has to subsume federal law, in this case the law of bankruptcy, which is really the preeminent law that we're looking at here. If you look at the two main provisions in question, I would just point a couple different things out. If you look at the one agreement, the second part that I cited, which it says, "Miss Arsenis agrees and intends that the judgment that will be non-dischargeable debt." My argument there would be that contravenes actually the specific federal statute, because under the statute it basically says all debts are dischargeable, unless they're proven non-dischargeable under section 523. And in that regard, the bankruptcy code places the burden of proof and the determination of nondischargeability in the bankruptcy court. I think that's specifically-

Justice Patterson (00:01:58):
Under federal law, would the parties to a bankruptcy proceeding in this kind of setting stipulate to the nondischargeability of a debt?

Michael Confusione (00:02:12):
No. They could in a bankruptcy proceeding [inaudible 00:02:16].

Justice Patterson (00:02:15):
That's what my question is. In a bankruptcy proceeding-

Michael Confusione (00:02:17):
It could.

Justice Patterson (00:02:18):
... you've got all kinds of debts. You got somebody who's a debtor, they're willing to stipulate.

Michael Confusione (00:02:29):
Right.

Justice Patterson (00:02:29):
That's perfectly fine under bankruptcy.

Michael Confusione (00:02:31):
That's fine. That's a dischargeability litigation.

Justice Patterson (00:02:35):
Dischargeability litigation. And for whatever reason, the debtor and the creditor together say stipulate.

Michael Confusione (00:02:45):
That's right.

Justice Patterson (00:02:45):

[p. 3]

Can we read this provision to be a commitment on the part of your client to stipulate in bankruptcy court to the nondischargeability of that debt?

Michael Confusione (00:02:59):
I guess you could read it like that, but even if you had read it in that regard, and I cited a lot of these cases, every court that has looked at it has essentially said, "If this agreement arises in the context of a pre-petition agreement..." In other words, not in the context of an already existing bankruptcy litigation, that it's not valid. I think that this is why it's ultimately important. Even if you could read the clauses in question here as

to not run afoul of the discreet language under the bankruptcy code, the real underlying problem, I think, and what I would submit is that the congressionally intent, as I understand it under the bankruptcy code, is to give people a fresh start. Though there are exceptions to discharge, including the fraud exception under 523A, they're narrowly construed by the bankruptcy statute itself and by the case law that has interpreted that. This is what's really underlying this kind of a case, I think.

(00:03:58):
If you have these kinds of agreements... My adversary's argument, and really with the trial court and even the appellate division said, is that, "Well, we'll just let the bankruptcy court decide whether or not these agreements are enforceable." But the problem is, if you allow these agreements, these provisions rather, in these kinds of settlement agreements it's essentially going to at least dissuade or deter people from, not only seeking bankruptcy, but... In other words, if you say I agree it's not dischargeable, doesn't that at least frustrate the intent under the bankruptcy code, the purpose of the code?

Justice Patterson (00:04:33):
So you're worried about the chilling effect?

Michael Confusione (00:04:34):
Yeah. Exactly. I think that's the main problem with the provisions.

Justice Patterson (00:04:40):
On the other hand, your client got a settlement that potentially almost cut her debt in half.

Michael Confusione (00:04:47):
Yeah, I agree.

Justice Patterson (00:04:48):
Right?

Michael Confusione (00:04:48):
Yeah.

Justice Patterson (00:04:49):
And you're arguing severability. Oh, just take this out. But it seems that we have a pretty clear record that Horizon was not going to go into this agreement but for this provision, right?

Michael Confusione (00:05:03):

[p. 4]

Yeah.

Justice Patterson (00:05:04):
So when you say sever that out but give my client the benefit of having a $950,000, obviously coming out of an alleged fraud, a $950,000 obligation to Horizon to pay money back that they say was procured by fraud, suddenly cut to 500. Your client gets... You're an excellent lawyer.

Michael Confusione (00:05:32):
I agree with you.

Justice Patterson (00:05:34):
But your client gets all the benefit of-

Michael Confusione (00:05:35):
Yeah, I agree, Your Honor. I don't want to jump ahead of myself and obviously it's up to the court. I don't

think I could take deposition that the remedy that's dictated is just to strike out the two provisions. I think at the very least my adversary, the client, Horizon, would have the opportunity to say whether or not it still wants to proceed into the settlement.

Justice Alpin (00:05:57):
Are you arguing severability? Have you ever argued severability?

Michael Confusione (00:06:00):
I did say that the provision should be stricken.

Justice Patterson (00:06:04):
Yeah, that's-

Michael Confusione (00:06:05):
But I think I agree with Your Honor that that's not really a legitimate-

Justice Patterson (00:06:09):
It's not fair. It's ultimately pretty unfair.

Michael Confusione (00:06:10):
I can't dictate that, or my client specifically can't dictate it. I agree.

Justice Patterson (00:06:14):
I thought you were telling us to take the provision out.

Michael Confusione (00:06:19):

[p. 5]

It's hard for me to take a position that I personally think is unreasonable. If the court says these two provisions in the agreement that we're talking about are invalid, I don't know if the court can hold Horizon

to the same agreement by simply striking out the provisions.

Justice Alpin (00:06:35):
Right. But I thought you were trying to get out of the agreement.

Michael Confusione (00:06:38):
Say it again, Judge.

Justice Alpin (00:06:39):
I thought you were trying to get out of the agreement based upon the [inaudible 00:06:45]. Am I right or wrong?

Michael Confusione (00:06:47):
No, you're right.

Justice Patterson (00:06:47):
You kind of wanted to get out of part of the agreement.

Michael Confusione (00:06:50):
I mean, look, the position my client took below was to say we didn't agree to these terms. I know that's not before the court. I think what Your Honor though was saying is, let's say that the court agrees with me and says these provisions are invalid. If we go then to the remedy, can I really say, well, they have to accept the agreement without two provisions? I don't think conceptually I could take that position because I don't think that's the point at all.

Justice Alpin (00:07:15):
That seems like a fair concession, because to Horizon this seemed to be a critical paragraph in the agreement.

Michael Confusione (00:07:22):
Right. I think Horizon could say, Your Honor, given now that the two provisions in question are stricken, they should have the right to say whether or not they want to continue under the settlement was reached or they want to say, well, forget it then. We're going to keep going with the claim. I think that's conceptually the right result from a legal standpoint.

Justice Patterson (00:07:41):
Okay. So you're saying, whatever mention is made of striking a provision, which I viewed as severability-

Michael Confusione (00:07:48):
Right.

Justice Patterson (00:07:49):

[p. 6]

... that we should assume this is an all or nothing proposition.

Michael Confusione (00:07:53):
Yeah. My view would be something like, we remand back to allow Horizon to determine whether or not it wants to continue with the agreement with the provision stricken out, or say forget it, then we're not... I think that's the-

Justice Patterson (00:08:07):
And I haven't looked at this issue.

Michael Confusione (00:08:08):
Right.

Justice Patterson (00:08:09):
I assume you have. Horizon's action, would it still be timely if it were renewed, or would you have an argument that they've either through statute of limitations or latches or some argument? Would you pursue such an... I mean, if you're saying they can go ahead, would they then be turning around and seeing a statute of limitations argument?

Michael Confusione (00:08:36):
Again, I'm only an appeal lawyer, but I don't think there would be a statute of limitations issue.

Justice Patterson (00:08:40):
Yeah, yeah.

Michael Confusione (00:08:40):
That's my instinct.

Justice Patterson (00:08:41):
[inaudible 00:08:42]. But I'm just trying to get-

Michael Confusione (00:08:42):
Yeah, no, I understand.

Justice Patterson (00:08:42):
You're saying the remedy is, they get the opportunity to decide do we start over with our [inaudible 00:08:47] claim?

Michael Confusione (00:08:48):
Yeah. And I don't think that Horizon should be prejudiced if in fact the agreement these... If the provisions are declared unenforceable, as I argue they should be, I don't think that Horizon should be

somehow prejudiced in fact because they didn't know they were going to be stricken.

Justice Patterson (00:09:04):

[p. 7]

Does your argument require this court to actually decide whether or not the language that ended up in this agreement that's before us actually does waive dischargeability?

Michael Confusione (00:09:15):
No. I think that all the court would have to say is, it frustrates or violates the purpose or intent behind the congressional remedy of bankruptcy. And to that extent, to the extent it may dissuade people from even seeking bankruptcy protection, it can't be in an agreement like this. I think if the court just said that, that's probably sufficient, in my view conceptually, to conclude the way I urge the court to go.

Justice Patterson (00:09:40):
But you feel the courts considered this already erred in just saying...

Michael Confusione (00:09:47):
Yeah.

Justice Patterson (00:09:47):
The question of dischargeability is not before us.

Michael Confusione (00:09:50):
Yeah, exactly.

Justice Patterson (00:09:50):
Even if this is a waiver, the bankruptcy court gets to decide [inaudible 00:09:56]?

Michael Confusione (00:09:56):
Yeah. Even if you look at the appellate division's decision, they talk about, well, we're not going to render advisory opinions," and all that. But that's unclear.

Justice Patterson (00:10:04):
Would it be a legitimate provision to say, if a petition in bankruptcy is filed then I the, in this case Ms. Arsenis, agree to stipulate to the nondischargeability of this debt?

Michael Confusione (00:10:25):
No. I don't think it-

Justice Patterson (00:10:25):
It would not be-

Michael Confusione (00:10:25):
I don't think you could do that because, again, the problem is we have the federal law that's basically handcuffing us all essentially, and whether or not you conclude the language of the statute prevents that. Even if you look at this 523, Your Honor, if you look at the subsection C which talk... Even if you look at that, it basically says, "On notice in a hearing the creditor can say, 'Hey, this specific debt isn't dischargeable.'" Even that in and of itself subsumes within it, I would submit, that there's some kind... If

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you have notice and a right to a hearing for the debtor, then obviously the debtor has some kind of a right to contest. I think you can't have a pre-petition waiver of the right to contest because that violates, again, if not the specifics of that statute it violates the purpose of that.

Justice Alpin (00:11:17):
It may prejudice other creditors, too.

Michael Confusione (00:11:18):
It could.

Justice Alpin (00:11:20):
Because you have a limited pie and the question is who's going to get it?

Michael Confusione (00:11:24):
Right.

Justice Alpin (00:11:25):
This is more of a muzzling provision.

Michael Confusione (00:11:27):
Yeah. I agree.

Justice Alpin (00:11:33):
That we've held, even in our state, at least in a sentencing... When one party is told that it can't speak it's depriving the court of maybe valuable information that could be provided to it.

Michael Confusione (00:11:47):
Agreed. I agree, Your Honor.

Justice Patterson (00:11:50):
But people stipulate all the time not to pursue claims.

Michael Confusione (00:11:55):
Yeah, they nothing do.

Justice Patterson (00:11:55):
There's nothing wrong with that.

Michael Confusione (00:11:56):
Yeah. If-

Justice Patterson (00:11:56):
You're

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Michael Confusione (00:11:56):
Go ahead, Judge.

Justice Patterson (00:11:56):
No, no. You go ahead, please.

Michael Confusione (00:11:59):
No, I was just going to say, and if this didn't involve federal law then maybe this court could say, well, New Jersey we have to weigh and balance a policy.

Justice Patterson (00:12:06):
It is not muzzling somebody to release a claim. Someone could release a claim under state law and, even though a court down the road might be very interested in hearing about that claim, that release is still valid. Right? Happens all the time. People release claims.

Michael Confusione (00:12:24):
Well, but the problem is, again, that we're now dealing with the Supreme Federal law.

Justice Patterson (00:12:30):
No, no. I'm saying that. But there's nothing wrong-

Michael Confusione (00:12:32):
You're saying about more generically. Yeah.

Justice Patterson (00:12:34):
But the problem seems to be the stipulation to the point of discharge, as Justice Patterson is questioning you about.

Michael Confusione (00:12:41):
Yeah.

Justice Patterson (00:12:42):
But is there any reason why your client couldn't have agreed to not contest that this was fraud if there was a later bankruptcy action?

Michael Confusione (00:12:55):
Well, she,-

Justice Patterson (00:12:57):
Because that would implicate clearly I think state interests that are allowable.

Michael Confusione (00:13:05):

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I think Your Honor makes the correct distinction in my view. In other words, again, going back to the very specific provisions in question here, they referenced those specifics of the bankruptcy code and talk about

dischargeability. There were other things that had been contested below and are not before the court here, and I'm not reorging them, but that talked about whether or not there was fraud involved. And that was a highly contested issue. It's not before the court is. That's okay, yeah.

Justice Patterson (00:13:30):
My point is not that the agreement would concede fraud in this action, but that if there was a later bankruptcy action your client hypothetically would not contest a fraud.

Michael Confusione (00:13:52):
Yeah. Again, I go back to this 523, even if you look at the subsection C, which talks about nondischargeability. Essentially it says, everything's dischargeable unless the accreditor shows it's not. And then if you look at the C, it vests that determination in the bankruptcy court. It also talks about the burden of proof is on the creditor. It's a right of notice in hearing. So if we go with what Your Honor just articulated and said, why is that okay? It's not okay because those rights are subsumed, if not in the language of the subsection C, the bankruptcy code, certainly the purpose of it.

Justice Alpin (00:14:33):
And it's going to affect all the other creditors.

Michael Confusione (00:14:34):
And it's going to affect all the other creditors.

Justice Alpin (00:14:39):
It seems to me that Horizon could have accomplished its goal, if it got your client to admit to fraud.

Michael Confusione (00:14:48):
Right.

Justice Alpin (00:14:49):
But throughout this agreement there are no admissions, can't be used against us, no inferences. Your client protected herself and her company in that fashion, yes?

Michael Confusione (00:15:06):
Yes.

Justice Patterson (00:15:07):
And not just in this action, but from those findings being used in connection with other contract arrangements.

Michael Confusione (00:15:14):
Right. Again, at least when I looked at the law, and it's possible I didn't see some things, but it certainly looked like if not every case it certainly looked like most cases that looked even specifically at pre-

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petition agreements that it's not going to be dischargeable offset invalid under federal bankrupt. It was literally a whole cornucopia of cases. I think it's a fairly straightforward issue in that regard.

Justice Patterson (00:15:41):
You don't dispute at all that the... Since we have no petition here, we're not in bankruptcy, your client's not in bankruptcy.

Michael Confusione (00:15:51):
That would be valid.

Justice Patterson (00:15:54):
That the remedy here, if this provision is stricken, is to find it to be material to the entire contract and strike the whole contract, at which point you're back to square one.

Michael Confusione (00:16:07):
Yeah. I think that that's the required remedy. Again, unless Horizon, who has the power essentially to say, well it's okay anyway, we're going to go forward. Whether or not that technically will be a new agreement or not, I don't know. I agree with Your Honor. Conceptually, they can't be forced to accept the agreement without these two provisions in it. Unless the court has anything further, I thank you again for hearing the case.

Justice Patterson (00:16:32):
Thank you.

Michael Confusione (00:16:33):
Nice to see the court in person again.

Justice Patterson (00:16:34):
Thank you, counsel. Miss. Lee.

Patricia Lee (00:16:55):
May I please the court. Respondent respectfully requests the affirmance of the decisions below and the rejection of the request to gut the party settlement agreement. I believe the questions that the Justices proposed hit the nail on the head in this case. There is, and the appellants have fatally failed to address, a distinction under federal decisional law as to waiver versus the application of collateral estoppel. While waiver is against public policy, and that has not been

disputed below, the application of collateral estoppel is not.

(00:17:36):
Counsel has indicated that his search for cases has revealed no other case on point. However, appellants have relied on two critical cases in federal jurisdictional law that say otherwise. We've cited in all of our briefs below Klingman versus Levinson, a 1987 seventh circuit decision. That decision is hard to miss because it is cited approvingly, although distinguished factually, in the only unpublished third circuit decision addressed in the appellate division's footnote below in re [inaudible 00:18:15]. If one were to

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shepardize that case, you will come across a ninth circuit affirmance that was issued in November of 2019, in re Johnson, which is also cited in the appellant's brief.

(00:18:30):
In that case it followed Levinson in deciding that nearly identical language in a settlement agreement, as well as in a terms for a consent decree, or a consent judgment, here we have a confession of judgment, were not unenforceable void and must be stricken. They were not deemed waiver of any bankruptcy rights. What they were however was evidential of the party's intent to meet and apply the standards for collateral estoppel. Because of that agreement, that identical language that was in the settlement and in the consent decree, the bankruptcy court decided with free and independent judgment in an adversary decision to

grant the creditor summary judgment. The appellate courts affirmed not only the 2019 affirmance from the ninth circuit, it was a unanimous three judge circuit court panel. That panel affirmed a three judge bankruptcy court sitting as appellate court, as well in the ninth circuit, and that court in turn had affirmed the chief bankruptcy judge.

(00:19:55):
Now, I've pulled down the pleadings, the briefs, the settlement agreement, but the case in in re Johnson is indistinguishable from the case here. The parties had a settlement agreement. By all terms they avoided a trial. There was an underlying fraud claim in the state court complaint. The settlement made clear that the settlement was a resolution of fraud claims so that there could be no ambiguity later that there was some kind of novation, or some other settlement of a non fraud alternative count. It made clear and resolved any ambiguity that the settlement was on the basis of the fraud claims.

(00:20:34):
The agreement in in re Johnson also made clear that, upon a breach, upon a default, and in that case the default happened five years later, the creditor can file the consent judgment with the state court and all of the complaint allegations will be treated as true, that there would be no contest of them. That is strikingly similar to the clause in our agreement because it was based on that decisional law. And the clause in our agreement indicates that upon a default, which has already happened here immediately, the creditor here, Horizon, can enter a consent confession of judgment supported

by an explicit affidavit that was in the material term sheet approved by the court below, that the allegations in the complaint for fraud specifically are to be treated as true. They support the entry of the judgment without need for further evidence, without need for a trial. The appellants agree not to contest them.

(00:21:41):
Now, people can include in a settlement agreement standard, I don't admit liability, because they know that this could rise to a criminal inquiry. Someone could request the settlement. They may never default. But here, the agreement was expressed. It wasn't in some document that never saw the light of day. It was in a material term sheet presented to the trial court judge, who had a hand in negotiating it over weeks and weeks and finally emanating in a settlement put on the record with [inaudible 00:22:14] on the eve of trial.

(00:22:20):
In re Johnson, Levinson and several other cases in that same vein... One particular case I will note for Your Honors is in re Nardone, that's a district of Massachusetts case 2008. They all say the same thing, that there is a distinction between collateral estoppel and waiver. We have never disputed below, and nor did the trial court rule, that these clauses constituted a waiver because, as appellant's counsel admitted, there cannot be any waiver. The bankruptcy code is explicit since 1970. In fact, it has been explicit in section 524A that, regardless of whether or not a discharge has ever been waived previously,

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the bankruptcy court has the absolute power to assess that judgment, whether it's by consent, whether it's after a verdict; and to ascertain independently whether the settlement debt, or the judgment debt that has not yet been satisfied, arises from fraud.

(00:23:26):
In settling this matter, the respondents have simply attempted, as the court has recognized, in exchange for giving up not 50% of its potential damages, 90%. This settlement was 10 cents on the dollar because of treble damages and attorney's fees. This case was involving more than $10 million litigated over five years with premier experts, countless depositions. Summary judgment motions were denied. This was going to trial. It would've been a long trial. The defendants did not want that trial, so they wanted a settlement. But what respondents didn't want to have happened, just like the court in re Johnson agreed, was five years later because our settlement provided for payments over four years, four years later to have a default on the big balloon payment that was due. And now we would have stale evidence and stale witnesses. That was not the goal, because we would've had no incentive not to try.

Justice Patterson (00:24:25):
You completed your opening statement?

Patricia Lee (00:24:28):
Yes. I can circle back to a couple more points, but I'm happy to answer questions.

Justice Patterson (00:24:33):
I have a question for you then. Collateral estoppel,

generally there is a fact that is proven that later in a subsequent proceeding must be accepted by the court. Obviously, there are a variety of things. What is it that you contend under principles of collateral estoppel must be accepted under this agreement by the bankruptcy court? Because I don't see fraud admitted, right? There's no admission of fraud here.

Patricia Lee (00:25:07):
Yes. Our position is that the agreement here, the stipulation here, which was clear in the default provision [inaudible 00:25:20] the fraud complaint would be deemed admitted in the sense that they will be stipulated to as part of the confession of judgment and will be entered without any contest.

Justice Alpin (00:25:31):
How can you say that? I want to follow up on Justice Patterson's question, because that's what I was thinking and she happened to articulate it. I'm looking at page 13 of the agreement. I'm just going to quote part of it. This agreement and the settlement represents does not constitute an admission by the parties of any violation of any federal, state or local law, or any duty whatsoever whether based in statute, common law or otherwise, or of any liability. The parties expressly deny any such violation of liability. Nothing in this agreement, nor any act or omission relating there to, is or shall be considered an admission, concession, acknowledgement or determination of any alleged liability. I can't imagine a stronger denial of liability than what you have permitted in this settlement agreement. Do you agree?

Patricia Lee (00:26:30):
I believe Your Honor in looking at it, it's very-

Justice Alpin (00:26:31):

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This goes to the very question that Justice Patterson asked. Collateral estoppel has to be based on a fact. That's a denial of a fact. The bankruptcy provision is a muzzling provision. It's merely saying that the plaintiff agrees not to contest the nondischargeability. So you can go to bankruptcy court and say this is nondischargeable and the plaintiff just has to sit silent there. And then the court may demand facts. I'm trying to understand this collateral estoppel argument.

Patricia Lee (00:27:08):
Well, Your Honor, first of all, the court below did not address the collateral estoppel argument because the case law is clear that that argument should be addressed first by the bankruptcy court.

Justice Alpin (00:27:17):
Where is the admission? Where is the fact?

Patricia Lee (00:27:19):
Your Honor-

Justice Alpin (00:27:20):
That's what Justice Patterson asked and I'm looking for it.

Patricia Lee (00:27:24):
The case law provides that consent judgements can be given collateral estoppel.

Justice Alpin (00:27:30):
How can you say that there was an admission to any allegation in the complaint based upon what I just read?

Patricia Lee (00:27:38):
You are reading a provision in the settlement agreement. I understand, Your Honor, and that's there. There was a separately negotiated default provision whereby there will be a specific language in a stipulation. And if there's inconsistencies then the bankruptcy court would hold a hearing and would assess that, but the language that is addressed in the cases... I'm sorry, Your Honor.

Justice Patterson (00:28:01):
Look at section 3.1 of the agreement under notice of breach. In the middle of that paragraph it says, "The confession of judgment, the separate document that accompanies this agreement, shall explicitly state that while Ms. Arsenis does not admit liability or wrongdoing, she agrees..." And then it goes on that her, "settlement payment obligation to Horizon as set forth in the agreement resolves Horizon's claims enumerated in the civil complaint." That is the furthest I've seen anywhere in this document that relates to a fact connected to fraud. And that is insufficient, I suggest. Unless you can point me to something that says that's an admission.

Patricia Lee (00:28:49):
Your Honor, I believe that it is an agreement in the default provisions to the entry of a judgment without contesting and treating as true all facts in the

complaint. There was language in the other agreements as

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well and several other cases that come out of in re Levinson where the courts found either that collateral estoppel was warranted, or that at minimum a hearing was necessary-

Justice Alpin (00:29:14):
But any other settlement agreement... Look, you're saying they should have owed $10 million. Okay. You settled for 950. We don't know what the facts are. No one would know what the facts are from looking at this settlement agreement. You've just come to terms. And that confession of judgment merely means that if they breach the agreement they've got to pay the 950. That's all that says. Am I mistaken?

Patricia Lee (00:29:41):
No. The agreement requires a supporting executed stipulation agreeing that the debt arises from the fraud claims in the complaint and that the allegations can be entered in support of that judgment based on the fraud claims without any contest. That's the language-

Justice Patterson (00:29:59):
Is there a confession of judgment existing somewhere that's outside of the record? I mean, does it exist?

Patricia Lee (00:30:06):
Well, we never got that far because they refused to sign it. The explicit terms of what those documents were to contain and that they were going to be executed within

10 days is what we sought to enforce. All I'm saying, Your Honors, is that-

Justice Alpin (00:30:19):
What is this? They didn't sign it. We're talking about facts. They didn't agree to anything. They didn't sign the confession of judgment.

Patricia Lee (00:30:27):
They agreed to what the terms of it would be. That's the same as you agreed to a settle agreement and you didn't sign it, Your Honors. The reality is that they are seeking to assert a black letter rule that language like this, meaning that the parties include language that say we recognize, we express an intent and understand that there could be preclusive effects later by agreeing that this debt sounds in fraud and that it could meet the bankruptcy exception.

Justice Patterson (00:30:56):
If we were to disagree with you and determine that purely as a matter of federal bankruptcy law this is not enforceable at this stage prepetition, is it your position that the entire agreement should be voided and not, as I believe your adversary has conceded, and not purely pull out these agreements? You've made a very strong case that this was an essential component of this agreement from your client's perspective. Correct?

Patricia Lee (00:31:27):
Your Honors, if I can just one moment. The essential part of the agreement is the stipulation not to contest the facts and that the debt arises from fraud.

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Justice Patterson (00:31:37):
You've said that. You've made it very clear in your papers that your client would not have entered into this agreement but for that provision. I know you want the court to enforce the provision, but if the court were to determine that this is inconsistent with federal bankruptcy law pre-petition, is it your position that the entire agreement should be voided and you simply should be permitted to proceed as you would've proceeded but for the settlement against this defendant?

Patricia Lee (00:32:15):
I do note that the agreement does not have a severability clause.

Justice Patterson (00:32:21):
Let me just-

Patricia Lee (00:32:21):
I guess it depends because we have already agreed below, and the trial court ruling is consistent, that there's no objection to there being some kind of prophylactic language in the order that it's not intending to predetermine or invade the jurisdiction of the bankruptcy court.

Justice Patterson (00:32:38):
I fully get that that's your position that you're pursuing in this appeal. I'm not in any way trying to ask you to back off of that. If the court were to disagree with you on your argument that this provision can either be reformed, or can be enforced as is, is it your position, I think it would be self-evident, that the entire

agreement should be scrapped, to use a colloquial word, and you should be permitted... I'm sure not happy about it, but you should be permitted to proceed with your fraud claims against the defendants?

Patricia Lee (00:33:23):
I think that's fair, because if they're looking to gut... It's not really clear. It keeps evolving. Gut a substantial portion of this agreement, I would rather turn in my fraud case now.

Justice Patterson (00:33:32):
That's why I started with this because I thought I was reading in your adversaries brief a suggestion that they get to get the benefit of this quite beneficial agreement without that provision, which you made clear was important to you. I just want to understand that your position is that, if the court disagrees with you on the issue of federal bankruptcy law, you would say all bets are off, the agreement's void in its entirety and you can just go back and seek what you indicated is more than $950,000, is a 10 million claim.

Patricia Lee (00:34:11):
Correct. That's correct.

Justice Solomon (00:34:12):

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Can I just clarify a couple of things? The confession of judgment, which is part of and to be attached to the settlement agreement, was never executed by the defendant. Correct? Was there ever any kind of application, motion or effort to compel the defendant to sign the confession of judgment?

Patricia Lee (00:34:33):
Yes,. That was the provision below. The settlement agreement had the attachments and that was what they refused to sign.

Justice Solomon (00:34:40):
I understand. Was there an application to compel them to sign it, or to effectuate the filing of the confession of judgment?

Patricia Lee (00:34:50):
To sign it.

Justice Solomon (00:34:52):
Just sign it? And that was denied, granted?

Patricia Lee (00:34:55):
It was granted.

Justice Solomon (00:34:57):
But the confession of judgment was never signed. Nevertheless, there is a court order requiring that it be signed. So from your standpoint there is a confession of judgment.

Patricia Lee (00:35:07):
Correct. And there was a denial of a stay of that obligation as well as a obligation to a point-

Justice Solomon (00:35:14):
From your standpoint, there is a confession of judgment and that can now be enforced with the attached court order in the settlement agreement. And that confession of judgment requires that they agree that the facts contained in the complaint are

stipulated, to essentially accept it as true, they're not contested.

Patricia Lee (00:35:35):
Right.

Justice Solomon (00:35:35):
Your argument is that those facts establish fraud and make the debt nondischargeable. Is one of the possible outcomes here that you're seeking, I think, that we say this is a matter for the bankruptcy court, essentially confirm that it's premature and all of your requests, applications, enforcement be dealt with by the bankruptcy court under the theory of estoppel?

Patricia Lee (00:36:06):

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That's exactly the outcome-

Justice Solomon (00:36:07):
So if the bankruptcy court decides that there is no estoppel here, there was no settlement agreement or whatever, or that that was procured against public policy or constitutes an illegal waiver, you're out of luck. You got to start over. But if they decide estoppel does apply, then you can continue to pursue and enforce the settlement agreement. That's pretty much your contention?

Patricia Lee (00:36:35):
That's correct.

Justice Solomon (00:36:36):
On the other hand, coming before us now, if we decide this clause is void against public policy in New Jersey

and unenforceable here so that anything you get as a result of that clause, and therefore the settlement agreement, is out the window, start over. Correct?

Patricia Lee (00:36:55):
Correct.

Justice Solomon (00:36:56):
However, if we do that you could still be in bankruptcy court and still attempt to prove in the bankruptcy court that this debt was incurred by fraud on the part of the defendant and therefore non-dischargeable.

Patricia Lee (00:37:11):
The Supreme Court has made that clear.

Justice Solomon (00:37:12):
So that when you're in the bankruptcy court making that claim, your claim is for the whole 10 million, or whatever it is, whatever that number is that you say the defendant owes to you under having perpetrated fraud. Correct?

Patricia Lee (00:37:29):
Correct.

Justice Solomon (00:37:29):
Okay. I just want to make sure I don't misunderstand where we're headed.

Speaker 6 (00:37:33):
Hey, can I add one question? I'm sorry, go ahead.

Justice Alpin (00:37:36):

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Yeah, take what Justice Solomon has just said. If you accept everything he said that you agreed with, why wouldn't you just sever this provision? Your adversary said he's bound to live by it. And then you'd have the confession of judgment. Why wouldn't you do that?

Patricia Lee (00:37:59):
I've reached out to try and resolve this case. I don't know if that's-

Justice Alpin (00:38:02):
No, no. I'm trying to understand your position.

Patricia Lee (00:38:05):
Yeah.

Justice Alpin (00:38:05):
This is a question as to whether or not you'd want to throw the entire agreement on the rocks, or whether you not you tried to keep it alive with this provision severed. Because with this provision severed, you've just told us that this confession of judgment has admissions that you can use in the bankruptcy court. The plaintiff's going to be up the... Arsenis is going to be up the creek. So why would you want the entire agreement to be struck? I'm trying to figure that out.

Patricia Lee (00:38:38):
Well, it's immaterial. We're dealing with material terms here. I don't know in a vacuum what the ruling ultimately will be here and that decision will be made once I know that. This is a matter that has been litigated by surprise attacks at all turns so I can't say

yet what might ultimately be the outcome. We're just trying to get some closure.

Justice Alpin (00:39:00):
Assume for the sake of argument, the court hasn't decided anything, that the provision is deemed to be contrary to public policy. The bankruptcy provision, that has to go. You want to start from zero, or do you want to enforce the remainder of the agreement?

Patricia Lee (00:39:21):
I don't know, Your Honor.

Justice Alpin (00:39:21):
Okay.

Justice Patterson (00:39:22):
You've got an issue with respect to an unsigned... I think from your perspective it's probably of some concern, even though you've got a court order, that on a collateral estoppel you don't have a signature with respect to the facts. I think that's probably a concern.

Patricia Lee (00:39:40):

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It is. Honestly, the default was almost immediate here. Even contrary to in re Johnson, which was five years later, this was almost immediate. There could be some other issues on fraudulent intent to even enter into the settlement.

Justice Patterson (00:39:56):
Let me ask you a question, just to be clear. I haven't looked into the law on this at all. You, I assumed,

dismissed your... Where were you in the litigation? You were heading to trial.

Patricia Lee (00:40:10):
The case? We were on the eve of-

Justice Patterson (00:40:12):
Eve of trial.

Patricia Lee (00:40:12):
It was Labor Day weekend. We were on the eve of trial for the day after Labor Day and we settled that Friday before.

Justice Patterson (00:40:18):
Okay. You agreed as part of the settlement to dismiss your complaint with prejudice, but if the entire settlement agreement goes you can refile that complaint.

Patricia Lee (00:40:32):
Correct.

Justice Patterson (00:40:33):
Are you dealing with any issues of... And this is a left field question, so I will thoroughly understand if you don't know the answer to this. Would you have any concerns about either the statute of limitations, a latches defense, or anything else that would be a technical impediment to your proceeding against the individual in the business if the settlement agreement were scrapped?

Patricia Lee (00:41:02):
I don't believe so. I think because [inaudible 00:41:04]-

Justice Patterson (00:41:03):
You just pick up where you left off and get your file out of storage?

Patricia Lee (00:41:07):
Correct.

Justice Patterson (00:41:09):
Just another left field question. At the time that you were resolving this matter, were there any other collateral, criminal insurance fraud matters that were ongoing and related to this and resolved in any way?

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Patricia Lee (00:41:27):
Well, a lot of times those are confidential, but we did have to under the IFPA send a notice and the case was being monitored. Part of the agreement at the end of the case, a letter gets sent indicating that the case has been resolved.

Justice Patterson (00:41:40):
Thank you. Is there anything more that you'd like to add to your argument?

Patricia Lee (00:41:52):
I would just stress, Your Honors, that the case law in terms of collateral estoppel and these provisions in general... The decisions I mentioned in in re Johnson and in Levinson... There's additional cases, in re Gibbs. There is a line of cases that indicate that the parties... What might be viewed as invading the bankruptcy court, on the one hand, if you're seeking to prevent someone from filing... For instance, you can't file for 180 days, or you can't list my debt, or you can't seek a

stay. That's different from seeking to settle a matter that actually sounded in fraud below that was litigated fulsomely with competent counsel with scorched earth discovery and motion practice and agreeing that the fraud, even though we didn't try it, that debt will arise out of fraud, because the common law elements of fraud are the same as in the statutory exception.

(00:42:53):
It was defendant's counsel that asked for the swap and that set forth in my affidavit below. It used to say fraud and they changed it saying, "Why don't we just use the bankruptcy citation? It means the same thing." And now they're using that to their advantage. Had it said fraud and not the bankruptcy citation here today we wouldn't be here. And that is what Levinson and in re Johnson says is not a distinction with a difference, because these-

Justice Patterson (00:43:21):
Just to understand, did the language about 11USC523 come from the defendants?

Patricia Lee (00:43:27):
Yes. The agreement as drafted indicated that there would be a stipulation that the claims arose out of fraud. They asked instead of saying that, fraud, false pretenses and false representations.

Justice Patterson (00:43:41):
The provision, to the extent that it refers to bankruptcy, that they're seeking to undo here was a provision that they requested?

Patricia Lee (00:43:49):
Correct. There was information indicated so that we

could show the intent and the comprehension so there was no ambiguity later that they understood this could have preclusive effect. That was the goal. That was the goal, not to just push this to another forum and have another six month trial. The goal was to give some sort of finality to the ability... You had your time to contest the allegations in the complaint.

Justice Alpin (00:44:14):

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Can I ask a question? This is about just the concept of collateral estoppel. That is typically where there is some fact alleged in one court that can't be disputed in another court. We're just dealing with an agreement here. I'm trying to wrap my head around this whole collateral estoppel. I could understand your argument being they've admitted to this, they've stipulated to this, but the concept of collateral estoppel does not seem to be applicable here. Am I off?

Patricia Lee (00:44:46):
Your Honor, I've spent the better part of the last two days reading almost every collateral estoppel case out of the bankruptcy court, and I will tell you that it's an issue preclusion doctrine. That doesn't mean we might wholly get collateral estoppel. We might only get it on the fact that the debt emanated from fraud claims. We might not get it on intent. The court might hold a hearing on that. It could be a partial application. That's what these bankruptcy courts have all addressed. It can narrow the issues for a hearing. That was the goal. The goal was in giving up these rights we were getting

some sort of prevention of a second bite of the apple of a full do-over. Because we were ready to go to trial.

(00:45:30):
Let me just make this point too, Your Honors. The agreement, as much as they're saying it was invading the bankruptcy court, in several places it acknowledged that the bankruptcy processes would apply. It says, "If and when they file for bankruptcy." They were allowed to file for bankruptcy. If they listed this debt, it notes in 11.2 in the confidentiality provision that we would be able to accept confidentially so that we could prosecute a dischargeability complaint. That is completely consistent with this agreement not being a waiver of rights, but rather the language in particular, the default provisions, just like in in re Johnson, were set up for collateral estoppel purposes. That is not void as against public policy.

(00:46:12):
What they're asking this court to do is sit as judge and jury of what a bankruptcy court would do with that language and whether or not they would find any preclusive value whatsoever from the stipulation that the defendant was required to file and the agreement not to contest any of the facts as part of a consent judgment. A consent judgment can be given collateral estoppel effect as to a default judgment, if it's been shown that there was a purposeful decision not to contest, that you've actually been involved with the proceeding. I believe that under this case law, this consent judgment with the stipulation would be given some preclusive effect. But I'm not the decider of that.

That's the exclusive jurisdiction of the bankruptcy court. But what those cases say is-

Justice Patterson (00:46:54):
We don't have the confession of judgment. Do we?

Patricia Lee (00:46:56):
We have an agreement of the language. These material terms sheet, I've never done one like this.

Justice Patterson (00:47:01):
I get it.

Patricia Lee (00:47:01):
It was explicitly negotiated with the court.

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Justice Patterson (00:47:03):
Where is it in the record?

Patricia Lee (00:47:05):
I'm sorry?

Justice Patterson (00:47:07):
Yeah, no. Can you give us a citation in the record where we can find the confession of judgment?

Patricia Lee (00:47:12):
Sure. I believe it's attachment to the motion for enforcement and it's attached to the settlement agreement.

Justice Alpin (00:47:27):
Can you give us an appendix number?

Patricia Lee (00:47:29):
Sure.

Justice Alpin (00:47:29):
If that's possible.

Patricia Lee (00:47:31):
Hold on one second. CA15 to 35. The confessional judgment forms are specifically at the confidential appendix 30 to 35.

Justice Alpin (00:47:56):
Thank you.

Justice Patterson (00:48:06):
Confidential appendix 30 to... I'm looking at the appellate division confidential appendix.

Justice Alpin (00:48:11):
Correct.

Justice Patterson (00:48:14):
There's another...

Patricia Lee (00:48:16):
It's for the appellants. The appellants confidential-

Justice Patterson (00:48:18):

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No, no. I'm looking your confidential appendix in the appellate division. Is that what you're referring to? Or you have the other one? There's one for us. I'm sorry. Ignore that. Okay.

Patricia Lee (00:48:31):
I have the confidential appendix dated. It's filed February 18th, 2020 in the appellate division.

Justice Patterson (00:48:44):
In the appellate division?

Patricia Lee (00:48:47):
Correct.

Justice Patterson (00:48:48):
All right.

Patricia Lee (00:48:53):
Paragraph four at confidential appendix 35 indicates, "I further agree not to contest Horizon's allegations so that a confession of judgment may be entered without the necessity of introducing evidence or the conduct of a trial." That is the provision that we believe falls squarely within in re Johnson.

Justice Alpin (00:49:10):
Can you read that again one more time slowly?

Patricia Lee (00:49:11):
Sure. "I further agree not to contest Horizon's allegations so that a confession of judgment may be entered without the necessity of introducing evidence or the conduct of a trial."

Justice Patterson (00:49:37):
So with that provision being enforced, did you even need the paragraph that immediately is above it? "I agree and intend that the judgment debt will be a nondischargeable debt pursuant to section 5523A2 in the event of a bankruptcy."

Patricia Lee (00:50:09):
That language was taken as a similar language to what's in in re Levinson and in re Johnson. In order for

a consent judgment to have collateral estoppel effects, the court needs to have some assurances that the parties anticipated and intended that there could be preclusive effects in a subsequent proceeding. That language designed to avoid that ambiguity.

Justice Patterson (00:50:32):
Thank you.

Patricia Lee (00:50:35):
It's not designed to usurp the ability of the bankruptcy court to make an independent finding.

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Justice Alpin (00:50:41):
I'm looking at paragraph four is the same. It's like 3.8. It's basically the same. Agrees not to contest the nondischargeability. But you agree not to contest the allegations. You're taking that as an admission.

Patricia Lee (00:50:56):
They agree not to contest the Horizon's allegations. That is what cases have found is a consent judgment. You can consent to a default judgment. And then the counts on which that judgment is entered is the underlying fraud claims. That's what this is designed to specify so that there's no ambiguity or argument later that, for instance, it was based on nonfraud claims. That was the goal of this issue, to the extent it can have preclusive impact in whole or in part. In re Johnson, Levinson say that that's an issue for the bankruptcy court to decide in the context of an adversary proceeding.

Justice Patterson (00:51:30):
What you have provided, with the addition of the order that they signed this, which they have yet to do, what you have seen in the seventh circuit case as all that's necessary to at least give the bankruptcy court what it needs to consider in order to make a determination as to whether there's preclusive effect.

Patricia Lee (00:51:57):
That's correct. If we thought something more was needed under the cases we would've given more. In re Nardone is the district of Massachusetts case out of 2008. That takes Levinson and puts it in a bite-sized summary for everyone, addressing the two issues here. One, rejecting that that language is a per se waiver because it can't be because parties can't contract away the rights to discharge. It's not self-executing. If the respondent's never filed a petition in the adversary proceeding, the discharge would encompass the debt. But at the same time, the court said, supporting with Levinson, that, "A settlement agreement that called for a consent agreement upon default that says we agree not to contest the allegations in the complaint and that entry of that judgment can be based on those counts." Now that is collateral estoppel.

Justice Patterson (00:52:49):
I think we have your point. Would you care to wrap up your argument please?

Patricia Lee (00:52:52):
Sure. From our perspective, Your Honors, we believe that the public policy and the equities here weigh in favor of affirming the judgment. This is a case where if it's not clear that language is per se void because of the

line of cases that deal with collateral estoppel, that this issue should be left to the province of the bankruptcy court. It was not impermissible for the courts below to say that this issue was not ripe, that it would be advisory, or that it should be addressed in the connection with that proceeding at a later point.

Justice Alpin (00:53:31):
This is the last question. If we knocked out the bankruptcy clause, you'd still have this... I just don't understand. Why wouldn't you want the rest of the agreement that they're going to affect you? You've got that confession of judgment language. You'd still have all the arguments that you have.

Patricia Lee (00:53:52):

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Well, Your Honor, I just don't know what you're talking about knocking out the language because they broadly are looking to knock out 11.2, 3.8, the four paragraphs in the confession of judgment. What was originally raised in the trial court was that they didn't like that statutory citation. We were like, well, let's swap it with the word fraud. Let's make sure it wasn't invading the province of the court, but now it's morphed. So I don't know what ultimately will be the holding here and how much it will gut the agreement.

Justice Patterson (00:54:20):
Your concern is that the confession of judgment could be extricated along with that provision.

Patricia Lee (00:54:28):
If you look at the petition here, they've asked for four

paragraphs of that supporting affidavit, which was set forth and consistent with the court held below the material term sheet to be voided.

Justice Patterson (00:54:40):
You view their effort to be to ultimately get out from under the confession of judgment?

Patricia Lee (00:54:44):
Correct. And then there would be a complete open field here for years later to have to completely redo the entire case. The goal here was, although the bankruptcy court needs to fairly assess the evidence, can look outside the judgment, all of that case law is clear. The goal here was to meet what had happened in in re Levinson and in re Johnson as if there's a default. You're stipulating to the facts and the complaint, which they agreed to do. And that has been upheld below as voluntarily and knowingly done.

Justice Patterson (00:55:23):
Does the court have any further questions?

Justice Solomon (00:55:28):
Not me.

Justice Alpin (00:55:28):
No. No. Not with this person, but I'd like to know whether he's seeking to knock out the 3.8 today.

Justice Patterson (00:55:36):
Counsel, thank you very much.

Patricia Lee (00:55:37):
Thank you, Your Honors.

Justice Patterson (00:55:38):
Mr. Confusione, Justice Alpin would like to ask a question.

Justice Alpin (00:55:43):

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I just have one question.

Michael Confusione (00:55:45):
Sure, Your Honor.

Justice Alpin (00:55:48):
Are you seeking to knock out 3.8 and only 3.8?

Michael Confusione (00:55:56):
3.8, meaning those two main provisions I cited in the beginning of my page one?

Justice Alpin (00:56:02):
Yes.

Michael Confusione (00:56:02):
Yeah. I think that there is one... If you bear with me for a minute, I actually marked here what I thought was no good.

Justice Alpin (00:56:12):
The reason why I'm asking that... Are you not asking to knock out the confession of judgment?

Michael Confusione (00:56:21):
No. Again, I think what the court has granted the petition on... No, I'm not. Only to the extent that it has the same problem that the two provisions I cited have in terms of either agreeing to waive any kind of right under the bankruptcy.

Justice Patterson (00:56:37):
But what does that mean? You're now under-

Michael Confusione (00:56:40):
I think there's one section in the confession of judgment that repeats that same language.

Justice Patterson (00:56:47):
You are looking to gut-

Michael Confusione (00:56:49):
That part of the confession to judgment is no good for the same reason it's no good in the final summary.

Justice Alpin (00:56:55):
But not the part where you don't contest the allegations.

Michael Confusione (00:56:59):

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Right.

Justice Alpin (00:57:00):
That is legitimate?

Michael Confusione (00:57:02):
In the procedural posture before the court?

Justice Alpin (00:57:04):
Yes.

Michael Confusione (00:57:05):
That's not before the court.

Justice Patterson (00:57:06):
But you're not committing to not make the... If part of

it goes out... And I understand we're putting you on the spot here. You're not committing to say that confession of judgment would have all of the preclusive effect that the bankruptcy court might give it. You'd be in there arguing, or somebody would be in there arguing, perhaps a different lawyer-

Michael Confusione (00:57:27):
In the bankruptcy court?

Justice Patterson (00:57:28):
In the bankruptcy court that this is entirely unenforceable.

Michael Confusione (00:57:32):
I think I would go back to this. Again, I look at the discreetness of what the court asked in its order, and it just said is this kind of a provision where it says, is that void is against public policy? Again, my position is, I've already expressed this, yes, for a couple of reasons. The main point is this. There's this question of... My adversary said something I thought was telling because-

Justice Patterson (00:58:04):
You didn't ask for a rebuttal. There was a specific question that was asked of you. Does this relate to that question?

Michael Confusione (00:58:10):
I actually did ask for a two minute of rebuttal briefly.

Justice Patterson (00:58:14):
I apologize.

Michael Confusione (00:58:15):

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I'm sorry. But course that's up to the court anyway, so I don't want to over talk.

Justice Patterson (00:58:19):
No, Mr. Confusione, that was my error. I see the note.

Michael Confusione (00:58:23):
Did I answer the question the court had in terms of... In other words, what's going to be argued in the bankruptcy-

Justice Patterson (00:58:31):
I'm saying it to put it very simply. I know you've argued many times before this court. You often use very evocative language. I think I'm hearing a maybe.

Michael Confusione (00:58:41):
Well, I-

Justice Patterson (00:58:41):
I think I'm hearing a sort of, maybe, kind of, and we'll see how it all goes.

Michael Confusione (00:58:48):
I think I would say that-

Justice Patterson (00:58:49):
Sometimes lawyers have to do that. I'm not [inaudible 00:58:51].

Michael Confusione (00:58:50):
Yeah, no.

Justice Patterson (00:58:50):
That's what I'm what I'm hearing.

Michael Confusione (00:58:54):
I'm trying to take the procedural posture of the case. The only issue before the court, as I view it, is what the court granted the order on.

Justice Alpin (00:59:00):
So just to be clear, your argument is that the provision that Ms. Arsenis agrees not to contest the nondischargeability is void for public policy. But you haven't argued that a provision that says that you will not contest the allegations is void for public policy.

Michael Confusione (00:59:22):
Correct.

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Justice Alpin (00:59:23):
Okay.

Justice Patterson (00:59:23):
Is it true, Mr. Confusione, that your client wanted the citation to the bankruptcy? I know you weren't there.

Michael Confusione (00:59:29):
I was going to address that. Again, I wasn't the lawyer, of course, below, but when I looked at the record-

Justice Patterson (00:59:34):
Are we here about a provision that is in the current form it's in because your client pushed for that?

Michael Confusione (00:59:40):
No, I didn't see any finding by the trial court that said that, and I didn't see anything any bell division that said that.

Justice Patterson (00:59:46):
Why would the trial court even get involved with that?

Michael Confusione (00:59:48):
Well, the trial court did go... Basically, the procedural posture, as I understood the motion was, they basically said, "Here's the final settlement agreement and we want this signed." Okay. And in that settlement agreement, there were provisions that I've pointed to here that my client said, "We object. We never agreed to those provisions." Now, who originally it suggested language, that was never found by the trial court. They didn't get that far. They just said, "You agreed with the provisions that are in the final settlement agreement. We're going to make you sign it." I actually think the statement by my adversary is not part of the record before this court here. That was never a finding by any court below.

Justice Patterson (01:00:26):
Counsel, is there anything else you'd like to add?

Michael Confusione (01:00:29):
I would just like to say this. I think this is a very important part. It's almost like, well, why are these two provisions in there? Because part of my adversary's argument is, well, really, they don't really mean anything because the bankruptcy court's going to determine it anyway. But she'd said something very telling. She said, "We were hoping it would narrow the issues for a hearing." Well, that in and of itself violates the bankruptcy code under that subsection C of 523, which subsumes the right of a debtor to contest.

(01:01:00):
The problem with deferring, as my adversary is trying to say, is that it will, as Justice Solomon said, it will essentially muzzle people's rights. Because if you put these provisions in these settlement agreements, people are not going to seek bankruptcy protection. And if it was a New Jersey right, maybe the court

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could say, well, we think this right prevails over that. But we're handcuffed as a state because we have this federal governing bankruptcy code, whose purpose is to give people a fresh start, except for these tiny enumerated exceptions. Going back to the specific question the court answered, I think the easy answer is, it's not valid. The other provisions that are at issue, they're not at issue here. I would rest otherwise on what I've said already.

Justice Patterson (01:01:44):
Thank you very much, counsel-

Michael Confusione (01:01:45):
Thank you for hearing the case.

Justice Patterson (01:01:46):
... for your advocacy on both sides. We'll take the case under advisement.

APPENDIX F

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION/SOMERSET VICINAGE

Docket No.: SOM-L-0281-15
Civil Action

[Filed April 14, 2022]

HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY,
Plaintiff,

v.

SPEECH & LANGUAGE CENTER, LLC; CHRYSSOULA MARINOS-ARSENIS; JOHN DOES 1-10 and ABC CORPORATIONS 1-10,
Defendants.

Patricia A. Lee, Esq, (028251998)
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Attorneys for Plaintiff
Horizon Blue Cross Blue Shield of New Jersey

ORDER AWARDING ATTORNEYS' FEES AND COSTS TO PLAINTIFF HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY

DENIED

THIS MATTER having been opened to the Court by Patricia A. Lee, Esq., of the law firm of Connell Foley LLP attorneys for Plaintiff Horizon Blue Cross Blue Shield of New Jersey ("Horizon") for an Order awarding attorneys' fees and costs to Horizon; and the Court having considered the moving papers in support of and in opposition thereto, if any, and for good cause shown;

~~**IT IS ON THIS** 14 day of April, 2022; **ORDERED** that Horizon's Motion for an Award of Attorneys' Fees and Costs is **GRANTED**;~~

~~**IT IS FURTHER ORDERED** that Defendant Chryssoula Marinos-Arsenis shall pay Horizon the amount of $_____ for attorneys' fees and costs incurred by Horizon in connection with its efforts to enforce the material settlement terms reached between the parties 6335082-1 2 and collect the amounts properly due and owing to Horizon, within thirty (30) days of the date of this Order;~~

IT IS FURTHER ORDERED that a copy of this Order shall be served upon all parties within 7 days of the date hereof.

/s/ Robert G. Wilson, J.S.C.
Honorable Robert G. Wilson, J.S.C.

The motion is hereby DENIED as moot. The matter was removed to the District Court on March 27, 2022.

APPENDIX G

Rebecca Field Emerson, Esquire
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215-366-5370
3959 Welsh Road, #199
Willow Grove, PA 19090
and
43 West 43rd Street, Suite 198
New York, NY 10036-7424

May 23, 2022

VIA EMAIL to: speechandlanguage@gmail.com
Speech and Language Center, L.L.C.
Attn. Chryssoula Marinos-Arsenis
Warren Medical Center, Unit 207
65 Mountain Blvd.
Warren NJ 07059

RE: Letter of Resolution

Dear Chryssoula:

Enclosed please find the Resolutions you hired me to draft for Speech arid Language Center, L.L.C., a New Jersey limited liability company, in a limited engagement for that purpose. As we discussed, they specify that you as the sole member of Speech and Language Center, L.L.C. have decided that it is in the best interest of Speech and Language Center, L.L.C. to remove the state litigation to federal court.

However, as we discussed, you have not hired me to represent Speech and Language Center, L.L.C. (or you personally) in this litigation.

If you have any questions, please let me know.

Regards,

/s/ Rebecca Field Emerson
Rebecca Field Emerson

SPEECH AND LANGUAGE CENTER, L.L.C.
MEMBER RESOLUTION

APPROVING LITIGATION REMOVAL TO FEDERAL COURT

Action by Consent of the Principal and Sole Member

May 23, 2022

The Principal and Sole Member of Speech and Language Center, L.L.C., a New Jersey Limited Liability Company, waiving the requirements of formal notice of a member meeting and without the formality of convening a meeting, does hereby consent to the following action of Speech and Language Center, L.L.C.

WHEREAS, Chryssoula Marinos-Arsenis is the principal and sole member of Speech and Language Center, L.L.C., which is located at Warren Medical Center, Unit 207, 65 Mountain Blvd., Warren NJ 07059; and

WHEREAS, Chryssoula Marinos-Arsenis has determined that it will be advantageous for Speech and Language Center, L.L.C. to remove the existing litigation (State case number 000281-15) to federal court (where it will become Federal Case number 3:22-cv-01748-MAS-DEA); and

WHEREAS, Chryssoula Marinos-Arsenis has determined that it will be advantageous for Speech and Language Center, L.L.C. to hire its own attorney to defend Speech and Language Center, L.L.C. in this federal litigation.

NOW, THEREFORE, BE IT RESOLVED, that these resolutions shall be deemed approved and adopted as of May 23, 2022.

FURTHER RESOLVED, that upon the adoption of these resolutions by the Principal and Sole Member, Chryssoula Marinos-Arsenis shall have the authority to execute any and all forms and documents needed to implement the removal of the state litigation to federal court, hire an attorney to represent Speech and Language Center, L.L.C. in the litigation, and pay the associated fees and expenses to implement this action on behalf of Speech and Language Center, L.L.C.

FURTHER RESOLVED, that this consent shall be filed with the official records of Speech and Language Center, L.L.C.

Principal and Sole Member	Ownership Percentage
Signature: /s/ Chryssoula Marinos-Arsenis **Chryssoula Marinos-Arsenis**	**100%**