

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

REACH Air Medical Services, LLC, et al.,

Plaintiffs,

v.

Kaiser Foundation Health Plan Inc., et al.,

Defendants.

Case No. 4:22-cv-03979

**DEFENDANT KAISER FOUNDATION HEALTH PLAN INC.'S MOTION TO
DISALLOW DISCOVERY IN THIS MATTER, OR ALTERNATIVELY, FOR A STAY
OF DISCOVERY PENDING RESOLUTION OF KAISER'S MOTION TO DISMISS**

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I. STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

Plaintiffs REACH Air Medical Services, LLC, et al. (“Plaintiffs”) filed their complaint on November 16, 2022. (ECF No. 1.) Defendant Kaiser Foundation Health Plan, Inc. (“Kaiser”) moved to dismiss on January 31, 2023. (ECF No. 25.) Co-defendant Medical Evaluators of Texas ASO, LLC (“MET”) moved to dismiss on January 26, 2023. (ECF No. 24.)

II. ISSUES TO BE RULED ON BY THE COURT

Kaiser moves this Court for an order disallowing discovery in this matter, or in the alternative, staying discovery until resolution of Kaiser’s motion to dismiss. The control of discovery “is committed to the sound discretion of the trial court and its discovery rulings will be reversed only where they are arbitrary or clearly unreasonable.” *Mayo v. Tri-Bell Indus., Inc.*, 787 F.2d 1007, 1012 (5th Cir. 1986) (citations omitted).

III. SUMMARY OF ARGUMENT

Through the No Surprises Act (“NSA”), Congress created an independent dispute resolution (“IDR”) arbitration process to resolve payment disputes between out-of-network providers and health plans in an efficient, streamlined, and 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”). Despite the strict statutory limitation on judicial review, Plaintiffs REACH Air Medical Services, LLC, CALSTAR Air Medical Services, LLC, and Guardian Flight LLC (collectively, “Plaintiffs”) and their affiliates filed several virtually identical lawsuits against various health plans and IDR arbitrators challenging the IDR arbitrations they have lost. This is one of those cases.¹ Kaiser contends that Plaintiffs’ claims lack merit, and has

¹ The related lawsuits filed by Plaintiffs and its affiliates are: (1) *Med-Trans Corp. v. Capital Health Plan, Inc. and C2C Innovative Solutions, Inc.*, Case No. 3:22-cv-1077 (M.D. Fla. 2022); (2) *Med-Trans Corp. v. Blue Cross and Blue Shield of Florida, Inc. and C2C Innovative Solutions*,

moved to dismiss. (ECF No. 25.) Co-defendant MET—the IDR arbitrator that issued the decision Plaintiffs challenge—has also moved to dismiss. (ECF No. 24.)

Kaiser brings this motion because Plaintiffs seek improper discovery. Kaiser submits that Plaintiffs have no right to *any* discovery in this case because discovery would allow Plaintiffs to circumvent the efficient and *confidential* independent arbitration framework created by Congress. (ECF No. 1, ¶ 26.) Significantly, in their motion to redact a hearing transcript in the related Florida matters, Plaintiffs’ affiliates *admit* that IDRs involve “confidential and proprietary internal business information” that is “competitively sensitive” and “commercially valuable when negotiating network agreements or making investment decisions in their IDR processes”—which Plaintiffs’ affiliates liken to a “*trade secret*.” See Declaration of Megan McKisson (“McKisson Decl.”), **Exhibit A** [Motion to Redact] at 2, 5 (emphasis added). Further, a protective order limiting discovery to attorney’s eyes only will not safeguard this confidential information, because Plaintiffs’ counsel—who represents Plaintiffs and their affiliates in all five of the parallel lawsuit filed by Plaintiffs and their affiliates—participates in the IDR submission process, including collecting data relating to Plaintiffs’ IDR wins and losses, and advising Plaintiffs on their continued “investment[.]” in the IDR process. (McKisson Decl., Exh. A at 2; *see also* McKisson Decl., **Exhibit B** [Declaration of Adam Schramek], ¶ 2.) As Plaintiffs *expressly acknowledge*, allowing discovery in this matter will enable Plaintiffs to gain an unfair advantage in IDRs. (McKisson Decl., Exh. A at 6.)

Inc., Case No. 3:22-cv-1139 (M.D. Fla. 2022); (3) *REACH Air Med. Services, LLC v. Kaiser Found. Health Plan, Inc. and C2C Innovative Solutions, Inc.*, Case No. 3:22-cv-1153 (M.D. Fla. 2022); and (4) *Guardian Flight, LLC v. Aetna Health Inc. et al.*, Case No. 4:22-cv-03805 (S.D. Tex. 2022).

In the alternative, Kaiser seeks a stay of discovery *at least* until the Court has ruled on Kaiser’s motion to dismiss. Granting a stay will prevent the burden of discovery that Kaiser believes is unnecessary. It will avoid disclosure of confidential information otherwise unavailable to Plaintiffs in medical reimbursement disputes governed by the NSA. And it will uphold the NSA’s core purpose of efficient independent arbitration as intended by Congress.

Just a few weeks ago, Chief Judge Timothy Corrigan of the Middle District of Florida considered this exact same issue in three of the nearly identical lawsuits filed by Plaintiffs and their affiliates. Judge Corrigan *sua sponte* rejected those plaintiffs’ attempt to seek discovery, and stayed all discovery until further order, but *at least* the hearing on each motion to dismiss. Indeed, Judge Corrigan expressly disapproved of the plaintiffs’ attempt to “hurry to get [discovery] before [the Court] actually know[s] whether or not there’s a lawsuit here.” (McKisson Decl., **Exhibit C** [Jan. 17 hearing transcript]² at 25:23–25; *see also* McKisson Decl. ¶ 4, **Exhibit D** [Jan. 18, 2023 order staying discovery].) At a minimum, the same result is warranted in this case. Kaiser requests that the Court disallow discovery in this matter, or in the alternative, stay discovery pending resolution of Kaiser’s motion to dismiss.

IV. BACKGROUND

A. Relevant Features of the NSA’s IDR Process.

Prior to the NSA, air ambulance providers like Plaintiffs engaged in “surprise billing”—a practice where providers sent “surprise” bills to health plan members to extract above-market payments from their health plans—which could climb as high as \$50,000 or more.³ Congress

² Kaiser has applied the redactions sought by the plaintiffs in the Florida case while their motion to redact remains pending.

³ *See* Sarah Kliff, *A \$52,112 Air Ambulance Ride: Coronavirus Patients Battle Surprise Bills* (N.Y. TIMES Oct. 13, 2020), <https://www.nytimes.com/2020/10/13/upshot/coronavirus-surprise-medical-bills.html>.

enacted the NSA to address this “market failure” by prohibiting providers from attempting to collect billed charges not paid by the health plan from patients. H.R. REP. NO. 116-615, pt. I, at 53; 42 U.S.C. § 300gg-135. After the health plan makes an initial payment to the provider, the NSA requires that any remaining disputes be resolved between the health plan and the provider via the IDR arbitration process. 42 U.S.C. § 300gg-112. In IDR arbitration, each party submits a proposed offer for payment of the services at issue. *Id.* § (b)(5)(B)(i)(I). The IDR arbitrator then selects between the offers to determine the payment amount (i.e., “baseball-style” arbitration). *Id.* § (b)(5)(C)(i)(I-II); ECF No. 1, ¶ 55. Neither party to the IDR has a right to discover any of the confidential materials submitted by the opposing party. (ECF No. 1, ¶ 26.)

Congress specifically designed the IDR process to provide for 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* H.R. REP. NO. 116-615, at 48, 58 (IDR process is structured “to reduce costs for patients and prevent inflationary effects on health care costs”); Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980, 55,996, 56,001 (Oct. 7, 2021) (underscoring “efficiency,” “predictability,” and “streamlining” in the IDR process); *Haller v. U.S. Dep’t of Health & Hum. Servs.*, 2022 WL 3228262, at *7 (E.D.N.Y. Aug. 10, 2022) (noting that Congress devised the IDR process as an “expert and inexpensive method” for resolving disputes). Consistent with this purpose of efficiency, Congress expressly incorporated the FAA’s narrow standards of judicial review into the NSA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345 (2011) (explaining that the purpose of the FAA is to “encourage[] . . . efficient and speedy” dispute resolution). Significantly, *as Plaintiffs admit*, neither party has a right to discover any of the confidential materials submitted in the IDR process by the opposing party in support of its offer. (ECF No. 1, ¶ 26; McKisson Decl., Exh. A.)

B. Procedural History.

On November 16, 2022, Plaintiffs brought this case against Kaiser and IDR entity MET. (ECF No. 1.) Plaintiffs seek to vacate⁴ an IDR award issued by MET under the NSA. *Id.* On January 25, 2023, Plaintiffs served their first sets of requests for production of documents and special interrogatories on Kaiser. (McKisson Decl., ¶ 5; **Exhibit E** [Plaintiffs’ discovery requests].) The documents requested include materials unavailable to Plaintiffs via the NSA’s IDR process. (McKisson Decl. ¶ 5, Exh. E; ECF No. ¶ 26.) Kaiser filed its pending motion to dismiss on January 31, 2023 for failure to state a claim upon which relief can be granted. Kaiser also moves to strike Plaintiffs’ claim for attorney’s fees. (ECF No. 25.) MET similarly moved to dismiss and to strike. (ECF No. 24.) On February 22, 2023, Kaiser’s counsel asked Plaintiffs to agree to a temporary stay of discovery until the this Court rules on Kaiser’s motion. Plaintiffs refused. (McKisson Decl. ¶ 6.)

C. The Florida Court Stays Discovery.

On January 17, 2023, Judge Timothy Corrigan held a hearing in all three related lawsuits filed by Plaintiffs in Florida. During that hearing, Judge Corrigan *sua sponte* rejected Plaintiffs’ attempt to seek discovery, and stayed all discovery until **at least** the hearing on each motion to dismiss, expressly disapproving of Plaintiffs’ attempt to “hurry to get [discovery] before [the court] actually know[s] whether or not there’s a lawsuit here.” (McKisson Decl., Exh. C at 25:23–25.)

⁴ As fully briefed in Kaiser’s Motion to Dismiss (ECF No. 25), Plaintiffs improperly filed a complaint, not a motion to vacate, which is “**required** in order to preserve the proper function of arbitration” *Kruse v. Sands Bros. & Co., Ltd.*, 226 F. Supp. 2d 484, 487 (S.D.N.Y. 2002). Kaiser maintains that Plaintiffs’ failure to timely file a motion, and include any evidence to support their allegations, warrants dismissal with prejudice. However, if the Court does not dismiss the complaint on this basis, and instead construes Plaintiffs’ complaint as a motion to vacate (albeit one unsupported by any evidence), the highly limited standards for discovery on motion for vacatur apply. *See Vantage Deepwater Co.*, 966 F.3d at 372.

The court rejected plaintiffs’ argument that their requests were “narrow,” explaining that the materials were “*kind of like everything you would want* if you were in this case.”⁵ So I—I don’t think we’re going to do that.” *Id.* at 29–30:25–27 (emphasis added). The court subsequently stayed discovery until further order. (McKisson Decl. ¶ 4, Exh. D.)

D. Plaintiffs Move to Redact, Admitting that IDR Information Is Confidential.

On February 9, 2023, the plaintiffs in the Florida lawsuits (Plaintiffs and their affiliate entities) moved to redact portions of a transcript from a hearing in those cases. (McKisson Decl., Exh. A.) In that motion, the plaintiffs *admit* that, in addition to the IDR submissions being confidential and non-discoverable in IDR proceedings,⁶ discovery of these submissions would provide a party with “competitively valuable information *to which it otherwise would not have access and with which it can make financial decisions.*” *Id.* at 4 (emphasis added). The plaintiffs further expressly acknowledge that IDR information “constitute[s] competitively sensitive information” which they compare to a “*trade secret.*” *Id.* (emphasis added). While Kaiser does not necessarily agree that IDR information legally qualifies as a trade secret, plaintiffs correctly recognize the highly confidential—and non-discoverable—nature of IDR information. *See id.*

V. LEGAL STANDARD

A district court has broad discretion in controlling discovery, and may disallow or stay discovery upon a showing of good cause. *Vantage Deepwater Co. v. Petrobras Am., Inc.*, 966 F.3d 361, 372 (5th Cir. 2020); *Corwin v. Marney, Orton Invs.*, 843 F.2d 194, 200 (5th Cir. 1988).

⁵ Significantly, the Court also questioned why plaintiffs in the Florida suits attempted to challenge the arbitration award via a complaint rather than a motion to vacate. (McKisson Decl., Exh. C at 5:7–10; *supra* fn. 4.)

⁶ (ECF No. 1, ¶ 26.)

The party seeking the discovery bears the burden of demonstrating its necessity. *Vantage Deepwater Co.*, 966 F.3d at 373.

VI. ARGUMENT

A. **The Information Plaintiffs Seek Is Not Discoverable in IDR Proceedings.**

First, discovery is not proper because the documents and information Plaintiffs seek are not discoverable in IDR proceedings. Here, Plaintiffs have expressly acknowledged the confidential nature of IDR submissions, as well as the fact that parties to an IDR arbitration are not entitled to discover the materials submitted by the other party in support of its offer. (ECF No. 1, ¶ 26; McKisson Decl., Exh. A.) Indeed, in their motion to redact, Plaintiffs describe the confidential nature of this information in detail, explaining that discovery of these submissions would provide a party with “competitively valuable information *to which it otherwise would not have access and with which it can make financial decisions.*” (McKisson Decl., Exh. A at 4 (emphasis added).) Plaintiffs further expressly acknowledge that IDR information “constitute[s] competitively sensitive information” which Plaintiffs compare to a “*trade secret.*” *Id.* (emphasis added). However, while Plaintiffs seek to protect their own allegedly confidential information in the Florida lawsuits, they simultaneously seek that exact confidential information—and much more—from Kaiser via discovery requests in this matter. (McKisson Decl., ¶ 3).

Further, a protective order limiting discovery to attorney’s eyes only will not safeguard this confidential information, because Plaintiffs’ counsel—who represents Plaintiffs and their affiliates in all five of the parallel lawsuit filed by Plaintiffs and their affiliates—participates in the IDR submission process, including collecting data relating to Plaintiffs’ IDR wins and losses, and advising Plaintiffs on their continued “investment[]” in the IDR process. (McKisson Decl., Exh. A at 2; *see also* Exh. B, ¶ 2.) Courts disfavor parties’ attempts to leverage the discovery process

to “bolster” their positions in related proceedings—such as IDR arbitrations. *See Samsung Elecs. Co., Ltd. v. Texas Instruments Inc.*, 1996 WL 343330, at *3 (N.D. Tex. 1996). This Court should prevent Plaintiffs’ attempt to obtain information *Plaintiffs admit* they are not entitled to obtain in IDR proceedings—which would add significant value to Plaintiffs’ own confidential IDR submissions. (ECF No. 1, ¶ 26.)

B. Disallowing Discovery Is Consistent with the Limits of the FAA, which Is Expressly Incorporated into the NSA.

Second, disallowing discovery is consistent with the strict limits that apply when a party challenges an arbitration award under the FAA.⁷ *See Vantage Deepwater Co.*, 966 F.3d at 372. Unlike the Federal Rules of Civil Procedure, which favor the broad disclosure of discovery, the FAA—which is expressly incorporated into the NSA—permits discovery only under limited circumstances. *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 2078, 2088 (2022) (explaining that, while different forums may allow for comprehensive discovery, the FAA limits discovery); *Norman v. Travelers Ins. Co.*, No. 3:19-CV-2351, 2019 WL 6250782, at *2 (N.D. Tex. Nov. 22, 2019) (“[C]ourts have generally denied arbitration-related discovery absent a compelling showing that such discovery is required.”); *see also Bell v. Koch Foods of Mississippi, LLC*, 358 F. App’x 498, 501 (5th Cir. 2009) (affirming district court’s denial of discovery in case challenging arbitration award because permitting discovery in the case “would defeat the FAA’s requirement of summary and speedy disposition of motions and petitions”). Post-arbitration discovery is disfavored as a “‘tactic’ employed by disgruntled or suspicious parties who, having lost the arbitration, are anxious for another go at it.” *Midwest Generation EME, LLC v. Continuum Chem. Corp.*, 768 F. Supp. 2d 939, 943 (N.D. Ill. 2010).

⁷ *Supra* fn. 4.

Vantage Deepwater Co. is instructive. There, in a proceeding to confirm an arbitration award, a party attempted to subpoena both the American Arbitration Association to discover facts relating to an arbitrator’s alleged bias, as well as a dissenting arbitrator. 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 [or vacatur] proceedings in their tracks and indefinitely postpone judgment by merely requesting discovery.” *Id.* at 373. Recognizing the “emphatic federal policy” favoring arbitration, and the corresponding prohibition on “review [of] the merits of an arbitration award[,]” the court held that a party seeking to vacate an arbitration award must meet the heavy burden of demonstrating that its discovery requests are justified. *Id.* at 368, 373. Plaintiffs cannot (and have not even attempted to) do so here.

In addition, disallowing discovery is consistent with the overall purpose of the FAA—to “encourage[] . . . efficient and speedy” dispute resolution. *Concepcion*, 563 U.S. at 345. Applying the same standard here adheres to the NSA’s core purpose of providing an efficient, streamlined, and low-cost dispute resolution mechanism. *See, e.g.*, H.R. REP. NO. 116-615, at 48, 58. Plaintiffs cannot simply style their case as a “complaint” to evade the strict discovery limits that apply when a party seeks to vacate an arbitration award under the FAA.⁸ *Vantage Deepwater Co.*, 966 F.3d at 372. Disallowing discovery is consistent with the principles of efficiency and finality that form the bedrock of both the FAA and the NSA.

C. In the Alternative, the Court Should Stay Discovery *at Least* until It Rules on Kaiser’s Motion to Dismiss.

In the alternative, the Court should at least stay discovery until it rules on Kaiser’s motion to dismiss. The Fifth Circuit has repeatedly confirmed that a district court properly exercises its

⁸ *Supra* fn. 4.

discretion by staying discovery until it has determined preliminary questions that may dispose of the case. *Corwin*, 843 F.2d at 200; *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987) (“A trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined”). A stay of discovery pending resolution of a motion to dismiss is particularly appropriate because “[s]uch motions are decided on the face of the complaint,” and “no discovery [is] needed to resolve . . . motions to dismiss.” *Landry v. Air Line Pilots Ass’n Int’l AFL-CIO*, 901 F.2d 404, 435 (5th Cir.), *cert. denied*, 111 S. Ct. 244 (1990).

Staying discovery will also save the parties and the Court the unnecessary cost and inconvenience associated with discovery on claims ultimately dismissed. *Landry*, 901 F.2d at 436. A stay of discovery pending resolution of a motion 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.” *Schoen v. Underwood*, No. W-11-CA-00016, 2011 WL 13238322, at *1 (W.D. Tex. July 18, 2011).

Consistent with this authority, in the related Florida lawsuits, the court rejected the plaintiffs’ attempt to obtain discovery before it ruled on the pending motions to dismiss. (McKisson Decl., ¶ 4 & Exhs. C, D.) Specifically, the court concluded that it would “determine whether the complaint is properly pled, whether we’re in the right place or not, before we get into discovery.” (McKisson Decl., Exh. C at 25:16–25.) The court rejected the plaintiffs’ argument that their requests were “narrow,” explaining that the materials were “*kind of like everything you would want* if you were in this case.”⁹ So I—I don’t think we’re going to do that.” *Id.* at 29–30:25–27 (emphasis added). The court subsequently stayed discovery until further order. (McKisson

⁹ Significantly, the court also questioned why plaintiffs attempted to challenge the arbitration award via a complaint rather than a motion to vacate. (McKisson Decl., Exh. C at 5:7–10; *supra* fn. 4.)

Decl. ¶ 4.) Judge Corrigan’s ruling aligns with the Fifth Circuit’s reasoning in *Landry*. Both authorities warrant a stay in this case.

Finally, Plaintiffs cannot credibly argue that they will be prejudiced by a stay. As the Fifth Circuit has observed, “no discovery [is] needed to resolve . . . motions to dismiss.” *Landry*, 901 F.2d at 435. Thus, it will not prejudice Plaintiffs to stay discovery until the Court rules on Kaiser’s pending dispositive motion.

VII. CONCLUSION

For the foregoing reasons, this Court should disallow discovery and reject Plaintiffs’ attempts to obtain Kaiser’s confidential—and highly valuable—information that *Plaintiffs compare* to a trade secret, which is not discoverable under the NSA and will give Plaintiffs an unfair advantage in their ongoing IDR submissions. In the alternative, the Court should stay discovery until it has ruled on Kaiser’s pending dispositive motion, following Fifth Circuit authority and the rulings in Plaintiffs’ parallel lawsuits.

Dated: February 24, 2023

/s/ Barclay R. Nicholson

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PLAN, INC.

CERTIFICATE OF CONFERENCE

Kaiser certifies that before filing the motion, it met and conferred with Plaintiffs' counsel to determine whether Plaintiffs would agree to the relief sought in this request. Counsel for Kaiser (Jack Burns and Megan McKisson) spoke with Adam Schramek and Abraham Chang, counsel for Plaintiffs, on February 22, 2023.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of February 2023, a true and correct copy of the above and 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. All others will be served via electronic mail.

/s/ Erica C. Gibbons

Erica C. Gibbons

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

REACH Air Medical Services, LLC, et al.,

Plaintiffs,

v.

Kaiser Foundation Health Plan Inc., et al.,

Defendants.

Case No. 4:22-cv-03979

**DECLARATION OF MEGAN MCKISSON IN SUPPORT OF
DEFENDANT KAISER FOUNDATION HEALTH PLAN INC.'S MOTION TO
DISALLOW DISCOVERY IN THIS MATTER, OR ALTERNATIVELY, FOR A STAY
OF DISCOVERY PENDING RESOLUTION OF KAISER'S MOTION TO DISMISS**

1. I am an attorney duly admitted to practice before this Court. I am an attorney at Sheppard, Mullin, Richter & Hampton LLP, counsel of record for Defendant Kaiser Foundation Health Plan, Inc. I have personal knowledge of the facts set forth herein, unless stated on information and belief, and if called upon to testify to those facts, I could and would competently do so.

2. On November 16, 2022, REACH Air Medical Services, LLC, CALSTAR Air Medical Services, LLC, and Guardian Flight LLC (collectively, "Plaintiffs") brought this case against Kaiser and IDR entity Medical Evaluators of Texas ("MET"). Plaintiffs seek to vacate an IDR award issued by MET under the No Surprises Act ("NSA"). Prior to filing this lawsuit, Plaintiffs and their affiliates filed several virtually identical lawsuits against various health plans and IDR arbitrators challenging the IDR arbitrations they have lost.

3. In the related Florida matters, Plaintiffs moved to redact a transcript from a hearing that the court held on January 17, 2023. **Exhibit A** [Motion to Redact]; **Exhibit B** [Declaration of

Adam Schramek]. In that motion, Plaintiffs’ affiliates *admit* that IDRs involve “confidential and proprietary internal business information” that is “competitively sensitive” and “commercially valuable when negotiating network agreements or making investment decisions in their IDR processes”—which Plaintiffs’ affiliates liken to a “*trade secret*.” *See* Exh. A at 2, 5.

4. A few weeks ago, Chief Judge Timothy Corrigan of the Middle District of Florida considered the appropriateness of discovery of these very same confidential materials after Plaintiffs served initial discovery requests in the three nearly-identical lawsuits filed by Plaintiffs and their affiliates in Florida. Judge Corrigan expressly disapproved of the plaintiffs’ attempt to “hurry to get [discovery] before [the Court] actually know[s] whether or not there’s a lawsuit here.” **Exhibit C** [redacted Jan. 17 hearing transcript]¹ at 25:23–25. Judge Corrigan further *sua sponte* rejected those plaintiffs’ attempt to seek discovery, and stayed all discovery until further order (at least the hearing on each motion to dismiss). **Exhibit D** [Jan. 18, 2023 order staying discovery].

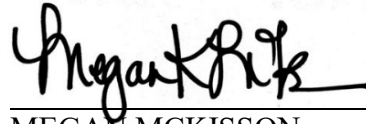
5. On January 25, 2023, Plaintiffs served their first sets of requests for production of documents and special interrogatories on Kaiser in this case. **Exhibit E** [Plaintiffs’ discovery requests]. The documents requested include confidential materials that Plaintiffs are not entitled to discover via the NSA’s IDR process.

6. On February 22, 2023, I asked Plaintiffs’ counsel if Plaintiffs would agree to a temporary stay of discovery until the pending motions are decided by this Court. Plaintiffs refused.

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

¹ Kaiser has applied the redactions sought by the plaintiffs in the Florida case while their motion to redact remains pending.

Executed on this 22nd day of February, at Los Angeles, California.

A handwritten signature in black ink, appearing to read "Megan McKisson", is written over a horizontal line.

MEGAN MCKISSON

EXHIBIT A

**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

EXHIBIT B

**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 C

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
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 [REDACTED]

04:16 6 [REDACTED]

04:16 7 [REDACTED]

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, [REDACTED]

04:17 16 MR. SCHRAHEK: 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 [REDACTED]

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

EXHIBIT D

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

MED-TRANS CORPORATION,

Plaintiff,

v.

Case No. 3:22-cv-1077-TJC-JBT

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

Defendants.

MED-TRANS CORPORATION,

Plaintiff,

v.

Case No. 3:22-cv-1139-TJC-JBT

BLUE CROSS AND BLUE SHIELD
OF FLORIDA, INC. and 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. and C2C INNOVATIVE
SOLUTIONS, INC.,

Defendants.

ORDER

These three cases are before the Court on six related motions to dismiss: C2C Innovative Solutions, Inc. and Capital Health Plan, Inc.'s motions to dismiss (Docs. 24 and 26 in 3:22-cv-1077); Blue Cross and Blue Shield of Florida, Inc. and C2C Innovative Solutions, Inc.'s motions to dismiss (Docs. 15 and 16 in 3:22-cv-1139); and C2C Innovative Solutions, Inc. and Kaiser Foundation Health Plan Inc.'s motions to dismiss (Docs. 19 and 30 in 3:22-cv-1153). On January 17, 2023, the Court held a preliminary pretrial conference, the record of which is incorporated by reference. Accordingly, for the reasons stated on the record at the preliminary pretrial conference, it is hereby

ORDERED:

1. The Court will hold a hearing on all pending motions in all three cases on **May 16, 2023, at 10:00 a.m.** before the undersigned in Courtroom 10D, United States Courthouse, 300 North Hogan Street, Jacksonville, Florida.¹
2. Discovery is stayed in all three cases until further order.

¹ All persons entering the Courthouse must present photo identification to Court Security Officers. Although cell phones, laptop computers, and similar electronic devices generally are not permitted in the building, attorneys may bring those items with them to the extent permitted by Local Rule 7.02.

DONE AND ORDERED in Jacksonville, Florida the 18th day of
January, 2023.



Timothy J. Corrigan
TIMOTHY J. CORRIGAN
United States District Judge

rmv

Copies:

Counsel of record

EXHIBIT E

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

REACH AIR MEDICAL SERVICES)
LLC, CALSTAR AIR MEDICAL)
SERVICES, LLC, and GUARDIAN)
FLIGHT LLC,)

Plaintiff,)

v.)

KAISER FOUNDATION HEALTH)
PLAN INC. and MEDICAL)
EVALUATORS OF TEXAS ASO, LLC,)

Defendants.

Case No. 4:22-cv-3979

**PLAINTIFFS' FIRST SET OF DISCOVERY
REQUESTS TO KAISER FOUNDATION HEALTH PLAN INC.**

Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Plaintiffs REACH Air Medical Services LLC, CALSTAR Air Medical Services, LLC, and Guardian Flight LLC submit their first discovery requests to Defendant Kaiser Foundation Health Plan Inc. ("Kaiser"). Kaiser 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 Plaintiffs. Kaiser is under a duty to supplement its responses to these requests for production in accordance with the Federal Rules of Civil Procedure.

Dated: January 25, 2023

Respectfully submitted,

/s/ Adam T. Schramek
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Of Counsel

*Attorneys for REACH Air Medical Services LLC,
CALSTAR Air Medical Services LLC, and
Guardian Flight LLC*

CERTIFICATE OF SERVICE

I certify that on January 25, 2023, the foregoing document was served by e-mail on 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 Kaiser 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. “IDR Disputes” means the disputes between Kaiser and Plaintiffs arising from payment for the emergency air transport services as described in Paragraphs 17-22 of the Complaint. When not capitalized, the term “IDR disputes” refers to disputes arising under the No Surprises Act in general.
7. “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.
8. “QPA” means Qualifying Payment Amount as provided under the No Surprises Act.

9. “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.
10. 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.
11. “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.
12. “You,” “Your,” and “Kaiser ” shall mean Kaiser Foundation Health Plan Inc. and any of its Representatives.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Documents you submitted to MET relating to the IDR Disputes, including Your position statements.

REQUEST FOR PRODUCTION NO. 2:

Documents and Communications relating to the IDR Disputes or IDR Determinations.

REQUEST FOR PRODUCTION NO. 3:

For the transports at issue in the IDR Disputes, produce the network agreements You used to calculate (1) each QPA You submitted to MET and (2) each QPA You listed on the Explanation of Benefits or Payments.

INTERROGATORIES

INTERROGATORY NO. 1:

Explain in detail and with reference to the agreements you produce in response to RFP No. 3 Your calculation of (1) each QPA you submitted to MET in each IDR Dispute, and (2) each QPA You claim You shared with Plaintiffs. Please show the calculation for each QPA separately with sufficient specificity that it can be replicated to reach each amount.

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

REACH Air Medical Services, LLC, et al.,

Plaintiffs,

v.

Kaiser Foundation Health Plan Inc., et al.,

Defendants.

Case No. 4:22-cv-03979

**[PROPOSED] ORDER GRANTING
DEFENDANT KAISER FOUNDATION HEALTH PLAN INC.'S MOTION TO
DISALLOW DISCOVERY IN THIS MATTER, OR ALTERNATIVELY, FOR A STAY
OF DISCOVERY PENDING RESOLUTION OF KAISER'S MOTION TO DISMISS**

The Court, having considered Kaiser Foundation Health Plan, Inc.'s Motion to Disallow Discovery in this Matter, or Alternatively, for a Stay of Discovery Pending Resolution of Kaiser's Motion to Dismiss, and any responses, applicable authorities, and arguments of counsel, finds:

Kaiser's Motion to Disallow Discovery in this Matter is hereby GRANTED.

[OR]

Kaiser's Motion to Stay Discovery is GRANTED, and the Court hereby stays discovery until further order.

SIGNED this _____ day of _____, 2023 at Houston, Texas.

Hon. Andrew S. Hanen
United States District Judge