

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

REACH Air Medical Services, LLC,

Plaintiff,

v.

Kaiser Foundation Health Plan Inc.
and C2C Innovative Solutions, Inc.,

Defendants.

Case No. 3:22-cv-1153-TJC-JBT

NOTICE OF SUPPLEMENTAL AUTHORITY
RE: MOTIONS TO DISMISS

Kaiser Foundation Health Plan, Inc. hereby provides notice of a recently-decided case on judicial review of arbitration awards under the No Surprises Act (“NSA”). Kaiser provides the following information under Local Rule 3.01(i):

Citation of supplemental authority:

GPS of New Jersey v. Horizon Blue Cross & Blue Shield, No. 22-cv-6614, 2023 WL 5815821 (D.N.J. Sept. 8, 2023).

Arguments that the authority supplements:

1. The Federal Arbitration Act (“FAA”) applies in its entirety to lawsuits challenging Independent Dispute Resolution (“IDR”) awards issued under the NSA, not just Section 10(a) of the FAA. Dkt. No. 45 at 5:1–6:6; *but see* Dkt. No. 37 at 4–5 (REACH argument to the contrary).

2. Lawsuits challenging awards issued under the NSA are governed by precedent interpreting the FAA. Dkt. No. 45 at 2:7–4:19; *but see* Dkt. No. 37 at 4–5 (REACH argument to the contrary).
3. Lawsuits challenging awards issued under the NSA must be brought by a motion supported by evidence, not a complaint. Dkt. No. 30 at 10:16–12:16; *but see* Dkt. No. 37 at 4–5 (REACH argument to the contrary).
4. The application of an alleged improper presumption in favor of the Qualifying Payment Amount (“QPA”) is not a sufficient basis to vacate an IDR decision. Dkt. No. 30 at 20:6–21:20.
5. IDR arbitrators are under no obligation to give their reasons for an award. Dkt. No. 1 at ¶ 41; Dkt. No. 51 at 91:10.
6. Congress’s purpose in creating the IDR mechanism was to provide an efficient and cost-effective way to resolve the very high volume of payment disputes that are initiated annually. Dkt. No. 30 at 7:2–8:9.

Succinct quotation from the authority:

1. The FAA applies in its entirety, not just Section 10(a):
 - *GPS of New Jersey*, No. 22-cv-6614, 2023 WL 5815821, *10 (applying Sections 9 and 11 of the FAA to the NSA dispute).
2. Precedent interpreting the FAA governs:
 - *Id.* at *4, 6, 9, 10, n.10 (applying FAA precedent in judicial review of IDR decision, including emphasizing that the “limited standard of review [of

arbitrations] reflects a strong presumption in favor of enforcing arbitration awards” and that “courts play only a limited role when asked to review the decision of an arbitrator.”).

3. Lawsuits challenging awards issued under the NSA must be brought by motion supported by evidence:

- *Id.* at *1, 4 (discussing that challenge was brought as a motion to vacate).
- *Id.* at *4 (“The moving party bears the burden of proving that the arbitration award at issue should be vacated, and the courts must accord arbitration decisions exceptional deference.”).
- *Id.* (“[A]n arbitration award is presumed valid unless it is affirmatively shown to be otherwise.”).

4. Application of an alleged improper presumption in favor of the QPA is not a sufficient basis for vacatur:

- *Id.* at *8 & n.10 (noting, in response to rejected argument that purported presumption in favor of the QPA constitutes a basis for vacatur, that in reviewing IDR decision, “[c]ourts may only consider these [FAA] § 10(a) grounds, which do not include ordinary errors of law of the kind that might justify reversal on appeal.”).

5. IDR arbitrators need not give reasons for an award.

- *Id.* at *6 (“It is a fundamental background principle of arbitration law that ‘arbitrators are under no obligation to give their reasons for an award.’ *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960). No further requirement of a reasoned award can be found in the No Surprises Act itself.”).

6. Congress’s purpose in creating the IDR mechanism was efficiency and cost-effectiveness.

- *GPS of New Jersey*, No. 22-cv-6614, 2023 WL 5815821, at *6 n.7 (“Indeed, there is every indication that Congress meant to prioritize efficiency in these arbitrations.”).

Dated: September 14, 2023

Respectfully submitted,

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By: /s/ Moe Keshavarzi

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of September 2023, a true and correct copy of the above and the foregoing document has been served on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/Elisabeth Walters
Elisabeth Walters