

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GUARDIAN FLIGHT, LLC,

Plaintiff,

VS.

**AETNA HEALTH INC. and MEDICAL
EVALUATORS OF TEXAS ASO, LLC,**

Defendants.

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Civil Action No. 4:22-cv-03805

**AETNA HEALTH INC.’S MOTION FOR A PROTECTIVE ORDER OR, IN THE
ALTERNATIVE, FOR A STAY ON DISCOVERY
PENDING RESOLUTION OF ITS PENDING MOTIONS TO DISMISS**

Aetna Health Inc.¹ moves the Court for a protective order against discovery in this matter or, in the alternative, an order staying discovery until resolution of Aetna’s motions to dismiss. *See* Dkt. 12 (lack of jurisdiction and failure to state a claim) and Dkt. 46 (mootness).²

SUMMARY OF THE ARGUMENT

Through the No Surprises Act (“NSA”), Congress created an Independent Dispute Resolution (“IDR”) process to resolve payment disputes between out-of-network providers and

¹ Guardian Flight’s complaint names “Aetna Health, Inc.” as a defendant. The correct Aetna entity that administered the health plan at issue is Aetna Life Insurance Company.

² On this date (May 10), Aetna served its objections to Guardian Flight’s discovery requests subject to this motion. Because Aetna files this motion for protection against all discovery, Aetna does not believe this is a “discovery dispute” contemplated by the Court’s rules for additional conference requirements. *See, e.g. Advanced Exteriors, Inc. v. United Servs. Auto. Ass’n*, 2022 WL 1239250, at *2 (D. Colo. Apr. 27, 2022) (“This court has not traditionally held discovery dispute conferences to discuss whether a stay of discovery is appropriate, and accordingly, the court does not consider a motion to stay all discovery to be a motion which requires the Parties to first contact the court to schedule a discovery dispute conference.”); *see also LS3 Inc. v. Cherokee Fed. Sols., L.L.C.*, 2021 WL 4947284, at *2 (D. Colo. Aug. 26, 2021) (explaining movant was not required to request a court conference before moving to stay discovery, noting that courts do not typically grant the requested relief without formal motions or orders).

health plans in an efficient, low-cost manner. To further this goal of efficiency, the NSA expressly incorporates the highly limited standard for judicial review under the Federal Arbitration Act (“FAA”). As explained in Aetna’s prior briefings, Guardian Flight’s allegation that Aetna misrepresented its Qualifying Payment Amount (“QPA”) to the IDR arbitrator because it is “improbably low” does not fit within the narrow scope of judicial review prescribed by Congress. *See generally* Dkt. 43 (Aetna’s Supplemental Briefing).

Aetna brings this motion because the discovery Guardian Flight seeks is improper. *See* Guardian Flight’s First Set of Discovery Requests, attached as **Exhibit 1**. Specifically, Guardian Flight has no right to *any* of the discovery it seeks, which concerns Aetna’s QPA calculation methodology. This is particularly true given the threadbare allegations in this case. To hold otherwise would effectively allow any healthcare provider to circumvent the IDR process’ confidential framework—a framework Congress carefully created—based on nothing more than unsubstantiated, self-serving allegations of a supposed “misrepresentation” to the IDR entity of an “improbably low” QPA. Such an outcome flies in the face of the NSA’s express language, which provides that IDR awards “shall not be subject to judicial review,” except for the four instances described in § 10 of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(II).

Notably, in a similar challenge to IDR awards brought by Guardian Flight’s affiliates in the Middle District of Florida,³ Guardian Flight’s counsel in this case—who also represents the affiliates in that trio of cases—admitted that the IDR process involves “confidential and proprietary internal business information” that is “sensitive” and “commercially valuable when negotiating

³ *Med-Trans Corporation v. Capital Health Plan, Inc. and C2C Innovative Solutions, Inc.*, Case No. 3:22-cv-1077, (M.D. Fla. 2022); *Med-Trans Corporation v. Blue Cross and Blue Shield of Florida, Inc. and C2C Innovative Solutions, Inc.*, Case No. 3:22-cv-1139, (M.D. Fla. 2022); and *Reach Air Medical Services LLC v. Kaiser Foundation Health Plan Inc. and C2C Innovative Solutions, Inc.* Case No. 3:22-cv-1153, (M.D. Fla. 2022).

network agreements or making investment decisions in their IDR process”—which the plaintiffs in the Florida cases liken to a trade secret. *See Med-Trans Corp. v. Capital Health Plan, Inc., et al.*, Case No. 3:22-cv-01077-TJC-JBT (M.D. Fla. 2023), Docket Entry 52 (Plaintiffs’ Opposed Motion to Partially Redact Telephonic Preliminary Pretrial Conference Transcript) and Docket Entry 52-1 (Declaration of Adam T. Schramek).⁴

In that case (hereinafter “*Med-Trans*”), Chief Judge Timothy Corrigan of the Middle District of Florida considered whether the same type of confidential information Guardian Flight seeks in this case was discoverable after the plaintiffs served similar discovery requests. Judge Corrigan expressly disapproved of the plaintiffs’ attempt to obtain discovery before the Court first decided whether it had jurisdiction to decide the parties’ dispute:

I’m inclined to determine whether the complaint is properly pled, whether we’re in the right place or not, before we get into discovery. And I’m not really seeing any reason to -- to allow discovery, but I want to give the plaintiff an opportunity to tell me what -- what they’re in such a hurry to get that -- before we actually know whether or not there’s a lawsuit here or not.⁵

Ultimately, Judge Corrigan *sua sponte* stayed all discovery until further ordered. *See Med-Trans Corp.*, Case No. 3:22-cv-01077-TJC-JBT, Docket Entry 48.⁶ A hearing on the defendants’ motions

⁴ Copies of Docket Entries 52 and 52-1 are included as **Exhibit 2**.

⁵ A copy of the redacted January 17 transcript is attached as **Exhibit 3**, at 25:19–25:25. It is also available on the court’s docket at Docket Entry 57; however, the transcript is not available to the general public.

⁶ It’s also worth noting that Guardian Flight took a radically different position on consolidation in *Med-Trans* than it has taken in this case: “But once we get back -- past [the motion-to-dismiss] phase, I think coordination really doesn’t need to happen anymore. These are separate air ambulance claims. These are separate payors. That’s one reason why we divided it [i.e., filed three separate lawsuits]. As far as what Blue Cross & Blue Shield of Florida did versus what Kaiser did -- **I mean, their processes and what they submitted [to the IDR entity], those are all going to be factually disparate, have no relationship to one another. So I think coordination at this point makes sense, but then after [the motion-to-dismiss stage] it doesn’t. And so that why we didn’t file them as a consolidated proceeding.**” Exhibit 3 at 28:16–29:1 (emphasis added).

to dismiss is currently set for May 16, 2023. *See id.*

Further, a protective order limiting discovery to attorney’s eyes only will not safeguard Aetna’s confidential information. Rather, Guardian Flight’s counsel—who represents Guardian Flight and its affiliates in at least four other lawsuits challenging IDR awards—made abundantly clear at the April 21 hearing that Guardian Flight intends to use this case as a means of obtaining any disparaging information it can use to its advantage in future IDR proceedings involving Aetna. *See* Dkt. 43-1 (April 21 hearing transcript) at 8:18–9:10.

Importantly, the Code of Federal Regulations already dictates the scope of information to which a provider such as Guardian Flight is entitled during the IDR process. *See* 45 C.F.R. § 149.140(d)(2). As explained in Aetna’s supplemental briefing, Aetna sent Guardian Flight the information identified in § 149.140(d)(2) on August 21, 2022—months before MET issued the IDR award at issue in this case. *Compare id.*, with Dkt. 12-1. Guardian Flight’s attempt to seek discovery beyond that prescribed by Congress is a bald attempt to usurp the regulatory oversight Congress has delegated to the Departments⁷ and sharply conflicts with the DOL’s implementation guidelines, which make abundantly clear: “[P]lans and issuers are not obligated to demonstrate that a QPA was calculated in accordance with the requirements of 26 CFR 54.9816-6T(c), 29 CFR 2590.716-6(c), and 45 CFR 149.140(c) **unless required to do so by an applicable regulator.**”⁸

In the alternative, Aetna requests a stay of discovery until the Court rules on Aetna’s pending motions to dismiss. *See* Dkt. 12 (lack of jurisdiction and failure to state a claim) and Dkt.

⁷ “Departments” refers to the Departments of Health and Human Services (“HHS”), Labor (“DOL”), and Treasury.

⁸ DEP’T OF LABOR, *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementations Part 55*, pg. 16 (emphasis added), available at <https://www.hhs.gov/guidance/document/faqs-about-affordable-care-act-and-consolidated-appropriations-act-2021-implementation-1>.

46 (mootness). Granting a stay will prevent disclosure of confidential information otherwise unavailable to Guardian Flight—information that Guardian Flight has made clear it intends to use in future payment disputes involving Aetna. This alternative approach—staying discovery pending resolution of Aetna’s motions to dismiss—is the same well-reasoned approach Judge Corrigan *sua sponte* elected to take in *Med-Trans*.

BACKGROUND

I. Relevant Features of the NSA’s IDR Process

Congress specifically designed the IDR process to provide an “efficien[t]” and streamlined means of dispute resolution at a minimal cost.” 42 U.S.C. § 300gg-111(c)(3)(A); *id.* § 300gg-111(c)(4)(E); *see also* Requirements Related to Surprise Billing, Part II (Interim Final Rules), 86 Fed. Reg. 55, 980, at 59,996 and 56,001 (Oct. 7, 2021) (underscoring the IDR’s purpose of “efficiency” and “predictability”). In its wisdom, Congress delegated to the Departments extensive regulatory oversight. The Departments, in turn, have determined the scope of information to which a provider is entitled as part of the IDR process. *See* 45 C.F.R. § 149.140(d)(2). Moreover, consistent with the NSA’s purpose of efficiency, Congress incorporated the FAA’s narrow standards for judicial review of IDR awards. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II).

Guardian Flight complains repeatedly that neither party has a right to discover confidential materials submitted during the IDR process by the opposing party to support its offer. *See, e.g.*, Dkt. 1 at 18. But the idea that confidential and proprietary information is not discoverable is not novel. What is novel is the idea that a party seeking to vacate an award under the FAA could use the courts to seek after-the-fact discovery requesting every ounce of information underlying the opposing party’s IDR submission. Such an outcome is antithetical to the NSA’s intended purpose to streamline out-of-network billing disputes. Indeed, rather than require parties to every IDR dispute exchange materials on an ad hoc basis, Congress has already determined the information

necessary for parties to submit informed proposals to the IDR entity deciding their dispute. *See* 45 C.F.R. § 149.140(d)(2). Moreover, *Congress has vested the Departments with extensive regulatory oversight to audit health plans to ensure QPAs are properly calculated.* *See id.* § 300gg-111(a)(2)(A)(i)–(ii).⁹ Through this regulatory oversight, the Departments ensure that health plans QPAs are supported by accurate information without unnecessarily bogging down the IDR process with endless discovery. In fact, HHS has an online portal for providers to submit complaints—such as the very complaint Guardian Flight makes in this case regarding Aetna’s supposed misrepresentation—and has the authority to enforce the NSA’s provisions.¹⁰

II. Judge Corrigan Stayed Discovery in Similar Suits to Vacate IDR Awards

On January 17, 2021, Judge Corrigan held a hearing in three related lawsuits filed by Guardian Flight affiliates, each of which seek to vacate IDR awards. During that hearing, Judge Corrigan *sua sponte* rejected the plaintiffs’ attempt to seek discovery, opting instead to stay discovery while the court resolved the defendants’ respective motions to dismiss. Notably, Judge Corrigan expressly disapproved of the plaintiffs’ attempt to conduct discovery before he determined whether the plaintiffs had pleaded a valid claim for relief:

I am going to stay discovery. There’s no reason to issue a case management scheduling order nor -- or to allow discovery until at least I have a hearing and I can figure out what I’ve got here, because I don’t -- I don’t know. And -- and so I’m going to do that. We’re not going to have discovery until -- until at least the hearing on the motion to dismiss, and then I’ll decide at that point whether to allow it to go forward.

⁹ *See also* DEP’T OF LABOR, *FAQs About Affordable Care Act* at 16 (“**The No Surprises Act and its implementing regulations place the responsibility for monitoring the accuracy of plans’ and issuers’ QPA calculation methodologies with the Departments** (and applicable state authorities) by requiring audits of plans’ and issuers’ QPA calculation methodologies.” (emphasis added)). Hyperlink available at footnote 8.

¹⁰ *See* CENTERS FOR MEDICARE & MEDICAID SERVICES, *Providers: Submit a Billing Complaint*, <https://www.cms.gov/nosurprises/policies-and-resources/providers-submit-a-billing-complaint> (portal allowing providers to submit billing complaints if they believe an insurer “is not complying with the Federal [IDR] process” or “want[s] to report a violation of the [NSA]”).

Exhibit 3 at 29:20–30:3. Judge Corrigan also rejected the plaintiffs’ argument that their discovery requests were reasonable, opining that they were essentially a wish list of “everything you would want if you were [prosecuting] the case.” *Id.* at 30:5–30:7.

III. Relevant Procedural History

At the parties’ initial scheduling conference on March 3, 2023, the Court determined—rightfully so—that Guardian Flight is not entitled to discovery regarding Aetna’s position statement submitted to MET as part of the IDR process.

On April 3, Guardian Flight served its first set of discovery requests, consisting of seven requests for production (RFPs) and three interrogatories (ROGs). *See* Exhibit 1. These requests are a blatant end run around the Court’s order and seek practically every data source Aetna would use to compute its QPA. For example, RFP No. 2 asks Aetna to produce documents and communications “sufficient to show how Aetna calculates its QPA for out of network air ambulance claims” such that “a person knowledgeable about QPA regulations [would be] able to replicate Aetna’s calculation for the QPA *for the transport at issue in this proceeding.*” *Id.* at 6 (emphasis added). Guardian Flight’s ROG No. 2 builds off this faulty base, asking that Aetna “[e]xplain in detail and with reference to the documents [it] produce[s] in response to RFP Nos. 1 and 2, *each step taken to calculate QPAs for air ambulance claims.*” *Id.* at 7 (emphasis added). Plainly, Guardian Flight seeks to reverse engineer Aetna’s QPA calculation methodology, which it will then use to its advantage in future IDR proceedings.

On May 2, Aetna requested a one-week extension to respond to Guardian Flight’s discovery, to which Guardian Flight agreed. Aetna’s discovery responses are due on or before Wednesday, May 10.

LEGAL STANDARD

Only on rare occasions do district courts allow discovery in vacatur proceedings. *See Vantage Deepwater Co. v. Petrobras Am., Inc.*, 966 F.3d 361, 372 (5th Cir. 2020). In an action to vacate an arbitration award, “[t]he party seeking discovery bears the burden of showing its necessity.” *Id.* (quotation omitted). “Moreover,” the Fifth Circuit cautioned, “the loser in arbitration cannot freeze the confirmation proceedings in their tracks and indefinitely postpone judgment by merely requesting discovery.” *Id.* (cleaned up).

ARGUMENT

I. The Information Guardian Flight Seeks is Not Discoverable in IDR Proceedings

As explained, Guardian Flight improperly seeks documents and information that are not discoverable in IDR proceedings. This, alone, should give pause to allowing the discovery process to go forward before the Court decides the pending motions to dismiss. *See* Dkt. 12 and Dkt. 46.

Further, in *Med-Trans*, Guardian Flight’s affiliates—represented by Guardian Flight’s counsel in this case—asked the court to protect confidential information concerning their results in IDR proceedings, complaining that discovery of such information would provide a party with “competitively valuable information to which [the other party] otherwise would not have access and with which it can make financial decisions.” Exhibit 2 at 4. Unabashedly, while its affiliates sought to protect their own confidential information in *Med-Trans*, Guardian Flight seeks Aetna’s confidential and “competitively valuable information to which it otherwise would not have access and with which it can make financial decisions.” Guardian Flight cannot have it both ways.

Given the above, it is beyond debate that a protective order limiting discovery to attorney’s eyes only will not safeguard Aetna’s confidential information. Guardian Flight’s counsel represents Guardian Flight or its affiliates in at least five other lawsuits challenging IDR awards—and in all those lawsuits, the plaintiffs all allege the IDR award was procured through

misrepresentations made to the IDR entity. In those cases, Guardian Flight or its affiliates have served similar discovery aimed at uncovering how the defendant–health group calculated the QPAs at issue, hoping to find a sympathetic court that will disregard the clear parameters of the NSA and grant them access to commercially valuable information, such as “Documents and Communications sufficient to show how Aetna calculates QPAs for out of network air ambulance claims.” Exhibit 1 at 6 (RFP No. 2).

There is little doubt any information Guardian Flight gets its hands on via discovery in this case will immediately be shared with its affiliates and used to gain a competitive advantage against Aetna in future IDR proceedings. *See generally* Dkt. 43-1 (April 21 hearing transcript) at 9:1–9:3 (“And by the way, when we file our IDR proceeding going forward, we can provide any evidence we want that we think is relevant to the IDR entity.”). Additionally, Guardian Flight is seeking the confidential information regarding its own competitors. *See, e.g.*, Exhibit 1 at 6 (RFP No. 6 seeks network contracts for each company with which Aetna has contracted rates for air-ambulance services in Nebraska).

II. Protecting Against Inappropriate Discovery is Consistent with the Limits of the FAA

It is well established that discovery in the context of a motion to vacate an arbitration award is extremely limited. *See Legion Ins. Co. v. Ins. Gen. Agency, Inc.*, 822 F.2d 541, 542–44 (5th Cir. 1987); *Midwest Generation EME, LLC v. Continuum Chem. Corp.*, 768 F. Supp. 2d 939, 943 (N.D. Ill. 2010) (“Post-arbitration discovery is rare, and courts have been extremely reluctant to allow it. It is often a ‘tactic’ employed by disgruntled or suspicious parties who, having lost the arbitration, are anxious for another go at it.”).

Disallowing discovery in this instance is consistent with the strict limits that apply when a party challenges an arbitration award under the FAA. And while Guardian Flight may take issue with equating the IDR process to arbitration, there is no doubt that the NSA expressly incorporates

the FAA’s extremely limited scope of judicial review. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(II); *Antwine v. Prudential Bache Secur., Inc.*, 899 F.2d 410, 413 (5th Cir. 1990) (“[j]udicial review of an arbitration award is extraordinarily narrow”); *see also* *Mantle v. Upper Deck Co.*, 956 F. Supp. 719, 726 (N.D. Tex. 1997) (“The standard of review for arbitration awards has been described as ‘among the narrowest known to the law.’” (citation omitted)).

The Fifth Circuit’s decision in *Vantage Deepwater* is instructive.¹¹ There, in a proceeding to confirm an arbitration award, a party attempted to subpoena the American Arbitration Association to discover facts relating to an arbitrator’s alleged bias and sought to depose the dissenting arbitrator regarding the same. *See Vantage Deepwater*, 966 F.3d at 373. The Fifth Circuit held that the district court did not abuse its discretion by disallowing this discovery, recognizing that “[t]he loser in arbitration cannot freeze the confirmation proceedings in their tracks and indefinitely postpone judgment by merely requesting discovery.” *Id.* (quotation omitted). Acknowledging the prohibition on courts to “review the merits of an arbitration award,” the court held that the party seeking to vacate the arbitration award must meet the heavy burden of demonstrating that the discovery requests are justified. *Id.* at 368, 373. Guardian Flight has not—and cannot—do so here.

At bottom, the NSA’s core purpose is to provide an efficient, streamlined, and low-cost dispute-resolution mechanism. Guardian Flight cannot simply assert unsupported, conclusory allegations of supposed misrepresentations to evade the strict discovery limits that apply when a party seeks to vacate an arbitration award under the FAA. *See generally* *O.R. Sec., Inc. v. Prof’l Planning Assocs.*, 857 F.2d 742, 745 (11th Cir. 1988) (rejecting contention that an FAA proceeding

¹¹ Notably, in the context of a motion to confirm or vacate an arbitration award, nearly every case that concerns a request to conduct post-arbitration discovery involves an arbitrator’s alleged bias.

to vacate an arbitration award should “develop into full scale litigation, with the attendant discovery, motions, and perhaps trial”). Disallowing discovery is consistent with the principles of efficiency and finality that form the bedrock of both the FAA and NSA.

III. In the Alternative, the Court Should Stay Discovery Until it Rules on Aetna’s Pending Motions to Dismiss

Alternatively, the Fifth Circuit has repeatedly confirmed that a district court properly exercises its discretion by staying discovery until it has determined preliminary questions that may dispose of the case. *See, e.g., Corwin v. Marney, Orton Inv.*, 843 F.2d 194, 200 (5th Cir. 1988) (discussing district court’s discretion to stay discovery pending a decision on a dispositive motion, noting “[i]t would be wasteful to allow discovery on all issues raised” when the case ultimately will not proceed past the motion-to-dismiss stage).

A stay of discovery pending resolution of a motion to dismiss is particularly appropriate, whereas here, there are serious doubts over whether the Court has jurisdiction to decide the dispute. *See* Dkts. 12, 19, 42, and 46; *see, e.g., Alex A. v. Edwards*, 2023 U.S. Dist. LEXIS 2168, at *6 (M.D. La. Jan. 3, 2023) (“[C]onsidering that Defendants’ Motion to Dismiss raises the threshold issue of subject-matter jurisdiction, the Court finds good cause to stay discovery pending resolution of Defendants’ Motion to Dismiss.”) (collecting cases); *Laufer v. Patel*, 2021 U.S. Dist. LEXIS 18317, at *4 (W.D. Tex. Feb. 1, 2021) (“Because standing is a threshold jurisdictional requirement, the Court agrees with Defendants that discovery should be stayed until the District Court has determined whether it has jurisdiction over this case.”); *see also Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011) (“Common situations in which a court may determine that staying discovery pending a ruling on a dispositive motion occur when dispositive motions raise issues of jurisdiction, venue, or immunity.”).

Moreover, staying discovery pending resolution of the motions to dismiss is “an eminently

logical means to prevent wasting the time and effort of all concerned, and to make the most efficient use of judicial resources.” *Coastal States Gas Corp. v. Dep’t of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979). Notably, Judge Corrigan’s decision in *Med-Trans* to stay discovery until the court decides the pending motions to dismiss is consistent with the authority outlined above.

Finally, Guardian Flight cannot credibly argue it will be prejudiced by a stay, as “no discovery [is] needed to resolve the [pending] motions to dismiss.” *Landry v. Air Line Pilots Ass’n Int’l*, 901 F.2d 404, 435 (5th Cir. 1990).

CONCLUSION

For the foregoing reasons, Aetna asks the Court to disallow discovery and reject Guardian Flight’s attempt to obtain Aetna’s confidential and highly valuable information. In the alternative, Aetna requests the Court stay discovery until it has ruled on Aetna’s pending motions to dismiss. *See* Dkt. 12 (lack of jurisdiction and failure to state a claim) and Dkt. 46 (mootness).

Respectfully submitted,

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Aetna Health Inc.**

CERTIFICATE OF CONFERENCE

During the parties' Rule 26 conference, Guardian Flight expressed its opposition to any stay of discovery. I hereby certify that I contacted counsel for Guardian Flight regarding the relief requested in this motion on May 10, 2023. I have not heard back from opposing counsel and, therefore, presume this motion is opposed.

/s/ David Hughes
David W. Hughes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on May 10, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ John B. Shely
John B. Shely

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,

Plaintiff,

VS.

AETNA HEALTH INC. and MEDICAL
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Defendants.

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Civil Action No. 4:22-cv-03805

ORDER

Pending before the Court is Aetna Health Inc.'s motion for a protective order or, in the alternative, motion for stay on discovery pending resolution of the defendants' motions to dismiss. That motion is **GRANTED**. Discovery in this matter is stayed until further ordered.

It is so ORDERED.

Date

The Honorable Alfred H. Bennett
United States District Judge

EXHIBIT 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GUARDIAN FLIGHT, LLC,

Plaintiff,

v.

AETNA HEALTH, INC., and MEDICAL
EVALUATORS OF TEXAS ASO, LLC,

Defendants.

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CIVIL ACTION NO. 4:22-cv-03805

PLAINTIFF’S FIRST SET OF DISCOVERY REQUESTS TO AETNA HEALTH, INC.

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Plaintiff Guardian Flight, LLC submits its first discovery requests to Defendant Aetna Health, Inc. (“Aetna”). Aetna is required to serve a written response and objections, if any, to these discovery requests and produce the documents to which no objection is asserted within thirty (30) days from the date of service to counsel of record for Plaintiff. Aetna is under a duty to supplement its responses to these requests for production in accordance with the Federal Rules of Civil Procedure.

Dated: April 3, 2023

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek

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Attorneys for Plaintiff Guardian Flight, LLC

CERTIFICATE OF SERVICE

I certify that on April 3, 2023, a true and correct copy of the foregoing was served electronically on Aetna's counsel of record.

/s/ Adam T. Schramek

Adam T. Schramek

INSTRUCTIONS

1. These discovery requests are governed by the Federal Rules of Civil Procedure.
2. Unless otherwise stated, these discovery requests seek documents and information regarding the period from January 17, 2022 through the present.
3. These discovery requests should be construed broadly, with the singular being construed to include the plural and vice versa. The conjunctive “and” should be construed to include the disjunctive “or” and vice versa. The word “any” should be construed to include “all” and vice versa. The word “each” should be construed to include “every” and vice versa. The word “including” should be construed to mean “including but not limited to.” Verbs should be construed to include all tenses.

DEFINITIONS

1. “MET” shall mean Medical Evaluators of Texas ASO, LLC.
2. The term “Communication” should be broadly construed to include any transmission of information, facts, data, thoughts, or opinion, whether written or oral, whether in-person or remote, including emails, letters, memoranda, legal or agency proceedings, meetings, discussions, conversations, telephone calls, agreements, text messages, instant messages, social media postings or comments, and blog posts or comments.
3. “Complaint” shall mean the complaint filed in the above captioned lawsuit.
4. “Defendants” shall mean Aetna and MET.
5. The term “Document” should be broadly construed. It includes all “writings and recordings” and “photographs,” as those terms are defined in Rule 1001 of the Federal Rules of Evidence. It also includes all materials encompassed by Federal Rule of Civil Procedure 34(a)(1)(A) and (B), including Comments to the rule and case law interpreting the rule.

6. “Explanation of Benefits or Payments” means the statements You provided to Guardian and the patient or plan beneficiary describing what costs You would cover relating to the transport at issue in the IDR Dispute.
7. “IDR Dispute” means the dispute between Aetna and Guardian arising from payment for the emergency air transport services as described in Paragraphs 3-4 of the Complaint. When not capitalized, the term “IDR disputes” refers to disputes arising under the No Surprises Act in general.
8. “IDR Determination” with a capital “D” means MET’s determination of the IDR Disputes. When not capitalized, the term “IDR determinations” refers to determinations in general.
9. “Network agreement” means an agreement or contract between an insurer and provider for the delivery of, and payment for, healthcare services.
10. “QPA” means Qualifying Payment Amount as provided under the No Surprises Act.
11. “Person” shall mean any natural person as well as any form of public or private organization or entity, such as a corporation, partnership, limited liability company, firm, association or business.
12. The phrase “relating to” should be broadly construed to include anything discussing, describing, involving, concerning, containing, embodying, reflecting, constituting, defining, identifying, stating, analyzing, responding to, referring to, dealing with, commenting on, prepared in connection with, used in preparation for, appended to, pertaining to, having any relationship to, or in any way being factually, legally, or logically connected in whole or in part to, the stated subject matter.
13. “Representative” of a Person shall mean any Person who acts, or purports to act, on behalf of the Person, including any present or former agents, employees, independent contractors,

attorneys, investigators, accountants, officers, directors, consultants and any other person or entity that can control or is controlled by the Person.

14. “You,” “Your,” and “Aetna ” shall mean Aetna Health, Inc., its affiliates, and any of its Representatives.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Documents and Communications sufficient to show Aetna's policy or practice for the initial amount it pays to out-of-network air ambulance providers for transports provided to patients with Aetna health insurance or a health plan administered by Aetna.

REQUEST FOR PRODUCTION NO. 2:

Documents and Communications sufficient to show how Aetna calculates QPAs for out of network air ambulance claims. The documents produced should be sufficient for a person knowledgeable about QPA regulations to be able to replicate Aetna's calculation of the QPA for the transport at issue in this proceeding.

REQUEST FOR PRODUCTION NO. 3:

Documents and Communications relating to the IDR Dispute or IDR Determination, other than what was submitted to or exchanged with MET. This request includes what is commonly referred to as a claim file, including all Explanation of Benefits or Payments that were created for the transport at issue in this proceeding.

REQUEST FOR PRODUCTION NO. 4:

For the transport at issue in the IDR Dispute, produce the Documents, including network agreements and data sources, You used to calculate (1) each QPA You contend applies to the IDR Dispute and (2) each QPA You listed on the Explanation of Benefits or Payments.

REQUEST FOR PRODUCTION NO. 5:

Documents and Communications relating to the "error that led to an incorrect QPA payment" as stated in the May 27, 2022 letter from Melissa Driscoll to Thomas Cook, attached hereto as Exhibit "A."

REQUEST FOR PRODUCTION NO. 6:

Network contracts for each Person identified in Interrogatory No. 3 who has submitted zero claims for air ambulance transport services since January 1, 2021.

REQUEST FOR PRODUCTION NO. 7

Documents and Communications relating to any Aetna decision or policy to contract with non-air ambulance providers for air ambulance transport services, such as the underlying fees schedules or contracted reimbursement rates set forth in the attached Exhibit "B."

INTERROGATORIES

INTERROGATORY NO. 1:

Explain in detail and with reference to the agreements you produce in response to RFP No. 4 Your calculation of (1) each QPA You contend applies to the IDR Dispute, and (2) each QPA You claim You shared with Plaintiff.

INTERROGATORY NO. 2:

Explain in detail and with reference to the documents you produce in response to RFP Nos. 1 and 2, each step taken to calculate QPAs for air ambulance claims.

INTERROGATORY NO. 3:

For each Person with whom You have contracted rates for air ambulance transport services in Nebraska, list the total number of claims they submitted to You for air ambulance transport services since January 1, 2021.

EXHIBIT A

Melissa Driscoll
Counsel
(860) 584-8530

May 27, 2022

Thomas A. Cook
EVP & General Counsel
6363 S. Fiddlers Green Circle, Suite 1400
Greenwood Village, CO 80111

RE Response regarding No Surprises Claims

Dear Mr. Cook:

Please find below the response to your letter regarding Air Ambulance reimbursements under the No Surprises Act.

The requirements of the law apply for both fixed wing and rotary wing services and do not include Ground Ambulance transport. Aetna's QPA rates for Air Ambulance do not include Ground Ambulance rates. In addition, in the regulations, the QPA methodology accounts for differences in fixed versus rotary wing transport through the variations in coding which is specific to the type of transport.

The regulation also does not prohibit the use of hospital based provider contracted rates and references both hospital and independent provider rates. An alternate geographic approach is utilized for Air Ambulance services than for other types of services citing the fact that there are fewer providers and the somewhat unique nature of the services. Requirements also are focused on pick up point.

You noted in your letter some claim examples and payment amounts. You indicated that prior to January 2022 claims had been paid in many cases at some percentile of FairHealth. You then correctly noted that the QPA is lower than the prior payments. That is correct, the QPA or median in network rate is generally lower than some prior FairHealth reimbursements.

That being said, we reviewed the claims in question and did identify an error that led to an incorrect QPA payment. We immediately reprocessed those claims and they have paid at a higher amount.

Please review the payment amounts on those reprocessed claims. I trust that you will find them to be appropriate.

Regards,



Melissa Driscoll, Counsel, Aetna

EXHIBIT B

Extract of Aetna In-Network Underlying Fees Schedule or Negotiated Reimbursement Rate for Contracted Conventional Air Ambulance Services Providers

| # | National Provider ID (NPI) | Provider Name | Provider Specialty | Fixed-Wing Rates | | Rotary Wing Rates | |
|----|----------------------------|---------------------------|----------------------------------|---------------------------|--------------------------------|---------------------------|--------------------------------|
| | | | | Air Service (HCPCS A0430) | Per Statute Mile (HCPCS A0435) | Air Service (HCPCS A0431) | Per Statute Mile (HCPCS A0436) |
| 1 | 1003080375 | ASHESH PARIKH | Physician/Cardiovascular Disease | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 2 | 1003129495 | MAHSA SHEKARI | Optometry | \$2,095.73 | \$34.86 | \$2,436.59 | \$43.05 |
| 3 | 1003329319 | JAZMINE MADDOX | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 4 | 1003329319 | JAZMINE MADDOX | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 5 | 1003329319 | JAZMINE MADDOX | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 6 | 1003329319 | JAZMINE MADDOX | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 7 | 1003329319 | JAZMINE MADDOX | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |
| 8 | 1003337783 | PUBLIX SUPER MARKETS, INC | Other Medical Supply Company | \$2,241.73 | \$21.08 | \$5,075.03 | \$44.98 |
| 9 | 1003337783 | PUBLIX SUPER MARKETS, INC | Other Medical Supply Company | \$4,755.24 | \$25.00 | | |
| 10 | 1003349648 | COURTNEY WASHINGTON | Physician/Family Practice | \$3,570.00 | \$21.08 | \$5,075.03 | \$58.11 |
| 11 | 1003875238 | EYE TEL IMAGING LLC | Physician/Ophthalmology | \$4,044.65 | \$9.50 | \$2,436.59 | \$44.98 |
| 12 | 1003875238 | EYE TEL IMAGING LLC | Physician/Ophthalmology | \$4,176.83 | \$25.97 | \$5,075.03 | \$50.00 |
| 13 | 1003879180 | DVA RENAL HEALTHCARE INC | End-Stage Renal Disease Facility | \$3,570.00 | \$21.08 | \$16,919.72 | \$44.98 |
| 14 | 1003946310 | JENNIFER CLEVELAND | Psychologist Clinical | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 15 | 1003946310 | JENNIFER CLEVELAND | Psychologist Clinical | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 16 | 1003946310 | JENNIFER CLEVELAND | Psychologist Clinical | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 17 | 1003946310 | JENNIFER CLEVELAND | Psychologist Clinical | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 18 | 1003946310 | JENNIFER CLEVELAND | Psychologist Clinical | \$6,241.42 | | \$14,392.12 | |
| 19 | 1013401371 | LEANA TALBOTT | Psychologist Clinical | \$3,570.00 | \$21.08 | \$5,075.03 | \$58.11 |
| 20 | 1013405034 | SCHULER DIALYSIS LLC | End-Stage Renal Disease Facility | \$3,570.00 | \$34.86 | \$5,213.04 | \$55.61 |
| 21 | 1013423227 | ANDREW MCLANE | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 22 | 1013423227 | ANDREW MCLANE | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 23 | 1013423227 | ANDREW MCLANE | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 24 | 1013423227 | ANDREW MCLANE | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 25 | 1013423227 | ANDREW MCLANE | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |

| # | National Provider ID (NPI) | Provider Name | Provider Specialty | Fixed-Wing Rates | | Rotary Wing Rates | |
|----|----------------------------|----------------------------|----------------------------------|---------------------------|--------------------------------|---------------------------|--------------------------------|
| | | | | Air Service (HCPCS A0430) | Per Statute Mile (HCPCS A0435) | Air Service (HCPCS A0431) | Per Statute Mile (HCPCS A0436) |
| 26 | 1013442102 | MAFON FOMUJANG | Nurse Practitioner | \$2,241.73 | \$20.48 | \$5,075.03 | \$44.98 |
| 27 | 1013442102 | MAFON FOMUJANG | Nurse Practitioner | \$3,570.00 | \$21.08 | \$5,548.74 | \$50.00 |
| 28 | 1013442102 | MAFON FOMUJANG | Nurse Practitioner | \$4,755.24 | | \$14,392.12 | \$55.31 |
| 29 | 1013442102 | MAFON FOMUJANG | Nurse Practitioner | \$6,241.42 | | | \$58.11 |
| 30 | 1013442102 | MAFON FOMUJANG | Nurse Practitioner | | | | \$133.26 |
| 31 | 1013551688 | PUBLIX NORTH CAROLINA, LP | Other Medical Supply Company | \$2,241.73 | \$25.00 | \$5,075.03 | \$44.98 |
| 32 | 1013948447 | GATEWAY COMMUNITY HC | Federally Qualified Health Ctr | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 33 | 1023012481 | LAURA PIIPPO | Physician/Ophthalmology | \$3,570.00 | \$21.08 | \$5,075.03 | \$50.00 |
| 34 | 1023096237 | BRYAN ODITT | Physician Assistant | \$3,570.00 | \$21.08 | \$5,548.74 | \$44.98 |
| 35 | 1023115417 | EMMA GONZALEZ | Optometry | \$4,044.65 | \$25.63 | \$5,075.03 | \$44.98 |
| 36 | 1023495959 | NACOGDOCHES DIALYSIS | End-Stage Renal Disease Facility | \$4,755.24 | \$21.08 | \$6,766.06 | \$44.98 |
| 37 | 1023535523 | CROWN POINT EYE CARE | Optometry | \$4,755.24 | \$34.86 | \$6,858.92 | \$55.31 |
| 38 | 1023647286 | JENNIFER MELENDEZ | Nurse Practitioner | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 39 | 1033382452 | STACY GHANAMI | Physical Therapist | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 40 | 1033401351 | MAXIM HEALTHCARE SERVICES | Home Health Agency | \$3,570.00 | \$21.08 | \$5,548.74 | \$44.98 |
| 41 | 1043250103 | DAN CRISWELL | Physician/Family Practice | \$3,570.00 | \$17.60 | \$5,075.03 | \$50.00 |
| 42 | 1043303274 | RIAZ RAHMAN | Physician/Internal Medicine | \$3,570.00 | \$21.08 | \$5,075.03 | \$44.98 |
| 43 | 1043412299 | LIFEHME, INC. | Oxygen supplier | \$3,570.00 | \$34.86 | \$6,766.06 | \$55.31 |
| 44 | 1043711195 | ALEXIS MONTOYA VILLALPANDO | Psychologist Clinical | \$4,755.24 | \$17.60 | \$5,548.74 | \$140.00 |
| 45 | 1043824717 | CHE BEHAVIORAL HEALTH | Licensed Clinical Social Worker | \$3,570.00 | \$17.60 | \$3,570.00 | \$44.98 |
| 46 | 1043824717 | CHE BEHAVIORAL HEALTH | Licensed Clinical Social Worker | \$4,755.24 | \$20.48 | \$4,831.31 | \$55.61 |
| 47 | 1043824717 | CHE BEHAVIORAL HEALTH | Licensed Clinical Social Worker | | \$21.01 | \$5,075.03 | \$124.30 |
| 48 | 1043824717 | CHE BEHAVIORAL HEALTH | Licensed Clinical Social Worker | | \$30.00 | \$5,213.04 | |
| 49 | 1053052506 | APERION CARE NILES LLC | Skilled Nursing Facility | \$3,570.00 | \$21.08 | \$2,436.59 | \$87.59 |
| 50 | 1053345553 | CLIFFORD FAGAN | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |

| # | National Provider ID (NPI) | Provider Name | Provider Specialty | Fixed-Wing Rates | | Rotary Wing Rates | |
|----|----------------------------------|---|---------------------------------|------------------------------|-----------------------------------|------------------------------|-----------------------------------|
| | | | | Air Service (HCPCS A0430) | Per Statute Mile (HCPCS A0435) | Air Service (HCPCS A0431) | Per Statute Mile (HCPCS A0436) |
| 51 | 1053345553 | CLIFFORD FAGAN | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 52 | 1053345553 | CLIFFORD FAGAN | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 53 | 1053345553 | CLIFFORD FAGAN | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 54 | 1053345553 | CLIFFORD FAGAN | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |
| 55 | 1053360131 | TORREY CARLSON | Optometry | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 56 | 1053439125 | PROFESSIONAL VISIONCARE, INC | Optometry | \$3,570.00 | \$17.60 | \$5,075.03 | \$21.08 |
| 57 | 1053467431 | JACKIE MURPHY | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 58 | 1053467431 | JACKIE MURPHY | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 59 | 1053467431 | JACKIE MURPHY | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 60 | 1053467431 | JACKIE MURPHY | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 61 | 1053467431 | JACKIE MURPHY | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |
| 62 | 1053735951 | COMPREHENSIVE HOSPITALIST SERVICES OF NEW MEXICO LLC | Physician/Hospitalist | \$3,570.00 | \$21.08 | \$5,075.03 | \$14.46 |
| 63 | 1053799064 | AKHIL SHENOY | Physician/Internal Medicine | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 64 | 1063000636 | TRINA LINDSEY | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 65 | 1063000636 | TRINA LINDSEY | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 66 | 1063000636 | TRINA LINDSEY | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 67 | 1063000636 | TRINA LINDSEY | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 68 | 1063000636 | TRINA LINDSEY | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |
| 69 | 1063059756 | MODUPE OLATUNDE | Nurse Practitioner | \$2,241.73 | \$21.08 | \$5,075.03 | \$43.05 |
| 70 | 1063059756 | MODUPE OLATUNDE | Nurse Practitioner | \$3,570.00 | | \$5,548.74 | \$58.11 |
| 71 | 1063059756 | MODUPE OLATUNDE | Nurse Practitioner | | | | \$133.26 |
| 72 | 1063089704 | SANDRA WINANS | Psychologist Clinical | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 73 | 1063089704 | SANDRA WINANS | Psychologist Clinical | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 74 | 1063089704 | SANDRA WINANS | Psychologist Clinical | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 75 | 1063089704 | SANDRA WINANS | Psychologist Clinical | \$4,755.24 | | \$6,766.06 | \$73.08 |

| # | National Provider ID (NPI) | Provider Name | Provider Specialty | Fixed-Wing Rates | | Rotary Wing Rates | |
|-----|----------------------------------|-----------------------------|--|------------------------------|-----------------------------------|------------------------------|-----------------------------------|
| | | | | Air Service (HCPCS A0430) | Per Statute Mile (HCPCS A0435) | Air Service (HCPCS A0431) | Per Statute Mile (HCPCS A0436) |
| 76 | 1063089704 | SANDRA WINANS | Psychologist Clinical | \$6,241.42 | | \$14,392.12 | |
| 77 | 1063450740 | TOD GANN | Physical Therapist | \$3,570.00 | \$20.48 | \$5,075.03 | \$44.98 |
| 78 | 1063492338 | JOHN MCDONALD | Physician/Pathology | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 79 | 1063669612 | LOUISIANA ORTHOPAEDIC SPEC | Clinic or Group Practice | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 80 | 1063793123 | SUMMER LAAKE | Nurse Practitioner | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 81 | 1063823425 | WALLY OMAR | Physician/Cardiovascular Disease (Cardiology) | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 82 | 1063924397 | PUBLIX ALABAMA LLC | Other Medical Supply Company | \$2,241.73 | \$21.08 | \$5,075.03 | \$44.98 |
| 83 | 1063924397 | PUBLIX ALABAMA LLC | Other Medical Supply Company | \$4,755.24 | \$25.00 | | |
| 84 | 1073027843 | CLAUDIA STANLEY | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 85 | 1073027843 | CLAUDIA STANLEY | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 86 | 1073027843 | CLAUDIA STANLEY | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 87 | 1073027843 | CLAUDIA STANLEY | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 88 | 1073027843 | CLAUDIA STANLEY | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |
| 89 | 1073069811 | SNG - PASADENA DIALYSIS CTR | End-Stage Renal Disease Facility | \$4,755.24 | \$21.08 | \$6,766.06 | \$44.98 |
| 90 | 1073286472 | JENNIFER GONZALEZ | Licensed Clinical Social Worker | \$2,241.73 | \$11.22 | \$3,713.85 | \$44.98 |
| 91 | 1073286472 | JENNIFER GONZALEZ | Licensed Clinical Social Worker | \$3,570.00 | \$20.48 | \$5,075.03 | \$55.31 |
| 92 | 1073286472 | JENNIFER GONZALEZ | Licensed Clinical Social Worker | \$4,176.83 | \$21.08 | \$5,548.74 | \$58.11 |
| 93 | 1073286472 | JENNIFER GONZALEZ | Licensed Clinical Social Worker | \$4,755.24 | | \$6,766.06 | \$73.08 |
| 94 | 1073286472 | JENNIFER GONZALEZ | Licensed Clinical Social Worker | \$6,241.42 | | \$14,392.12 | |
| 95 | 1073776860 | SOUTHWEST REGIONAL PCR, LLC | Clinical Laboratory | \$3,570.00 | \$17.60 | \$4,831.31 | \$44.98 |
| 96 | 1073776860 | SOUTHWEST REGIONAL PCR, LLC | Clinical Laboratory | \$5,891.50 | \$21.08 | \$5,075.03 | \$124.30 |
| 97 | 1073902771 | PRIMROSE DIALYSIS, LLC | End-Stage Renal Disease Facility | \$3,570.00 | \$34.86 | \$5,213.04 | \$55.61 |
| 98 | 1093463838 | KIRCHNER WOMENS CLINIC | Physician/Obstetrics & Gynecology | \$2,241.73 | \$21.08 | \$5,548.74 | \$133.26 |
| 99 | 1093708687 | DUANE MILLER | Physician/Psychiatry | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 100 | 1093712424 | PATRICIA FENDERSON | Physician/Pathology | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |

Exhibit B: Aetna Median In-Network Underlying Fee Schedule or Negotiated Reimbursement Rate for Contracted Conventional Air Ambulance Services Providers Offering Air Ambulance Services by HCPCS Codes and Provider Specialty

| Specialty Code | Specialty | # of Unique Providers | Fixed-Wing | | Rotary Wing | |
|----------------|--|-----------------------|---------------------------|--------------------------------|---------------------------|--------------------------------|
| | | | Air Service (HCPCS A0430) | Per Statute Mile (HCPCS A0435) | Air Service (HCPCS A0431) | Per Statute Mile (HCPCS A0436) |
| 02 | Physician/General Surgery | 6 | \$1,973.88 | \$19.31 | \$5,920.55 | \$58.11 |
| 03 | Physician/Allergy/ Immunology | 1 | \$3,570.00 | \$21.08 | \$5,075.03 | \$14.46 |
| 04 | Physician/Otolaryngology | 1 | \$3,807.33 | \$23.80 | \$10,997.38 | \$56.86 |
| 05 | Physician/Anesthesiology | 2 | \$4,162.62 | \$21.08 | \$5,075.03 | \$44.98 |
| 06 | Physician/Cardiovascular Disease (Cardiology) | 5 | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 08 | Physician/Family Practice | 24 | \$3,570.00 | \$21.05 | \$5,075.03 | \$54.06 |
| 11 | Physician/Internal Medicine | 10 | \$4,176.83 | \$20.48 | \$5,075.03 | \$44.98 |
| 16 | Physician/Obstetrics & Gynecology | 3 | \$2,241.73 | \$21.08 | \$5,548.74 | \$133.26 |
| 18 | Physician/Ophthalmology | 7 | \$3,535.00 | \$21.01 | \$5,075.03 | \$44.98 |
| 22 | Physician/Pathology | 39 | \$4,755.24 | \$21.08 | \$5,075.03 | \$44.98 |
| 26 | Physician/Psychiatry | 11 | \$4,176.83 | \$20.48 | \$5,075.03 | \$44.98 |
| 30 | Physician/Diagnostic Radiology | 4 | \$2,241.73 | \$17.60 | \$5,075.03 | \$55.61 |
| 35 | Chiropractic | 2 | \$4,044.65 | \$21.08 | \$5,075.03 | \$44.98 |
| 36 | Physician/Nuclear Medicine | 1 | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 37 | Physician/Pediatric Medicine | 2 | \$3,364.56 | \$21.05 | \$5,075.03 | \$44.98 |
| 41 | Optometry | 35 | \$3,570.00 | \$21.08 | \$5,075.03 | \$44.98 |
| 43 | Certified Registered Nurse Anesthetist (CRNA) | 1 | \$6,241.42 | \$20.48 | \$14,392.12 | \$44.98 |
| 47 | Independent Diagnostic Testing Facility (IDTF) | 1 | \$4,755.24 | \$21.08 | \$5,548.74 | \$143.35 |
| 49 | Ambulatory Surgical Center | 1 | \$3,570.00 | \$21.08 | \$16,919.72 | \$44.98 |
| 50 | Nurse Practitioner | 26 | \$4,110.74 | \$21.08 | \$5,075.03 | \$50.00 |
| 54 | Other Medical Supply Company | 20 | \$3,570.00 | \$21.08 | \$5,075.03 | \$44.98 |
| 58 | Medical Supply Company with Pharmacist | 3 | \$3,570.00 | \$25.00 | \$5,548.74 | \$44.98 |
| 59 | Ambulance Service Provider | 9 | \$3,570.00 | \$21.08 | \$5,548.74 | \$44.98 |
| 61 | Voluntary Health or Charitable Agency[1] | 1 | \$3,570.00 | \$20.48 | \$5,075.03 | \$44.98 |
| 62 | Psychologist Clinical | 34 | \$4,176.83 | \$20.48 | \$5,548.74 | \$55.31 |

| Specialty Code | Specialty | # of Unique Providers | Fixed-Wing | | Rotary-Wing | |
|----------------|--|-----------------------|---------------------------|--------------------------------|---------------------------|--------------------------------|
| | | | Air Service (HCPCS A0430) | Per Statute Mile (HCPCS A0435) | Air Service (HCPCS A0431) | Per Statute Mile (HCPCS A0436) |
| 64 | Audiologist | 3 | 3570 | 21.08 | 5075.03 | 58.11 |
| 65 | Physical Therapist in Private Practice | 6 | 3570 | 20.48 | 5075.03 | 44.98 |
| 69 | Clinical Laboratory | 12 | 3807.325 | 21.08 | 5075.03 | 44.98 |
| 70 | Clinic or Group Practice | 6 | 3570 | 21.045 | 5075.03 | 51.545 |
| 71 | Registered Dietitian or Nutrition Professional | 1 | 2241.73 | 21.08 | 6766.06 | 44.98 |
| 75 | Slide Preparation Facility | 1 | 4755.24 | 21.08 | 5075.03 | 44.98 |
| 80 | Licensed Clinical Social Worker | 202 | 4176.83 | 20.48 | 5548.74 | 55.31 |
| 86 | Physician/Neuropsychiatry | 2 | 3570 | 21.08 | 5075.03 | 51.545 |
| 92 | Physician/Radiation Oncology | 1 | 1354.31 | 17.6 | 6766.06 | 58.11 |
| 93 | Physician/Emergency Medicine | 8 | 4162.62 | 21.08 | 5075.03 | 51.545 |
| 97 | Physician Assistant | 10 | 4755.24 | 21.08 | 5075.03 | 44.98 |
| A0 | Hospital | 5 | 3570 | 21.08 | 16919.72 | 44.98 |
| A1 | Skilled Nursing Facility | 7 | 3570 | 21.08 | 3713.85 | 44.98 |
| A4 | Home Health Agency | 5 | 3570 | 21.08 | 5548.74 | 44.98 |
| B1 | Oxygen supplier | 8 | 3570 | 34.86 | 5548.74 | 44.98 |
| B4 | Other Facility/Center | 23 | 3570 | 21.08 | 5213.04 | 55.61 |
| C5 | Dentist | 1 | 4044.65 | 21.08 | 5075.03 | 44.98 |
| C6 | Physician/Hospitalist | 3 | 3570 | 21.08 | 5075.03 | 14.46 |
| UN | Unknown | 966 | 4176.83 | 20.48 | 5548.74 | 55.31 |

EXHIBIT 2

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

MED-TRANS CORPORATION,

Plaintiff,

v.

Civil Action No.

3:22-cv-01077-TJC-JBT

CAPITAL HEALTH PLAN, INC.
and C2C INNOVATIVE
SOLUTIONS, INC.,

Defendants.

MED-TRANS CORPORATION,

Plaintiff,

v.

Civil Action No.

3:22-cv-01139-TJC-JBT

BLUE CROSS AND BLUE
SHIELD OF FLORIDA, INC., d/b/a
FLORIDA BLUE, and C2C
INNOVATIVE SOLUTIONS, INC.,

Defendants.

REACH AIR MEDICAL
SERVICES LLC,

Plaintiff,

v.

Civil Action No.

3:22-cv-01153-TJC-JBT

KAISER FOUNDATION
HEALTH PLAN INC. and C2C
INNOVATIVE SOLUTIONS, INC.,

Defendants.

**PLAINTIFFS' OPPOSED MOTION TO PARTIALLY REDACT
TELEPHONIC PRELIMINARY PRETRIAL CONFERENCE
TRANSCRIPT**

Plaintiffs Med-Trans Corporation (“Med-Trans”) and REACH Air Medical Services, LLC (“REACH”) (collectively “Plaintiffs”) respectfully request this Court for an order partially redacting the transcript of the telephonic preliminary pretrial conference, dated January 19, 2023, reported by Ms. Shannon M. Bishop, the court reporter. *See* Dkt. 49 (3:22-cv-1077); Dkt. 36 (3:22-cv-1139); Dkt. 34 (3:22-cv-1153).

On January 19, 2023, the parties appeared before the Honorable Judge Timothy Corrigan for a joint telephonic preliminary pretrial conference. Med-Trans and REACH request redaction of certain portions of the transcript of that conference because they contain confidential and proprietary internal business information.

Counsel for Plaintiffs also participates in their IDR submissions. *See* Declaration of Adam T. Schramek (“Schramek Decl.”) at ¶ 2. As a result, counsel collects, maintains and reports to Plaintiffs various data points relating to those submissions and the results, including Plaintiffs’ and their affiliates’ win and loss rates. *Id.* This information is provided solely to Plaintiffs and their affiliates. *Id.*

At the preliminary pretrial conference, the Court asked a specific question to Plaintiffs' counsel regarding those IDR results:

THE COURT: All right. And out of those couple hundred decided, **how many did you win and how many did you lose?**

Tr. at 10/2 to 10/4. Because counsel knew this information and desired to respond to the Court's inquiry with complete candor, the information was provided and referenced twice more during the proceedings. *See* Tr. at 10/5 to 10/7, 10/15 and 11/6.

Plaintiffs solely seek redaction of these three references to their specific IDR results (wins versus losses) because this information is not publicly available, none of the insurers have publicly disclosed their IDR results, information regarding IDR results has commercial value to other air ambulance providers and industry data aggregators. *See* Schramek Decl. at ¶ 3.

Information used in a federal court proceeding may be maintained as confidential where a party demonstrates "good cause" to overcome the common law right of access. *See Romero v. Drummond Co., Inc.*, 480 F.3d 1234, 1246 (11th Cir. 2007); Whether good cause exists depends on the party's "interest in keeping the information confidential." *Id.* (quoting *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1309, 1315 (11th Cir. 2001)). "Competitively sensitive business information that has economic value

because it is undisclosed” has been considered “highly confidential” and limited to disclosure to counsel only. *See Intamin Amusements Rides Int. Corp. Est. v. U.S. Thrillrides, LLC*, 2021 WL 9949843, at *1 (M.D. Fla. 2021). Similarly, confidentiality has been found appropriate where a deposition transcript contained “confidential information regarding Defendant's business operations as well as confidential and competitively sensitive information” and expert report containing “data and analysis...which Defendant's competitors could use...to undercut” its position. *See Barkley v. Pizza Hut of Am., Inc.*, 2015 WL 5915817, at *3 (M.D. Fla. Oct. 8, 2015)

Public disclosure of Plaintiffs’ IDR results would provide its air ambulance competitors with a bench mark against which to compare their results. If its results are better than Plaintiffs’, the competitor may decide not to further invest in its IDR process. If its results are worse, it may decide to increase investment in its IDR process. Either way, it has competitively valuable information to which it otherwise would not have access and with which it can make financial decisions.

The same is true of insurers like the Defendant insurers in these actions. Plaintiffs have been unable to locate any information on the results Defendant insurers have obtained against other providers, including other air ambulance companies. *See Schramek Decl.* at 3. If an insurer had another’s IDR results,

the insurer could make financial decisions based on that additional information, such as the amount of additional investment to make in that process. After all, a higher win rate for an insurer means less claims payments and greater profit. Moreover, this information would be commercially valuable when negotiating network agreements or making investment decisions in their IDR processes. *Id.* at 3. IDR results constitute competitively sensitive information, which is presumably why the Defendant insurers have not made this information public.¹

While Plaintiffs are not claiming that their IDR results rise to the level of trade secrets, it is notable that federal law defines trade secrets to include “*all forms and types of financial, business, . . . [or] economic . . . information, including . . . compilations*, whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing.” 18 U.S. Code § 1839 (3) (emphasis added). In other words, non-public business information including compilations (like IDR results) qualify as the type of information over which trade secret status can exist. Similarly, the Florida legislature has adopted an expansive definition of “trade secrets” that includes “*any portion or phase of any . . . compilation of information which* is for use, or *is used*, in the *operation of a business* and which

¹ If any of the Defendants have publicly disclosed this data, they will have an opportunity in their opposition briefs to provide it to the Court.

provides the business an advantage, or ***an opportunity to obtain an advantage, over those who do not know or use it***” including commercial information. Fla. Stat. § 812.081(c).

The Florida legislature—and Florida courts—have protected the type of confidential business information that Plaintiffs seek to redact. *See, e.g., CFPB v. Ocwen Fin. Corp.*, 2018 WL 3118266, at *4 (S.D. Fla. June 25, 2018) (approving confidentiality designations of documents “related to [company’s] business practices, its daily operations”); *cf. Pinnacle Towers LLC v. Airpowered, LLC*, 2015 WL 5897524, at *2 (M.D. Fla. Oct. 7, 2015) (granting motion to seal licensing agreements because they contained “proprietary information” that would harm party’s “commercial interest and competitive standing” if made public); *see also Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978) (noting that courts have protected “sources of business information that might harm a litigant's competitive standing”).

For these reasons, Plaintiffs have established good cause to redact their confidential IDR results. Accordingly, Plaintiffs request that the following line/page designations of the transcript on file be redacted:

| Starting Page/Line | Ending Page/Line |
|--------------------|------------------|
| 10/5 | 10/7 |

| | |
|-------------------------|---------------------------|
| 10/15 starting at “but” | 10/15 (remainder of line) |
| 11/6 starting at “in” | 11/6 (remainder of line) |

CONCLUSION

Plaintiffs respectfully request that this Court grant its Motion to Partially Redact the Telephonic Preliminary Pretrial Conference Transcript.

Dated: February 9, 2023

SMITH HULSEY & BUSEY

By: s/ Lanny Russell
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Respectfully submitted,

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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 3.01(g), the undersigned has conferred with counsel for Defendants regarding the relief requested in this Motion, and is opposed to the requested relief.

CERTIFICATE OF SERVICE

I certify that on February 9, 2023, a true and correct copy of the foregoing was served via the Court's ECF system on all counsel of record.

/s/ Adam Schramek

Adam Schramek

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

MED-TRANS CORPORATION,

Plaintiff,

v.

Civil Action No.
3:22-cv-01077-TJC-JBT

CAPITAL HEALTH PLAN, INC.
and C2C INNOVATIVE
SOLUTIONS, INC.,

Defendants.

MED-TRANS CORPORATION,

Plaintiff,

v.

Civil Action No.
3:22-cv-01139-TJC-JBT

BLUE CROSS AND BLUE
SHIELD OF FLORIDA, INC., d/b/a
FLORIDA BLUE, and C2C
INNOVATIVE SOLUTIONS, INC.,

Defendants.

REACH AIR MEDICAL
SERVICES LLC,

Plaintiff,

v.

Civil Action No.
3:22-cv-01153-TJC-JBT

KAISER FOUNDATION
HEALTH PLAN INC. and C2C
INNOVATIVE SOLUTIONS, INC.,

Defendants.

DECLARATION OF ADAM T. SCHRAMEK

1. My name is Adam T. Schramek. I am an attorney duly licensed by the State Bar of Texas to practice law in the state of Texas. I am also admitted to practice before the United States Supreme Court, the Fifth Circuit Court of Appeals, and all four federal district courts in Texas. I am a partner with Norton Rose Fulbright US LLP, which is representing Plaintiffs Med-Trans Corporation (“Med-Trans”) and REACH Air Medical Services, LLC (“REACH”) (collectively “Plaintiffs”) in the above captioned proceedings, for which I have been admitted *pro hac vice*.

2. Plaintiffs are two of the operating subsidiaries of Global Medical Response (“GMR”). My law firm assists GMR’s operating subsidiaries in their Independent Dispute Resolution (“IDR”) submissions. This includes collecting, maintaining and reporting IDR results, including win and loss rates. This information is provided by us solely to GMR for its use in its IDR program, including making decisions on investments in that program.

3. Over the last several months, I have conducted various searches for publicly available information on the win and loss rates for insurers and other payors. In particular, I have searched for such data on the three Defendant insurers at issue in this proceeding as well provider and insurer win and loss rates for Defendant C2C. This search has included Defendants' websites, industry articles, and CMS publications. To date, I have not located any

publicly available source of this data. This information would be commercially valuable to parties when negotiating network agreements or making investment decisions in their IDR processes.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 9, 2023

/s/Adam T. Schramek

Adam T. Schramek

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MED-TRANS CORPORATION,

Plaintiff,

v.

CASE NO. 3:22-cv-1139-TJC-JBT

BLUE CROSS BLUE SHIELD OF
FLORIDA & C2C INNOVATIVE
SOLUTIONS, INC.,

Defendants.

MED-TRANS CORPORATION,

Plaintiff,

v.

CASE NO. 3:22-cv-1077-TJC-JBT

CAPITAL HEALTH PLAN, INC. &
C2C INNOVATIVE SOLUTIONS,
INC.,

Defendants.

REACH AIR MEDICAL SERVICES,
LLC,

Plaintiff,

v.

CASE NO. 3:22-cv-1153-TJC-JBT

KAISER FOUNDATION HEALTH
PLAN, INC. & C2C INNOVATIVE
SOLUTIONS, INC.,

Defendants.

TELEPHONIC PRELIMINARY PRETRIAL CONFERENCE
(REDACTED TRANSCRIPT)
BEFORE THE HONORABLE TIMOTHY J. CORRIGAN
UNITED STATES DISTRICT JUDGE
Jacksonville, Florida
January 17, 2023
4:07 p.m.

(Proceedings recorded by mechanical stenography; transcript
produced by computer.)

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P R O C E E D I N G S

January 17, 2023

4:07 p.m.

- - -

THE COURT: Counsel, we're having some feedback here. If you could put your phones on mute for now, let's see if that helps.

All right. We're going to try and go ahead and see if we can make it work. This is the case of *Med-Trans Corp. versus Capital Health, BSBC, and Kaiser*. The cases are numbered 3:22-cv-1077, 3:22-cv-1139, and 3:22-cv-1153.

I'm going to go through the attorneys that we have listed as making an appearance. I assume there will be a primary spokesperson for each party. And you can just identify yourself when you're speaking, please.

I've got Mr. Russell and Mr. Schramek for the plaintiff.

I've got Mr. Smith and Mr. Lehner for Capital Health.

I've got Mr. Conner, Ms. Mansfield, and Ms. Fleming for BCBS.

I've got Mr. Fackler, Mr. Giboney, Ms. Hanson, and Mr. Batla for C2C.

I've also got some corporate reps, Mr. Dodd for Kaiser, and Mr. Keshavarzi -- Keshavarzi, if I'm saying it correctly. I apologize if I'm not. And that's also for Kaiser.

04:09 1 We're here today for a preliminary pretrial
04:09 2 conference. I have familiarized myself with the case enough
04:09 3 to, I think, be able to get us where we need to go today.

04:09 4 I do have a couple of preliminary questions. I'll
04:09 5 start with the plaintiff. And, again, if you -- when you
04:09 6 speak, please identify yourself.

04:09 7 So I guess the question I have for the plaintiffs is:
04:09 8 Why is this case brought as a complaint, as opposed to a
04:09 9 proceeding under the FAA that would -- that would address the
04:10 10 arbitration in that context?

04:10 11 MR. SCHRAMEK: This is Adam Schramek, Your Honor,
04:10 12 arguing on behalf of the plaintiffs.

04:10 13 So, first of all, this case was not brought under the
04:10 14 Federal Arbitration Act. We do not believe the FAA itself
04:10 15 actually applies.

04:10 16 It was brought under the No Surprises Act, which sets
04:10 17 forth a statutory scheme for what are known as IDR, independent
04:10 18 dispute resolution determinations.

04:10 19 And the way the statute is worded, it says that
04:10 20 judicial review shall be available in cases that would
04:10 21 match/qualify the standard to vacate an arbitration award.

04:10 22 And the way that Congress did it, they specifically
04:10 23 cited to one small section of the FAA, which is the standard to
04:10 24 be applied, the legal standard.

04:10 25 They did not incorporate other sections of the FAA,

04:10 1 including Section 6, which would require this proceeding to be
04:10 2 brought by motion rather than by complaint.

04:11 3 We also in our briefing go into great detail about
04:11 4 why it is we do not believe the standard of review under the
04:11 5 FAA is applicable here, because this is not an -- a proceeding
04:11 6 based on an agreed arbitration procedure, where the parties can
04:11 7 agree to the rules, they can agree to the scope of discovery,
04:11 8 they can agree to how everything is done, so that at the end of
04:11 9 the day, when you don't like the decision, you don't get to
04:11 10 revisit any, really, substantive issues.

04:11 11 Here, we believe the scope of review must be broader,
04:11 12 because under the No Surprises Act -- the way that the
04:11 13 executive branch has implemented the No Surprises Act, they've
04:11 14 made it to where we don't get to see the other side's pleading.
04:11 15 We don't get to see the evidence they submit. There's no
04:11 16 exchange or discussion.

04:11 17 And so the idea of the Federal Arbitration Act
04:11 18 standard applying, or the motion practice applying, does not
04:11 19 fit with the statutory scheme for the NSA.

04:11 20 If the Court were to simply say we're going to do
04:11 21 this just like a Federal Arbitration Act proceeding,
04:12 22 essentially we don't believe we would be receiving the due
04:12 23 process that would be required of a compelled administrative
04:12 24 proceeding under federal law.

04:12 25 And that's really the difference. It's -- and that's

04:12 1 one of the questions, Your Honor --

04:12 2 THE COURT: So are you saying -- so we're not going
04:12 3 to decide the motion to dismiss, but I know I asked the
04:12 4 question. But I guess that's what I would be deciding, or one
04:12 5 of the things I would be deciding, is what's the proper format
04:12 6 for a case to seek review of one of these awards.

04:12 7 But I was interested in something you said. What
04:12 8 was -- how did it work? Because it's a baseball arbitration.
04:12 9 So did you just submit a number and they submitted a number and
04:12 10 some explanation and that's it, there's no -- there's no
04:12 11 exchange of information during the process? Is that -- am I
04:12 12 understanding that correctly?

04:12 13 MR. SCHRAMEK: Pretty much, Judge. That is -- that's
04:12 14 similar to -- very similar to how the process works. So we
04:13 15 submit an offer, a dollar offer, and then there are certain
04:13 16 non-exclusive statutory factors of information we can provide,
04:13 17 and then there's certain information we're prohibited from
04:13 18 providing, such as Medicare rates.

04:13 19 We are -- each side is allowed to make a submission.
04:13 20 The other side doesn't get to see the submission. And the
04:13 21 decision that's rendered does not have to be reasoned.

04:13 22 So all we get at the end of the day is -- and,
04:13 23 interestingly enough, one of the bases under the Federal
04:13 24 Arbitration Act is a misrepresentation, you know, of -- to the
04:13 25 decision-maker. And, in fact, the No Surprises Act says that

04:13 1 if you make a misrepresentation to the IDR entity, that that
04:13 2 award is not going to be binding.

04:13 3 Well, Judge, how are we going to know if a
04:13 4 misrepresentation was made if we don't get to see the other
04:13 5 side's submission? That's kind of one of our, kind of,
04:13 6 foundational due process arguments in the context of these
04:13 7 particular decisions. But we don't get to see the other side's
04:13 8 submission.

04:13 9 The only way we know about what we've alleged are
04:13 10 misrepresentations in this proceeding is because the IDR entity
04:14 11 happened to make reference to some of the information that has
04:14 12 been submitted by the payors in these cases, including their --
04:14 13 what's known as a qualifying payment amount, a QPA.

04:14 14 So we believe judicial review is integral to the
04:14 15 process of making this statute work, of making the process
04:14 16 work. And I'll note that we had hundreds of IDR decisions --
04:14 17 and I'm talking about all my air ambulance clients in 2022, had
04:14 18 hundreds of IDR decisions.

04:14 19 We're here today about three of them that we do not
04:14 20 believe were appropriately -- decided under the wrong standard.

04:14 21 Yes, there have been regula- -- attacks to the
04:14 22 regulations. Some of the regulations have been overturned.
04:14 23 And, in fact, an illegal presumption was overturned by a
04:14 24 court -- a federal court here in Texas.

04:14 25 That illegal presumption, we contend, continued to be

04:14 1 applied by C2C after that decision was rendered. And so that's
04:15 2 also part of this due process judicial review.

04:15 3 It's not just a motion after an agreed process where
04:15 4 you have all the discovery and exchange of information you
04:15 5 expect and private agreements between the parties.

04:15 6 You have a federal compelled process where we have
04:15 7 not -- to this day, we don't even know the person who made our
04:15 8 decision.

04:15 9 THE COURT: Okay. So there's a lot in there. And,
04:15 10 again, I'm trying to just -- I'm -- I want to understand a
04:15 11 little bit, and then I'll -- of course, I'll hear from the
04:15 12 defendants in a minute.

04:15 13 But I'm not -- so are you saying that since this --
04:15 14 because this law just went into effect about a year ago, right?

04:15 15 MR. SCHRAMEK: That's right.

04:15 16 THE COURT: Okay. Are you saying there have been
04:15 17 hundreds of these awards that have happened since that time?

04:15 18 MR. SCHRAMEK: Yes. And to give a little bit of
04:15 19 clarity, the law went into effect January 1st, but the actual
04:15 20 process to submit claims and have a dispute resolution -- IDR,
04:15 21 a dispute resolution, didn't happen until late April, when the
04:16 22 federal government finally opened the portal, which is like
04:16 23 a -- you know, an ECF portal, where you can make your filing.

04:16 24 So it's really between about late April, early May,
04:16 25 and the end of December that my clients have had hundreds of

04:16 1 cases submitted, and a couple hundred decided.

04:16 2 THE COURT: All right. And out of those couple
04:16 3 hundred decided, how many did you win and how many did you
04:16 4 lose?

04:16 5 MR. SCHRAMEK: Your Honor, the year-end contract --
04:16 6 year-end, if you include defaults, we won ■ percent of the
04:16 7 cases we submitted.

04:16 8 THE COURT: So I guess I'm not -- so is the only -- I
04:16 9 guess I'm not understanding. If this is a flawed process, it
04:16 10 denies you due process, it -- are you saying that these --
04:16 11 these particular decisions were handled differently than all
04:16 12 the rest of those?

04:16 13 Or are you just saying -- are you just saying you
04:17 14 lost these ones and now you want to say the process wasn't any
04:17 15 good, but the process was okay for the ■ percent that you won?

04:17 16 MR. SCHRAMEK: Well, no, Judge, we -- we -- our issue
04:17 17 has to do with these specific cases, and in particular, for
04:17 18 example, C2C, which is one of the defendants. Our winning rate
04:17 19 with C2C was zero percent. That's why this lawsuit got --
04:17 20 these lawsuits got filed, because we believe C2C is applying a
04:17 21 legal presumption and not following the statutory standard, and
04:17 22 that that was taken advantage of by misrepresentations in
04:17 23 particular lawsuits with some of the providers.

04:17 24 THE COURT: How much money is involved in these
04:17 25 three? Just so I'm clear -- I assumed when -- when these suits

04:17 1 came in, I assumed that these were like a test case or
04:17 2 something, so that it would be -- it wouldn't be just these
04:17 3 cases, but it would be trying to make a point, or trying to set
04:17 4 a precedent as to how these matters were going to be handled.
04:18 5 But now I'm hearing from you that it's really not that, because
04:18 6 you were okay in the █ percent that you won.

04:18 7 So it's really just about these three cases? There's
04:18 8 not going to be 100 more of these?

04:18 9 MR. SCHRAMEK: I don't expect there to be 100 more,
04:18 10 Judge, but I do expect there to be continuing going forward
04:18 11 challenges to IDR decisions, not just by my clients, but this
04:18 12 applies to all out-of-network providers, including emergency
04:18 13 room physicians and the like.

04:18 14 And I've certainly spoken to my colleagues on this
04:18 15 side of the docket who are watching this case very closely
04:18 16 and -- and discussed about, you know, plans for how -- how do
04:18 17 you do these challenges? What are they subject to?

04:18 18 So it is going to have broader implications than
04:18 19 simply these particular claims. But these particular claims
04:18 20 are going to explain how the challenges proceed and what
04:18 21 court -- and what level of judicial review are going to be
04:19 22 allowed when we do have decisions or decision-makers, I should
04:19 23 also say, that we believe have acted inappropriately or
04:19 24 misapplied the law or ignored the rules of the NSA, and, you
04:19 25 know, they tossed a coin and said, "Well, we make more

04:19 1 money" -- "it's a lot easier if we just toss a coin and pick
04:19 2 winners and losers than read all these papers."

04:19 3 Those are the substantive issues that will have
04:19 4 repercussions, really across the country, because every --
04:19 5 every out-of-network provider in the United States is going to
04:19 6 have these sorts of challenges.

04:19 7 THE COURT: Well, I guess what I'm trying to
04:19 8 understand is this -- and, again, maybe we're getting too far
04:19 9 in the weeds here.

04:19 10 But if -- if what you just told me was that your
04:19 11 client was denied due process in this procedure, in which you
04:19 12 submitted information, the other side submitted information,
04:19 13 and neither one got to see what the other did, wouldn't that be
04:19 14 true in every single one of these?

04:19 15 But yet you're not -- you're not actually seeking to
04:19 16 hold the statute unconstitutional or seeking the regulations to
04:20 17 be held unconstitutional. Or are you?

04:20 18 MR. SCHRAMEK: Judge, we are currently not seeking to
04:20 19 hold the regulations unconstitutional. We think the system can
04:20 20 work, but it needs to have checks and balances.

04:20 21 And one of those checks and balances is meaningful
04:20 22 judicial review when -- in situations like this, which we
04:20 23 believe would -- would qualify, and that with that meaningful
04:20 24 review, the system can work.

04:20 25 But without it, if we're subject to just the Federal

04:20 1 Arbitration Act standard of file a motion and if you don't have
04:20 2 the evidence yet, you don't -- we're not going to look, you
04:20 3 know, any deeper than that, then we do think there would be a
04:20 4 deeper problem.

04:20 5 So part of your decision, we believe, is going to
04:20 6 counsel as to, you know, what is the next step? Are we -- you
04:20 7 know, will we get meaningful judicial review when there's --
04:20 8 there's an issue with a decision?

04:20 9 THE COURT: Why is the arbitrator or the company
04:20 10 that -- Innovative Solutions, why are they a necessary party to
04:21 11 the case?

04:21 12 MR. SCHRAMEK: So, Judge, we thought long and hard
04:21 13 about that, as you can imagine. And the problem we faced was
04:21 14 that under the statute there is no procedure; and under the
04:21 15 regulation, there is no procedure by which an IDR entity must
04:21 16 rehear a case, may rehear a case. There is absolutely nothing
04:21 17 new.

04:21 18 So the only way that we believe we can be afforded
04:21 19 full relief -- which is, under the federal rules, the standard
04:21 20 for a necessary party in order to allow, you know, full relief
04:21 21 be accorded by the Court -- we concluded that they had to be a
04:21 22 party right now.

04:21 23 We certainly are talking to the regulators. We hope
04:21 24 that the CMS or the three departments that run the NSA will
04:21 25 pass a regulation that says, you know, that the re-hearing can

04:21 1 occur upon -- you know, if a court orders a rehearing, that
04:21 2 there's a process for it.

04:21 3 But right now, if you said, "Yeah, they -- they
04:22 4 misapplied the law. They applied the illegal presumption. You
04:22 5 get a rehearing," there's nowhere for me to go.

04:22 6 In a private arbitration proceeding, I can go down to
04:22 7 the AAA or the JAMS any day of the week and submit it. And, in
04:22 8 fact, both the AAA and the JAMS rules specifically have a rule
04:22 9 that says arbitration pursuant to court order, when you get to
04:22 10 go compel arbitration.

04:22 11 There's nothing like that in the NSA or the enacting
04:22 12 regulations. And so we essentially concluded we needed the
04:22 13 entities as parties, because this Court can order them to
04:22 14 rehear the case and to apply the proper standard.

04:22 15 THE COURT: And is that the relief you're seeking in
04:22 16 this case?

04:22 17 MR. SCHRAMEK: It is.

04:22 18 THE COURT: All right. For no other reason other
04:22 19 than they're listed first on my sheet of paper here, who's
04:22 20 going to speak for Capital Health?

04:22 21 MR. SMITH: Good afternoon, Your Honor. This is Ruel
04:23 22 Smith. And I'll be speaking for Capital Health Plan,
04:23 23 Incorporated.

04:23 24 THE COURT: All right. Again, I'm -- I'm mainly
04:23 25 today going to -- I just want to kind of get a little sense of

04:23 1 what's going on here, and then I'm going to decide how to
04:23 2 proceed here.

04:23 3 I mean, obviously we've got these motions pending and
04:23 4 so forth. And I'm not going to be able to rule on them today.
04:23 5 But I think we've got issues of whether discovery should go
04:23 6 forward or not, and we've got maybe some issues of
04:23 7 consolidation and other issues that we probably can talk about
04:23 8 today.

04:23 9 But as long as I ask the plaintiffs a little bit, I
04:23 10 want to give you a chance to say a little bit. Don't say
04:23 11 everything, but say a little bit.

04:23 12 MR. SMITH: Okay, Your Honor. The -- one of the --
04:23 13 one of the -- one of the contentions on which the plaintiff
04:23 14 challenges the notion that the -- that an action to vacate has
04:24 15 to be initiated by motion is that -- they contend that this
04:24 16 doesn't share certain essential characteristics that
04:24 17 arbitration ought to have, they say.

04:24 18 They say, additionally, that due process would
04:24 19 require more than the FAA provides in this circumstance,
04:24 20 because the arbitral process here is compelled. And they sort
04:24 21 of cast that as a -- as a unique feature of the NSA, but, in
04:24 22 fact, it's -- it's not all that unique.

04:24 23 And we point this out in our briefings, that other --
04:24 24 other federal statutes require submission to arbitral bodies
04:24 25 that are not governed by the -- the organization's rules

04:24 1 Mr. Schramek just cited, for example.

04:24 2 We cite in our reply brief one -- that is the Federal
04:24 3 Insecticide, Fungicide, and Rodenticide Act. So -- of all
04:25 4 things -- where parties providing data to the FDA, or providing
04:25 5 data to the FDEPA, want to be federally compensated for the use
04:25 6 of their data by people seeking pesticide permits, is a pricing
04:25 7 dispute, not unlike what we have here, because the IDR was set
04:25 8 up to settle -- the dispute resolution process was set up to
04:25 9 settle pricing disputes between -- in this case, air ambulance
04:25 10 or other non-network providers and health plans, like the three
04:25 11 health plan defendants here.

04:25 12 Well, in a similar structure involving price
04:25 13 disputes, the FIFRA, Federal Insecticide, Fungicide, and
04:25 14 Rodenticide Act, allows for one party to initiate binding
04:25 15 arbitration.

04:25 16 THE COURT: Okay. Okay. You're -- you're getting
04:25 17 too far in the weeds for me here.

04:25 18 MR. SMITH: Understood. Sure.

04:25 19 THE COURT: I just wanted to give you a chance to
04:25 20 give me the 30,000-foot view of what your position is, but I'm
04:26 21 not going to be able to get into the Insecticide Act today.

04:26 22 MR. SMITH: Understood. It -- it essentially is that
04:26 23 there are examples of federal statutory schemes that mandate
04:26 24 arbitration and supply either less or no judicial review of
04:26 25 this.

04:26 1 We point out that some of the relief sought by the
04:26 2 plaintiff is actually in other sections of the FAA. And we
04:26 3 discuss that -- that in sort of federal common law that sprung
04:26 4 up around the FAA and other arbitration schemes. There are
04:26 5 essential elements of arbitration that -- the main one of which
04:26 6 is finality that this process does achieve.

04:26 7 And so it is an arbitration and it is governed by the
04:26 8 FAA. It should have been brought by motion, and should be
04:26 9 governed by the standards, which are very high, as Your Honor
04:27 10 is well aware, I'm sure, concerning -- you know, when you talk
04:27 11 about undue means by -- by the arbitral parties, you're talking
04:27 12 about things that equate to bribery, corruption, et cetera.
04:27 13 When you talk about partiality of the arbitrator, that is a
04:27 14 very high standard to meet as well.

04:27 15 THE COURT: Okay.

04:27 16 MR. SMITH: And so those are the -- those are the
04:27 17 main arguments that Capital Health Plan is advancing, Your
04:27 18 Honor.

04:27 19 THE COURT: Thank you, sir.

04:27 20 Mr. Conner, Ms. Mansfield, Ms. Fleming, who's talking
04:27 21 for Blue Cross?

04:27 22 MR. CONNER: This is Mr. Conner, Your Honor.

04:27 23 THE COURT: All right. Go ahead.

04:27 24 MR. CONNER: So, Judge, obviously we have some
04:27 25 fundamental disagreements. One of the principal arguments

04:27 1 about why this should be a motion instead of a complaint is
04:27 2 because we are relying on case law that dictates that the
04:27 3 motion has to be brought under the Federal Rules of Civil
04:28 4 Procedure. It's not dependent on the FAA provision that the
04:28 5 other side is arguing about.

04:28 6 And we've cited that case law in our papers. So
04:28 7 that's one of the sort of principal arguments about why this
04:28 8 needs to be a motion.

04:28 9 I don't think there should really be a -- much of an
04:28 10 argument about this is an arbitration or not an arbitration.
04:28 11 It's called an arbitration in the way that it's set up. We've
04:28 12 cited a lot of information in our papers about that.

04:28 13 The issue is what is the scope of judicial review
04:28 14 going to be? Is it going to be that, you know, the -- the
04:28 15 doors are thrown open to full-blown litigation of something
04:28 16 that has been decided by an arbitrator already, intended to
04:29 17 be --

04:29 18 THE COURT: Well, let -- let me just --

04:29 19 MR. CONNER: -- expedite the process -- okay.

04:29 20 THE COURT: Let me just stop you, Mr. Conner, because
04:29 21 I was going to ask -- I was going to ask Mr. Fackler about this
04:29 22 anyway, but -- so I have one of these arbitration -- I have one
04:29 23 of these emails that -- I guess this was the actual decision of
04:29 24 the -- of C2C, I guess.

04:29 25 And, you know, I'm not going to read the whole thing,

04:29 1 but it basically says, "We've reviewed this. You've asked for
04:29 2 this. They've asked for this. Here -- here is some things
04:29 3 we're supposed to consider. Here were the offers of the
04:29 4 parties. And we -- we -- we agree with the -- with the
04:29 5 insurance company."

04:29 6 And that's it. No reasoning, no -- no nothing,
04:29 7 really. No -- I mean, I'm not entirely sure how you would have
04:30 8 judicial review of something like this. I mean, unless -- so I
04:30 9 guess when you're talking about an arbitration award and
04:30 10 how -- the deference you have to give to it and all that, you
04:30 11 know, that's -- that's under the FAA when you've had a -- when
04:30 12 you've had due process and you've had -- you've had parties
04:30 13 testing it, and the arbitrator at least usually says why
04:30 14 they're doing what they're doing.

04:30 15 But as far as I can tell -- "As noted above, the IDRE
04:30 16 must consider related and credible information submitted by the
04:30 17 parties to determine the appropriate OON rate. As set forth in
04:30 18 the regulation, additional credible information related to
04:30 19 certain circumstances was submitted by both parties. However,
04:30 20 the information submitted did not support the allowance of
04:30 21 payment at a higher OON rate."

04:31 22 That's it as far as I can tell, in terms of
04:31 23 reasoning. So how am I -- I mean, how would you even have
04:31 24 judicial review of it, even under the FAA?

04:31 25 MR. CONNER: So -- so you're asking me instead of

04:31 1 Mr. Fackler? I just want to be clear.

04:31 2 THE COURT: All right. Okay. Okay. I'll -- that's
04:31 3 fair. I'll ask -- I ask Mr. Fackler.

04:31 4 Mr. Fackler, how --

04:31 5 MR. FACKLER: Yes, Your Honor.

04:31 6 THE COURT: Yeah. How much did your client get paid
04:31 7 for this?

04:31 8 MR. FACKLER: Yeah. As alleged in the complaint, I
04:31 9 believe it's \$349 --

04:31 10 THE COURT: Yeah.

04:31 11 MR. FACKLER: -- to set up as a system to expedite it
04:31 12 and to have a -- encourage the parties to submit reasonable
04:31 13 bids, incentivize them to lower their bids to try to work it
04:31 14 out. And otherwise you're thrown into the system with a
04:31 15 limited review. And my client does review the required factors
04:32 16 and the submissions. One of the concerns or one of the
04:32 17 factors --

04:32 18 THE COURT: You don't -- you don't really -- I guess
04:32 19 what you're saying is, you shouldn't really expect much for
04:32 20 \$349.

04:32 21 MR. FACKLER: Right. Candidly, yes, Your Honor. You
04:32 22 know, we are not -- we don't have a panel of attorneys who
04:32 23 review them at \$500 an hour to go through that. That just is
04:32 24 impractical with the statutory scheme that was set up that we
04:32 25 applied for and were approved to be IDREs or arbitrators.

04:32 1 And real quick on your point, Your Honor, about
04:32 2 whether it's a reasoned opinion or not a reasoned opinion, you
04:32 3 can get reasoned opinions -- you can sign up and pay extra for
04:32 4 reasoned opinions in private arbitrations or you can get a
04:32 5 simple decision, which is just, "You win X amount."

04:33 6 And there's a case by Judge Tjoflat that was cited in
04:33 7 the papers that said, "Look, if we can't pierce through what
04:33 8 they decided, then that is not evidence of a manifest disregard
04:33 9 of the law, and, therefore, it is not subject to review under
04:33 10 that -- that statute -- or under that case law and under the
04:33 11 FAA, assuming we do operate under the FAA."

04:33 12 THE COURT: All right. I hear you. I didn't know
04:33 13 you only got \$349. So I guess -- I guess your client, by
04:33 14 getting sued, is having to pay a lot more than that to -- for
04:33 15 their attorneys.

04:33 16 MR. FACKLER: That conversation most definitely came
04:33 17 up, Your Honor.

04:33 18 THE COURT: Yeah. I bet.

04:33 19 So, Mr. --

04:33 20 MR. FACKLER: While -- while I've got an opportunity,
04:33 21 Your Honor, I do want to mention that we interpreted your
04:33 22 preliminary pretrial conference, which stated the parties need
04:33 23 not engage in discovery -- we received discovery last night
04:34 24 from the plaintiffs, and at --

04:34 25 THE COURT: Yeah. We're going to --

04:34 1 MR. FACKLER: -- some point --

04:34 2 THE COURT: I'm going to take care of that.

04:34 3 MR. FACKLER: Okay. Thank you, Your Honor.

04:34 4 THE COURT: Yeah. We're going to take care of that.

04:34 5 MR. FACKLER: Yeah. Great. Thank you.

04:34 6 THE COURT: Mr. Dodd or Mr. -- tell me how to say
04:34 7 your name, sir. I apologize.

04:34 8 MR. KESHAVARZI: That's okay, Your Honor.

04:34 9 Keshavarzi.

04:34 10 THE COURT: Keshavarzi. Who's going to speak for
04:34 11 Kaiser?

04:34 12 MR. KESHAVARZI: I will, Your Honor. I will, Your
04:34 13 Honor.

04:34 14 Your Honor, I know that you want to --

04:34 15 THE COURT: So say -- identify yourself, please.

04:34 16 MR. KESHAVARZI: Mo Keshavarzi with Sheppard, Mullin
04:34 17 for Kaiser Foundation Health Plan, Your Honor.

04:34 18 THE COURT: All right. Go ahead, sir.

04:34 19 MR. KESHAVARZI: Your Honor, I know there's been a
04:34 20 lot of discussion about what the No Surprises Act says and, you
04:34 21 know, whether -- to what extent it incorporates the FAA, and it
04:34 22 does not. All of those will be briefed and a lot has been
04:34 23 said. I'm not going to get into the weeds and try to stay
04:34 24 above them, as Your Honor noted.

04:34 25 But it is important, Your Honor, to put everything

04:34 1 that's happening today and these types of cases and the NSA in
04:35 2 context.

04:35 3 The NSA was adopted by Congress in a rare act of
04:35 4 bipartisanship, because, prior to the NSA, air ambulance
04:35 5 companies could bill whatever they wanted and nobody could tell
04:35 6 them what they -- how much they were entitled to get because of
04:35 7 a flaw in the Federal Arbitration Act.

04:35 8 So the -- so I'll give you an example. We had a
04:35 9 patient that was transported from Cancun to San Diego and the
04:35 10 air ambulance company billed a million dollars for it. Okay?

04:35 11 And so the NSA brought that to end. And what the NSA
04:35 12 did was -- said there was going to be a lot of disputes between
04:35 13 health plans and air ambulance companies.

04:35 14 And what the NSA wanted was that -- there's a quick
04:35 15 mechanism for resolving this dispute. And there is a lot of
04:35 16 built-in mechanisms to force the parties to come into a
04:35 17 contract with each other; for example, you can only use certain
04:35 18 batches of claims at a time.

04:35 19 And the idea is that if you make it painful for
04:35 20 people to constantly have to do these arbitrations, they will
04:35 21 eventually come to a contract. You win some, you lose some.
04:36 22 At the end of the day, you decide it's better to be in a
04:36 23 contract.

04:36 24 And the idea -- one of the essential parts of the
04:36 25 arbitration process under the NSA is no discovery. And the NSA

04:36 1 makes that clear, that neither the plan nor the provider gets
04:36 2 to have discovery of the other side.

04:36 3 What the air ambulance company is telling Your Honor
04:36 4 is that even though Congress said absolutely no discovery
04:36 5 during the arbitration process, if you file a lawsuit in
04:36 6 federal court, you can have full-blown discovery.

04:36 7 That just doesn't make sense. And it's totally
04:36 8 inconsistent with what Congress said about no discovery under
04:36 9 the arbitration process. And they came up with an extremely
04:36 10 narrow basis for appealing an IDRE decision. And that
04:36 11 extremely narrow basis incorporates the Federal Arbitration
04:36 12 Act.

04:36 13 Where the NSA -- what Congress said under the NSA
04:36 14 was, "We want finality. What we don't want is federal courts
04:36 15 to be inundated" -- and what they're asking you to do would
04:37 16 cause federal courts to be inundated with challenges to
04:37 17 arbitration awards.

04:37 18 So every time they lose, they come up with a reason
04:37 19 they don't like it, they get to do full-blown discovery. And
04:37 20 what was the reason for this lawsuit?

04:37 21 Ever since they filed this lawsuit, C2C has stopped
04:37 22 arbitrating their claims. What do they tell you? They said
04:37 23 they lost all C2C cases. So they bring these lawsuits and C2C
04:37 24 stops taking their claims.

04:37 25 It's litigation in the strategy here. And it's

04:37 1 inconsistent with the NSA -- both the purpose of what the
04:37 2 NSA -- the legislative history behind the NSA, and the specific
04:37 3 terms of the NSA, and which we'll note for Your Honor.

04:37 4 If they have problems with due process, they can file
04:37 5 a constitutional challenge to the NSA. That's not in this
04:37 6 court. That's not in this case. And they don't have the right
04:37 7 parties to do that.

04:37 8 They can sue CMS and have a constitutional challenge
04:37 9 that, you know, they don't get to do discovery. But this
04:37 10 Court, we respectfully submit, has the NSA instructing, you
04:37 11 know, what should be done, and under what circumstances, and a
04:38 12 decision made may be -- may be reviewed.

04:38 13 THE COURT: Okay. I appreciate it.

04:38 14 So one more question and then I'll -- then I'll tell
04:38 15 you what we're going to do. I just want to give the
04:38 16 plaintiff -- I'm inclined to stay discovery. I'm inclined to
04:38 17 have a hearing on the motions to dismiss, figure this out. I
04:38 18 mean, obviously it's kind of all first impression.

04:38 19 I'm inclined to determine whether the complaint is
04:38 20 properly pled, whether we're in the right place or not, before
04:38 21 we get into discovery. And I'm not really seeing any reason
04:38 22 to -- to allow discovery, but I want to give the plaintiff an
04:38 23 opportunity to tell me what -- what they're in such a hurry to
04:38 24 get that -- before we actually know whether or not there's a
04:38 25 lawsuit here or not.

04:38 1 MR. SCHRAMEK: Sure, Your Honor. On the discovery
04:39 2 front, the reason I sent the discovery yesterday, the day
04:39 3 before the hearing, and then served -- sent a copy to the Court
04:39 4 is I wanted to show the Court what I think is a very narrow --
04:39 5 narrowly tailored -- narrowly tailored set of discovery.

04:39 6 We're talking about a handful of document requests, a
04:39 7 couple of interrogatories. And it really goes to the heart of
04:39 8 the matter on these issues we've been talking about.

04:39 9 And so, of course, we don't see any reason to -- to
04:39 10 wait until after the motion to dismiss. In fact, I think that
04:39 11 the discovery could very well enhance some of the arguments.

04:39 12 I know we're doing it on the pleadings, but, you
04:39 13 know, we're talking a lot about public policy issues and -- and
04:39 14 what can and can't be allowed. And I think discovery will
04:39 15 provide some insight into that.

04:39 16 And I'll note that even under the Federal Arbitration
04:39 17 Act cases, you can get discovery under the FAA. So it's not
04:39 18 like if the Court were to decide, "Oh, yeah, the FAA applies,
04:39 19 that means no discovery."

04:39 20 Not at all. In fact, we cited in our cases
04:39 21 situations where the court remanded to the arbitration -- to
04:40 22 the district court, I'm sorry -- remanded to the district court
04:40 23 for an evidentiary hearing with the arbitrator over whether the
04:40 24 arbitrator was biased; biased being one of the reasons of the
04:40 25 Federal Arbitration Act to challenge it.

04:40 1 So you can get discovery in FAA challenges. And we
04:40 2 believe even if you had to bring this under the FAA, that the
04:40 3 Court is -- certainly can allow discovery in an FAA challenge,
04:40 4 so that the party can get additional evidence supporting its
04:40 5 allegations. So we don't think -- certainly not the issue of
04:40 6 whether the FAA applies or doesn't is dispositive on the
04:40 7 discovery front and discovery should proceed.

04:40 8 And I also wanted to mention the 349 a case. There
04:40 9 are only a handful of companies, I think maybe 11 at this point
04:40 10 in time -- it goes up and down every once in a while -- in the
04:40 11 entire country that do these IDR proceedings. They do
04:40 12 thousands, tens of thousands of these.

04:40 13 So 349 a pop times 10,000 is good money. So for C2C
04:40 14 to have to come into court and defend its decision in its
04:41 15 application of what we believe was an illegal presumption --
04:41 16 and like the Court said, to actually look behind the
04:41 17 cut-and-paste job that we received, you know, in this
04:41 18 decision -- I think that that's a fair position to put C2C in.

04:41 19 So we don't see any need to, you know, pause
04:41 20 discovery. We think the Court can answer these questions in
04:41 21 due course. And we think this matter can be on for a final
04:41 22 resolution in due course, because discovery can be limited in
04:41 23 these -- in these sorts of proceedings. And --

04:41 24 THE COURT: All right. Let me ask you this. Let me
04:41 25 just ask you this and then we're going to move on here.

04:41 1 What about consolidation of these cases? Should --
04:41 2 is there any -- could the Court just carry them all three
04:41 3 together and not consolidate them? Do they need to be
04:41 4 consolidated? What is -- you didn't file them as a
04:41 5 consolidated action. So what's the --

04:41 6 MR. SCHRAMEK: That's right.

04:41 7 THE COURT: What's the reason for that?

04:41 8 MR. SCHRAMEK: So we -- we completely agree with
04:41 9 coordination, and certainly at the motion to dismiss stage, as
04:42 10 all the parties are making the same basic arguments, because
04:42 11 there is no guidance, there is no law on the proper procedure,
04:42 12 and so we're all trying to figure out exactly what will be the
04:42 13 law going forward. And so to have all the parties participate
04:42 14 at the same hearing, motion to dismiss, if we have one, is -- I
04:42 15 would request to the Court -- I think that makes sense.

04:42 16 But once we get back -- past that phase, I think the
04:42 17 coordination really doesn't need to happen anymore. These are
04:42 18 separate air ambulance claims. These are separate payors.
04:42 19 That's one reason we divided it.

04:42 20 As far as what Blue Cross & Blue Shield of Florida
04:42 21 did versus what Kaiser did -- I mean, their process and what
04:42 22 they submitted, those are all going to be factually disparate,
04:42 23 have no relationship to one another.

04:42 24 So I think coordination at this point makes sense,
04:42 25 but then after this point it doesn't. And so that's why we

04:42 1 didn't file them as a consolidated proceeding.

04:42 2 THE COURT: Do any of the defendants wish to be heard
04:42 3 on that issue?

04:42 4 MR. FACKLER: On the issue of consolidation, Your
04:42 5 Honor?

04:42 6 THE COURT: Yes, sir, Mr. Fackler.

04:43 7 MR. FACKLER: Yeah. We would prefer consolidation,
04:43 8 but we don't think it's a needle mover either way.

04:43 9 THE COURT: Okay. All right.

04:43 10 All right. I really -- I really feel like -- that we
04:43 11 ought to go ahead and have a hearing on the motions that are
04:43 12 pending before we move forward in this case.

04:43 13 By everyone's admission, you know, this is a new law,
04:43 14 these are new issues. You know, I'm just -- today I was just
04:43 15 poking around asking questions. I don't really -- I'm not
04:43 16 really in depth on it. I haven't reviewed all the statutes in
04:43 17 depth. I haven't read all the cases that you've cited. And so
04:43 18 I -- I'm just trying to get a sense of what's going on here.

04:43 19 And -- but I think we just need to go ahead and set a
04:43 20 hearing. And I'm prepared to do that. I think I am going to
04:44 21 stay discovery. There's no reason to issue a case management
04:44 22 scheduling order nor -- or to allow discovery until at least I
04:44 23 have the hearing and I can figure out what I've got here,
04:44 24 because I don't -- I don't know.

04:44 25 And -- and so I'm going to do that. We're not going

04:44 1 to have any discovery until -- until at least the hearing on
04:44 2 the motion to dismiss, and then I'll decide at that point
04:44 3 whether to allow it to go forward.

04:44 4 I looked at the proposed discovery. And, you know,
04:44 5 it's not -- I guess it's narrow, but it's kind of like
04:44 6 everything you would want if you were in the case. So I -- I
04:44 7 don't think we're going to do that.

04:44 8 In terms of consolidation, I'm not going to
04:44 9 consolidate at this time, but I am going to conduct a joint
04:44 10 hearing in all three cases at the same time. It seems to make
04:44 11 sense.

04:44 12 And I'll, of course -- to the extent that the
04:44 13 defendants have -- to the extent the defendants have a common
04:45 14 interest, you know, maybe you'll be able to coordinate your
04:45 15 arguments a little bit so that I'm not just hearing the same
04:45 16 thing over and over again.

04:45 17 So I'm looking at some dates here. And I was given
04:45 18 some dates by my folks here. I've got a long criminal trial
04:45 19 I'm getting ready to start in February, so -- so -- and we need
04:45 20 some time to -- you know, we haven't really had a chance to
04:45 21 study this stuff. So I'm looking at -- they gave me a couple
04:45 22 of dates. I'm just looking to see which one is the best for
04:46 23 me.

04:46 24 So I can do -- the best days of the week for me in
04:46 25 April are going to be on Mondays. And so I'm looking at

04:46 1 Monday, April 24th, at 2 o'clock in my courtroom in person.

04:46 2 I'm not going to necessarily be able to accommodate
04:46 3 everybody's schedule. But if somebody has a really big problem
04:46 4 with that, now is your time to tell me.

04:46 5 MR. KESHAVARZI: Your Honor, this is Mo Keshavarzi
04:46 6 for Kaiser. I can move anything around to make this hearing
04:46 7 happen except for in April I have a trial starting on April 10
04:46 8 that -- it's an arbitration that we've confirmed is going. And
04:46 9 it's going to be for three weeks. So I'll be right in the
04:46 10 middle of my arbitration. And I'll be the lead counsel for
04:46 11 Kaiser. So if there is any other date you could give me other
04:47 12 than the time of my arbitration, I would be grateful.

04:47 13 THE COURT: Yeah. That seems like a good reason.

04:47 14 So my next offer is -- is in May. And -- because
04:47 15 Mr. -- you said your arbitration starts on April 10th; is that
04:47 16 correct?

04:47 17 MR. KESHAVARZI: Yes, Your Honor. And it goes to the
04:47 18 end of April. So any time after the week of the -- starting
04:47 19 the week of May 1, or even before my arbitration.

04:47 20 THE COURT: Yeah. I can't --

04:47 21 MR. KESHAVARZI: After my arbitration, the week
04:47 22 of May 1 would --

04:47 23 THE COURT: Yeah. I can't do it before. I was going
04:47 24 to offer April 17th, but you've got the same problem.

04:47 25 All right. My next offer is -- and I guess I

04:47 1 could -- I can do it either Monday or Tuesday of this week.
04:47 2 And I guess I'll offer you Tuesday so people don't have to
04:47 3 travel on the weekend.

04:47 4 Tuesday, May 16th, at 10 o'clock. Tuesday, May 16th,
04:48 5 at 10 o'clock.

04:48 6 Everybody looked? Going once. Going twice.

04:48 7 All right. That's it.

04:48 8 So I'm going to issue a notice of hearing on all
04:48 9 pending motions for May 16th, at 10 o'clock, here in my
04:48 10 courtroom in Jacksonville for an in-person hearing on all
04:48 11 pending motions. I believe all the briefing has been done.

04:48 12 Is there -- I'm sorry?

04:48 13 LAW CLERK: We're still waiting for some from Kaiser.

04:48 14 THE COURT: Okay. I think -- I'm told that Kaiser
04:48 15 still has a pleading that's -- or briefing that's due; is that
04:48 16 correct?

04:48 17 MR. KESHAVARZI: Your Honor, we filed our motion.
04:48 18 We're awaiting the opposition. And then there will be a reply.
04:48 19 But we filed our motion last week.

04:48 20 THE COURT: Okay. All right. Well, that will give
04:48 21 you time to do all that, and we'll have enough time to review
04:48 22 it, then.

04:49 23 Discovery is not going to go forward until we have a
04:49 24 hearing on the motion -- the motions to dismiss. The cases
04:49 25 will not be consolidated at this time; however, the hearing

04:49 1 is -- is in all three cases at the same time. And I'll try to
04:49 2 resolve them at the same time as well.

04:49 3 All right. That's all I was planning on doing today.
04:49 4 We got into a little bit of discussion of it, but that's
04:49 5 helpful to me to start to educate me on what people are going
04:49 6 to be saying.

04:49 7 But I'll start with the plaintiff. I'm not
04:49 8 necessarily asking you to agree with me, but is there anything
04:49 9 else we need to address today while I've got you on the phone?

04:49 10 MR. SCHRAMEK: Nothing for plaintiff, Judge.

04:49 11 THE COURT: All right. What about from Capital
04:49 12 Health?

04:49 13 MR. SMITH: Your Honor, this is Ruel Smith of Capital
04:50 14 Health. Nothing from us.

04:50 15 THE COURT: All right. What about from Blue Cross?

04:50 16 MR. CONNER: This is Tim Conner. Nothing from us,
04:50 17 Your Honor.

04:50 18 THE COURT: What about from Kaiser?

04:50 19 MR. KESHAVARZI: Nothing, Your Honor. Thank you for
04:50 20 your time today.

04:50 21 THE COURT: All right. What about from C2C?

04:50 22 MR. FACKLER: Michael Fackler. Nothing from us.

04:50 23 THE COURT: Okay. We'll issue a notice or an
04:50 24 order -- I'm not sure which -- that sets this for hearing. And
04:50 25 we'll get the briefing finished up. We'll review the matter

04:50 1 and be ready to talk to y'all about it on May 16th, at 10 a.m.

04:50 2 In the meantime, no discovery will occur.

04:50 3 All right. Thank you all. We're adjourned.

4 (The proceedings concluded at 4:50 p.m.)

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CERTIFICATE

UNITED STATES DISTRICT COURT)
)
MIDDLE DISTRICT OF FLORIDA)

I hereby certify that the foregoing transcript is a true and correct computer-aided transcription of my stenotype notes taken at the time and place indicated herein.

DATED this 19th day of January, 2023.

s/Shannon M. Bishop
Shannon M. Bishop, RDR, CRR, CRC