IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

UNITEDHEALTH GROUP INCORPORATED, UNITED HEALTHCARE SERVICES, INC., and OPTUM, INC.,	)	
Plaintiffs,	)	C.A. No. N25C-06-042 CLS
v.	)	
GUARDIAN NEWS & MEDIA LLC d/b/a THE GUARDIAN, GUARDIAN NEWS & MEDIA LTD., and GUARDIAN MEDIA GROUP PLC.,	)	
Defendants.	)	

Date Submitted: April 28, 2026
Date Decided: July 20, 2026

MEMORANDUM OPINION

Upon Defendants' Motions to Dismiss, **GRANTED**.

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SCOTT, J.

This defamation action arises from an article (the "Article") published online by news outlet, The Guardian.[1] UnitedHealth Group Incorporated ("United"), United Healthcare Services, Inc. ("United Healthcare"), and Optum, Inc. ("Optum") (collectively, "United," "United Plaintiffs," or "Plaintiffs") are companies comprising one of the nation's largest healthcare conglomerates. The Article reports that United has been secretly paying nursing home employees bonuses to reduce hospital transfers of United Medicare/Medicaid patients.

Plaintiffs filed a Complaint against the Guardian News & Media LLC (the "Guardian U.S."), and its United Kingdom parent companies (collectively, "Defendants"), Guardian News & Media Ltd. ("GNM") and Guardian Media Group Plc. ("GMG") (collectively, the "Guardian U.K." or "Guardian U.K. Defendants"), alleging that the Article is defamatory and defamatory by implication.

The Guardian U.S. filed a Motion to Dismiss under Superior Court Civil Rule 12(b)(6). The Guardian U.K. Defendants filed a Motion to Dismiss under Rule 12(b)(2) or alternatively, Rule 12(b)(6). For the following reasons, after reviewing of the Article, the parties' briefing, and oral argument, the Defendants' Motions to Dismiss are **GRANTED**.

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[1] Compl., D.I. 1, Ex. A; George Joseph, *Revealed: UnitedHealth Secretly Paid Nursing Home to Reduce Hospital Transfers*, THE GUARDIAN (May 21, 2025, 11:45 a.m.), https://www.theguardian.com/us-news/2025/may/21/unitedhealth-nursing-homes-payments-hospital-transfers [hereinafter Article].

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

A. THE PARTIES

Plaintiffs are a group of entities that work together to provide healthcare products and healthcare services.[3] Plaintiff United is incorporated in Delaware with its principal place of business in Minnesota.[4] Plaintiff United Healthcare is a subsidiary of United that is incorporated in, and operates its principal place of business in, Minnesota.[5] Plaintiff Optum is also a subsidiary of United that is incorporated in Delaware with its principal place of business in Minnesota.[6]

Defendants "are a group of corporate entities that control, operate, and publish the global media outlet, The Guardian."[7] Defendant Guardian U.S. is incorporated in Delaware with its principal place of business in New York.[8] The Guardian U.S. controls and manages The Guardian's operations in the United States.[9] The Guardian U.S. is a subsidiary Defendant GNM.[10] GNM is incorporated under the laws of, and has its principal place of business in, the United Kingdom.[11] GNM is a

[2] The facts are drawn from the allegations in the Complaint and are assumed to be true and undisputed for the purposes of the Motions to Dismiss. *See generally* Compl.
[3] *Id.* ¶ 23.
[4] *Id.*
[5] *Id.* ¶ 24.
[6] *Id.* ¶ 25.
[7] *Id.* ¶ 27.
[8] *Id.* ¶¶ 28–29.
[9] *Id.* ¶ 28.
[10] *Id.*
[11] *Id.* ¶ 30.

subsidiary of Defendant GMG.[12] GMG is also incorporated under the laws of, and has its principal place of business in, the United Kingdom.[13]

B. UNITED'S INSTITUTIONAL SPECIAL NEEDS PLAN ("I-SNP")

According to United, "[a]voidable hospitalization amongst nursing home residents is a major public health issue."[14] Elderly nursing home residents are vulnerable to severe, life-threatening complications when hospitalized for an extended period.[15] So when the U.S. Department of Health and Human Services started focusing on reducing hospitalization-associated infections in 2014-2015, United implemented its UnitedHealthcare Nursing Home Plan, an I-SNP "offered to Medicare-eligible individuals who reside in Skilled Nursing Facilities ("SNF")."[16] "Through this program, Optum helps SNFs identify changes in patient conditions earlier, and monitor, assess and identify health concerns before they become serious."[17] As a part of the program, Optum's clinicians "provide in-person . . . assistance to deliver skilled care to residents, and 24/7 support for the SNFs' medical staff to ensure I-SNP members have timely assistance when needed."[18] This includes Optum providing "residents with a dedicated nurse practitioner to

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[12] *Id.* ¶ 31.
[13] *Id.*
[14] *Id.* ¶ 54.
[15] *Id.* ¶¶ 54–57.
[16] *Id.* ¶¶ 57–58.
[17] *Id.* ¶ 59.
[18] *Id.*

coordinate a resident's healthcare and prescription drug use amongst the resident's" care team.[19]

United's I-SNP has led to a reduction in avoidable hospitalizations, re-hospitalization, and emergency visits.[20] United alleges that the results stem from "innovative methods used to encourage SNFs to improve the quality of onsite care and prevent avoidable hospitalizations."[21] In addition to Optum clinician assistance, such innovative methods include "paying incentives to SNFs when" I-SNP members adhere to medication plans, receive vaccinations, and "SNFs prevent avoidable hospitalizations as measured by" admits per thousand ("APK").[22] The Complaint asserts that while "the specifics of each SNF contract may not be publicly disclosed, there is nothing secret about this payment structure" as it follows a payment reform initiative from the Centers for Medicare & Medicaid Services ("CMS") to reduce avoidable hospitalization in elderly patients ("CMS Initiative").[23]

The SNFs receive payment incentives based on United's Premium Dividend Program.[24] The incentives received depend on whether the SNFs meet "certain quality metrics[,] including reducing the number of avoidable hospitalizations[] or

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[19] *Id.*
[20] *Id.* ¶ 60.
[21] *Id.* ¶ 61.
[22] *Id.* ¶ 62(a)–(f).
[23] *Id.* ¶ 63 n.53 (citing *Phase Two: Payment Reform*, CTRS. FOR MEDICARE & MEDICAID SERVS. (August 27, 2015) https://www.cms.gov/medicare/medicaid-coordination/reduce-avoidable-hospitalizations/payment-reform) [hereinafter CMS Initiative].
[24] *Id.* ¶ 85.

increasing vaccinations."[25] These incentives are based on SNF performance per quality metric, and constitute an addition to base contractual payments.[26] The quality metrics and incentive-based payments for I-SNPs are "not only used to save money[,]" but "because they work[] . . . and improve the quality of care for patients."[27]

C. THE ARTICLE

In May 2025, the Guardian U.S. published the Article on The Guardian's website.[28] The Article, titled "Revealed: UnitedHealth secretly paid nursing homes to reduce hospital transfers[,]" reports on United's I-SNP and the effects that incentivizing SNF staffers with bonuses to reduce hospitalizations has had on patient health and care decisions.[29] The Article states that the payment incentives to reduce hospitalizations is "part of a series of cost-cutting tactics that has saved the company millions, but at times risked residents' health[.]"[30] The Guardian wrote the Article following an investigation into confidential corporate and patient records; public records requests and court files, including a complaint filed in a Georgia District Court, *United States v. UnitedHealthcare of Georgia, Inc.* ("Gonite Complaint");[31]

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[25] *Id.*
[26] *Id.*
[27] *Id.* ¶ 63.
[28] *See generally* Article.
[29] *Id.*
[30] *Id.* at 1.
[31] *See generally* Am. Compl., *United States v. United Healthcare of Georgia, Inc.*, No. 5:19-cv-00246-MTT (D. Ga. July 30, 2024) [hereinafter Gonite Compl.].

interviews with current and former United and nursing home employees; and two whistleblower declarations.[32]

D. Procedural History

The United Plaintiffs filed a Complaint on June 4, 2025, alleging that the Article is defamatory for "falsely and categorically" asserting that its "efforts to avoid dangerous and preventable hospitalizations for nursing home patients" through its I-SNP "have harmed patients by denying them the care they needed."[33] United designates twelve (12) statements from the Article as defamatory.[34] The Complaint asserts six causes of action: Counts I, III, and V for defamation, and Counts II, IV, and VI for defamation by implication.[35] The defamation by implication claims concern the same statements from Counts I, III, and IV.[36] United alleges that the Article has caused it to lose business opportunities and damaged its reputation.[37]

On September 3, 2025, the Guardian U.S. filed a Motion to Dismiss, contending that the Article is neither defamatory nor defamatory by implication under Rule 12(b)(6).[38] On October 9, 2025, the Guardian U.K. filed a Motion to

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[32] Article at 1.
[33] Compl. ¶ 64.
[34] *See generally id.*; Article.
[35] *See generally* Compl.
[36] *Id.*
[37] *Id.*
[38] *See generally* Def. The Guardian U.S.'s Opening Br. in Support of its Mot. to Dismiss, D.I. 19 [hereinafter Guardian U.S. Opening Br.].

Dismiss for lack of personal jurisdiction under Rule 12(b)(2) or alternatively, that there are no actionable defamation claims under Rule 12(b)(6).[39] The United Plaintiffs filed their Responses in Opposition on November 25, 2025.[40] Defendants filed their Replies on December 19, 2025.[41] The Court held oral argument on April 28, 2026. The matter is now ripe for decision.

II. THE PARTIES' CONTENTIONS

The Guardian U.S. first argues that New York law applies under the facts of this case. Substantively, the Guardian U.S. posits that, "[s]imply put, [United] do[es] not like how The Guardian reported on the I-SNP program. But that is not enough to plead defamation or defamation by implication."[42] Specifically, the Guardian U.S. contends that Count I does not sufficiently plead defamation because the statement is incapable of defamatory meaning. Next, it argues that Counts III and V of the Complaint fail to state a claim for defamation because the statements proffered are substantially true. The Guardian U.S. further claims that Counts V and VI of the Complaint are privileged as a fair report of the Gonite Complaint. Finally, the

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[39] *See generally* Defs. Guardian News & Media Ltd. & Guardian Media Group Plc.'s Opening Br. in Support of their Mot. to Dismiss, D.I. 33 [hereinafter Guardian U.K. Opening Br.].

[40] *See generally* Pls.' Opp'n to Mot. Dismiss of Guardian News & Media LLC, D.I. 36 [hereinafter Guardian U.S. Answering Br.]; Pls.' Opp'n to Mot. to Dismiss of the Guardian News & Media Ltd. & Guardian Media Group Plc., D.I. 37 [hereinafter Guardian U.K. Answering Br.].

[41] *See generally* Def. The Guardian U.S.'s Reply Br. in Further Support of its Mot. to Dismiss, D.I. 38 [hereinafter Guardian U.S. Reply Br.]; Defs. Guardian News & Media Ltd. & Guardian Media Group Plc.'s Reply Br. in Further Support of its Mot. to Dismiss, D.I. 39 [hereinafter Guardian U.K. Reply Br.].

[42] Guardian U.S. Opening Br. at 3.

Guardian U.S. asserts that Counts II, IV, and VI for defamation by implication fail because the Article "reports truthful facts and reaches truthful conclusions about" United, which is "not defamation by implication; it is criticism."[43]

In contrast, United argues that the Court should "reserve" a decision on the applicable law but otherwise asserts that there is no actual conflict between New York and Delaware defamation law.[44] United also posits that it adequately pleads the falsity of the statements and defamatory meaning. United claims that the fair report privilege does not apply because the statement from Counts V and VI is outside the scope of the privilege and the statement is not accurate. Lastly, United briefly addresses that the claims for defamation by implication are sufficiently pled as the statements give rise to false impressions.

The parties do not dispute that this Court has jurisdiction over the Guardian U.S., but in their Motion to Dismiss, the Guardian U.K. Defendants argue that the Court lacks specific personal jurisdiction over them based on their involvement in the publication of the Article. Alternatively, while incorporating the merits of the Guardian U.S.'s Rule 12(b)(6) argument,[45] the Guardian U.K. Defendants proffer that the Complaint fails for improper group pleading and failure to plead actual malice against them. United claims that the Court may exercise specific personal

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[43] *Id.* at 34.
[44] Guardian U.S. Answering Br. at 15.
[45] Guardian U.K. Opening Br. at 27 n.9.

jurisdiction over the Guardian U.K. Defendants as parent companies transacting business through the Guardian U.S., and because they caused tortious injury in Delaware. The United Plaintiffs otherwise contend that they sufficiently state a claim against the Guardian U.K. under Rule 12(b)(6).

III. STANDARD OF REVIEW

Upon a motion to dismiss under Superior Court Civil Rule 12(b)(6), the Court (i) accepts all well-pled factual allegations as true, (ii) accepts even vague allegations as well-pled if they give the opposing party notice of the claim, (iii) draws all reasonable inferences in favor of the non-moving party, and (iv) only dismisses a case where the plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[46] The Court does not, however, accept "conclusory allegations that lack specific supporting factual allegations."[47] But "it is appropriate . . . to give the pleader the benefit of all reasonable inferences that can be drawn from the pleading."[48]

IV. DISCUSSION

The Motions to Dismiss can be resolved based on the Guardian U.S.'s Motion to Dismiss under Rule 12(b)(6) as the Complaint fails to state claims for defamation

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[46] *ET Aggregator, LLC v. PFJE AssetCo Hldgs. LLC*, 2023 WL 8535181, at *6 (Del. Super. Dec. 8, 2023).
[47] *Id*. (quoting *Ramunno v. Crawley*, 705 A.2d 1029, 1034 (Del. 1998)).
[48] *TrueBlue Inc. v. Leeds Equity Partners IV, LP*, 2015 WL 5968726, at *2 (Del. Super. Sept. 25, 2015) (quotation omitted).

and defamation by implication. Accordingly, the Court does not address the merits of the Guardian U.K.'s personal jurisdiction argument. Turning to the issues raised in the Guardian U.S.'s Motion to Dismiss, the Court first addresses the choice-of-law issue raised by the Guardian U.S. that New York law applies here.

A. Choice of Law

The Court will apply New York substantive and Delaware procedural law for purposes of the Motions to Dismiss given that the parties "have not presented a fully-developed choice-of-law analysis[,]" but primarily "briefed the motion to dismiss under New York law[.]"[49] The Court notes, however, that the majority of the issues raised can be resolved under federal, New York, and Delaware law yielding the same results.[50] But for purposes of the fair report privilege and both parties arguments on the issue being briefed under New York law, the Court applies New York's fair report privilege.

B. Defamation & Defamation by Implication

To establish a claim for defamation per se under New York law, the plaintiff must plead: "(i) a false statement; (ii) publication; (iii) fault; . . . (iv) one of four per se injuries[;]" and (v) the statement must be "of and concerning the plaintiff."[51]

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[49] *Harbone v. Dow Jones & Co., Inc.*, 2024 WL 5200947, at *8 (Del. Super. Dec. 23, 2024).
[50] *Toptal, LLC v. Bloomberg L.P.*, 2025 WL 2172609, at *3 (Del. Super. July 31, 2025) (quoting *Vichi v. Koninklijke Philips Elecs., N.V.*, 85 A.3d 725, 773–74 (Del. Ch. 2014)) ("A genuine conflict does not exist 'if application of the competing laws would yield the same result.'").
[51] *U.S. Dominion, Inc. v. Fox News Network, LLC*, 2021 WL 5984265, at *21 (citing *Kasavana v. Vela*, 100 N.Y.S.3d 82, 85–86 (N.Y. App. Div. 2019); *Chicherchia v. Cleary*, 616 N.Y.S.2d 647,

"Defamation by implication is premised not on direct statements but on false suggestions, impressions and implications arising from otherwise truthful statements."[52] To establish a claim for defamation by implication "where the factual statements at issue are substantially true, the plaintiff must make a rigorous showing that the language of the communication as a whole can be reasonably read both to impart a defamatory inference and to affirmatively suggest that the author intended or endorsed that inference."[53] Under both Delaware and New York law, the actual malice standard is heightened for defamation by implication claims.[54]

The Court notes that there is a "high bar that must be cleared for a court to grant dismissal."[55] But "[e]arly dismissal of defamation lawsuits for failure to state a claim on which relief can be granted" to "not only protects against the costs of meritless litigation, but provides assurance to those exercising their First

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648 (N.Y. App. Div. 1994)); *accord Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022) (quoting *Doe v. Cahill*, 884 A.2d 451, 463 (Del. 2005)) (pleading a claim for defamation under Delaware law requires that: "1) the defendant made a defamatory statement; 2) concerning the plaintiff; 3) the statement was published; and 4) a third party would understand the character of the communication as defamatory") (internal quotation marks omitted).

[52] *Stepanov v. Dow Jones & Co., Inc.*, 987 N.Y.S.2d 37, 42 (N.Y. App. Div. 2014) (quoting *Armstrong v. Simon & Schuster*, 649 N.E.2d 825, 829 (N.Y. 1995)) (internal quotation marks omitted).

[53] *Id.* at 44 (noting that the rule balances the rights of plaintiffs seeking recovery for defamation and the "defendant's First Amendment protection for publishing substantially truthful statements"); *accord ShotSpotter Inc. v. VICE Media, LLC*, 2022 WL 2373418, at *14 (Del. Super. June 30, 2022) (stating that "the standard for malice is heightened in a defamation by implication claim[,]" which requires establishing falsity and the defendants intent or reckless disregard in communicating the defamatory meaning).

[54] *ShotSpotter Inc.*, 2022 WL 2373418, at *14; *Stepanov*, 987 N.Y.S.2d at 44.

[55] *ShotSpotter Inc*, 2022 WL 2373418, at *6.

Amendment rights that doing so will not needlessly become prohibitively expensive."[56]

1. COUNTS I AND II ARE DISMISSED.

The Guardian U.S. argues that Count I is not capable of defamatory meaning in the context of which it is presented. Further, the Guardian U.S. claims that because it is not defamatory on its face, it is not defamatory by implication. United contends that the statement is plainly defamatory and that context shows the Guardian U.S. "intended to impart this defamatory conclusion."[57]

a. Count I is not capable of defamatory meaning.

A statement is defamatory when it tends to "arouse in the mind of the average person in the community an evil or unsavory opinion []or expose plaintiff to public hatred, contempt, or aversion."[58] "It is for the Court in the first instance to determine whether the printed words are susceptible to the particular defamatory meaning ascribed to them by plaintiff."[59] The inquiry is premised on the ordinary meaning

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[56] *Id.* (quoting *Owens v. Lead Stories, LLC*, 2021 WL 3076686, at *9 (Del. Super. July 20, 2021), *aff'd*, 273 A.3d 275, 2022 WL 521388 (Del. Feb. 22, 2022) (TABLE)) (internal quotation marks omitted).

[57] Guardian U.S. Answering Br. at 32.

[58] *Pritchard v. Herald Co.*, 503 N.Y.S.2d 460, 462 (N.Y. App. Div. 1986) (citing *Rinaldi v. Holt, Rinehart & Winston, Inc.*, 366 N.E.2d 1299, 1305 (N.Y. 1977), *cert. denied*, 434 U.S. 969 (1977); *accord Cousins v. Goodier*, 283 A.3d 1140, 1148 (Del. 2022) (quoting Restatement of Torts § 559 (1938); *Spence v. Funk*, 396 A.2d 967, 969 (Del. 1978)) ("A statement is defamatory when it 'tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'").

[59] *Pritchard*, 503 N.Y.S.2d at 461 (citing *Aronson v. Wiersma*, 483 N.E.2d 1138, 1139 (N.Y. 1985); *Tracy v. Newsday, Inc.*, 155 N.E.2d 853, 854 (N.Y. 1959)); *accord ShotSpotter Inc.*, 2022 WL 2373418, at *6 (citing *Cahill*, 884 A.2d at 463) (stating that "[w]hether or not a statement is

of the words and the context in which they appear in the entire statement and publication.[60] The Court may consider "all relevant factors" and has "considerable discretion in deciding whether a statement is defamatory, guided only by 'the words themselves and their purpose, the circumstances surrounding their use, and the manner, tone and style with which they are used[.]'"[61]

Count I of the Complaint alleges that the Article is defamatory and defamatory by implication for:

> accus[ing] Plaintiffs of coercing nursing home residents into signing "do not resuscitate" orders "even when the patients . . . clearly expressed a desire that all available treatments be used to keep them alive" . . . and supported that defamatory [s]tatement with a deceptively edited version of an internal email from Plaintiffs that The Guardian presented as evidence of UnitedHealth forcing DNRs on elderly patients.[62]

The Article reports that:

> The company also monitored nursing homes that had smaller numbers of patients with "**do not resuscitate**" – or DNR – and "do not intubate" orders in their files. Without such orders, patients are in line for life-saving treatments that might lead to costly hospital stays.

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defamatory is a question of law" that is determined by the Court); *see also Isaac v. Politico LLC*, 346 A.3d 103, 117 (Del. 2025) (citing *Slawik v. News-Journal Co.*, 428 A.2d 15, 17 (Del. 1981)) (stating that whether a statement is capable of defamatory meaning "is a question of law within the court's purview to decide at the motion to dismiss and summary judgment stages").

[60] *Pritchard*, 503 N.Y.S.2d at 461; *see also Jacobus v. Trump*, 51 N.Y.S.3d 330, 336 (N.Y. App. Div. 2017) (quoting *Aronson*, 483 N.E.2d at 1139).

[61] *Jacobus*, 51 N.Y.S.3d at 336 (citing *Farber v. Jeffreys*, 941 N.Y.S.2d 537, 2011 WL 5248207, at *14 (N.Y. App. Div. Nov. 2, 2011) (TABLE); *Steinhilber v. Alphonse*, 501 N.E.2d 550, 554 (N.Y. 1986)); *see also Toptal, LLC*, 2025 WL 2172609, at *7 (citing *Images Hair Sols. Med. Ctr. v. Fox News Network, LLC*, 2013 WL 6917138, at *3 (Del. Super. Dec. 20, 2013)) (determining whether a statement is capable of defamatory meaning based on: "(1) content; (2) verifiability; and (3) context of an alleged defamatory statement").

[62] Compl. ¶¶ 108, 124.

> Two current and three former UnitedHealth nurse practitioners told the Guardian that UnitedHealth managers pressed nurse practitioners to persuade Medicare Advantage members to change their "code status" to DNR **even when patients had clearly expressed a desire that all available treatments be used to keep them alive**.[63]

The Complaint alleges that this statement is defamatory because the accusation of "pressuring vulnerable patients to change their end-of-life wishes from 'full code' to DNR to increase Plaintiffs' profits even when the patient wanted life-saving care[,]" tends to harm United's reputation in the community.[64]

The Guardian U.S. proffers that Count I should be dismissed as any defamatory meaning attributed to the statement is refuted by the Article, which "specifically informs readers that Plaintiffs denied 'inappropriately push[ing] patients to change their code status to DNR.'"[65] Further, the Guardian U.S. argues that United "twist[s] the Article's language" with the defamatory meaning they ask the Court to ascribe to the statement.[66]

In contrast, United argues that the Guardian U.S.'s position is "patently absurd" because "[p]rinting a denial does not negate the defamatory meaning in the mind of an average reader."[67] United claims that the "deceptively edited" email in

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[63] Article at 3 (emphasis added).
[64] Compl. ¶¶ 112–14.
[65] Guardian U.S. Opening Br. at 25; *see* Article at 3.
[66] Guardian U.S. Reply Br. at 16.
[67] Guardian U.S. Answering Br. at 31 (internal quotation marks omitted).

the Article combined with the statement conveys a defamatory meaning that United "convinced patients to die to save the company money."[68]

United's characterization of the statement is not reflective of what it says. Rather, the Complaint cherry picks language from two separate paragraphs of the Article to allege that the Guardian reported that United pressured patients to sign DNRs contrary to their wishes so United could save money. But the Article reports: that as part of the I-SNP, United monitored nursing home patients' code status; that United employees told the Guardian U.S. about how they felt once these policies were implemented; and that United denied "inappropriately push[ing] patients to change their code status[,]" or that any other I-SNP methods were implemented for any other reason than to improve patient care.[69]

It is not reasonable to conclude that United is exposed to public hatred, shame, or ridicule for monitoring I-SNP nursing home patients' code orders as a healthcare service provider. It is also not reasonable to imply that United is defamed for pressuring patients to change their code status when the Article reports that it was United nurse practitioners who felt pressured to talk to I-SNP patients about changing their code status. Nothing in Article states that United was approaching I-SNP members and telling them to change their code status so they could save money.

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[68] *Id.*

[69] Article at 3.

Indeed, the Article indicates that United was not attempting to do that. The cropped picture of the internal email does not indicate that United was trying to pressure patients for that reason either, but for patients to better understand their options as discussed below. The statement, in the context of the entire publication and the surrounding statements, cannot be reasonably understood to mean that United "convinced patients to die to save money."[70]

In sum, the Complaint does not allege that the statement is capable of a defamatory meaning on its face. Thus, Count I is **DISMISSED**.

b. Count II is dismissed as it does not imply a defamatory meaning.

A claim for defamation by implication "requires 'statements' that 'can be reasonably understood to imply defamatory and provably false facts about' the plaintiff(s)."[71] For the reasons stated above, the statement from Count I of the Complaint does not imply a defamatory meaning as written in the Article. Moreover, the cropped internal email inserted as an illustration in the Article does not change the outcome.[72] The email itself does not indicate anything defamatory in nature, and even includes that United's "goal is [to] help members understand

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[70] Guardian U.S. Answering Br. at 31.

[71] *Ferrari v. Forbes Media LLC*, 2025 WL 2201083, at * 6 (D. Del. Aug. 1, 2025) (quoting *Cousins*, 283 A.3d at 1158); *accord Stepanov*, 987 N.Y.S.2d at 44.

[72] *See* Compl. ¶¶ 49, 111; Guardian U.S. Answering Br. at 34 (arguing that the Guardian intended to endorse a defamatory inference given the context of the "deceptively edited email" that crops the portion stating that DNR is not the goal).

prognosis and disease trajectory."[73] Nothing about this picture from the Article could be reasonably understood as an intention to endorse a defamatory inference. Therefore, Count II is **DISMISSED**.

2. COUNTS III AND IV ARE DISMISSED.

The Guardian U.S. argues that United fails to state a claim for defamation because the statements under Count III are substantially true. According to the Guardian U.S., because the statements are substantially true and supported by the allegations in the Complaint, they do not give rise to a claim for defamation by implication.

United, on the other hand, asserts that the Guardian U.S.'s position is "misplaced" because it is not arguing that the statements "are literally true; it argues only that their 'gists'—the impression they create in its reader—are true."[74] United's position on its claim for defamation by implication under Count IV of the Complaint is less clear and appears to combine its defamation and defamation by implication argument.

a. Count III alleges that the statements are substantially true.

A "statement's truth or substantial truth is an absolute defense" to a defamation claim.[75] To plead falsity, the plaintiff "must allege that the complained

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[73] Article at 3.
[74] Guardian U.S. Answering Br. at 15–16.
[75] *Stepanov*, 987 N.Y.S.2d at 42 (citing *Konrad v. Brown*, 937 N.Y.S.2d 190, 191 (N.Y. App. Div. 2012); *accord Page*, 270 A.3d at 843 (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S.

of statement is 'substantially false.'"[76] Consequently, "[i]f an allegedly defamatory statement is 'substantially true,' a claim of libel is legally insufficient . . . and should [be] dismissed."[77] "[A] statement is substantially true if the statement would not have a different effect on the mind of the reader from that which the pleaded truth would have produced."[78] This is evaluated by determining "whether the 'gist' or 'sting' of the statement is true."[79]

i. ***Statements about United secretly paying SNFs bonuses to reduce hospitalizations.***

A portion of the statements from Count III, Paragraph 142 of the Complaint concern United "secretly" or "quietly" paying bonuses to its SNF staffers in I-SNP nursing homes to reduce hospital transfers and patient costs:

767, 775 (1986)) (concluding that the plaintiff has the burden of proving falsity, which "serve[s] the constitutional commitment to freedom of the press, ensure[s] media outlets and similar defendants [are] not saddled with unwarranted liability, and encourage[s] public debate and discussion on important public issues").

[76] *Tannerite Sports, LLC v. NBCUniversal News Grp.*, 864 F.3d 236, 242 (2d Cir. 2017) (quoting *Franklin v. Daily Holdings, Inc.*, 21 N.Y.S.3d 6, 12 (N.Y. App. Div. 2015)) (internal quotation marks omitted).

[77] *Id.* (quoting *Franklin*, 21 N.Y.S.3d at 12) (internal quotation marks omitted); *see also Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 516 (1991) (concluding that the question of falsity "overlooks minor inaccuracies and concentrates upon substantial truth").

[78] *Tannerite Sports, LLC*, 864 F.3d at 242 (quoting *Franklin*, 21 N.Y.S.3d at 12); *accord Page*, 270 A.3d at 844 (applying the substantial truth doctrine to determine falsity based on a comparison of the "'effect of the alleged libel versus the effect of the precise truth on the mind of the recipient or average[,]' and see[ing] if the effect if the same").

[79] *Page*, 270 A.3d at 844 (quoting *Ramada Inns, Inc. v. Dow Jones & Co., Inc.*, 543 A.2d 313, 317 (Del. Super. 1987) (internal quotation marks omitted); *see Masson*, 501 U.S. at 517 (quoting *Heuer v. Kee*, 59 P.2d 1063, 1064 (Cal. 1936)) (stating that "[m]inor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified'"); *Fulani v. New York Times Co.*, 686 N.Y.S.2d 703, 703 (N.Y. App. Div. 1999) (finding that the allegedly defamatory statement's "gist" or "sting" did not have a different effect on the mind of a reasonable reader other than the truth).

> (a) Revealed: UnitedHealth secretly paid nursing homes to reduce hospital transfers[.]
>
> (b) A Guardian investigation finds insurer quietly paid facilities that helped it gain Medicare enrollees and reduce hospitalizations. Whistleblowers allege harm to residents.
>
> (c) UnitedHealth Group, the nation's largest healthcare conglomerate, has secretly paid nursing homes thousands in bonuses to help slash hospital transfers for ailing residents – part of a series of cost-cutting tactics that has saved the company millions, but at times risked residents' health, a Guardian investigation has found.
>
> (d) Those secret bonuses have been paid out as a part of a UnitedHealth program that stations the company's own medical teams in nursing homes and pushes them to cut care expenses for residents covered by the insurance giant.
>
> ***
>
> (f) The secret bonuses were just one of many maneuvers UnitedHealth devised to track and cut expenses in its nursing home initiative.[80]

United alleges that these Statements are false because the bonuses are received in accordance with the CMS Initiative, making the quality metrics and payments incentives public information.[81] United alleges that it does not "'secretly pa[y]' [these] bonuses to nursing homes to deny necessary medical treatment or prevent necessary hospitalizations[,]" but "to reduce unnecessary, preventable, and avoidable hospitalizations that present a real and often fatal danger to vulnerable nursing home residents[.]"[82]

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[80] Compl. ¶¶ 142(a)–(d), (f), 159(a)–(d), (f).
[81] *Id.* ¶ 146(a).
[82] *Id.* ¶ 146(a)–(b).

The Guardian U.S. claims that United fails to plead falsity because the Complaint pleads that bonuses were received by SNF staffers if they met the quality metric for reducing hospital transfers and that these bonuses, as provided for in SNF staffer contracts, are not "publicly disclosed."[83] The Guardian U.S. contends that United "attempt[s] to manufacture falsity by alleging that they pay nursing homes to 'prevent ***unnecessary*** hospitalizations[.]'"[84]

United contends that the employment contracts for SNF staff not being publicly disclosed is "irrelevant" given that the contracts "mirror industry-standard, publicly available quality measures set by CMS."[85] United also claims that these quality metrics were implemented as a part of their I-SNP to reduce unnecessary hospital transfers, but the Article paints a picture that the payment incentives caused harm to patients that were not transferred to the hospital when necessary.[86] United posits that it is "jarring[]" for the Guardian U.S. to argue that the inclusion of "unnecessary" does not render the statements false as the defamatory sting is obvious: "no reasonable reader would fault UnitedHealth for preventing unnecessary hospitalizations; nearly all of them would find it grotesque to read that it obstructed necessary ones."[87]

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[83] Guardian U.S. Opening Br. at 16 (citing Compl. ¶ 63) (internal quotation marks omitted).
[84] *Id.* at 18 (emphasis in original).
[85] Guardian U.S. Answering Br. at 21.
[86] *Id.* at 17–18.
[87] *Id.*

The Court disagrees with United. The Complaint asserts that "the specifics of each SNF contract may not be publicly disclosed[.]"[88] The definition of "secret" is "information shared only with another or with a select few."[89] "Disclose" is defined as "to make known or public."[90] It is not reasonably conceivable that the use of the word "secretly," "secret," or "quietly" instead of "not publicly disclosed" would have a different effect on the mind of an average reader; either way, the payment incentives included in SNF staffer contracts were not readily available information to the public.

United's argument that the statements are false because the CMS Initiative makes the SNF contracts public information is unavailing. The payment reform from the CMS Initiative as referenced in the Complaint is a press release on how certain Enhanced Care Coordination Providers agreed to participate in a study implementing a payment model in long-term care facilities that assists with reducing hospitalizations and lowering Medicare and Medicaid spending. The CMS payment model is not relevant to establishing the falsity of the Article. Nowhere in the press release from CMS does it mention United's involvement in the study or that the payment incentives to reduce hospitalizations should be confidential. Thus, the Article's reporting of the bonuses as "secret," or made "secretly" or "quietly," is

[88] Compl. ¶ 63.
[89] Merriam-Webster Dictionary.
[90] *Id.*

substantially true as the Complaint alleges that the United did not disclose payment incentives received by SNFs for reducing hospitalizations with the public.

The Complaint further alleges that "UnitedHealth promotes high-quality preventative onsite care to I-SNP members by paying incentives to SNFs when . . . SNFs prevent avoidable hospitalizations as measured by APK."[91] It is not false that the Article states the undisclosed bonuses were used to reduce hospitalizations. The Court is unpersuaded that the failure to include an adjective such as "avoidable" or "unnecessary" renders the statements materially false. In fact, in the context of the entire publication, the Article includes multiple statements that United implemented the bonuses to avoid "*unnecessary* hospitalizations that are costly and dangerous to patients and that its partnerships with nursing homes improve health outcomes" and improve patient care.[92] Moreover, nowhere in the Article does it state that the bonuses were used to reduce *necessary* hospitalizations. Rather, the Article discusses the impact that United and its I-SNP policy in reducing hospitalization has had on its patients' health.

In sum, even drawing all reasonable inferences in Plaintiffs' favor, the gist of the Article accurately conveys United's I-SNP, which paid its nursing home participants' staff undisclosed bonuses if quality metrics such as reductions in

[91] Compl. ¶ 62(f).
[92] Article at 2, 3, 5, 6 (emphasis added).

hospitalization were met. United cannot claim statements are false based on how they would prefer the Article describe the I-SNP or edit the Article to add words it would prefer that the Article use. Therefore, the statements alleged in Paragraph 142(a)–(d), and (f) of the Complaint are dismissed for failure to allege falsity.

ii. *Statements about United clinician involvement in patient care decisions.*

The next group of statements that United claims are defamatory and defamatory by implication concern the Article's reporting of United employees being involved in patient care decisions:

> (e) In several cases identified by the Guardian, nursing home residents who needed immediate hospital care under the program failed to receive it, after interventions from UnitedHealth staffers. At least one lived with permanent brain damage following his delayed transfer, according to a confidential nursing home incident log, recordings and photo evidence.
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> ***
>
> (g) In one incident from 2019, a remote UnitedHealth provider working for the program received a report shortly after midnight about a nursing home resident . . . who was slurring her words and unable to move her arm – textbook stroke symptoms. . . . But instead of greenlighting an immediate hospitalization for a possible stroke, the remote UnitedHealth employee suggested the resident might be suffering from a less serious condition called a transient ischemic attack (TIA) . . . and advised the nurse to run a blood test. . . . "Their diagnosis says TIA, [but] nobody can say that so early," the patient's doctor said [("Patient 1")].
>
> (h) In another incident that year, a nursing home nurse in Puyallup, Washington, delayed hospitalizing a resident also exhibiting potential stroke symptoms because of UnitedHealth protocols that pushed facility staff to wait for guidance from the company. According to confidential nursing home records obtained by the Guardian, the nurse

> phoned a remote UnitedHealth provider, who was unsure about what to do and failed to call for an immediate transfer. Tired of waiting for a call back, the nurse finally bypassed the remote provider and called an independent doctor, who ordered the patient to be transferred. But the delay meant that about an hour passed before the resident was actually taken to the hospital, which was only a few minutes away from his facility. After the belated hospitalization, the patient suffered permanent verbal slurring and facial droop on the right side of his face, audio recordings and photos obtained by The Guardian show [("Patient 2")].
>
> (i) [T]he company's tactics put pressure on facility nurses to turn over patient care decisions to UnitedHealth staffers[.][93]

United alleges that these statements are false because United "never required SNFs to 'turn over patient decisions to UnitedHealth staffers.'"[94] Rather, the I-SNP provided:

> an extra layer of care for its members . . . to help ensure patient conditions are identified, assessed, and treated appropriately, [and] . . . encourage[] and remind[] SNFs to keep UnitedHealth informed of changes in patient conditions to allow UnitedHealth to perform those functions, coordinate care amongst the patient's caregivers and clinicians, and to ensure the patient is receiving high quality care that prevents avoidable complications that can lead to the need for serious and sometimes fatal medical intervention.[95]

Additionally, United pleads that the incidents as reported are false for omitting material information.[96]

[93] Compl. ¶¶ 142(e), (g)–(i), 159(e), (g)–(i).
[94] *Id.* ¶ 146(g).
[95] *Id.*
[96] *Id.* ¶ 146(e)–(f).

The Guardian U.S. argues that United misconstrues the Article by claiming it reports that United employees were "***required***" to turn patient care decisions over to United staffers.[97] The Guardian U.S. further contends that any facts that may have been omitted from the statements concerning Patients 1 and 2 are immaterial, but that even United's "disagreements" do not change that the Complaint pleads the substantial truth of the statements.[98]

In a footnote, United claims that the Guardian U.S.'s position "ignores the balance of the Complaint" as United clinicians were placed to assist and support SNFs.[99] United proffers that its clinicians were not trying to stop hospitalizations for patients, and that the incidents as described in the Article omit facts, which "create[s] the false impression that UnitedHealth was responsible for the delay."[100]

United does not plead that the facts in the statements are false. For example, United alleges that while a United staffer recommended a blood test to rule out a TIA for Patient 1, the Article falsely leaves out that it is ultimately the SNF's decision to effectuate a transfer to the hospital when needed.[101] Similarly, United asserts that it was false for the Article to leave out a United clinician's

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[97] Guardian U.S. Opening Br. at 20–21 (emphasis in original).
[98] *Id.* at 21.
[99] Guardian U.S. Answering Br. at 18 n.6.
[100] *Id.* at 19.
[101] Compl. ¶ 146(e).

"repeated insistence on hospitalization and repeated phone calls to ensure the patient was hospitalized" in Patient 2's situation.[102] The Complaint does not allege that these statements are false, only that the omissions regarding United-employee involvement created a false impression. The Guardian U.S., however, is not required to publish facts just because United would have preferred more favorable facts.[103]

The omissions do not render the statements false. Reading the Article as a whole, the defamatory sting is that the I-SNP, as alleged in the Complaint, implemented policies where United clinicians monitored the SNFs and how patient care decisions were made. In turn, these policies effected patient care. In each instance, even if the omitted facts were included, those facts still indicate that SNFs first reached out to United clinicians before making the decision to hospitalize a patient, thereby showing how the I-SNP policies caused a delay in patient care decisions. Therefore, even drawing all reasonable inferences in United's favor, if the truth was written in the Article as it is alleged in the Complaint, it would not have a different effect on the average reader.

Moreover, the Court is further unpersuaded that it was false for the Article to state that these policies *pressured* SNFs to turn patient care decisions over to

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[102] Guardian U.S. Answering Br. at 19; *see also* Compl. ¶ 146(f).
[103] *See e.g., ShotSpotter Inc.*, 2022 WL 2373418, at *13 (noting that the defendant was "under no obligation to publish flattering facts about its subject matter").

United when the Complaint alleges exactly that.[104] It is not reasonably conceivable that including the facts as alleged in the Complaint would have a different effect on the mind of a reasonable reader as to how the I-SNP policies effected patient care decisions. The statements concerning United clinicians' involvement with I-SNP patients are substantially true as alleged and therefore dismissed.

iii. *Statement about the bonus pay-out structure.*

United alleges that it was defamatory for the Guardian U.S. to report that "[u]nder the 'Premium Dividend' program . . . a high APK . . . meant that a nursing home received nothing."[105] The entire statement from the Article reads: "Under the 'Premium Dividend' program, a low APK qualified a nursing home for the various bonus payments the insurer offered. A high APK meant that a nursing home received nothing."[106] United claims this statement is false because it "does not strip SNFs of all payments" if I-SNP quality metrics are not met.[107]

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[104] *See* Compl. ¶ 146(g); United's assertion that it was false for the Article to report that SNFs were not "required" to turn over patient care decisions to United staffers misconstrues the Article. "Pressure" is defined as "the constraint of circumstances," "the weight of social or economic imposition," or the "burden of physical or mental distress." Merriam-Webster Dictionary. "Required" is defined to mean "stipulated as necessary to be done, made, or provided." *Id.* It is apparent that the ordinary meaning of these words are different, and that alleging the statement is false for that reason lacks merit. The Court also notes that pressure does not rise to level of requiring someone to do something, and that SNF staffers decisions on patient care became more difficult once staffers' bonuses were premised on following the I-SNP policies.
[105] Compl. ¶¶ 142(j), 159(j).
[106] Article at 2.
[107] Compl. ¶ 146(h).

According to the Complaint, the Premium Dividend Program provides SNFs with the ability to earn bonuses for any quality metric that is met, even when others are not.[108]

The Guardian U.S. argues that in an "attempt to allege falsity, Plaintiffs sever [the] [s]tatement . . . from its context and falsely contend that the Article reports that UnitedHealth strips 'SNFs of all payments if they do not meet'" the I-SNP's quality metrics.[109] The Guardian U.S. claims that in the context of the whole statement and the Article, the statement is clearly reporting that failure to meet the APK quality metric meant that a SNF staffer would not receive a bonus for that specific metric.[110]

The Court agrees with the Guardian U.S.'s position. It is not reasonable to infer from the statement and the entire Article that SNF staffers would not be paid for their job if they had a high APK. It is clear that the Article's focus is on one of the quality metrics from United's I-SNP, which makes SNF staffers eligible for a bonus if met: hospitalization reduction in nursing homes. When reading the entire statement, the Article expressly distinguishes when SNFs qualify for a bonus for meeting the APK quality metric and when they do not. Nowhere in the Article does the reporting address anything concerning SNF

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[108] *Id.*
[109] Guardian U.S. Opening Br. at 22.
[110] *Id.*

staffers base contractual salaries. Therefore, the Court finds that a reasonable reader would not conclude that the Article is referencing SNF staffers' base salaries.

Otherwise, United alleges, and asserts in their briefing, that the statement is substantially true. The Premium Dividend Program "enables a SNF to receive an incentive payment even if the SNF does not meet some or all of the quality metrics."[111] United alleges that "SNFs are paid incentives for meeting . . . certain quality metrics including reducing the number of avoidable hospitalizations[,]" but still paid their base salary even where the metrics are not met.[112] The statement at issue here is reporting that SNF staffers received a bonus where the APK quality metric was met, but did not receive one where the APK quality metric was not met. Hence, this statement is dismissed for failure to allege falsity as the statement has the same defamatory sting whether or not the Article clarified that SNF staffers are paid their contractual salaries when quality metrics are not met. Count III is **DISMISSED**.

b. Count IV does not plead a claim for defamation by implication.

Count IV is dismissed because the Complaint does not raise a reasonable inference that the Article, as a whole, imparts a defamatory inference or suggests

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[111] Compl. ¶ 146(h); *see also* Guardian U.S. Answering Br. at 25.
[112] Compl. ¶ 85.

that the Guardian U.S. intended that inference. As discussed above, there is nothing false about the challenged statements from Count III as indicated by United's own allegations. Consequently, it is not reasonably conceivable that the Guardian U.S. intended to indorse any inference other than the truth and scrutinize the effects of the truth. United's grievances do not make a rigorous showing that the statements under Count III state a claim for defamation by implication. Count IV is **DISMISSED**.

C. Counts V and VI are Dismissed under the Fair Report Privilege.[113]

Finally, Counts V and VI of the Complaint allege that the following statement is defamatory and defamatory by implication:

> The Guardian's reporting also found that the program offered nursing homes even larger sums for every senior enrolled in the insurer's offerings for long-term nursing home residents, which are called "Institutional Special Needs Plans." In some cases, these payments incentivized nursing homes to leak confidential resident records to UnitedHealth sales teams so they could directly solicit elderly residents and their families, according to a whistleblower lawsuit currently being fought in federal court in Georgia as well as internal nursing home records and interviews with more than a dozen current and former nursing home employees and UnitedHealth salespeople.[114]

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[113] Although affirmative defenses are generally "not well-suited for treatment" on a motion to dismiss, the Court finds that "*it is clear from the face of the complaint* that" the fair report privilege exists and there are no set of facts United can prove to avoid it as to Counts V and VI of the Complaint. *U.S. Dominion, Inc.*, 2021 WL 5984265, at *21 (quoting *Reid v. Spazio*, 970 A.2d 176, 183–84 (Del. 2009)) (emphasis in original) (internal quotation marks omitted).

[114] Compl. ¶¶ 176(a), 194(a).

The Guardian U.S. claims that this statement is protected by New York's Fair Report privilege because it reports on the allegations from the Gonite Complaint.[115] United claims that the privilege is inapplicable as an ordinary viewer would not know that the Article was reporting on a judicial proceeding and the statement is not a substantially accurate description of the judicial proceeding.

New York law establishes that a "civil action cannot be maintained . . . for the publication of a fair and true report of any judicial proceeding, legislative proceeding, or other official proceeding[.]"[116] Section 74 is given a "liberal interpretation" and provides "broad protection to news accounts of judicial or other official proceedings."[117] The issues the Court must address here is whether the fair report privilege attaches to the statement and if so, whether the statement accurately reports the Gonite Complaint.

"Allegedly defamatory statements are protected by Section 74 only where the statements report on a judicial proceeding."[118] In other words, "the

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[115] *See generally* Gonite Compl. While the Guardian U.S. also argues that the statement in Count V is substantially true, the Court finds that the Fair Report privilege suffices to resolve whether United sufficiently states a claim for relief on this statement.
[116] N.Y. Civ. Rights Law § 74.
[117] *Cholowsky v. Civiletti*, 887 N.Y.S.2d 592, 595 (N.Y. App. Div. 2009) (quoting *Becher v. Troy Publ'g Co.*, 589 N.Y.S.2d 644, 646 (N.Y. App. Div. 1992)) (internal quotation marks omitted); *accord Read v. News-Journal Co.*, 474 A.2d 119, 120 (Del. 1984) (noting that the privilege is broad).
[118] *Wenz v. Becker*, 948 F. Supp. 319, 323 (S.D.N.Y. 1996) (citing *Williams v. Williams*, 246 N.E.2d 333, 337 (N.Y. 1969)); *see also Fine v. ESPN, Inc.*, 11 F. Supp. 3d 209, 216 (N.D.N.Y. 2014).

challenged report must be 'of' a proceeding."[119] The privilege does not attach, however, "[i]f the context in which the statements are made make it 'impossible for the ordinary viewer to determine whether defendant was reporting on a trial or simply from interviews and independent research, the absolute statutory privilege does not attach[.]'"[120] "The key question is whether the reader is able to determine that the report [or statement] is *of a proceeding*."[121]

Here, it is clear that the statement is of a judicial proceeding. First, the Article states that it found nursing homes received larger payment incentives for enrolling more seniors in the I-SNP "according to a whistleblower lawsuit currently being fought in federal court in Georgia[.]"[122] United alleges that the Article "cites a 'whistleblower lawsuit' filed by a former Optum employee" in reference to the statement at issue under Counts V and VI.[123] Thus, an ordinary viewer would be able to determine that the preceding sentences were of the Gonite Complaint.

United's argument that there is an insufficient connection for the statement to be of a judicial proceeding because "it also attributes the claim to 'internal

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[119] *Fine*, 11 F. Supp. 3d at 216 (quoting *Cholowsky*, 887 N.Y.S.2d at 596).
[120] *Wenz v. Becker*, 948 F. Supp. at 323 (quoting *Corp. Training Unlimited, Inc. v. Nat'l Broad. Co.*, 868 F.Supp. 501, 509 (E.D.N.Y. 1994)).
[121] *Kinsey v. New York Times Co.*, 991 F.3d 171, 180 (2d Cir. 2021) (applying New York law) (emphasis in original).
[122] Article at 4.
[123] Compl. ¶ 90.

nursing homes records' and 'interviews'" with former and current United salespersons is unpersuasive.[124] The ordinary viewer must be able to ascertain "some . . . 'connection between the challenged report and the . . . proceeding.'"[125] "How 'direct' this connection must be has not been clearly defined[,]" but "[q]uotations from, and summaries of, documents or other material that the report indicates are part of a proceeding are indisputably statements 'of' that proceeding."[126] For example, in *El Greco Leather Products Co., Inc. v. Shoe World, Inc.*, a New York District Court found that the allegedly defamatory article was privileged under Section 74 even though the report of a judicial proceeding included additional allegations outside the complaint.[127] The Court reasoned that "these further allegations 'constitute[d] background to the misconduct attributed to [the company] in the complaint.'"[128]

Like *El Greco Leather Prods. Co., Inc.*, the reference to the Guardian U.S.'s review of the internal nursing home records and other interviews does not

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[124] Guardian U.S. Answering Br. at 29.
[125] *Fine*, 11 F. Supp. 3d at 216 (quoting *Corp. Training Unlimited, Inc.*, 868 F.Supp. at 509).
[126] *Id.* at 216–17 (citing *Corp. Training Unlimited, Inc.*, 868 F.Supp. at 509; *Aguirre v. Best Care Agency, Inc.*, 961 F. Supp. 2d 427, 457–58 (E.D.N.Y. 2013); *Fuji Photo Film U.S.A., Inc. v. McNulty*, 669 F. Supp. 2d 405, 415 (S.D.N.Y. 2009); *McRedmond v. Sutton Place Rest. And Bar, Inc.*, 851 N.Y.S.2d 478, 480 (N.Y. App. Div. 2008)).
[127] 623 F. Supp. 1038, 1043 (E.D.N.Y. 1985).
[128] *El Greco Leather Prods. Co., Inc.*, 623 F. Supp. at 1043 (quoting *Ford v. Levinson*, 454 N.Y.S.2d 846, 848 (N.Y. App. Div. 1982)); *see also Fine*, 11 F. Supp. 3d at 216 (concluding that "[s]tatements or allegations that go beyond matters in a proceeding have been deemed privileged as a 'background' report of that proceeding").

remove the statement from the protections of the fair report privilege. Indeed, the context shows that the statement challenged as defamatory "focuses exclusively" on the Gonite Complaint, while the subject matter relating to the internal nursing home records and interviews comes after the report on the Gonite Complaint.[129] Consequently, because the background information that follows the challenged statement is expressly attributed to the Guardian's independent investigation, separate from the statement on the Gonite Complaint, the fair report privilege attaches to the challenged statement here.

The Court next addresses whether the statement is a fair and accurate report of the Gonite Complaint. It is sufficient that a report be "substantially accurate" to be considered "'fair and true' within the meaning of the statute[.]"[130] "[A] fair and true report admits of some liberality; the exact words of every proceeding need not be given if the substance can be substantially stated."[131]

A comparison of the challenged statement and the Gonite Complaint indicates that the Guardian U.S.'s report on the proceeding is substantially accurate. The Gonite Complaint sought relief for claims based on United's I-SNP and its use of "improper and illegal means to solicit vulnerable, elderly

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[129] *Fine*, 11 F. Supp. 3d at 217; *see* Article at 4.
[130] *Holy Spirit Ass'n for Unification of World Christianity v. New York Times Co.*, 399 N.E.2d 1185, 1187 (N.Y. 1979).
[131] *Id.* (internal citations and quotation marks omitted).

patients for it [I-SNP] . . . and by paying kickbacks to [SNFs] . . . to obtain illegal referrals of their residents to the ISNPs."[132] Specifically, it alleges that payment incentives were received under United's Dividend Savings program on a quarterly basis for the quality metrics met, which were "then multiplied by the number of the facility's enrollments."[133] The Gonite Complaint pleads that a Medicare or Medicaid patient's personal health information ("PHI") is protected information and that:

> [t]he SNFs, incentivized to meet the quota and reap the rewards of having an ISNP contract with UnitedHealth, and at UnitedHealth's request, gave UnitedHealth access to residents' PHI, including specifically identifying which residents were Medicare and/or Medicaid beneficiaries, thereby giving the UnitedHealth Defendants the opportunity to mine this PHI for potential referrals and make direct contract with those residents, in violation of the Medicare regulations and the AKS.[134]

This led SNFs to "directly solicit" patients for the I-SNP, "increasing the payments received by the SNF."[135]

The challenged statement is a fair and true report of the Gonite Complaint. While it summarizes some of the allegations in the complaint, the exact wording need not be stated as the substance of the pleadings are substantially accurate as stated in the Article. Contrary to United's assertion, the statement does not state

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[132] Gonite Compl. ¶ 2.
[133] Gonite Compl. ¶ 143.
[134] *Id.* ¶¶ 189, 210.
[135] *Id.* ¶ 211.

that the United "*exponentially increas[ed]*" the incentivized payments, only that they received "even larger sums."[136] Moreover, the fact that the Article reports the incentivized payments would be received based on "every senior enrolled" as opposed to "multiplied by the number of the facility's enrollments" does not make the statement inaccurate.[137] Thus, the challenged statement is protected under the fair report privilege.

Count VI is also protected as defamation by implication claims fall under the fair report privilege for protected statements.[138] Accordingly, the challenged statement is privileged as a fair report of the Gonite Complaint. Counts V and VI are **DISMISSED**.

V. CONCLUSION

In conclusion, for the foregoing reasons, the Defendants' Motions to Dismiss are **GRANTED**, and the Complaint is **DISMISSED** without prejudice.

IT IS SO ORDERED.

/s/ Calvin Scott
Judge Calvin L. Scott, Jr.

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[136] Guardian U.S. Answering Br. at 30 (emphasis in original); Article at 4.
[137] Article at 4; Gonite Compl. ¶ 143; Guardian U.S. Answering Br. at 30.
[138] *Kesner v. Dow Jones & Co., Inc.*, 515 F. Supp. 3d 149, 173 (S.D.N.Y. 2021) (holding that even if the plaintiff alleged a claim for defamation by implication, the statement fell "squarely within the protections the fair report privilege").