UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MED-TRANS CORPORATION,

Plaintiff,

v.

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

Defendants.

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

DEFENDANT C2C INNOVATIVE SOLUTIONS, INC.'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS

Defendant, C2C Innovative Solutions, Inc. ("C2C"), pursuant to the Court's order dated January 8, 2023 [Dkt. 42], files this Reply in support of its Motion to Dismiss. [Dkt. 24].

I. The No Surprise Act's Dispute Resolution Process

In December 2020, Congress enacted the No Surprises Act ("NSA") to reduce costs associated with surprise medical bills. As part of its cost-reduction efforts, the NSA creates a stream-lined arbitration process to resolve payment disputes between out-of-network providers (including air ambulance providers

such as Plaintiff) and health insurance issuers. 42 U.S.C. § 300gg-111(c). Under this process, each party submits its proposed payment and explanation to an independent private arbitrator, which the NSA calls a "certified IDR entity." § 300gg-111(c)(5)(B). The arbitrator then selects one of the two proposed payment amounts. § 300gg-111(c)(5)(A). The arbitrator must provide the parties with a decision no later than 30 days after its appointment. *Id.* The arbitrator's decision is insulated from judicial review unless the party challenging the award can establish one of the four statutory grounds delineated in section 10 of the Federal Arbitration Act. § 300gg-111(c)(5)(E).

II. Argument

Plaintiff's suit does not challenge the constitutional validity of this comprehensive statutory scheme. Plaintiff nonetheless seeks to elide the NSA's dispute resolution provisions (and their attendant cost reductions) by arguing that "an IDR proceeding is not an arbitration at all." Specifically, Plaintiff argues that the IDR process cannot be characterized as arbitration because (i) the process lacks features associated with traditional arbitration, and (ii) the NSA does not expressly use the word "arbitration." Plaintiff is incorrect on both counts.

A. The NSA requires arbitration, specifically "baseball-style" arbitration.

The NSA's independent dispute resolution process is a form of arbitration

called "baseball-style" or "final offer" arbitration. *See LifeNet, Inc. v. United States Dep't of Health & Hum. Services*, —F. Supp. 3d—, 2022 WL 2959715, at *2 (E.D. Tex. July 26, 2022) ("[Section] 300gg-112 requires the provider and insurer each to submit a proposed payment amount and explanation to an arbitrator in a 'baseball-style' arbitration. The arbitrator must then select one of the two proposed amounts, taking into account the considerations specified in [the NSA]."") (internal quotation marks and citation omitted); *Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 587 F. Supp. 3d 528, 534 (E.D. Tex. 2022). Baseball-style arbitration reduces litigation costs by incentivizing parties to submit reasonable offers or otherwise settle their disputes. *See* Sarah Jolley, *Home Run or Strike Out: Can Baseball Arbitration Solve America's Medical Debt Crisis?*, 2022 J. Disp. Resol. 169, 172 (2022) ("[Under baseball-style arbitration] parties have incentives to submit reasonable rather than aspirational offers for fear their bid will be rejected. Given that parties have a greater chance of reaching a mutually agreeable result through negotiation, they have incentives to avoid the arbitration process altogether.").

This well-recognized form of arbitration is routinely enforced. *See, e.g., S. Steel Mining Co., LLC v. Wilson Downhole Servs.*, 2006 WL 2869535, at *5 (W.D. Pa. Oct. 5, 2006) (denying motion to vacate arbitration award and stating, "the award

of the Arbitrator is clearly derived from the Arbitration Agreements, specifically the provision in the Amendment that provides for 'baseball arbitration' "); *Kim-C1, LLC v. Valent Biosciences Corp.*, 756 F. Supp. 2d 1258, 1273 (E.D. Cal. 2010) (denying motion to vacate baseball-style arbitral award). Thus, Plaintiff's position—that the IDR process is not arbitration because it lacks aspects of "traditional arbitration"—is wrong.[1] Although Plaintiff might desire "traditional arbitration," Plaintiff's preferences cannot change the statute.

B. Legislative use of compulsory arbitration, including baseball-style arbitration, is common.

Plaintiff mistakenly asserts that the Railway Labor Act ("RLA") does not impose compulsory arbitration. While Section 157 creates a voluntary process for arbitrating disputes between railway carriers and other carriers or employees, this process applies solely to "major disputes." *See CSX Transp., Inc. v. Bhd. of Maint. of*

[1] Plaintiff also relies heavily on *Illinois Bell Telephone Company v. Box* for its position that the IDR process created by the NSA is not "arbitration." 526 F.3d 1069 (7th Cir. 2008). No such holding appears in *Illinois Bell*. Although Judge Easterbrook suggested that a statutorily created dispute resolution process was misleadingly called "arbitration," the issue played no role in the decision. *See generally id.*; *cf. Warren v. DeSantis*, 4:22-cv-302-RH-MAF, 2022 WL 6250952, at *6 (N.D. Fla. Sept. 29, 2022) ("Dictum is not binding on anyone for any purpose. . . . And this is especially true when the dictum does not analyze or even recognize an issue on which it is cited.").

Way Employees, 327 F.3d 1309, 1320 (11th Cir. 2003) ("The RLA distinguishes between two types of disputes in labor relations—major and minor. Depending on the classification of the dispute, each party must follow certain procedures mandated by the RLA."). Under Section 153, arbitration of "minor disputes" is mandatory. *See Union Pac. R. Co. v. Bhd. of Locomotive Engineers & Trainmen Gen. Comm. of Adjustment, Cent. Region*, 558 U.S. 67, 72–73 (2009) ("Congress . . . amended the [RLA] in 1934 (1934 Amendment) to mandate arbitration of minor disputes[.]"); *CSX Transp.*, 327 F.3d at 1320 ("If a dispute is 'minor' the parties . . . must submit to compulsory arbitration of the dispute by the NRAB."). Notably, Section 153 does not refer to the National Railroad Adjustment Board as "arbitrators." *Cf.* Dkt. 39 p. 11 ("The NSA does not refer to entities such as C2C as 'arbitrators' ").

Congress has also extended the RLA to apply to the airline industry. *See* 45 U.S.C. § 184. Like the rail industry, minor disputes between air carriers and their employees must be resolved through compulsory arbitration. *See Air Line Pilots Ass'n, Intern. v. Nw. Airlines, Inc.*, 627 F.2d 272, 275 (D.C. Cir. 1980). Neither "arbitration" nor "arbitrator" appear in Section 184. *Cf.* Dkt. 39 p. 10 ("With the Telecommunications Act of 1996 (and the Railway Labor Act cited by C2C), the

statute expressly used the term 'arbitrator' and 'arbitration' to describe the process being created.").

In any event, legislation mandating baseball-style arbitration is not novel. *See* Jolley, 2022 J. Disp. Resol. at 172 ("[T]he United States routinely inserts baseball-style arbitration provisions into international tax treaties with countries such as Canada, France, Germany, and Belgium"). And several states incorporate baseball-style arbitration into their own versions of the NSA. *See, e.g.*, N.Y. Fin. Serv. Law § 605(a) ("[A]n independent dispute resolution entity shall select either the health care plan's payment or the non-participating provider's fee."); Me. Rev. Stat. tit. 24-A, § 4303-E (same).

III. Conclusion

The NSA's IDR procedure is not a "black box" but fully consistent with the type of arbitration—baseball-style—Congress intended for the resolution of out-of-network billing disputes. Neither the mandatory nature of the NSA's arbitration process nor its lack of discovery procedures and formal hearings change the result. Indeed, the NSA intentionally eliminates these aspects of traditional litigation to carry out its purpose—reduce costs associated with out-of-network medical bills. *See* § 300gg-111(c)(5)(A) (arbitrator must render decision within 30 days of selection as arbitrator); § §300gg-111(c)(5)(C)–(D) (listing specific

factors arbitrator may consider in selecting one of two competing offers for payment). If any doubts remain, they are extinguished by the NSA's express incorporation of the Federal Arbitration Act's standard for vacating *arbitration* awards. *See* § 300gg-111(c)(5)(E).

Simply put, Plaintiff's dissatisfaction with C2C's decision-making does not make C2C a proper party to this suit.[2] Nor should Plaintiff be allowed to indirectly challenge the "fairness" of the NSA's arbitration process by asking the Court to read procedures into it that Congress purposely excluded. *See Norelus v. Denny's, Inc.*, 628 F.3d 1270, 1300–01 (11th Cir. 2010) ("Courts may not rewrite the language of a statute in the guise of interpreting it in order to further what they deem to be a better policy than the one Congress wrote into the statute.").

For these reasons, the Court should grant C2C's Motion to Dismiss.

[2] To the extent Plaintiff seeks prospective relief against C2C for an alleged failure to adhere to statutory requirements, the NSA provides it with an exclusive remedy—it may seek to revoke C2C's certification through filing a petition with the appropriate federal agency. *See* 42 U.S.C. § 300gg-111(c)(4)((D).

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Counsel for Defendant, C2C Innovative Solutions, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January 2023, a copy of the foregoing has been electronically filed with the Clerk of the U.S. District Court, Middle District of Florida, via CM/ECF, which will serve copies to all counsel of record.

s/ Pierce N. Giboney
Attorney