

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF TEXAS
 HOUSTON DIVISION

GUARDIAN FLIGHT, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No.:
)	4:22-cv-03805
)	Lead Consolidated Case
AETNA HEALTH INC., et al.)	
)	
Defendants.)	
_____)	

**REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMERICA’S
 HEALTH INSURANCE PLANS AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS
 AETNA HEALTH INC. AND KAISER FOUNDATION HEALTH PLAN’S MOTIONS
 TO DISMISS**

All agree that the decision whether to grant leave to file an amicus brief falls “within the broad discretion of the district court.” Pls. Opp’n to Mot. for Leave, Doc. 63, at 3 (June 13, 2023) (“Opp’n”) (quoting *Sierra Club v. FEMA*, No. H-07-0608, 2007 U.S. Dist. LEXIS 84230, *2 (S.D. Tex. Nov. 14, 2007)). The Court should exercise its discretion to grant America Health Insurance Plan’s (AHIP) motion for leave to file an amicus brief because it offers relevant and timely information about the broader consequences of the Court’s interpretation of the No Surprises Act, drawing from AHIP’s decades of cross-cutting experience and deep understanding of how the nation’s health care and health insurance systems work.

Plaintiffs’ primary objection is that AHIP is impermissibly partial to Defendants. But Plaintiffs acknowledge that an amicus need not be “totally disinterested” and do not dispute that AHIP has no stake in the outcome of the specific payment determinations at issue. Opp’n 5. As do most *amici*, AHIP moves to file a brief in support of a particular outcome. But advocating for a

particular ruling is not disabling partiality. That AHIP’s members “are likely to confront similar challenges to IDR awards in the future” (Opp’n 5) is a reason to grant leave to file, not deny it. District courts regularly grant trade associations leave to file amicus briefs precisely because of the broader effect a decision in one case is likely to have on the industry and the association’s members, rejecting similar claims of impermissible partiality. For example, in *SEC v. Cetera Advisors LLC*, No. 19-cv-02461, 2020 U.S. Dist. LEXIS 264750, *5-7 (D. Colo. Aug. 25, 2020), the court permitted an amicus brief from a trade association where the defendants were association members and one defendant’s executive served on the association’s board. And in *C&A Carbone, Inc. v. County of Rockland*, No. 08-cv-6459, 2014 U.S. Dist. LEXIS 38658, *14-15 (S.D.N.Y. Mar. 24, 2014), the court granted leave to file an amicus brief because “the ultimate outcome of this litigation could prove dispositive in future disputes” involving the trade associations’ members, “even taking into account the *Amici*’s partiality.”

The national and industry-wide consequences—beyond the particular parties’ interests—of cases addressing novel questions interpreting the brand-new No Surprises Act are precisely why AHIP has been granted leave to file amicus briefs in many such cases. *See, e.g., Tex. Med. Ass’n v. U.S. Dep’t of Health & Human Servs.*, 587 F. Supp. 3d 528 (E.D. Tex. 2022); *Am. Med. Ass’n v. U.S. Dep’t of Health & Human Servs.*, No. 1:21-cv-3231 (D.D.C.); *Ass’n of Air Med. Servs. v. U.S. Dep’t of Health & Human Servs.*, No. 1:21-cv-3031 (D.D.C.). Although Plaintiffs attempt (Opp’n 6-7) to minimize the issues presented here, the Court has already recognized that the case presents questions of first impression about the interpretation of the Act. Consolidation Order, Doc. No. 35, at 2 (May 10, 2023). What’s more, resolving statutory interpretation questions often turns on consideration of the practical effects of competing interpretations. *See, e.g., King v. Burwell*, 576 U.S. 473, 494 (2015) (rejecting interpretation that would “push a State’s individual

insurance market into a death spiral,” because “[i]t is implausible that Congress meant the Act to operate in this manner”). AHIP’s proposed amicus brief thus does address “questions of statutory interpretation that this court must answer,” *contra* Opp’n 6. And it is timely, with this motion fully briefed before the hearing on Kaiser Foundation Health Plan’s motion to dismiss, which is scheduled for June 30. The Court should therefore grant the motion for leave to file an amicus brief, because AHIP provides useful information on issues that “could have ramifications beyond the current parties.” *Sierra Club v. BNSF Ry. Co.*, No. C13-967-JCC, 2016 U.S. Dist. LEXIS 124269, *4-5 (W.D. Wash. Sept. 13, 2016) (permitting trade association to file amicus brief).

Dated: June 16, 2023

Respectfully Submitted,

/s/Hyland Hunt

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2023, I electronically filed the foregoing amended motion with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/Hyland Hunt

Hyland Hunt