UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

GUARDIAN FLIGHT, LLC, Plaintiff, vs. AETNA HEALTH, INC., *et al.*, Defendants.	Civil Action No. 4:22-cv-03805 Consolidated (Case No. 4:22-cv-03979)

AETNA HEALTH INC.'S RESPONSE TO PLAINTIFFS' MOTION TO PARTIALLY RECONSIDER DISMISSAL AGAINST INSURER DEFENDANTS

Defendant Aetna Health Inc. ("Aetna") submits this brief in response to Plaintiffs' Motion to Partially Reconsider Dismissal Against Insurer Defendants and to Certify Dismissal Order for Appeal (the "Motion"). *See* Dkt. 79.

I. INTRODUCTION

There is nothing "efficient" about Plaintiffs' attempt to relitigate the Court's Order dismissing the health plan defendants from this lawsuit (the "Order"). *See* Dkt. 76. After months of briefing and oral argument, the Court correctly determined that Plaintiffs' allegations regarding Aetna and Kaiser (collectively, "Defendants") failed to meet the four narrow exceptions for vacatur of arbitration awards under the Federal Arbitration Act ("FAA"). *See Guardian Flight, LLC v. Aetna Health Inc.*, 2024 WL 484561 (S.D. Tex. Jan. 5, 2024). Specifically, the Court found that Plaintiffs' allegations that Defendants misrepresented their qualifying payment amounts ("QPAs") fell "woefully short of alleging fraud or undue means" and that nothing else in Plaintiffs' complaint suggested that Defendants "engaged in immoral or illegal behavior." *Id*. at *7. Thus, because any allegations about Defendants' supposed bad-faith behavior were "conclusory, at best,

and . . . not factually supported," the Court found that Plaintiffs' allegations were insufficient to invoke judicial review under the No Surprises Act ("NSA"), which incorporates the FAA's grounds for vacatur. *Id*. In Plaintiffs' parallel lawsuit filed in the Middle District of Florida, Chief Judge Timothy Corrigan reached the same conclusion, finding near-identical conclusory allegations that insurer-defendants failed to make required disclosures or submitted incorrect QPAs were "deficient." *Med-Trans Corp. v. Cap. Health Plan, Inc*., 2023 WL 7188935, at *8 (M.D. Fla. Nov. 1, 2023).

Plaintiffs offer no justifiable reason to depart from these rulings; in fact, they don't even ask the Court to revisit its legal analysis. Instead, they insist without any basis that Defendants must remain parties to the lawsuit as "necessary parties." *See* Dkt. 79 at 6–7. Plaintiffs' argument is premised on the idea that the Court will eventually vacate the underlying IDR awards based on their allegation that the IDR arbitrator, Medical Evaluators of Texas ASO, LLC ("MET"), exceeded its authority in issuing the underlying IDR awards. But even if Plaintiffs prevail against MET, the remedy is simply vacatur. Defendants are not necessary parties for the Court to issue such relief.

II. SUMMARY OF THE ARGUMENT

Plaintiffs' Motion presents a procedural quagmire. Specifically, Plaintiffs have moved for the Court to reconsider its dismissal of Defendants, insisting they are "necessary parties." *See* Dkt. 79 at 6–7. If the Court grants that Motion, Plaintiffs request that the Court certify its modified order for interlocutory appeal under 28 U.S.C. § 1292(b). In the alternative, Plaintiffs ask that the Court certify final judgments as to Defendants under Rule 54(b) of the Federal Rules of Civil Procedure. This procedural approach is unsound.

Rule 54(b) and § 1292(b) are "designed to address different situations." *Bush v. Adams*, 629 F. Supp. 2d 468, 474 (E.D. Pa. 2009); *see De Melo v. Woolsey Marine Industries, Inc*., 677 F.2d 1030, 1032 (5th Cir. 1982) (describing the two rules as "mutually exclusive"). Section 1292(b) provides a discretionary means to appeal a non-dispositive interlocutory order. *See* CHARLES A. WRIGHT & ARTHUR R. MILLER, *Federal Practice and Procedure* § 2658.2 (4th ed. 2023) (hereinafter, "WRIGHT & MILLER"). Rule 54(b), on the other hand, applies where the district court has entered a final judgment as to particular claims or parties, yet that judgment is not immediately appealable because other issues in the case remain unresolved. *See id*. Notably, both are reserved for exceptional circumstances, which this case does not present.

Further clouding the issues, Plaintiffs' request for relief under § 1292(b) is predicated upon a finding by the Court that its dismissal of Defendants was in error, which requires reconsideration of the dismissal order. Reconsideration, in turn, is governed by Rule 54(b). However, should the Court decline to reconsider its Order, Plaintiffs alternatively ask the Court to enter partial final judgment as to Defendants, which is also governed by Rule 54(b). In other words, for purposes of Plaintiffs' Motion, Rule 54(b) arises in two separate contexts. First, reconsideration of the Order. Second, assuming the Court declines to reconsider its Order, the discretionary decision of whether to enter partial final judgment also arises under Rule 54(b).

As explained below, reconsideration is not warranted—the Court correctly dismissed Plaintiffs' claims against Defendants. This eliminates any need for the Court to decide whether it should certify a modified order for appeal under 28 U.S.C. § 1292(b). However, even if the Court were modify its Order, Plaintiffs' have objectively failed to satisfy § 1292(b)'s exacting standard to certify that order for interlocutory appeal. Further, final judgment as to Defendants—also under Rule 54(b)—is not appropriate. Partial final judgments under Rule 54(b) are disfavored and should

be granted only "when there exists some danger of hardship or injustice through delay which would be alleviated by immediate appeal." *PYCA Indus. v. Harrison Cnty. Waste Water Mgmt. Dist.*, 81 F.3d 1412, 1421 (5th Cir. 1996). Plaintiffs have objectively failed to demonstrate even a remote possibility that they will suffer hardship or prejudice unless the Court issues a partial final judgment under Rule 54(b).

III. LEGAL STANDARDS

A. Reconsideration Under Rule 54(b)

The Federal Rules of Civil Procedure do not officially provide for a motion for reconsideration. *Shepherd v. Int'l Paper Co*., 372 F.3d 326, 328 n.1 (5th Cir. 2004). However, courts construe requests to reconsider interlocutory orders to fall under Rule 54(b), which provides: "any order or other decision . . . that adjudicates fewer than all claims or the rights and liabilities of fewer than all parties . . . may be revised at any time before the entry of a judgment adjudicating all the claims." Fed. R. Civ. P. 54(b).

"[W]hether to grant such a motion rests within the discretion of the court." *Dos Santos v. Bell Helicopter Textron, Inc*., 651 F. Supp. 2d 550, 553 (N.D. Tex. 2009). Although the precise standard for evaluating a motion to reconsider under Rule 54(b) is not clearly established, courts have found that "[c]onsiderations similar to those under Rules 59 and 60 inform the Court's analysis." *Dall. Cnty. v. MERSCORP, Inc.*, 2 F. Supp. 3d 938, 950 (N.D. Tex. 2014) (cleaned up). In turn, Rules 59 and 60 make clear that "[m]otions for reconsideration have a narrow purpose and are only appropriate to allow a party to correct a manifest error of law or fact or to present newly discovered evidence." *Id*. (quotation omitted). Indeed, this Court has recently considered the Rules 59 and 60 standards when addressing a motion for reconsideration of an interlocutory order. *See, e.g., Hebert v. FMC Techs., Inc*., 2022 WL 17422642, at *3 (S.D. Tex. Sept. 27, 2022) (Bennett,

J.) ("The party moving for reconsideration [under Rule 54(b)] must establish a 'manifest error of law or fact' or 'newly discovered evidence.'"), *aff'd* 2023 WL 4105427 (5th Cir. June 21, 2023), *cert. denied* 2024 WL 674843 (U.S. Feb. 20, 2024).

B. Certification for Interlocutory Appeal Under 28 U.S.C. § 1292(b)

Section 1292(b) provides a means for litigants to bring an immediate appeal of a non-dispositive order with the consent of both the district court and court of appeals. A district court may certify an order for interlocutory appellate review under § 1292(b) if each of the following three requirements are met: (1) there is a controlling question of law, (2) there are substantial grounds for difference of opinion, and (3) an immediate appeal may materially advance the ultimate termination of the litigation.

Section 1292(b) embodies a narrow exception to the final-judgment rule. The party seeking certification has the burden of showing that exceptional circumstances justify a departure from the basic policy of postponing appellate review until after the entry of a final judgment. *See Coopers & Lybrand v. Livesay*, 437 U.S. 463, 475 (1978). Further, even where the statutory criteria of § 1292(b) are met, the district court retains discretion to deny certifying an order for interlocutory appeal. *See Swint v. Chambers Cnty. Comm'n*, 514 U.S. 35, 47 (1995) (explaining that "district courts [have] first line discretion to allow interlocutory appeals" under § 1292(b)).

C. Partial Final Judgment Under Rule 54(b)

Rule 54(b) provides that "[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). The Fifth Circuit has cautioned that Rule 54(b) partial

final judgments are not favored and should be awarded only when necessary to avoid hardship or injustice. *See PYCA Indus.*, 81 F.3d at 1421.

When deciding a Rule 54(b) motion for partial final judgment, district courts "should consider such factors as: "(1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; [and] (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like." *Abecassis v. Wyatt*, 2010 WL 2671576, *2 (S.D. Tex. June 30, 2010) (Rosenthal, J.) (quoting *Akers v. Alvey*, 338 F.3d 491, 495 (6th Cir. 2003)).

IV. ARGUMENT & AUTHORITIES

A. Plaintiffs Have Failed to Demonstrate that Reconsideration is Appropriate.

Reconsideration under Rule 54(b) "is an extraordinary remedy and should be used sparingly." *Adams v. United Ass'n of Journeymen & Apprentices of the Plumbing & Pipefitting Indus. of the United States & Canada, Local 198*, 495 F. Supp. 3d 392, 396 (M.D. La. 2020). Thus, "rulings should only be reconsidered where the moving party has presented substantial reasons for reconsideration." *Id*. (quotation omitted).

1. The correct standard for reconsidering interlocutory orders

As a threshold matter, Plaintiffs insist that "the exacting standards [for reconsideration] under Rule 59 and Rule 60 do not apply" to requests for reconsideration under Rule 54(b). Dkt. 79 at 4. While reconsideration of interlocutory orders is governed by Rule 54(b), neither Rule 54(b) nor the Fifth Circuit articulates a standard by which to decide whether reconsideration is merited.

However, the wealth of district courts in the Fifth Circuit—including this Court[1]—have found that "considerations similar to those under Rules 59 and 60 inform the Court's analysis." *MERSCORP*, 2 F. Supp. 3d at 950 (quotation omitted); *see eTool Dev., Inc. v. Nat'l Semiconductor Corp.*, 881 F. Supp. 2d 745, 748 (E.D. Tex. 2012) ("Although the source of the court's authority to revise or amend an order or judgment is different for interlocutory orders than for final orders or judgments, many of the same policy considerations apply both to motions for reconsideration under Rule 54(b) and to motions for reconsideration under Rule 59(e). Accordingly, district courts (including this court) frequently apply the same standards to the two." (collecting Fifth Circuit authority)).

Motions for reconsideration under Rules 59 and 60 "have a narrow purpose and are only appropriate to allow a party to correct a manifest error of law or fact or to present newly discovered evidence." *MERSCORP*, 2 F. Supp. 3d at 950 (quotation omitted). As mentioned, this Court has turned to the Rules 59 and 60 standards when considering a Rule 54(b) motion for reconsideration of an interlocutory order. *See Hebert*, 2022 WL 17422642, at *3 ("Similar considerations to those under Rules 59 and 60 bear on the Court's review, such as whether the movant is attempting to rehash its previously made arguments or is attempting to raise an argument for the first time without justification. The party moving for reconsideration must establish a manifest error of law or fact or newly discovered evidence." (cleaned up)).

Put simply, a motion for reconsideration is "an extraordinary remedy" that serves a very limited purpose. *See Adams*, 495 F. Supp. 3d at 396. Without question, Plaintiffs have not so much as attempted to show a manifest error of law or fact or newly discovered evidence warrants reconsideration. Moreover, even if Plaintiffs were correct that Rule 54(b) utilizes a "less exacting

[1] *See Hebert*, 2022 WL 17422642, at *3 ("While the Court has discretion to reconsider its decision under Rule 54(b), similar considerations to those under Rules 59 and 60 bear on the Court's review[.]" (cleaned up)).

standard" than Rules 59 and 60, as explained in greater detail below, Plaintiffs' conjectural argument that Defendants are "necessary parties" does not come close to demonstrating that reconsideration is warranted. *See id*. ("rulings should only be reconsidered where the moving party has presented substantial reasons for reconsideration" (quotation omitted)).

2. Plaintiffs have failed to carry their *prima facie* burden under Rule 54(b)

Plaintiffs' *entire* argument for reconsideration is as follows. If Plaintiffs ultimately prevail on their claim against MET, the IDR awards at issue will be vacated; Defendants were adverse parties to Plaintiffs in the IDR proceedings that produced the IDR awards at issue; thus, Defendants are "necessary parties to Plaintiffs' claim that MET exceeded its powers."[2] *See* Dkt. 79 at 6–7 (citing Fed. R. Civ. P. 19(a)(1)(B)(i)). This simply is not true. Rather, if a plaintiff can successfully establish one of the four grounds for judicial review in the NSA, the remedy is simply vacatur of the underlying award. *See* 42 U.S.C. § 300gg-111(c)(5)(E)(i) (incorporating 9 U.S.C. § 10(a)).

Tellingly, Plaintiffs ignore the textual constraints of Rule 19(a)(1), which instructs that a party is only necessary if a court "cannot accord complete relief among the existing parties" or if disposing of the action in that party's absence would "impede [that party's] ability to protect the[ir] interest" or would "leave an existing party subject to . . . inconsistent obligations because of the interest." Fed. R. Civ. P. 19. None of these situations apply. Indeed, as the Fifth Circuit has recognized, "it is obvious that Rule 19 does not contemplate joinder of any party who might possibly be affected by a judgment in any way." *Shelton v. Exxon Corp*., 843 F.2d 212, 218 (5th Cir. 1988); *see also Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 49 (2d Cir. 1996) (holding that

[2] Plaintiffs only use the term "necessary parties" at the beginning of their Motion. *See* Dkt. 79 at 2 & 4. However, in the argument section, Plaintiffs refer to Rule 19(a)(1)(B)(i), which addresses when a party is considered "necessary" and, therefore, must be joined. *See id*. at 7.

for a party to be "necessary" within the meaning of Rule 19(a)(1), ***the absent party must be the one claiming the interest***).

Plaintiffs' failure to explain *why* Defendants are necessary parties ends the Court's inquiry as it relates to Plaintiffs' reconsideration request. *See Hood ex rel Miss. v. City of Memphis*, 570 F.3d 625, 628 (5th Cir. 2009) ("the party advocating joinder has the initial burden of demonstrating that a missing party is necessary"). Regardless,[3] if Plaintiffs were to ultimately prevail against MET, then the award(s) can be vacated and reconsidered under the NSA's IDR process based on the relief granted against MET. *See* 42 U.S.C. § 300gg-111(c)(5)(B). Releasing Defendants from this lawsuit does not "impede [Defendants'] ability to protect [their] interest[s]," nor does it leave Defendants subject to "multiple" or "inconsistent obligations." Fed. R. Civ. P. 19(a)(1)(B). Similarly, Defendants' absence does not prevent the Court from according complete relief (i.e., vacatur) among the existing parties. *See* Fed. R. Civ. P. 19(a)(1)(A).

As Plaintiffs admit, their claim against MET involves "a different legal question that requires proof of substantially different facts than the dismissed claims[.]" Dkt. 79 at 10. Moreover, Defendants have no interest to protect—MET either did or did not apply a presumption in favor of their respective QPAs. In addition, there is no possibility of "inconsistent" or "multiple" judgments. As explained above, if the Court were to vacate the IDR award(s)—i.e., render a final judgment—Plaintiffs would simply refile their claims in statutory arbitration. Defendants' absence from the case does not somehow immunize them from a judicial decision. All said, there is no reason that the Court cannot "accord complete relief" among the remaining parties (i.e., Plaintiffs

[3] As explained, Plaintiffs have not even attempted to carry their initial burden. While it is incumbent on neither the Court nor Defendants to fill in the gaps, for the sake of completeness, Aetna addresses grounds for joinder under Rule 19(a)(1).

and MET) per Rule 19(a)(1). Defendants do not need to remain parties to this lawsuit in order for this Court to determine whether MET's IDR award(s) should be set aside.[4]

B. Even if Plaintiffs Could Show Reconsideration is Warranted Under Rule 54(b), Plaintiffs Have Failed to Demonstrate that the Court Should Certify the Order for Interlocutory Appeal Under § 1292(b).

Interlocutory appeals pursuant to 28 U.S.C. § 1292(b) are appropriate only in "exceptional" circumstances. *Clark-Dietz & Assocs.-Engineers, Inc. v. Basic Constr. Co.*, 702 F.2d 67, 69 (5th Cir. 1983). Section 1292(b) appeals require a district-court determination—and concurrence by the court of appeals—that (1) a "controlling question of law" is involved, (2) as to which "there is substantial ground for difference of opinion," and (3) that "an immediate appeal from the order may materially advance ultimate termination of the litigation." 28 U.S.C. § 1292(b). "Every ground in § 1292(b) must be met in order for the interlocutory appeal to be considered; these are not factors to be weighed and balanced." *Admiral Ins. Co. v. Willson (In re Cent. La. Grain Coop., Inc.)*, 489 B.R. 403, 411 (W.D. La. 2013) (cleaned up). Moreover, even if a movant satisfies all statutory grounds, the decision to certify an order for interlocutory appeal is within the district court's discretion. *See Coates v. Brazoria Cnty. Tex.*, 919 F. Supp. 2d 863, 867 (S.D. Tex. 2013). Plaintiffs, as the moving party, bear the burden of demonstrating that interlocutory appeal is appropriate. *See id*.

1. Controlling question of law

A "controlling question of law" must be purely legal in nature. *See Malbrough v. Crown Equip. Corp.*, 392 F.3d 135, 136 (5th Cir. 2004) (recognizing that a "genuine issue of material fact

[4] Moreover, the difference between the full amount billed by Guardian Flight and the amount previously paid by Aetna (on behalf of the plan) is $36,568.47—the most that Guardian Flight could have recovered via the IDR process. As set forth in the record, Aetna tendered payment to Guardian Flight in the amount of $36,568.47, which it refused to accept.

. . . is not a question of law within the meaning of § 1292(b)." (internal citations omitted)); *Speer v. Tow (In re Royce Homes LP)*, 466 B.R. 81, 94 (S.D. Tex. 2012) ("In the interlocutory-appeal context, the question of law must refer to a pure question of law that the reviewing court could decide quickly and cleanly without having to study the record." (cleaned up)).

According to Plaintiffs, the alleged "controlling question of law" is "whether or when [judicial] review or vacatur of an IDR award is available under [the NSA] if a party to the IDR alleges that a misrepresentation of fact was made to the IDR entity." Dkt. 79 at 8. The scope of judicial review available under the NSA is addressed in the following subsection. But to the extent Plaintiffs' seek to relitigate whether the misrepresentation(s) alleged in their live pleading(s) is sufficient to trigger one of the four grounds for vacatur under the FAA—i.e., where an award is procured by corruption, fraud, or undue means—such an inquiry is fact-specific and not the type of "pure" legal questions that the appellate court can decide "quickly and cleanly."

2. Substantial grounds for difference of opinion

Plaintiffs cannot demonstrate a substantial ground for difference of opinion. "The threshold for establishing [this element] is higher than mere disagreement or even the existence of some contrary authority." *Coates*, 919 F. Supp. 2d at 868; *see Ryan v. Flowserve Corp.*, 444 F. Supp. 2d 718, 724 (N.D. Tex. 2006) ("[S]imply because a court is the first to rule on a question or counsel disagrees on applicable precedent does not qualify the issue as one over which there is substantial disagreement. Nor does a party's claim that a district court has ruled incorrectly demonstrate a substantial disagreement." (citation omitted)). Of the three § 1292(b) criteria, the requirement that there be substantial grounds for difference of opinion is historically the easiest to define and most difficult to satisfy. *See* WRIGHT & MILLER § 3930 ("judges have not been bashful about refusing to find substantial reason to question a ruling of law, even in matters of first impression").

"Courts traditionally will find a substantial ground for difference of opinion 'if a trial court rules in a manner which appears contrary to the rulings of all Courts of Appeals which have reached the issue, if the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented.'" *Coates*, 919 F. Supp. 2d at 868–69 (quoting 4 AM. JUR. 2D *Appellate Review* § 123).

The only two courts to consider the scope of judicial review available under the NSA both have easily found that "the NSA uses exclusive language regarding when judicial review is permitted—only when one of the four paragraphs of Section 10 of the FAA is triggered." *Guardian Flight*, 2024 WL 484561, at *6; *see Med-Trans*, 2023 WL 7188935, at *5–7. As this Court explained:

> If Congress intended to make misrepresentations of fact a type of "undue means" that triggers judicial review, it would have stated as such. Instead, the NSA clearly separates when an IDR award is binding—absent a fraudulent claim or evidence of misrepresentation of fact to the IDR entity—and when an IDR award is subject to judicial review—pursuant to Section 10(a) of the FAA.

Guardian Flight, 2024 WL 484561, at *6.

Plaintiffs' wholly fail to explain how there is any ground for difference of opinion, much less substantial grounds. *See* Dkt. 79 at 8–9. The best they can offer is a perfunctory: "[R]easonable jurists could disagree as to how best to construe [the NSA's] complicated statutory scheme for review of mandatory IDR decisions[.]" *Id*. But there is no disagreement. Nor is the scope of judicial review "complicated." In fact, it is incredibly straightforward. Section 300gg-111(c)(5)(E) provides, in no uncertain terms: "A determination of a certified IDR entity . . . . shall not be subject to judicial review, except in a case described in [9 U.S.C. § 10(a)]." 42 U.S.C. § 300gg-11(c)(5)(E).

3. Materially advancing the ultimate termination of the litigation

"The basic rule of appellate jurisdiction restricts review to final judgments." *Clark-Dietz & Assocs.-Engineers, Inc*. 702 F.2d at 69. A case must be "exceptional" to warrant departure from this general rule. *See id*. Plaintiffs demonstrate no such extraordinary circumstances here. To the contrary, Plaintiffs' request is fundamentally "piecemeal," as Plaintiffs seek to reinstate Kaiser and Aetna as defendants to its claim against MET, certify the portions of the award involving Kaiser and Aetna for appeal under § 1292(b), and then stay proceedings in this Court. *See* Dkt. 79 at 9 n.2.

Plaintiffs insist that an "immediate appeal may materially advance the ultimate termination of the litigation." Dkt. 79 at 9. To materially advance the ultimate termination of the litigation "means that resolution of a controlling legal question would serve to avoid a trial or otherwise substantially shorten the litigation." *McFarlin v. Conseco Servs*., 381 F.3d 1251, 1259 (11th Cir. 2004). Without question, Plaintiffs' proposed interlocutory appeal would not further this purpose.

C. The Court Should Decline to Enter Partial Final Judgment Under Rule 54(b).

"Since the inception of the federal judiciary," the role of a court of appeals "has been to review final decisions of the trial courts, not to tinker with ongoing cases through piecemeal appeals, which waste 'judicial energy,' create unnecessary delays, and obstruct the pursuit of meritorious claims." *Tetra Techs., Inc. v. Cont'l Ins. Co*., 755 F.3d 222, 231 (5th Cir. 2014) (citation omitted). Accordingly, Rule 54(b) motions are disfavored and should be granted only "when there exists some danger of hardship or injustice through delay which would be alleviated by immediate appeal." *PYCA Indus*., 81 F.3d at 1421. Indeed, appellate courts have acknowledged that a liberal construction of Rule 54(b) has tremendous potential to rapidly increase their caseload

because of the rule's natural tendency to multiply appeals in a single case. *See, e.g., Brandt v. Bassett (In re Se. Banking Corp.)*, 69 F.3d 1539, 1548 (11th Cir. 1995).

When deciding a request for partial final judgment, 'court[s] should consider such factors as: "(1) the relationship between the adjudicated and the unadjudicated claims; (2) the possibility that the need for review might or might not be mooted by future developments in the district court; (3) the possibility that the reviewing court might be obliged to consider the same issue a second time; (4) the presence or absence of a claim or counterclaim which could result in set-off against the judgment sought to be made final; [and] (5) miscellaneous factors such as delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like.'" *Abecassis*, 2010 WL 2671576, *2 (Rosenthal, J.) (quoting *Akers*, 338 F.3d at 495).

Here, there is ample reason to decline to enter partial final judgment. To begin, there is no danger—either alleged or factual—of hardship or delay. Further, if the Court were to find that MET applied an illegal presumption in favor of Defendants' QPAs, any need for the Fifth Circuit to review the Court's decision regarding Defendants' dismissal would be moot. That is, a finding that MET applied an illegal presumption would result in vacatur of the underlying IDR awards—the very relief Plaintiffs sought by way of their claims against Defendants. Admittedly, MET has appealed the denial of its arbitral-immunity defense; however, rendering a final judgment as to Defendants on the off chance that the Fifth Circuit reverses that decision would certainly be curious grounds for contravening the general aversion to partial final judgments. Further, Plaintiffs agree that a potential appeal of Defendants' dismissal presents a distinct and different issue than at issue in MET's interlocutory appeal. *See* Dkt. 79 at 10. Accordingly, adhering to the general principle that a final judgment is proper only after the rights and liabilities of all parties to the action have been adjudicated would not create the possibility that the Fifth Circuit would be obliged to consider

the same issue a second time. The remaining factors identified above are either irrelevant or neutral.[5]

V. CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Motion to Partially Reconsider Dismissal Against Insured Defendants and to Certify Dismissal Order for Appeal (Dkt. 79). Both certification of an interlocutory order for appeal under § 1292(b) and partial final judgment under Rule 54(b) are reserved for exceptional circumstances, which this case is not. Plaintiffs offer no justifiable reason to reconsider the Court's well-reasoned Order; in fact, Plaintiffs' argument does not even address the Court's legal analysis. *See supra*, Section IV(A). But even if Plaintiffs could offer a persuasive argument, they objectively fail to demonstrate the three elements necessary to certify an interlocutory order for appeal under § 1292(b). *See supra*,

[5] Additionally, collateral estoppel provides an alternate basis to justify the Court's dismissal of Defendants. In its Order, the Court correctly found that REACH was collaterally estopped from asserting its claims against Kaiser based on Chief Judge Corrigan's ruling in *Med-Trans*. *See Guardian Flight*, 2024 WL 484561, at *6. However, the Court stopped short of finding the preclusive effect of the judgment in *Med-Trans* estopped Guardian Flight and CALSTAR from pursuing their claims against Kaiser. *See id*. In its response brief, Kaiser skillfully explains why collateral estoppel applies with equal force to Guardian Flight's and CALSTAR's claims against it. *See* Dkt. 86. Aetna avers that the reasoning likewise applies to Guardian Flight's claim against Aetna under the doctrine of nonmutual issue preclusion. A defendant may assert defensive nonmutual issue preclusion—a species of collateral estoppel—provided the party against whom issue preclusion is asserted had a full and fair opportunity for judicial resolution of the same issue in the earlier suit. *See Vargas-Colón v. Fundación Damas, Inc*., 864 F.3d 14, 28 (1st Cir. 2017). Critically, as with traditional issue preclusion, mutuality between the parties is not required in defensive collateral estoppel cases. *See Ga.-Pacific Consumer Prods. LP v. Four-U-Packaging, Inc.*, 701 F.3d 1093, 1098–99 (6th Cir. 2012). Rather, the key inquiry is whether the party against whom preclusion is asserted is attempting to relitigate issues of fact or law that were necessary to the court's judgment and actually determined in the prior action. REACH—which, like Guardian Flight and CALSTAR, is a subsidiary of the same parent company—raised the very same issues in *Med-Trans* where it had a full and fair opportunity to litigate its claims and obtained a judicial resolution. For these reasons, collateral estoppel supplies an additional reason why this Court reached the correct conclusion in dismissing Defendants and should not disturb that ruling.

Section IV(B). Similarly, Plaintiffs have not demonstrated the requisite hardship or injustice needed for a court to enter partial final judgment under Rule 54(b). *See supra*, Section IV(C).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed electronically on March 21, 2024. 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/ David Hughes
David Hughes