

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

In re:	§	Chapter 7
	§	
LITTLE RIVER HEALTHCARE	§	Case No.
HOLDINGS, LLC, et al.,	§	18-60526-rbk
	§	
Debtors	§	(Jointly Administered)
<hr/>		
	§	
James Studensky, Chapter 7 Trustee	§	
For Little River Healthcare Holdings,	§	
LLC, et al.,	§	
	§	
Plaintiff	§	
	§	
v.	§	Adv. Proc. No.
	§	20-06093-rbk
UnitedHealthcare Insurance Company,	§	
UnitedHealthcare of Texas, Inc.,	§	
UnitedHealthcare Benefits of Texas,	§	
Inc., UnitedHealthcare Community	§	
Plan of Texas, L.L.C., et al.	§	
	§	
Defendants	§	

JEFF MADISON’S MOTION TO QUASH TRIAL SUBPOENA

Non-Party Jeffrey Paul Madison (hereinafter “Madison”) moves to quash a subpoena served on him by Defendants UnitedHealthcare Insurance Company, United Healthcare of Texas, Inc., UnitedHealthcare Benefits of Texas, Inc., UnitedHealthcare Community Plan of Texas, L.L.C. and other affiliated entities (hereinafter “UnitedHealthcare”). A copy of the subpoena is attached hereto as

Ex. A. The subpoena both (a) requires Madison to disclose information in violation of Madison's Fifth Amendment privilege against self-incrimination, and (b) presents an undue burden on Madison. It should be quashed. In the alternative, a protective order should be issued to modify Madison's compliance with the subpoena to accommodate Madison's Constitutional rights.

Rockdale Blackhawk, LLC, d/b/a Little River Healthcare (hereinafter "Little River") was a Texas limited liability company. Formed in 2006, the company is currently inactive. Little River was a rural CAH (Critical Access Hospital). Madison was a principal of Little River and functioned as its Chief Executive Officer. Little River and its affiliates filed for bankruptcy in 2018.

On August 24, 2020, the Chapter 7 Trustee (hereinafter "Trustee") initiated an adversary proceeding against UnitedHealthcare to recover amounts allegedly owed to the Debtors by UnitedHealthcare and to disallow claims held by UnitedHealthcare. *See* Dkt. 1. The Trustee and UnitedHealthcare dispute whether certain healthcare claims should have been paid by UnitedHealthcare or whether UnitedHealthcare properly denied such claims. *Id.*; *see also* Dkt. 126 at 2.

Madison was served with a subpoena by UnitedHealthcare to appear at trial in this matter beginning June 10, 2024. Madison, through his attorneys, conferred with UnitedHealthcare in a good faith effort to comply with the subpoena given Madison's pending criminal charges in *U.S. v. Hertzberg, et al.*, Case No. 6:22-cr-00003-JDK-JDL (E.D. Tex.), but those discussions have come to an impasse.

Criminal Charges Pending Against Madison

On January 13, 2022, Madison and eighteen others were charged in a one-count indictment with conspiracy to violate the Anti-Kickback Statute in connection with the referral of patients for laboratory testing at two Texas hospitals, Little River Healthcare ("Little River") and Stamford Hospital ("Stamford"). On January 13,

2022, a grand jury returned an indictment charging Jeff Madison and others with a single count of Conspiracy to Commit Illegal Remunerations in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1320a-7b (the “AKS”). *U.S. v. Hertzberg, et al.*, Case No. 6:22-cr-00003-JDK-JDL (E.D. Tex.), Dkt. 1. The Indictment alleges, in pertinent part, that Madison conspired to do the following:

- (a) To violate the Anti-Kickback statute by knowingly and willfully soliciting or receiving any remuneration, including any kickback, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring beneficiaries for the furnishing or arranging for the furnishing of any item or service or in return for or in return for ordering or recommending the ordering of any item or service for which payment may be made in whole or in part under a Federal health care program, in violation of 42 U.S.C. §§ 1320a-7b(b)(1)(A) and 1320a-7b(b)(1)(B); and
- (b) To violate the Anti-Kickback statute by knowingly and willfully offering or paying remuneration, including any kickback, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce the referral of beneficiaries for the furnishing or arranging for the furnishing of any item or service or to induce another person to order or arrange for or recommend the ordering of any item or service for which payment may be made in whole or in part under a Federal health care program, in violation of 42 U.S.C. §§ 1320a-7b(b)(2)(A) and 1320a-7b(b)(2)(B).

Id., Dkt. 1.

Beginning in 2011, Madison determined that Little River could earn revenue by recruiting physicians to affiliate with the hospital and order procedures under the hospital’s insurance contracts. Little River paid five different MSOs—interchangeably referred to as “marketers,”—to identify and recruit such physicians for the hospital. In support of the AKS theory, the Indictment alleges Little River paid marketers, who then paid managed services organizations (“MSOs”), who then paid physicians in exchange for those physicians referring laboratory samples to LRH. *Id.*

Trial on the Indictment commenced before Judge Kernodle on October 16, 2023. *Id.*, Dkt. 871. The trial continued through November 30, 2023, at which time the jury returned a guilty verdict as to Madison and the other four defendants that proceeded to trial. *Id.*, Dkt. 1020. Madison did not testify at trial.

On February 12, 2024, Madison filed a Rule 29 Motion for Judgment of Acquittal. *Id.*, Dkt. 1049. In it, Madison presented the following arguments:

- A. The Indictment was not brought within the statute of limitations.
 - 1. The case was indicted on January 13, 2022, and the applicable statute of limitation is five years.
 - 2. The statute of limitations begins to run after the last overt act in furtherance of the conspiracy, or when a participant withdraws from the conspiracy, whichever is earlier.
 - 3. The last overt act in the alleged LRH conspiracy was in December 2016.
 - 4. LRH withdrew from the alleged conspiracy by terminating its relationship with Ascend via the December 22, 2016, termination letter.
- B. Madison Relied Upon the Advice of Legal Counsel and Acted in Good Faith.
- C. The weight of the admissible and credible trial evidence preponderates against a guilty verdict.
 - 1. The Government Failed to Establish the Essential Elements of a Conspiracy Against Mr. Madison.
 - 2. The Government Failed to Present Credible Evidence that Mr. Madison Agreed to Violate the Anti-Kickback Statute.

Id.

Madison also joined the motions for new trial and judgments of acquittal filed by his co-defendants. *Id.*, Dkt. 1060. The government responded to Madison's motion on April 19, 2024. *Id.*, Dkt. 1132. On May 24, 2024, Madison filed his reply brief in support of his Rule 29 Motion for Judgment of Acquittal. *Id.*, Dkt. 1162. In

it, Madison presented the following reply arguments:

- A. The Indictment was not brought within the statute of limitations.
 - 1. The government's own witnesses established there was no single conspiracy.
 - 2. Because there was no single overarching conspiracy, the Government is reduced to relying on a single check – a check for which there is no evidence of knowing receipt by a coconspirator.
 - 3. LRH withdrew from the alleged conspiracy in December 2016.
- B. Madison reasonably relied upon the advice of legal counsel and acted in good faith.
- C. Other bases for acquittal.

Id., Dkt. 1162.

The court has yet to decide Madison's post-trial motions, nor has Madison been sentenced. If the district court denies Madison's post-trial motions, an appeal to the Fifth Circuit shall ensue. Thus, not only is there no final judgment in the district court, but the matter against Madison is far from complete.

Madison's Deposition

On May 25, 2022, Madison gave a deposition in a separate proceeding, captioned *James Studensky, Chapter 7 Trustee for Little River Healthcare Holdings, LLC, et al. v Blue Cross and Blue Shield of Texas*, Adversary Proceeding No. 20-06095. That adversary proceeding was initiated on September 14, 2020, less than a month after this separate proceeding was initiated on August 24, 2020.

Though initiated at around the same time, the two proceedings are entirely different matters regarding entirely different claims. The instant proceeding contains twelve causes of action, to wit:

- I. Breach of Contract – Failure to Pay for Services Provided to United Members

- II. Breach of Contract - Improper Recoupment
- III. United's Breach of the Covenant of Good Faith and Faith Dealing
- IV. United's Violations of Texas' Prompt Pay Statutes, TEX. INS. CODE §§ 843.336 et seq. and 1301.101 et seq. United's Unfair Claim Settlement Practices
- V. United's Violations of the Texas Free Enterprise and Antitrust Act
- VI. Defamation
- VII. Business Disparagement
- VIII. Tortious Interference with Existing Contracts
- IX. Common Law Claim for Unfair Competition
- X. Exemplary Damages
- XI. Declaratory Judgment

ECF No. 1262 at 12–23.

In the separate proceeding against BCBS, the causes of action were as follows:

- I. Business Disparagement
- II. Civil Conspiracy to Commit Business Disparagement, Tortious Interference with Existing Contracts, Unfair Competition, and Tortious Interference with Prospective Contracts Abuse of Process
- III. Tortious Interference with Existing Contracts
- IV. Tortious Interference of Prospective Contracts
- V. Common Law Claim for Unfair Competition Exemplary Damages
- VI. Declaratory Judgment

ECF No. 1277 at 17–25.

That the proceedings are two separate matters, involving two separate disputes, is significant since a witness' testimonial waiver of the Fifth Amendment privilege is only effective if it occurs in the same proceeding in which a party desires to compel the witness to testify. *See Mitchell v. U.S.*, 526 U.S. 314, 321 (1999)

(referencing “a single proceeding”) (citing *Rogers v. U.S.*, 340 U.S. 367, 373 (1951)); *U.S. v. Constantine*, 263 F.3d 1122, 1128 n.4 (10th Cir.2001). Even a second trial on the same indictment is a separate proceeding. *See, e.g., Crandell v. La. State Penitentiary*, No. 10-CV-1602, 2013 WL 4782818, at *10 (W.D. La. Sept. 6, 2013) (discussing the non-waiver of defendant’s Fifth Amendment privilege as to second trial by virtue of defendant’s testimony in first trial). And whether a waiver has occurred, or not, “applies to deposition testimony as well.” *Whitney Nat’l Bank v. Air Ambulance by B&C Flight Management, Inc.*, 2007 WL 1468417, at *3 (S.D. Tex. May 18, 2007) (citing *U.S. v. Hutchinson*, 22 F.3d 846, 852–53 (9th Cir. 1993), abrogated on other grounds *U.S. v. Yeung*, 672 F.3d 594 (9th Cir. 2012)).

And that a waiver can only occur in the same proceeding is logical as different proceedings present entirely different circumstances and, from a temporal standpoint, occur under a variety of circumstances and legal viewpoints. When Madison testified in the separate matter involving BCBS, it occurred a mere four months after he was indicted. At that time, Madison was confident the Indictment would be dismissed, and not only because of a lack of proof, but because the Indictment came after the statute of limitations ran out. *See, supra*, references to filings in *U.S. v. Hertzberg, et al.*, Case No. 6:22-cr-00003-JDK-JDL (E.D. Tex.), where Madison maintains his multiple defenses notwithstanding his conviction.¹

Now, over two years later, in this post-conviction posture, the weight of the Indictment against Madison is more significant. The risk and threat of prosecution is unquestionable. Though Madison testified before in a separate proceeding, he has a right to not testify in this one and intends to fully exercise that right.

¹ Madison will not go into the details of his criminal case and defenses here. What is clear is that the threat of prosecution, or re-prosecution, is real and that circumstances were far different for Madison when he gave a deposition in the separate BCBS matter over two years ago.

The Trial Subpoena

On April 11, 2024, counsel for UnitedHealthcare first contacted counsel for Madison regarding Madison’s prospective appearance at the trial of this matter. Several emails and telephone conferences ensued discussing Madison’s ongoing criminal matter, his Fifth Amendment rights associated with that matter, and prospective ways that UnitedHealthcare could obtain the information it needed while preserving Madison’s Fifth Amendment privilege and not imposing an undue burden on Madison in the process. This included the possibility that the parties stipulate to a series of questions propounded by UnitedHealthcare to which Madison would assert his Fifth Amendment privilege. Under this scenario, UnitedHealthcare receives the benefit of the negative inference that a Fifth Amendment assertion carries in a civil trial.² No agreement was reached and UnitedHealthcare did not disclose the information it intends to elicit from Madison.

Argument

Pursuant to Federal Rule of Bankruptcy Procedure 9016, Federal Rule of Civil Procedure 45 governs subpoenas applies to this proceeding. *See* Fed. R. Bankr. P. 9016. Pursuant to Federal Rule of Bankruptcy Procedure 7026, Federal Rule of Civil Procedure 26 governs the scope of discovery. *See* Fed. R. Bankr. P. 7026.

Rule 45 allows a party to move to quash or modify a subpoena if it “requires disclosure of privileged or other protected matter, if not exception or waiver

² The invocation of the Fifth Amendment privilege “is admissible if it is relevant and not otherwise prohibited by the rules.” *FDIC v. Fid. & Deposit Co. of Md.*, 45 F.3d 969, 977 (5th Cir. 1995) (citing Fed. R. Evid. 402). When a party testifies at a civil trial, admission of the privilege takes the form of an instruction that the jury may infer that the answer to a question as to which the party has invoked the privilege would be unfavorable to that party. *See Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). When a non-party witness at a civil trial invokes the privilege, an adverse inference instruction may also be given, provided there is corroborating evidence of the adverse facts to be inferred and those facts are otherwise admissible. *Fid. & Deposit Co. of Md.*, 45 F.3d at 977–78.

applies,” or if it “subjects a person to undue burden.”³ Fed. R. Civ. P. 45(d)(3)(iii)–(iv).

The Fifth Amendment provides that “(n)o person . . . shall be compelled in any criminal case to be a witness against himself . . .” U.S. Const. amend. V. This privilege against self-incrimination “can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory . . .” *Kastigar v. U.S.*, 406 U.S. 441, 444 (1972) cert. denied sub nom. *Adams Extract Co. v. Franey*, 449 U.S. 1102 (1981).

Madison may invoke the privilege when he “reasonably apprehends a risk of self-incrimination, . . . though no criminal charges are pending against him, . . . and even if the risk of prosecution is remote.” *In re Corrugated Container Anti-Tr. Litig.*, 620 F.2d 1086, 1091–92 (5th Cir. 1980) (quoting *Wehling v. Columbia Broadcasting System*, 608 F.2d 1084, 1087 n.5 (5th Cir. 1979) (citations omitted)). And the Fifth Amendment does not require Madison to “play the odds” of prosecution. *Hernandez v. Hankook Tire Am. Corp.*, No. 2:12-CV-03618-WMA, 2014 WL 3052545, at *3 (N.D. Ala. July 3, 2014) (citing *In re Corrugated Container*, 620 F.2d at 1091).

Nor should the court predict the likelihood of prosecution. *See, e.g., In re Corrugated Container*, 620 F.2d at 1091–92. The privilege must be sustained if it is not “perfectly clear” that the witness’s answers “cannot possibly” tend to incriminate. *Hoffman v. U.S.*, 341 U.S. 479, 488 (1951); *see U.S. v. Goodwin*, 625 F.2d 693, 700–01 (5th Cir. 1980). The court determines whether a witness’s silence is justified. *Roznovsky v. Estelle*, 546 F.2d. 1185, 1187 (5th Cir. 1977). Indeed, a

³ In determining whether a subpoena is unduly burdensome, courts consider the following factors: (1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed.” *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). The Court may also consider the expense and inconvenience to the non-party. *Id.*

court is to presume the reasonableness of Madison's claimed apprehension of prosecution unless genuine questions exist about the government's legal ability to prosecute. *See, e.g., U.S. v. Sharp*, 920 F.2d 1167, 1171 (4th Cir. 1990) (citing U.S. Const. Art. II, § 3 regarding the government's obligation to faithfully execute the laws).⁴ The Fifth Amendment may be asserted by Madison, who is under an indictment, until a sentence has been fixed and judgment of conviction is final. *See Mitchell v. U.S.*, 526 U.S. 314, 326 (1999). Madison has not been sentenced and any judgment of conviction that may be forthcoming is far from final.

A court normally evaluates any Fifth Amendment invocation on a question-by-question basis, asking: (1) is the answer sought incriminating on its face or in context (*e.g.*, inconsistent with previous sworn testimony); and (2) is the witness's asserted fear of criminal prosecution reasonable under the circumstances? *U.S. v. Redhead*, 194 Fed. Appx. 234, 236 (5th Cir. 2006) (citing *Hoffman*, 341 U.S. at 486–87; *Steinhrecher v. C.I.R.*, 712 F.2d 195, 198 (5th Cir. 1983)). This, of course, assumes that there is a line of questioning for Madison, or prospective topics for Madison, which do not implicate his Fifth Amendment privilege. That is not the case here as the entire proceeding, and UnitedHealthcare's entire line of questioning (whatever it may be), goes to the heart of that for which Madison is indicted.

Under the *Wehling* test, a court must ordinarily make two inquiries to determine whether a witness may assert the Fifth Amendment privilege and refuse to respond to questioning. First, the court determines whether answers *may tend to reveal* the witness engaged in criminal activities. If the answers could not possibly be incriminatory, the witness must answer. *Zicarelli v. N.J. State Comm'n of*

⁴ The court does not have the power to grant judicial immunity to Madison so that he may comply with the subpoena. The Fifth Circuit does not approve grants of judicial use immunity. *See e.g., U.S. v. L'Hoste*, 640 F.2d 693, 695 (5th Cir. 1981). The decision to confer witness immunity is for the executive branch and not the judiciary. *See, e.g., In re Corrugated Container*, 620 F.2d at 1094–95.

Investigation, 406 U.S. 472 (1972). “If answering the questions *might* incriminate the witness, the court must next ask whether there is a risk, even a remote risk, that the witness will be prosecuted for the criminal activities that his testimony might touch on.” *In re Corrugated Container*, 620 F.2d at 1091 (emphasis added).

(This determination does not depend) upon a judge’s prediction of the likelihood of prosecution. Rather, . . . it is only when there is but a fanciful possibility of prosecution that a claim of fifth amendment privilege is not well taken. . . . When a witness can demonstrate any possibility of prosecution which is more than fanciful he has demonstrated a reasonable fear of prosecution sufficient to meet constitutional muster.

Id. at 1091–92 (quoting *In re Folding Carton Antitrust Litigation*, 609 F.2d 867, 871 (7th Cir. 1979) (citations omitted)). Further, “the claim of privilege must be sustained if it is ‘evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result.’” *Steinbrecher*, 712 F.2d at 198 (citing *Hoffman*, 341 U.S. at 486–87).

Madison meets both requirements of this test. As UnitedHealthcare explained in a prior filing (Dkt. 233 at 2), UnitedHealthcare is defending against the Trustee’s claims by, *inter alia*, endeavoring to demonstrate that Little River paid illegal kickbacks to doctors through MSOs, outside laboratories performed some of the testing at issue, and the services billed were for patients that never physically visited Little River. UnitedHealthcare further asserts that non-party testimony, like that from Madison, is necessary to demonstrate these three points. Madison’s answers to questions may reveal that he violated federal and state law. The risk that Madison will be prosecuted for such crimes is a certainty—he already has been. If a new trial is granted to Madison, by the district court or the Fifth Circuit, there is no reason to believe the government will not try the case again. But “[n]either the practical

unlikelihood of . . . prosecution, nor the Assistant United States Attorney’s denial of an intention to charge [the witness], negate[s the witness’s] privilege.” *U.S. v. Johnson*, 488 F.2d 1206, 1209 n.2 (1st Cir. 1973); *see U.S. v. D’Apice*, 664 F.2d 75 (5th Cir. 1981).

A Court can quash on a subpoena if it seeks information outside the scope of the proceeding. *See, e.g., In re Interventional Pain Assocs., P.A.*, 510 F. Supp. 3d 448, 450 (W.D. Tex. 2021) (quashing subpoena on the grounds it is “neither relevant nor proportional to the needs of the case.”). “Rule 26’s relevance and proportionality requirements apply equally in the context of Rule 45 motions to avoid imposing any undue burden or expense on the person or entity subject to the subpoena.” *Id.* Courts also disapprove of the use of subpoenas on witnesses who will not present relevant evidence in the matter. *See, e.g., Fintiv, Inc. v. STMicroelectronics, Inc.*, No. 1:21-cv-00044-ADA, 2021 WL 2784560, at *2 (W.D. Tex. Apr. 20, 2021). Any line of questioning that remotely implicates Madison’s Fifth Amendment privilege is clearly outside the scope of the proceeding.

If the court does not quash the subpoena, it should order that Madison’s compliance therewith is conditioned on UnitedHealthcare’s pre-trial and/or pre-testimonial production of specific questions that (1) are clearly germane to the proceedings; (2) are not adequately addressed by a prospective stipulation; (3) are not adequately addressed by other witnesses or documentary evidence; and (4) do not implicate Madison’s Fifth Amendment privilege.⁵ Amidst Madison’s interactions with UnitedHealthcare, UnitedHealthcare has refused to provide questions or otherwise identify the nature of the information it intends to seek from Madison such that the above assurances can be met.

⁵ An *in camera* review, under seal, is also an available remedy to the court. *Goodwin*, 625 F.2d at 693.

CONCLUSION

For the reasons addressed above, Madison respectfully requests that the motion be granted, and the subpoena be quashed. In the alternative, Madison requests that his compliance with the subpoena be made contingent upon UnitedHealthcare's production of specific questions that (1) are clearly germane to the proceedings; (2) are not adequately addressed by a prospective stipulation; (3) are not adequately addressed by other witnesses or documentary evidence; and (4) do not implicate Madison's Fifth Amendment privilege.

Dated: June 10, 2024

Respectfully submitted,

PNT LAW FIRM

Christopher L. Peele
Texas Bar No. 24013308

/s/ Austin R. Nimocks
Austin R. Nimocks
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ATTORNEYS FOR NON-PARTY,
JEFFERY PAUL MADISON

CERTIFICATE OF SERVICE

I hereby Certify that on this 10th day of June, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/EMF system which served the same on all counsel of record.

/s/ Austin R. Nimocks
Austin R. Nimocks

Exhibit A

UNITED STATES BANKRUPTCY COURT

Western

District of

Texas Waco Division

In re Little River Healthcare Holdings, LLC, et al.

Debtor

Case No. 18-60253-rbk

(Complete if issued in an adversary proceeding)
James Studensky, Chapter 7 Trustee for Little River
Healthcare Holdings, LLC et al.,

Plaintiff

Chapter 7

UnitedHealthcare Insurance Company, et al.

Defendant

Adv. Proc. No. 20-AP-06093

SUBPOENA TO APPEAR AND TESTIFY

AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

Jeffrey Madison c/o Austin R. Nimocks, PNT Law Firm, 206 Wild Basin Rd. S., Bldg. A, Ste. 206,

To: Austin, TX 78746

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE 800 Franklin Avenue Suite 140 Waco, TX 76701	COURTROOM 1
	DATE AND TIME 6/10-21/2024 at 9:00am

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 6/4/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Kyle D. Nelson

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) UnitedHealthcare Insurance Company, et al., who issues or requests this subpoena, are:

Kyle Nelson, 800 LaSalle Ave., Suite 2800, Minneapolis, MN 55402 knelson@robinskaplan.com 612-349-8500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Exhibit B

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

In re:	§	Chapter 7
	§	
LITTLE RIVER HEALTHCARE	§	Case No.
HOLDINGS, LLC, et al.,	§	18-60526-rbk
	§	
Debtors	§	(Jointly Administered)
<hr/>		
	§	
James Studensky, Chapter 7 Trustee	§	
For Little River Healthcare Holdings,	§	
LLC, et al.,	§	
	§	
Plaintiff	§	
	§	
v.	§	Adv. Proc. No.
	§	20-06093-rbk
UnitedHealthcare Insurance Company,	§	
UnitedHealthcare of Texas, Inc.,	§	
UnitedHealthcare Benefits of Texas,	§	
Inc., UnitedHealthcare Community	§	
Plan of Texas, L.L.C., et al.	§	
	§	
Defendants	§	

**[PROPOSED] ORDER GRATING JEFF MADISON’S
MOTION TO QUASH TRIAL SUBPOENA**

Upon the June 10, 2024 motion filed by Non-Party Jeffrey Paul Madison to quash Defendants’ June 4, 2024 subpoena to testify at the trial of this matter, and pursuant to Federal Rules of Bankruptcy Procedure 7030 and 9016 and Federal Rule of Civil Procedure 45;

IT IS HEREBY ORDERED that Madison's motion to quash is granted.

DATED this the _____ day of June, 2024.

HON. RONALD B. KING

Prepared and submitted by:

PNT LAW FIRM

Christopher L. Peele
Texas Bar No. 24013308

/s/ Austin R. Nimocks
Austin R. Nimocks
Texas Bar No. 24002695

206 Wild Basin Road S.
Bldg. A, Ste. 206
Austin, Texas 78746
(512) 522-4893 (phone)
chris@pntlawfirm.com
austin@pntlawfirm.com

ATTORNEYS FOR NON-PARTY,
JEFFERY PAUL MADISON

Exhibit A

UNITED STATES BANKRUPTCY COURT

Western

District of

Texas Waco Division

In re Little River Healthcare Holdings, LLC, et al.

Debtor

Case No. 18-60253-rbk

(Complete if issued in an adversary proceeding)
James Studensky, Chapter 7 Trustee for Little River
Healthcare Holdings, LLC et al.,

Plaintiff

Chapter 7

UnitedHealthcare Insurance Company, et al.

Defendant

Adv. Proc. No. 20-AP-06093

SUBPOENA TO APPEAR AND TESTIFY

AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

Jeffrey Madison c/o Austin R. Nimocks, PNT Law Firm, 206 Wild Basin Rd. S., Bldg. A, Ste. 206,

To: Austin, TX 78746

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE 800 Franklin Avenue Suite 140 Waco, TX 76701	COURTROOM 1
	DATE AND TIME 6/10-21/2024 at 9:00am

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 6/4/2024

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Kyle D. Nelson

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) UnitedHealthcare Insurance Company, et al., who issues or requests this subpoena, are:

Kyle Nelson, 800 LaSalle Ave., Suite 2800, Minneapolis, MN 55402 knelson@robinskaplan.com 612-349-8500

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

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WESTERN DISTRICT OF TEXAS
WACO DIVISION

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HOLDINGS, LLC, et al.,	§	18-60526-rbk
	§	
Debtors	§	(Jointly Administered)
<hr/>		
	§	
James Studensky, Chapter 7 Trustee	§	
For Little River Healthcare Holdings,	§	
LLC, et al.,	§	
	§	
Plaintiff	§	
	§	
v.	§	Adv. Proc. No.
	§	20-06093-rbk
UnitedHealthcare Insurance Company,	§	
UnitedHealthcare of Texas, Inc.,	§	
UnitedHealthcare Benefits of Texas,	§	
Inc., UnitedHealthcare Community	§	
Plan of Texas, L.L.C., et al.	§	
	§	
Defendants	§	

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Prepared and submitted by:

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Christopher L. Peele
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/s/ Austin R. Nimocks
Austin R. Nimocks
Texas Bar No. 24002695

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(512) 522-4893 (phone)
chris@pntlawfirm.com
austin@pntlawfirm.com

ATTORNEYS FOR NON-PARTY,
JEFFERY PAUL MADISON

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

In re:	§	Chapter 7
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LITTLE RIVER HEALTHCARE	§	Case No.
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