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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

It is a safe assumption that in most cases involving negligence issues the defendant would prefer to have the case tried in a federal court, if possible, while for the plaintiff the corollary is true. The basic reason- money verdicts are more conservative in jury trials. The drawback for the defendant is that the cases seem to be tried more quickly on the federal trial calendar.

Entry to the federal system is not available to all litigants as certain basic hurdles must be overcome to gain access to this venue. With this preamble we discuss a recent case wherein a hospital found itself a defendant in Kings County, a venue noted for its juries being generous to plaintiffs. The plaintiff had been hospitalized and alleged negligent care resulting in bed sores.

The defendant did its homework and attempted to move the matter to the federal court citing a relatively new federal law which limited liability for injuries related to countermeasures during a public health emergency. In addition, a motion was made to dismiss the case under a New York statute which immunized health care facilities from decisions made as a result of COVID-19.

The federal court examined the complaint, and the underlying facts, and ruled that the federal court was not available to the defendant hospital in this matter. The injuries claimed were “common type” and not related to health care decisions related to the COVID outbreak. The claim for gross

negligence stripped the hospital of the protection of the New York statute as the New York law allowed that claim to be sufficient to strip immunization under the statute.

The hospital pursued an appeal to the Second Circuit Court of Appeals but was unsuccessful as the Court held that Congress did not intend to eliminate state causes of action for non-immunized claims. The Appeals Court also rejected the hospital's claim that it was appropriately in the federal system as it might have a defense under a federal statute as this alone does not give rise to federal court jurisdiction.

Respectfully submitted,

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