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## **TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF**

**United Health, as a plan administrator of many ERISA governed benefit plans refused to pay a facility fee to out-of-network physicians performing surgery at their own medical offices contending that none of their plans stated that a physician's office qualified as a "facility," which would have entitled them to receive a separate facility fee.**

**This determination was challenged by MSSNY and the Society which represented office-based surgical facilities. A five-day trial ensued in the federal court and resulted in a victory for the carrier.**

**The facts emerging during the trial showed that United administered many ERISA governed health plans and that all had distinguished between "facilities" and "physician offices" and that none stated that a physician's office was a "facility."**

**Medicare rules provide for a global professional fee for an office-based surgery which includes a component for one's practice expenses and the global professional fee is reduced when the surgery is performed in either a hospital or ambulatory surgical facility to allow for the facility to recoup some of its expenses. In the office -based scenario the enhanced fee is**

meant to include expenses related to the in-office base surgery and thus no separate facility fee need be offered.

Plaintiffs contended that United had failed to adequately review their plans to decide whether physician offices should not be entitled to qualify for a separate facility fee.

The trial court reviewed the legal standard for ERISA claims and found that the plan administrator has discretion to interpret a plan's terms and that only a showing that a denial was both arbitrary and capricious would overturn a denial. The administrator was charged with the responsibility of having reasonable procedures and if the same were fulfilled the administrator had performed its function.

The court found that Plaintiffs had failed to overcome these difficult hurdles and further that none of the plans in question had specifically required United to pay facility fee to a physician's office and in many such payment was specifically prohibited.

*Respectfully submitted,*

*Schaum Law Offices*