

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

INSOURCE DEVELOPMENT SERVICES
OF BATAVIA, LLC
701 Seneca Street, Suite 210
Buffalo, New York 14210

Plaintiff,

vs.

HEALTHNOW NEW YORK INC.
257 West Genesee Street
Buffalo, New York 14202-2657

Civil Action No. _____

and

UNITED MEMORIAL MEDICAL CENTER
127 North Street
Batavia, New York 14020

Defendants.

COMPLAINT

Plaintiff, Insource Development Services of Batavia, LLC , by and through its attorneys, Colucci & Gallaher, P.C., as and for its complaint against defendants, HealthNow New York Inc. and United Memorial Medical Center, states as follows:

JURISDICTION

1. This court has federal question jurisdiction, pursuant to 28 U.S.C. §1331, over claims arising under 15 U.S.C. §1 et. seq.
2. Supplemental jurisdiction over the plaintiff's pendent state law claims exists pursuant to 28 U.S.C. §1367(a).

VENUE

3. Pursuant to 28 U.S.C. §1391(b), venue is proper in the Western District of New York, the judicial district in which the claims arose, in which the plaintiff currently resides and in which each individual defendant currently resides and/or maintains an office for business.

JURY TRIAL

4. A jury trial of all issues is demanded pursuant to U.S. Federal Rules of Civil Procedure 38.

PARTIES

5. Plaintiff, Insource Development Services of Batavia, LLC (“Insource”), is, and at all times material to this complaint was, a limited liability company formed and existing under the laws of the state of New York.

6. Insource is a citizen and resident of the state of New York with its corporate offices located at 701 Seneca Street, Buffalo, New York 14210.

7. Defendant, HealthNow New York Inc. (“HealthNow”), is, and at all times material to this complaint was, a not-for-profit corporation organized and existing under the laws of the state of New York.

8. HealthNow is a citizen and resident of the state of New York with its corporate offices located at 257 West Genesee Street, Buffalo, New York 14202.

9. Defendant, United Memorial Medical Center (“United”), is, and at all times material to this complaint was, a not-for-profit corporation organized and existing under the laws of the state of New York.

10. United is a citizen and resident of the state of New York with its corporate offices and principal place of business located at 127 North Street, Batavia, New York 14020.

BACKGROUND

11. Insource opened an urgent care center, in Batavia, New York in mid-June 2013.
12. Insource is not conducting the business of insurance.
13. Insource's urgent care center will provide treatment options for persons who do not have a primary care physician but also for persons who are injured or sick and require medical treatment and care during or outside of their doctor's normal office hours.
14. Without an urgent care center ("UCC") to treat minor injuries outside of or even during doctors' normal office hours, patients are forced to visit the emergency room at United at a cost of nearly ten (10) times what a visit to Insource's UCC would cost the patient and/or his/her insurance company.
15. Even during doctors' normal office hours, a patient's ability to visit a UCC or emergency room is often a necessity since many doctors do not do perform suturing at their offices.
16. There are presently two (2) other UCCs operating in the greater Genesee County area.
17. One of these UCCs is St. Jerome's UCC ("St. Jerome's") located in Batavia.
18. The second UCC ("Leroy") is located in Leroy, New York. Both St. Jerome's and Leroy are owned and operated by United.
19. Both St. Jerome's and Leroy are frequently closed for unexplained reasons or open for only very short hours.
20. Services at St. Jerome's and Leroy are limited and when these United facilities are closed, patients are informed and directed to visit the emergency room at United's acute care facility in Batavia.
21. United, St. Jerome's and Leroy are not conducting the business of insurance.

22. The Relevant Market for purposes of this complaint is the city of Batavia and the territory of Genesee County, New York (the “Relevant Market”).

23. The relevant entities for purposes of competition are 2 UCC’s in Genesee County operated by United (i.e., St. Jerome’s and Leroy) and the new UCC facility which is being opened by Insource (the “Relevant Entities”).

24. Until the opening of Insource’s facility, United had a monopoly within the Relevant Market.

25. HealthNow is a health insurance provider which provides health insurance to individuals and employees of numerous companies throughout the Relevant Market.

26. More than two (2) years ago, officials from HealthNow discussed with Insource’s management the possibility of opening a UCC in the Batavia area.

27. In fact, HealthNow encouraged Insource to develop a new model, invest in and design such a facility and eventually open it in Batavia, New York.

28. Additionally, HealthNow and Insource were in the process of negotiating the rates which HealthNow would pay to Insource for HealthNow insurance subscribers who might visit Insource’s proposed UCC.

29. In 2011, after informing Insource that HealthNow was going to send a list of rates and a contract for final agreement, HealthNow suddenly ceased negotiations without notice, did not send the proposed rate list to Insource, and declined to (1) negotiate further in good faith; or (2) even to return the numerous telephone calls from Insource’s management.

30. Insource is not an average or typical UCC but is bringing enhanced services, including tele-medicine facilities and specialized care to the Batavia area at its UCC facility

which will substantially increase the level of medical care and treatment available to the residents of Batavia and Genesee County, the Relevant Market.

31. Additionally, Insource, while increasing the level of health care in the Relevant Market, will also create substantial savings for consumers of health care services.

32. Beginning some years ago, HealthNow and other companies in the insurance business developed high deductible medical plans which are now extremely common in the Relevant Market.

33. With a high deductible plan, a family will be responsible for paying the yearly deductible before HealthNow makes any payment at all.

34. The deductible on a high deductible family plan is typically \$3,000 a year.

35. Consequently, a trip to the emergency room at United will necessitate the subscriber writing a check for at least \$1,500 on behalf of him/her or their family dependent.

36. However, the same treatment at Insource's UCC costs the subscriber approximately \$150.

37. Upon information and belief, before negotiations between HealthNow and Insource broke off in 2011, United, through its agents, had substantive discussions with HealthNow concerning the opening of a UCC by Insource in Batavia.

38. Upon information and belief, HealthNow and United entered into a vertical, collusive arrangement under which HealthNow and United agreed, by contract, arrangement or other means to restrict competition in the Relevant Market.

39. Upon information and belief, HealthNow and United entered into a vertical, collusive arrangement under which HealthNow and United agreed, by contract, arrangement or other means to exclude and/or boycott Insource from the Relevant Market.

40. Previously, a UCC had been operated in Genesee County by Lakeside Memorial Hospital in Leroy, New York ("Lakeside UCC").

41. Upon information and belief, United opened its Leroy facility to attempt to exclude Lakeside UCC from the Relevant Market.

42. Upon information and belief, United did engage in behavior which was designed to further its intent to obtain a monopoly in the Relevant Market.

43. Upon information and belief, the actions of United were successful in excluding Lakeside UCC from the Relevant Market and in giving United's facilities a monopoly within the Relevant Market.

44. This demonstrates a pattern of behavior on the part of United which was and continues to be designed to facilitate its intent to create and maintain a monopoly within the Relevant Market.

45. HealthNow provides medical insurance coverage to subscribers throughout Western New York.

46. Upon information and belief, HealthNow's subscribers comprise approximately fifty percent (50%) of the persons in Genesee County, the Relevant Market, who have private medical insurance.

47. United, through its two UCCs, had before June 2013, a monopoly for UCCs within the Relevant Market.

48. It is and was the intent of United, through its contract and/or collusive arrangement or other means with HealthNow, to attempt to maintain a monopoly for UCCs in Genesee County, the Relevant Market.

49. Upon information and belief, United, through its contract, agreement and/or collusive arrangement or other means with HealthNow, intends to attempt to drive Insource's UCC out of business after June 2013 to again gain/maintain a monopoly on UCC's in Genesee County.

50. Additionally, Insource has contracts with numerous other healthcare providers so that the patients who utilize Insource's UCC can be serviced or linked with other health services and providers such as neurological specialties or orthopedic specialties.

51. In fact, United, through its agents, has contacted these numerous healthcare providers who have contractual arrangements with Insource to service Insource's patients.

52. United, through its agents, has tortiously interfered with Insource's contractual arrangements with numerous other companies.

53. United and its agents' actions are all directed at either maintaining or regaining a monopoly position for United in the Relevant Market and restricting competition within the Relevant Market.

54. United's actions consequentially are restricting, and will restrict, the level of healthcare which is available to residents of Genesee County.

55. All the actions of United, its agents and HealthNow are directed to restricting competition within the Relevant Market, maintaining and/or regaining a monopoly position for United which as a consequence restricts and in fact lowers the level of healthcare available to residents of Genesee County.

56. The actions of HealthNow and United in attempting to exclude Insource from the Relevant Market amount to a boycott.

57. HealthNow has stated repeatedly through its management and agents that allowing Insource to operate a UCC in Batavia, New York does not fit into HealthNow's Business Plan.

58. The above described actions of HealthNow and United are not reasonable.

59. Upon information and belief, there is at least one other New York LLC or Corporation involved in this collusive contract, agreement or arrangement between HealthNow and United.

60. It is the intention of Insource to add that party to this action after discovery is conducted.

COUNT I
15 U.S.C. §1

61. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

62. As previously alleged, Insource opened a UCC in Batavia, New York in mid-June 2013.

63. As previously alleged, there are presently two (2) other UCCs operating in the greater Batavia area.

64. As previously alleged, one (1) of the two (2)UCCs operating in the greater Batavia area is St. Jerome's UCC located in Batavia, which is operated by United.

65. As previously alleged, the second UCC in Genesee County is located in LeRoy, New York and is also operated by United.

66. Both St. Jerome's and Leroy are operated by United and are frequently closed for unexplained reasons or open for only short hours.

67. Services at St. Jerome's and the LeRoy location are limited and when these two (2 UCCs) are closed, patients are informed to visit the emergency room at United's acute care facility in Batavia.

68. United previously engaged in anti-competitive, exclusionary behavior in regards to Lakeside UCC in Leroy, New York.

69. United's actions were taken with the intent to create a monopoly in the Relevant Market.

70. Upon information and belief, United's actions did result in the closing of Lakeside UCC which gave United a monopoly in the Relevant Market.

71. This demonstrates a pattern of behavior by United and the intent to exclude other UCCs from the Relevant Market.

72. As previously defined, the Relevant Market for purposes of the complaint is the city of Batavia and the territory of Genesee County, New York.

73. The Relevant Entities for purposes of competition are UCCs (i.e. St. Jerome's and Leroy and Insource's UCC) operating in Genesee County.

74. Until June 2013, United has had a monopoly within the Relevant Market.

75. As previously alleged, in 2011 Insource and HealthNow were negotiating for rates for Insource's UCC to be located in Batavia.

76. Upon information and belief, before negotiations between HealthNow and Insource broke off in 2011, United, through its agents, had substantive discussions with HealthNow concerning the opening of a UCC by Insource in Batavia.

77. Upon information and belief, HealthNow and United entered into a vertical collusive contract, agreement, arrangement or other means under which HealthNow and United agreed to restrict competition/trade in the Relevant Market.

78. Before June 2013, United controlled 100% of the UCCs in the Relevant Market.

79. Upon information and belief, HealthNow subscribers comprise approximately 50% of the persons in Genesee County, the Relevant Market, who have medical insurance.

80. It is and was the intent of HealthNow and United to enter into a contract, agreement or arrangement to restrain trade and/or prevent competition within the Relevant Market.

81. After negotiations between HealthNow and Insource broke off, a protracted period elapsed while Insource attempted to get HealthNow to return to the bargaining table.

82. The actions of United and HealthNow have caused Insource to be delayed more than two (2) years in opening its facility in Batavia, New York.

83. As a consequence, Insource has lost more than two (2) years of revenue from its Batavia UCC.

84. Since HealthNow is attempting to boycott or exclude Insource from the Relevant Market, HealthNow's subscribers cannot use their health insurance coverage to be treated at Insource's UCC.

85. HealthNow and United are continuing to prevent HealthNow subscribers from being treated at Insource's UCC.

86. Insource will continue to lose revenue because HealthNow subscribers will not be able to access the services provided by Insource at its UCC.

87. All the actions of United, HealthNow and their agents are directed to restricting competition and/or trade within the Relevant Market.

88. As a natural consequence, United and HealthNow's actions are reducing and will restrict the level of healthcare which is available to be provided to residents of Genesee County and the Relevant Market.

89. The actions of HealthNow and United are not reasonable or done for a proper business purpose.

90. On account of the foregoing, Insource has been damaged in an amount to be determined at the trial of this action.

COUNT II
15 U.S.C. §2

91. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

92. As previously alleged, Insource opened a UCC in Batavia, New York in mid-June 2013.

93. As previously alleged, there are presently two (2) other UCCs operating in the greater Batavia, Genesee County area.

94. As previously alleged, one (1) of the two (2) UCCs operating in the greater Batavia area is St. Jerome's UCC located in Batavia, which is operated by United.

95. As previously alleged, the second UCC in Genesee County is located in Leroy, New York and is also operated by United.

96. Both St. Jerome's and Leroy are frequently closed for unexplained reasons or open for only short hours.

97. Services at St. Jerome's and Leroy are limited and when these two UCCs are closed, patients are informed to visit the emergency room at United's acute care facility in Batavia.

98. United previously engaged in anti-competitive, exclusionary behavior in regards to Lakeside UCC in Leroy, New York.

99. United's actions were taken with the intent to create a monopoly in the Relevant Market.

100. Upon information and belief, United's actions did result in the closing of Lakeside UCC which gave United a monopoly in the Relevant Market.

101. As previously defined, the Relevant Market for purposes of this complaint is the city of Batavia and Genesee County, New York.

102. As previously defined, the Relevant Entities for purposes of competition are UCCs operating in Genesee County.

103. Until June 2013, United has had a monopoly within the Relevant Market.

104. It is the intent of United and HealthNow to create and/or maintain a monopoly for United in Genesee County by boycotting or excluding all other UCC's from the Relevant Market.

105. As previously alleged, in 2011 Insource and HealthNow were negotiating for rates for Insource's UCC to be located in Batavia.

106. Upon information and belief, before negotiations between HealthNow and Insource broke off in 2011, United, through its agents, had substantial discussions with HealthNow concerning the opening of a UCC by Insource in Batavia.

107. Upon information and belief, after those discussions, HealthNow and United entered into a vertical, collusive contract, agreement, arrangement or other means under which HealthNow and United agreed to restrict competition/trade in the Relevant Market.

108. United and HealthNow took these actions with the intent to create and/or maintain a monopoly for United within the Relevant Market in regard to UCCs.

109. Before 2013, United controlled 100% of the UCCs in the Relevant Market.

110. Upon information and belief, HealthNow subscribers comprise approximately 50% of the persons in Genesee County, the Relevant Market, who have private medical insurance.

111. After negotiations between HealthNow and Insource broke off, a protracted period elapsed while Insource attempted to get HealthNow to return to the bargaining table.

112. The actions of United and HealthNow have caused Insource to be delayed more than two years in opening its facility in Batavia, New York, which has maintained a monopoly for an additional two years for United within the Relevant Market.

113. HealthNow and United took all these actions with the intent of creating and/or maintaining a monopoly for United within the Relevant Market.

114. All the actions of United, HealthNow and their agents are directed to restricting competition/trade within the Relevant Market.

115. The actions of HealthNow and United are not reasonable or done for a proper business purpose.

116. As a consequence of the actions of HealthNow and United, Insource has lost more than two (2) years of revenue from its Batavia UCC.

117. As a consequence of the actions of HealthNow and United, Insource will continue to lose revenue because HealthNow subscribers will not be able to access the care provided by Insource at its UCC.

118. As a natural consequence of its actions, United and HealthNow's actions are reducing and will restrict the level of healthcare which is available to residents of Genesee County and the Relevant Market.

119. On account of the foregoing, Insource has been damaged in an amount to be determined at the trial of this action.

COUNT III
EQUITABLE RELIEF (INJUNCTIONS)

120. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

121. No previous application has been made for injunctive relief.

122. As previously alleged, Insource opened a UCC in Batavia, New York in mid-June 2013.

123. In 2011, Insource and HealthNow had almost completed negotiations for rates which would be paid to Insource by HealthNow for subscribers who were treated by Insource.

124. As previously alleged, prior to this time United through its agents had extensive conversations with HealthNow seeking the exclusion of Insource from the Relevant Market.

125. After United had those conversations through its agents with HealthNow, and as a direct result of the same, HealthNow broke off negotiations with Insource and attempted to exclude Insource from the Relevant Market.

126. After negotiations between HealthNow and Insource broke off, a protracted period elapsed while Insource attempted to get HealthNow to return to the bargaining table.

127. United and HealthNow entered into a collusive contract, agreement or arrangement with the intent to (1) restrain trade in the Relevant Market; and (2) to maintain and/or create a monopoly for United in the Relevant Market in regard to UCCs.

128. As Insource's UCC opens in Batavia, New York, there is no access to its facilities by HealthNow subscribers unless subscribers make a cash payment out of their own pockets to Insource.

129. Upon information and belief, approximately 50% of the persons in the Relevant Market who have health private insurance are subscribers of HealthNow.

130. This means that on a continuing basis, Insource will continue to lose substantial revenue since it is not able to treat the subscribers of HealthNow in the Relevant Market.

131. HealthNow is specifically taking the above referenced actions in combination with United to provide a monopoly to United for UCCs and restrict trade within the Relevant Market.

132. It is likely that Insource will succeed on its claims under 15 U.S.C. §1 and 15 U.S.C. §2 at trial.

133. It is difficult, if not impossible, to calculate the exact amount of subscribers of HealthNow who are and will be prevented from being treated by Insource and its medical professionals.

134. Because it is (1) difficult to determine precisely what potential patients of Insource with whom the defendants have interfered; (2) because it is difficult to determine what effect the actions of the defendants have had on the contractual relations of Insource in regards to specific patients; (3) because Insource will have no way to prove the number of patients lost; (4) because it will be extremely difficult to calculate the exact amount of lost profits which results

from the actions of the defendants; (5) because there exists great risk that Insource will suffer a crippling injury to its business, it is likely that Insource will suffer irreparable harm and injury which will not be compensable by monetary damages.

135. Consequently, Insource requests both a preliminary and a permanent injunction requiring the defendants, United and HealthNow, to cease and desist in their activities in contravention of 15 U.S.C. §1 and 15 U.S.C. §2 and preventing the defendants from acting in combination to restrain trade and/or create a monopoly for United in the Relevant Market.

COUNT IV
15 U.S.C. §15
ATTORNEY'S FEES

136. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

137. As previously alleged, the defendants have engaged in activities in contravention of 15 U.S.C. §1 and 15 U.S.C. §2.

138. 15 U.S.C. §15(a) states:

“Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover . . . a reasonable attorney’s fee.”

139. Therefore, if Insource is successful at trial in this matter it will be entitled to reasonable attorney’s fees.

140. On account of the foregoing, the Court should award to Insource its full attorney’s fees in prosecuting this civil action pursuant to 15 U.S.C. §1 and 15 U.S.C. §2.

COUNT V
15 U.S.C. §15
COSTS

141. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

142. 15 U.S.C. §15(a) states:

“Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover . . . the cost of suit...”

143. Therefore, if Insource should prevail at trial the Court should award the costs of its lawsuit to Insource.

144. On account of the foregoing, Insource is entitled to the costs of its suit after trial.

COUNT VI
15 U.S.C. §15
TREBLE DAMAGES

145. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

146. 15 U.S.C. §15(a) states:

“Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained...”

147. Therefore, if Insource succeeds at trial of this matter, the amount of damages incurred and proven by Insource shall be trebled.

148. On account of the foregoing, Insource is entitled to treble the amount of its actual damages proven at trial.

COUNT VII
PUNITIVE DAMAGES

149. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

150. The actions of both HealthNow and United were calculated to provide a monopoly to United in the Relevant Market.

151. The natural consequence of the actions of HealthNow and United is to reduce the amount of medical care which is available to persons who reside in the Relevant Market.

152. The natural consequence of the actions of HealthNow and United is to increase the cost of medical care which is available to persons who reside in the Relevant Market.

153. Upon information and belief, HealthNow's business plan does not provide for Insource to operate a UCC in the Relevant Market in competition with United, or at all.

154. The actions of HealthNow and United are not reasonable or done for a proper business purpose.

155. Because of the egregious, blatant and flagrant nature of the acts of HealthNow and United, Insource is entitled to Punitive Damages.

156. On account of the foregoing, Insource is entitled to Punitive Damages after the trial of this action.

PENDENT STATE LAW CLAIMS

COUNT VIII
MONOPOLY

NEW YORK GENERAL BUSINESS LAW §340

157. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

158. United previously engaged in anti-competitive, exclusionary behavior in regards to Lakeside UCC in Leroy, New York.

159. United's actions were taken with the intent to create a monopoly in the Relevant Market.

160. Upon information and belief, United's actions did result in the closing of Lakeside UCC which gave United a monopoly in the Relevant Market.

161. This demonstrates a pattern of behavior by United to exclude UCCs from the Relevant Market.

162. As previously alleged, Insource opened a UCC in Batavia, New York in mid-June 2013.

163. As previously alleged, in 2011, Insource and HealthNow had been extremely close to completing the negotiations for Insource to provide healthcare services to subscribers of HealthNow.

164. As previously alleged, upon information and belief, United, through its agents, had extensive discussions with HealthNow in which United, through its agents, attempted to prevent Insource from opening a UCC in the Relevant Market.

165. As a direct result of United's discussions with HealthNow, United and HealthNow entered into a contract, agreement or collusive arrangement under which United and

HealthNow attempted to (1) restrain trade in the Relevant Market; and (2) create and/or maintain a monopoly for United in the Relevant Market.

166. As Insource opens its UCC in Batavia, New York, it does not have an agreement to treat HealthNow subscribers.

167. Since there is no agreement between Insource and HealthNow, HealthNow subscribers cannot be treated at Insource's UCC unless they pay cash.

168. Since, upon information and belief, HealthNow subscribers comprise approximately 50% of the persons with medical insurance in Genesee County, the Relevant Market, HealthNow has the power to deny significant amounts of revenue to Insource.

169. HealthNow and United have acted in this manner in an attempt to (1) keep Insource from opening a UCC within the Relevant Market; and (2) to force any facility opened by Insource in the Relevant Market to close for lack of business.

170. HealthNow and United have taken these actions all in restraint of trade with the deliberate attempt to monopolize the UCC commercial business within the Relevant Market and to boycott and/or exclude Insource from being able to participate commercially in the Relevant Market.

171. On account of the foregoing, Insource has suffered damages in an amount to be determined at the trial of this action.

COUNT IX
ATTORNEY'S FEES
NEW YORK GENERAL BUSINESS LAW §340

172. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

173. New York State General Business Law §340(5) states :

“...any person who shall sustain damages by reason of any violation of this section, shall recover...reasonable attorney’s fees.”

174. Therefore, if Insource is successful at the trial of this action on its pendent state claims, it is entitled to recover reasonable attorney’s fees pursuant to state law.

175. On account of the foregoing, Insource is entitled to its full attorney’s fees after the trial of this action.

COUNT X
COSTS
NEW YORK GENERAL BUSINESS LAW §340

176. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

177. New York State General Business Law §340(5) states:

“...any person who shall sustain damages by reason of any violation of this section, shall recover...costs not exceeding \$10,000...”

178. Therefore, if Insource is successful after the trial of this action on its pendent state claims, it shall be entitled to its costs up to a maximum of \$10,000.

179. On account of the foregoing, Insource is entitled after the trial of this action to its actual costs of trying the action up to the maximum of \$10,000.

COUNT XI
STATE LAW TREBLE DAMAGES
NEW YORK GENERAL BUSINESS LAW §340

180. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

181. New York State General Business Law §340(5) states:

“...any person who shall sustain damages by reason of any violation of this section, shall recover three-fold the actual damages sustained thereby...”

182. Therefore, if Insource is successful at the trial of this action on its pendent state claims, it shall be entitled to its treble the amount of damages which are proven at trial.

183. On account of the foregoing, Insource is entitled to treble the damages which are proven at the trial of this action.

COUNT XII
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
AS AGAINST UNITED MEMORIAL MEDICAL CENTER

184. Insource hereby incorporates by reference all the foregoing paragraphs and further alleges as follows.

185. United, through its agents, has contacted numerous businesses and persons throughout Western New York with whom Insource has or is developing business relations.

186. United, through its agents has made disparaging and derogatory remarks against Insource in an attempt to interfere with Insource's contractual relations.

187. United is attempting to induce third parties from continuing with, or entering into further contractual agreements with Insource.

188. United's intent in these actions is to interfere with the business and contractual relations of Insource and prevent Insource's contractual partners from doing business with Insource.

189. United has undertaken these actions with the specific intent of damaging Insource and attempting to drive Insource out of business.

190. Upon information and belief, the actions of United have damaged Insource's contractual relations.

191. Upon information and belief, Insource has suffered monetary damages because of the actions of United.

192. On account of the foregoing, Insource is entitled to damages in an amount to be determined at the trial of this action.

COUNT XIII
FRAUDULENT INDUCEMENT/PROMISSORY ESTOPPEL
AS AGAINST HEALTHNOW NEW YORK, INC.

193. More than two (2) years ago Insource, through its agents, had meetings with HealthNow's agents about Insource's new telemedicine services.

194. HealthNow encouraged and asked Insource to develop that model and to open a UCC in the Batavia, New York area.

195. In direct response to these discussions with HealthNow, and based upon the promises made by HealthNow, Insource developed its plans for a UCC in Batavia, New York and expended substantial sums in developing those plans.

196. Insource and HealthNow then entered into negotiations for the amounts which would be paid to Insource for HealthNow subscribers who would be treated at Insource's UCC.

197. At that time, HealthNow was having discussions with United and its agents concerning Insource's opening of a UCC in Batavia.

198. As a direct result of the discussions between United and HealthNow, HealthNow, broke off negotiations with Insource and decided to boycott and/or exclude Insource from the Relevant Market.

199. As a consequence and direct result of the actions of HealthNow, and relying upon the statements of HealthNow, Insource expended significant amounts of money based on the representations and/or promises of HealthNow.

200. After negotiations between HealthNow and Insource broke off, a protracted period elapsed while Insource attempted to get HealthNow to return to the bargaining table.

201. As a consequence and direct result of the actions of HealthNow, Insource was delayed more than two years in opening its UCC and lost more than two years of revenue.

202. Additionally, Insource will continue to lose revenue since HealthNow's subscribers will not be able to visit Insource's UCC to obtain care and treatment.

203. On account of the foregoing, Insource is entitled to damages the amount of which will determined at the trial of this action.

WHEREFORE, plaintiff Insource Development Services of Batavia, LLC prays as follows:

A. That the Court award compensatory damages to the plaintiff and against the defendants jointly and severally in an amount to be determined at trial.

B. That the Court award compensatory damages to the plaintiff and against the defendants jointly and severally in an amount to be determined at trial.

C. That the Court grant a preliminary and a permanent injunction against the defendants jointly and severally requiring the defendants to cease and desist in their activities in contravention of 15 U.S.C. §§1 and 2 and preventing the defendants from acting in combination to restrain and/or create a monopoly for United in the Relevant Market.

D. That the Court award the plaintiff its full attorney's fees in prosecuting this civil action pursuant to 15 U.S.C. §15.

E. That pursuant to 15 U.S.C. §15 the Court award the plaintiff the costs of its suit after trial.

F. That pursuant to 15 U.S.C. §15 the Court award the plaintiff treble the amount of its actual damages in an amount to be proven at trial.

G. That the Court award Punitive Damages in an amount to be determined at the trial of this action.

H. That pursuant to New York General Business Law §340 the Court award compensatory damages to the plaintiff and against the defendants jointly and severally in an amount to be determined at the trial of this action.

I. That the Court award the plaintiff its full attorney's fees in prosecuting this civil action pursuant to New York General Business Law §340.

J. That the Court award the plaintiff the actual costs of its suit up to \$10,000 pursuant to New York State General Business Law §340.

K. That the Court award the plaintiff treble the amount of its actual damages after trial pursuant to New York State General Business Law §340.

L. That pursuant to New York State law the Court award compensatory damages to the plaintiff and against the defendant United Memorial Medical Center in an amount to be determined at the trial of this action.

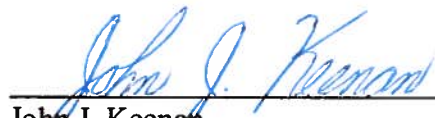
M. That pursuant to New York State law the Court award compensatory damages to the plaintiff and against the defendant HealthNow New York, Inc. in an amount to be determined at the trial of this action.

N. For any and all other relief to which the plaintiff may be entitled.

DATED: June 25, 2013
Buffalo, New York

COLUCCI & GALLAHER, P.C.

By:



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