

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

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

Plaintiffs,

V.

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

Defendants.

CIVIL ACTION NO. 4:22-cv-03979

**PLAINTIFFS' RESPONSE TO DEFENDANT  
KAISER FOUNDATION HEALTH PLAN, INC.'S  
MOTION TO DISALLOW DISCOVERY, OR FOR A STAY  
OF DISCOVERY PENDING RESOLUTION OF THE MOTIONS TO DISMISS**

## TABLE OF CONTENTS

	<b>Page</b>
Statement of the Nature of the Case And Stage Of The Proceedings.....	1 -
Plaintiffs’ Statement of the Issues.....	1 -
Summary of Argument .....	1 -
Legal Standard .....	3 -
Argument and Authorities.....	3 -
I.    The Information Plaintiffs Seek is Relevant, Discoverable, and Narrowly Tailored. ....	3 -
II.   No Authority Supports Disallowing Discovery In a Proceeding Challenging an IDR Award Under the NSA.....	7 -
III.  Kaiser Has Failed to Show Good Cause to Warrant a Stay .....	9 -
Conclusion .....	12 -

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Allied-Bruce Terminix Companies, Inc. v. Dobson</i> , 513 U.S. 265 (1995).....	7
<i>Baxter v. Louisiana</i> , 2022 WL 1509118 (M.D. La. May 12, 2022).....	6
<i>Datskow v. Teledyne</i> , 899 F.2d 1298 (2d Cir. 1990).....	11
<i>Ford Motor Co. v. U.S. Auto Club, Motoring Div., Inc.</i> , 2008 WL 2038887 (N.D. Tex. Apr. 24, 2008) .....	9, 10
<i>Glazer’s Wholesale Drug Co., Inc. v. Klein Foods, Inc.</i> , 2008 WL 2930482 (N.D. Tex. Jul. 23, 2008).....	10
<i>Hoelt v. MVL Grp., Inc.</i> , 343 F.3d 57 (2d Cir. 2003).....	7, 9
<i>Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara</i> , 364 F.3d 274 (5th Cir. 2004) .....	8
<i>Mcpeters v. Lexisnexis</i> , 2011 WL 13253446 (S.D. Tex. Oct. 5, 2011).....	3
<i>Salzgitter Mannesmann International (USA) Inc. v. Sun Steel Co. LLC</i> , 2022 WL 3041134 (S.D. Tex. Aug. 2, 2022) .....	9
<i>In re Terra Int’l, Inc.</i> , 134 F.3d 302 (5th Cir. 1998) .....	3, 9
<i>United States v. Garrett</i> , 571 F.2d 1323 (5th Cir. 1978) .....	3
<i>University Commons-Urbana, Ltd. v. Universal Constructors Inc.</i> , 304 F.3d 1331 (11th Cir. 2002) .....	7
<i>Vantage Deepwater Company v. Petrobras Am., Inc.</i> , 966 F.3d 361 (5th Cir. 2020) .....	7
<i>Yeti Coolers, LLC v. Magnum Solace, LLC</i> , 2016 WL 10571903 (W.D. Tex. Oct. 19, 2016) .....	9

**Rules and Statutes**

9 U.S.C. § 2.....	7
FED. R. CIV. P. 26(c) .....	3, 9
FED. R. CIV. P. 81(a)(6)(B) .....	8

**STATEMENT OF THE NATURE OF THE CASE AND STAGE OF THE PROCEEDINGS**

Plaintiffs REACH Air Medical Services LLC (“REACH”), CALSTAR Air Medical Services, LLC (“CALSTAR”), and Guardian Flight, LLC (“Guardian”) (collectively “Plaintiffs”) filed a complaint to vacate six IDR awards and request rehearings. Doc. 1.

Defendants Kaiser Foundation Health Plan Inc. (“Kaiser”) and Medical Evaluators of Texas, ASO LLC (“MET”) moved to dismiss. Docs. 24, 25. Plaintiffs filed response briefing to those motions. Docs. 27, 28. The parties submitted their 26(f) Joint Discovery Order and Case Management Plan on January 5, 2023. Doc. 13. On January 17, 2023, Magistrate Judge Sam Sheldon conducted the initial pretrial and scheduling conference, during which the Defendants failed to mention staying discovery. That same day, Magistrate Judge Sheldon entered a scheduling order containing expert and discovery deadlines. Doc. 22. On January 25, 2023, Plaintiffs served their first set of discovery requests. Chang Decl., Exhibits A, B. On February 24, 2023, hours before their objections and responses to Plaintiffs’ first set of discovery were due, Kaiser filed this Motion to Disallow, or Alternatively, Stay Discovery. Doc. 29. On that same day, it served its responses and objections to Plaintiffs’ discovery. Chang Decl., Exhibits. C, D.

**PLAINTIFFS’ STATEMENT OF THE ISSUES**

Whether Kaiser has shown good cause to disallow or stay discovery?

**SUMMARY OF ARGUMENT**

Kaiser could have asked this Court to stay discovery at the parties’ initial pretrial and scheduling conference. It failed to do so, and Magistrate Judge Sheldon entered a scheduling order after considering the parties’ positions in the Joint Discovery Order and Case Management Plan, opening discovery. Having failed to raise the issue in the first instance, Kaiser now seeks to avoid producing the information and documents central to this suit, including by filing this Motion and

by asserting boilerplate, meritless discovery responses and objections to Plaintiffs' narrow requests.

Kaiser's discovery games reflect its stated tactic that discovery—and judicial review—are not allowed under the No Surprises Act. In the name of “efficiency” and “finality,” Kaiser claims that this Court has no right to see the evidence—or even review Kaiser's conduct. In support, Kaiser offers a flawed reading of the NSA, mischaracterizes parallel proceedings in the Middle District of Florida, and misstates the law. Simply, Kaiser's extraordinary request to disallow discovery has no basis in law or fact.

Kaiser starts by attempting to reverse the burden of proof by stating the wrong legal standard. Under the Federal Rules of Civil Procedure, it is not Plaintiffs' burden to establish that discovery is warranted, but the Defendant's burden to show good cause to justify a stay. Without good cause, the default is for discovery to proceed. Kaiser also argues that discovery should be disallowed because the information sought is both nondiscoverable and would contravene the limits of the Federal Arbitration Act (“FAA”). But the NSA incorporates only a small piece of the FAA, and confidentiality concerns can be addressed through a protective order.

Kaiser asks in the alternative that this Court stay discovery, but fails to establish particular and specific facts amounting to good cause. First, Kaiser makes much of Plaintiffs' efforts to redact confidential information from public disclosure, equating it to Kaiser's attempt to entirely evade discovery. But Plaintiffs' motion to redact only prevents the information from being disclosed to the public, and parties and this court are still privy to that information. Second, Kaiser raises exaggerated fears of wasting party and judicial resources. Had Kaiser truly wished to prioritize judicial economy, it would not have waited until the eleventh hour to file this Motion,

nor would it have asserted objectively baseless, boilerplate responses and objections to Plaintiffs' narrowly tailored requests.

Kaiser has stated its intent to evade discovery and judicial review under the NSA. This Court should not allow it to do so, and this Motion should be denied.

### **LEGAL STANDARD**

A party seeking to disallow or stay discovery bears the burden of showing good cause. FED. R. CIV. P. 26(c). While discovery may be stayed pending the outcome of a motion to dismiss, "the issuance of [a] stay is by no means automatic." *Mcpeters v. Lexisnexis*, 2011 WL 13253446, at \*1 (S.D. Tex. Oct. 5, 2011) (internal quotations omitted). "The burden is upon the movant to show the necessity of [a stay], which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements." *In re Terra Int'l, Inc.*, 134 F.3d 302, 306 (5th Cir. 1998) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978)). Three factors are considered when determining whether good cause exists for a stay of discovery: 1) the strength of the dispositive motion; 2) the breadth of the discovery sought; (3) the burden of responding to such discovery. *See Mcpeters*, 2011 WL 13253446, at \*1.

### **ARGUMENT AND AUTHORITIES**

#### **I. The Information Plaintiffs Seek is Relevant, Discoverable, and Narrowly Tailored.**

Kaiser first argues that discovery should be completely disallowed because "discovery is not proper because the documents and information Plaintiffs seek are not discoverable in IDR proceedings." Doc. 29 at 11. But discovery in litigation is broader than under IDR proceedings, and the information Plaintiffs seek is relevant, discoverable, and narrowly tailored.

Kaiser's asks this Court to disallow discovery entirely because the information Plaintiffs seek is confidential, and because such information is "nondiscoverable" in the IDR process, it should also be undiscoverable here. *Id.* But this is not an IDR proceeding. Plaintiffs were forced

to file suit to seek judicial review of IDR awards *because* it had no forum to do so under the NSA and no avenue through which to obtain discovery. Common sense dictates that discovery in a case seeking judicial review of an IDR award must be broader than what is permitted as part of the IDR process—otherwise, judicial review under the NSA would be meaningless. 42 U.S.C. § 300gg-III(c)(5)(E)(i)(I-II). When a plaintiff alleges that an IDR award was procured through the fraudulent calculation of a statutorily mandated amount—the Qualifying Payment Amount (“QPA”), in this case—a court must be able to determine whether that amount was calculated correctly. And when a plaintiff alleges that an IDR award was granted as the result of applying an illegal standard, the court must know basic facts about the determination, such as who made the IDR determination, and what their qualifications are.

That is the type of information Plaintiffs seek in discovery. For instance, Plaintiffs wish to know the identities of the MET individuals who made the IDR determinations here, as well as their qualifications. Chang Decl., Ex. B at 5. Plaintiffs also wish to know how Kaiser calculated its purported QPA. Chang Decl., Ex. at A at 5. As alleged, for each of the IDR disputes at issue, Kaiser submitted a QPA to MET, and a different QPA to Plaintiffs. This alone is grounds for vacatur, as the QPAs submitted should have been identical. The discovery Plaintiffs seek would present minimal burden, as nearly all of the documents sought can be easily located in email exchanges between MET and Kaiser. Plaintiffs’ requests were specifically drafted such that Defendants could collect and produce documents on a go-get basis, and would not need to conduct a lengthy review of documents.

In response to Plaintiffs’ requests, Kaiser has wholesale refused to produce any documents, instead repeating the same baseless objections to each request, including that Plaintiffs’ requests seek “documents that are not relevant to any parties’ claims or defenses, nor proportional to the



needs of the case,” and that Plaintiffs “seek[] to impose on Kaiser the burden of proving Plaintiffs’ claims and defenses.” Chang Dec., Ex. C at 4, 6; Ex. D at 7, 8, 10.<sup>1</sup>

To justify its refusal, Kaiser also tries to recast Plaintiffs’ efforts to redact its confidential IDR win-rate *from the public* as grounds to disallow discovery. Kaiser claims that Plaintiffs “*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.’” Doc. 29 at 6. Not so.

First, to address the obvious, a motion to redact simply prevents the public from seeing confidential information. The parties are still privy to what has been redacted. Second, the information Plaintiffs sought to redact—specifically its calendar year 2022 results of all IDR proceedings across the country—is not relevant to this lawsuit, has nothing to do with the specific IDR disputes at issue, and is competitively sensitive. Here, some of the information Plaintiffs seek in discovery is plainly not competitively sensitive, such as the identities of MET individuals and their qualifications. Other information, such as how Kaiser calculates its purported QPAs, would be covered by protective order.

And Kaiser cannot articulate why a protective order would not adequately preserve confidentiality here the same way protective orders do in nearly all litigation requiring the disclosure of sensitive commercial information. Its sole argument is that “a protective order limiting discovery to attorney’s eyes only will not safeguard this confidential information, because

---

<sup>1</sup> To further highlight Kaiser’s discovery games, Kaiser filed this Motion on the very same day it served its objections and responses. Had Kaiser truly been concerned about the disclosure of confidential information as it claims, it could have (1) raised the issue of a stay at the initial pre-trial conference; (2) filed a motion to stay discovery at any point before discovery was served; or (3) filed a motion to stay at any point before its discovery responses and objections were due, instead of waiting the full thirty days.

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,” which somehow would “enable Plaintiffs to gain an unfair advantage in IDRs.” Doc. 29 at 6. To be clear—one of the key allegations is that Kaiser fraudulently calculated its QPA, because under the NSA, payors are required to follow a statutorily mandated calculation. In other words, Kaiser argues that Plaintiffs are gaining “an unfair advantage in IDRs” *by attempting to verify whether Kaiser is following the rules.*

This logic simply does not hold up. Payors such as Kaiser are statutorily required to disclose the QPA as part of the Open Negotiation Period between the parties. That same QPA is supposed to be submitted to the IDR entity should negotiations fail. *How* a payor calculates the QPA should not affect negotiation strategy, which largely depends on *what* amount the QPA is, particularly when the calculation should be consistent with federal law. Kaiser does not explain how ensuring that the QPA is calculated correctly would “add significant value to Plaintiffs’ own confidential IDR submissions.” *Id.* at 12. Perhaps more importantly, Kaiser’s argument does not make any sense given the fact both parties’ IDR submissions will be subject to confidential discovery. Any theoretical “advantage” Plaintiffs could obtain from seeing Kaiser’s submission is neutralized because Kaiser will see Plaintiff’s submission.

Case law and practice in federal courts across the country make plain that disclosure of potentially sensitive information is addressed through protective orders and not through a blanket prohibition on discovery. *See Baxter v. Louisiana*, 2022 WL 1509118, at \*2 (M.D. La. May 12, 2022) (denying defendant’s motion to stay, and rejecting its argument that the “information sought is of a sensitive nature that should not be subject to disclosure” because it could not “expand on

the burden such disclosure would actually impose.”). For these reasons, this Court should deny Kaiser’s motion and the extraordinary remedy it seeks.

## **II. No Authority Supports Disallowing Discovery In a Proceeding Challenging an IDR Award Under the NSA**

Kaiser asks this Court for extraordinary relief, but cannot point to any authority in support. Simply, there is no case law disallowing discovery in a challenge to an IDR award under the NSA. Kaisers’ request is unwarranted and unsupported, and this Court should deny the Motion.

Kaiser argues that “disallowing discovery is consistent with the strict limits that apply when a party challenges an arbitration award under the FAA.” Doc. 29 at 12. But Plaintiffs do not seek judicial review under the FAA. Rather, Plaintiffs seek review under the NSA, which incorporates only the grounds for vacatur under the FAA, and nothing else. As more extensively briefed in its Response to Kaiser’s Motion to Dismiss, Doc. 28 at 12, the policy rationale for voluntary arbitrations under the FAA does not apply to IDR proceedings. The FAA only applies to agreements between parties that involve interstate commerce or maritime activities. 9 U.S.C. § 2; *see also Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 273-274 (1995). There is no such agreement here. And as Judge Corrigan recognized, challenges to IDR awards are very different from challenges to typical private-party arbitrations. At the parties’ initial pretrial conference, Judge Corrigan reviewed one of the contested IDR decisions, noting that its lack of reasoning or citation to evidence would make it impossible for him to conduct a review under the FAA. Chang Decl., Ex. E at 18:20-25, 19:1-15 and 21-24. In other words, to determine whether illegal or improper conduct occurred or not, discovery would be required.

Even under FAA motion practice, this Court may allow discovery to support a plaintiff’s claims, including arbitrator depositions, where the facts warrant it. *See, e.g., University Commons-Urbana, Ltd. v. Universal Constructors Inc.*, 304 F.3d 1331, 1339 (11th Cir. 2002); *Hoelt v. MVL*

*Grp., Inc.*, 343 F.3d 57, 66-67 (2d Cir. 2003). *Vantage Deepwater Co.*, which Kaiser cites as “instructive,” expressly acknowledges this.<sup>2</sup> *Vantage Deepwater Company v. Petrobras Am., Inc.*, 966 F.3d 361, 372 (5th Cir. 2020) (“District Courts occasionally allow discovery in vacatur and confirmation proceedings.”).

To date, Plaintiffs have not been allowed any of the discovery that parties are routinely allowed in voluntary arbitration proceedings. *See* AHLA Rule 5.5 (Arbitrators “should permit discovery that is relevant to the claims and defenses at issue and is necessary for the fair resolution of a claim”). And Plaintiffs only learned of Kaiser’s misrepresentations by sheer chance because MET quoted different QPAs to Plaintiffs than the ones they were provided. Plaintiffs should be allowed discovery in support of their challenge before the Court rules on it.

As a separate consideration, allowing Kaiser to wholly escape discovery would present dire consequences from a due process perspective. Without discovery, Kaiser and other payors could continue to make misrepresentations in IDR proceedings, leaving courts powerless to provide meaningful judicial review, as is required by the NSA. Payors like Kaiser would be empowered to continue submitting different QPAs to IDR entities than the QPAs it submits to providers, perverting the intended purpose of the NSA, which relies on the exchange of correctly calculated, truthful offers of payment.

Finally, Kaiser’s case citations do not support the proposition of disallowing discovery completely in NSA proceedings. In fact, the cases cited by Kaiser all acknowledge that discovery may be allowed under the FAA. *See also* FED. R. CIV. P. 81(a)(6)(B) (“(6) These rules, to the extent applicable, govern proceedings under the following laws[. . . (B) 9. U.S.C., relating to

---

<sup>2</sup> As explained above and in Plaintiffs’ motion to dismiss briefing, FAA case law does not control because the NSA incorporates only the FAA’s grounds for vacatur, and judicial review under the NSA must be broader than what is allowed under the FAA.

arbitration”). Further, the Fifth Circuit has not instituted “strict limits” to discovery in FAA proceedings as Kaiser suggests. Doc. 29 at 12. Rather, the Fifth Circuit has advised courts to take a flexible and practical approach to allowing discovery in challenges under the statute. *Karaha Bodas Co., LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 305 (5th Cir. 2004) (in assessing discovery requests in actions under the FAA “the court must weigh the asserted need for hitherto undisclosed information and assess the impact of granting such discovery on the arbitral process. The inquiry is an entirely practical one. . .” (internal quotations and citations omitted)); *see also Hoeft v. MVL Grp., Inc.*, 343 F.3d 57, 66-67 (2d Cir. 2003); *Salzgitter Mannesmann International (USA) Inc. v. Sun Steel Co. LLC*, 2022 WL 3041134, at \*1 (S.D. Tex. Aug. 2, 2022). Even if Kaiser were correct that some of its information warrants protection or that other information is not relevant, the appropriate remedy would not be to disallow discovery completely, but to provide for appropriate protections and limit the scope of discovery accordingly.

### **III. Kaiser Has Failed to Meet Its Burden Showing Good Cause to Warrant a Stay.**

In its haste to avoid Plaintiffs’ narrow discovery requests, Kaiser proclaims that “[t]he party seeking the discovery bears the burden of demonstrating its necessity.” Doc. 29 at 11. Not so. As the party seeking a stay of discovery, Kaiser bears the burden of proof. *In re Terra Int’l, Inc.*, 134 F.3d at 306. A stay of discovery is the exception and not the rule. *Ford Motor Co. v. U.S. Auto Club, Motoring Div., Inc.*, 2008 WL 2038887, at \*1 (N.D. Tex. Apr. 24, 2008). Contrary to Kaiser’s assertions, the default is for discovery to proceed. *See* FED. R. CIV. P. 26(c). Kaiser fails to meet its burden to show good cause, and so discovery should proceed as normal.

Kaiser first argues that judicial resources can be conserved by staying discovery until after the pending motions to dismiss are resolved. Doc. 29 at 14. But if that were paramount, the Federal Rules would provide that discovery be stayed automatically whenever a motion to

dismissed is filed. That is obviously not the case. *See Yeti Coolers, LLC v. Magnum Solace, LLC*, 2016 WL 10571903, at \*1 (W.D. Tex. Oct. 19, 2016) (“[h]ad the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. Pro. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect. In fact, such a notion is directly at odds with the need for expeditious resolution of litigation”) (internal citations and quotations omitted); *see also Ford Motor Co.*, 2008 WL 2038887, at \*1 (declining to stay discovery “merely because defendant **believe[d]** it [would] prevail on its motion to dismiss.”) (emphasis added); *Glazer’s Wholesale Drug Co., Inc. v. Klein Foods, Inc.*, 2008 WL 2930482, at \*2 (N.D. Tex. Jul. 23, 2008) (declining to stay discovery when the parties “are more sophisticated and the grounds for dismissal less clear cut.”).

But more to the point, had Kaiser cared so much about “judicial economy” and conserving resources, it would have raised staying discovery at the parties’ initial pretrial conference, rather than waiting until the very last day of a discovery deadline to file this Motion. And it would not have asserted objectively baseless, boilerplate objections and responses to Plaintiffs’ discovery requests, as it has. Chang Decl., Ex. C, Ex. D. Instead, the parties are now engaged in the very slog of discovery that Plaintiffs’ narrowly tailored discovery requests were designed to avoid. Kaiser’s appeal to judicial economy and efficiency rings hollow, and it has not shown good cause to stay discovery.

Kaiser’s other argument in support of staying discovery relies on Judge Corrigan’s order in a similar proceeding in the Middle District of Florida. Doc. 29 at 14-15. That Judge Corrigan decided to stay discovery pending his decision on a motion to dismiss bears no relevance to this proceeding. In Florida, defendants—including **Kaiser**—objected to discovery at the initial case conference, the court considered the parties’ arguments, and then decided not to enter a scheduling order while it considered the motions to dismiss. Here, Kaiser participated in the initial case

conference and failed to object to the scheduling order entered, including expert and discovery deadlines.

While the Florida lawsuits are unrelated to this case, another case in this District is related, however. On March 3, 2023, Judge Alfred Bennett conducted an initial pretrial conference for *Guardian Flight, LLC v. Aetna Health, Inc. and Medical Evaluators of Texas ASO, LLC*, 4:22-CV-3805, filed in the Southern District of Texas as a related case.<sup>3</sup> At the end of the hearing, in response to Defendant Aetna’s request for clarification regarding whether discovery was to move forward, he clarified that “[t]here will be no discovery as to Medical Evaluators of Texas, or information submitted to Medical Evaluators of Texas. ***Other discovery may go forward.***” Chang Decl., Ex. F at 19:19-22 (emphasis added). As Judge Bennett correctly observed, “[t]he default is that discovery is allowed,” with courts granting a stay of discovery only where facts “make the Rules of Federal Procedure inoperative . . . such that discovery should not be allowed.” *Id.* at 13:20-24. Evidently, the facts in that case did not merit a stay, nor do they warrant one here.

Ultimately, in assessing whether Kaiser has shown good cause to stay discovery, this Court is not bound by either Judge Corrigan’s ruling in the Middle District of Florida or Judge Bennett’s decision in this District. But the Court should consider 1) the strength of the dispositive motion; 2) the breadth of the discovery sought; (3) the burden of responding to such discovery. As explained above, the discovery that Plaintiffs seek is narrow, discrete, and would not impose a significant burden on Kaiser. And as explained in Plaintiffs’ response in opposition to Kaiser’s motion to dismiss, Kaiser’s motion to dismiss is weak, as Plaintiffs have properly stated a claim under the Federal Rules of Civil Procedure.

---

<sup>3</sup> Plaintiff Guardian Flight moved to consolidate this case with *Guardian v. Aetna* on March 13, 2023. A courtesy copy of the filing was provided to the Court on the same day.

Having failed to raise the issue at the initial pretrial conference, Kaiser now seeks to evade discovery altogether. It cannot be allowed to do so. *See Datskow v. Teledyne*, 899 F.2d 1298, 1303 (2d Cir. 1990) (finding that, even though faulty service-of process defense was asserted in timely answer, the defendant ***waived objection*** by participating in scheduling discovery and motion practice and attending conference with the magistrate). Indeed, under the schedule to which Kaiser agreed, Plaintiffs have a four-month period to conduct discovery before its expert witness disclosures are due. To carry its burden of proof that Kaiser misrepresented its QPA, Plaintiffs anticipate having an expert witness calculate its real QPA for the transports. Plaintiffs clearly will be unable to do that without discovery. As explained in response to Defendants Motions to Dismiss, the detailed factual information relating to Kaiser's fraudulent representation is solely within Kaiser's possession—a fact Kaiser knows well. Without the limited discovery Plaintiffs have served on Defendants, this Court will be unable to assess whether Kaiser has, in fact, fraudulently calculated its QPA, and Kaiser will be, as it hopes, effectively immune from any attempts to stop it from doing so on any or all of its future QPA calculations. This Court can address Kaiser's confidentiality concerns with a protective order, and should deny Kaiser's motion so that this case can be effectively adjudicated on its merits.

### **CONCLUSION**

For these reasons, Plaintiffs ask that this Court deny Kaiser's Motion to Disallow Discovery, or Alternatively, Stay Discovery Pending the Resolution of Defendants' Motion to Dismiss.



Dated: March 17, 2023

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek

Adam T. Schramek, Lead Counsel  
Texas Bar No. 24033045  
Federal ID: 431403  
98 San Jacinto Boulevard  
Suite 1100  
Austin, TX 78701-4255  
Telephone: (512) 474-5201  
Facsimile: (512) 536-4598  
adam.schramek@nortonrosefulbright.com

Abraham Chang  
Texas Bar No. 24102827  
Federal ID: 3831625  
Dewey J. Gonsoulin III  
Texas Bar No. 24131337  
Federal ID: 3805035  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
Facsimile: (713) 651-5246  
abraham.chang@nortonrosefulbright.com  
dewey.gonsoulin@nortonrosefulbright.com

*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on March 17, 2023, a true and correct copy of the foregoing was served via the Court's ECF system on all counsel of record.

/s/ Adam T. Schramek

Adam T. Schramek

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

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

Plaintiffs,

V.

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

Defendants.



CIVIL ACTION NO. 4:22-cv-03979

## DECLARATION OF ABRAHAM CHANG

1. My name is Abraham Chang and I am an attorney duly admitted to practice before this Court. I am a senior associate with Norton Rose Fulbright US LLP, which is representing Plaintiffs REACH Air Medical Services LLC (“REACH”), CALSTAR Air Medical Services, LLC (“CALSTAR”), and Guardian Flight, LLC (“Guardian Flight”) in the above captioned proceeding, for which I am counsel of record. 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. I attest that Exhibit A is a true and correct copy of the interrogatories and requests for production issued to Kaiser on January 25, 2023.

3. I attest that Exhibit B is a true and correct copy of the interrogatories and requests for production issued to MET on January 25, 2023.

4. I attest that Exhibit C is a true and correct copy of Kaiser's response and objections to Plaintiffs' January 25, 2023 interrogatories.

5. I attest that Exhibit D is a true and correct copy of Kaiser's response and objections to Plaintiffs' January 25, 2023 requests for production.

6. I attest that Exhibit E is a true and correct copy of the redacted transcript from Judge Timothy Corrigan's joint telephonic preliminary pretrial conference held on January 17, 2023 in the Middle District of Florida in the following captioned cases: *Med-Trans Corporation v. Capital Health Plan, Inc.* and *C2C Innovative Solutions, Inc.*, 3:22-cv-1077; *Med-Trans Corporation v. Blue Cross and Blue Shield of Florida, Inc.* and *C2C Innovative Solutions, Inc.*, 3:22-cv-1139; and *Reach Air Medical Services LLC v. Kaiser Foundation Health Plan, Inc.* and *C2C Innovative Solutions, Inc.*, 3:22-cv-1153.

7. I attest that Exhibit F is a true and correct copy of the transcript from Judge Alfred Bennett's preliminary pretrial conference held on March 3, 2023 in the Southern District of Texas in the following captioned case: *Guardian Flight, LLC v. Aetna Health, Inc.*, and *Medical Evaluators of Texas ASO, LLC*, 4:22-cv-3805.

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

Dated: March 17, 2023

/s/Abraham Chang  
Abraham Chang

# EXHIBIT A

**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  
Adam T. Schramek, Lead Counsel  
NORTON ROSE FULBRIGHT US LLP  
Texas Bar No. 24033045  
Federal ID: 431403  
Suite 1100  
Austin, TX 78701-4255  
Telephone: (512) 474-5201  
Facsimile: (512) 536-4598  
adam.schramek@nortonrosefulbright.com

Abraham Chang  
NORTON ROSE FULBRIGHT US LLP  
Texas Bar No. 24102827  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
Facsimile: (713) 651-5246  
abraham.chang@nortonrosefulbright.com  
*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.

# EXHIBIT B

**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 MEDICAL EVALUATORS OF TEXAS ASO LLC**

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 Medical Evaluators of Texas ASO, LLC ("MET"). MET is required to serve a written response and objections, if any, to these discovery requests and produce any documents to which no objection is asserted within thirty (30) days from the date of service to counsel of record for Plaintiffs. MET 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  
Adam T. Schramek, Lead Counsel  
NORTON ROSE FULBRIGHT US LLP  
Texas Bar No. 24033045  
Federal ID: 431403  
Suite 1100  
Austin, TX 78701-4255  
Telephone: (512) 474-5201  
Facsimile: (512) 536-4598  
adam.schramek@nortonrosefulbright.com

Abraham Chang  
NORTON ROSE FULBRIGHT US LLP  
Texas Bar No. 24102827  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
Facsimile: (713) 651-5246  
abraham.chang@nortonrosefulbright.com  
*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. “Kaiser” shall mean Kaiser Foundation Health Plan Inc.
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 transports 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 Determinations” with a capital “D” means MET’s determinations 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 “MET” shall mean Medical Evaluators of Texas ASO, LLC and any of its Representatives.

## **REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1:**

Documents You received from Kaiser relating to the IDR Disputes, including Kaiser's position statement.

### **REQUEST FOR PRODUCTION NO. 2:**

Communications relating to the IDR Disputes or IDR Determinations.

### **REQUEST FOR PRODUCTION NO. 3:**

With respect to the Person(s) identified in Interrogatory No. 1, the materials used to train that Person(s) in determining which offer to select in air ambulance reimbursement disputes.

### **REQUEST FOR PRODUCTION NO. 4:**

With respect to the Person(s) identified in Interrogatory No. 1, the resume(s) of such Person(s).

### **REQUEST FOR PRODUCTION NO. 5:**

Documents provided to individuals handling IDR air ambulance disputes concerning the use or relevance of the QPA in determining which offer to select in air ambulance reimbursement disputes.

### **REQUEST FOR PRODUCTION NO. 6**

With respect to the Person(s) identified in Interrogatory No. 1, the Communications with such Person(s) concerning the use or relevance of the QPA in determining which offer to select in air ambulance reimbursement disputes.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify each Person who participated in the IDR Determinations and explain his or her role.

**INTERROGATORY NO. 2:**

With respect to the IDR determinations issued in calendar year 2022 by MET that were made by each Person identified in Interrogatory No. 1, provide separately for each such Person the following categories of information (separating air ambulance reimbursement disputes from all other emergency out-of-network payment disputes):

- a. Total number of disputes for which a determination was made;
- b. Total number of disputes for which a determination was made that was contested (i.e. excluding defaults where the non-initiating party did not respond);
- c. Total number of contested disputes for which a determination was made where the offer selected was the one submitted by the air ambulance provider.



# EXHIBIT C

**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 RESPONSES AND  
OBJECTIONS TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET ONE**

Defendant Kaiser Foundation Health Plan Inc. ("Kaiser" or "Defendant") hereby submits its responses and objections to Plaintiffs REACH Air Medical Services, LLC, et al. (collectively, "Plaintiffs")'s Special Interrogatories, Set One, pursuant to Federal Rule of Civil Procedure 34.

**I. PRELIMINARY STATEMENT**

These responses are made solely for the purpose of, and in relation to, this action. Each response is given subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any statement contained herein if the interrogatory were asked of, or any statement contained herein were made by, a witness present and testifying in court. All such objections and the grounds therefor are reserved and may be interposed at the time of trial.

Kaiser has not yet completed discovery in this action and has not yet completed preparation for trial. Consequently, the following responses are given without prejudice to Kaiser producing evidence of any subsequently discovered facts.

Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred. The fact that an interrogatory herein has been answered should not be taken as an admission of, or a concession of the existence of, any facts set forth or assumed by such interrogatory, or that such response constitutes evidence of any fact thus set forth or assumed. All responses must be construed as given on the basis of present recollection. Any interrogatory deemed as continuing is objected to as oppressive, overburdensome, improper and not in compliance with the provisions of Rule 33, and will not be regarded as continuing in nature.

Kaiser does not intend to waive the attorney-client privilege or the work product immunity in connection with its response to any interrogatory and expressly makes these objections to any interrogatory which could be construed to invade either of those privileges.

The preceding information is incorporated into each of the following responses as if set forth in full.

## **II. GENERAL OBJECTIONS**

1. Kaiser objects to these Interrogatories because they are the subject of Kaiser's Motion to Disallow Discovery in this Matter, or Alternatively, For a Stay of Discovery ("Motion to Disallow or Stay"), ECF. No 29. At the very least, Kaiser objects to responding to these Interrogatories until the Court rules on Kaiser's motion. Kaiser reserves the right to amend and/or supplement its answers after the Court rules.

2. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it purports to impose any requirement or discovery obligation that are inconsistent with those imposed by Rule 26(e)(1) or other applicable law. Kaiser will supplement its responses, if appropriate, pursuant to the obligations imposed by Rule 26(e)(1).

3. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Any such disclosure by Kaiser is inadvertent and shall not constitute a waiver of any privilege.

4. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it is overbroad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

5. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it is vague, ambiguous, and indecipherable.

6. Kaiser objects to each instruction, definition, and Interrogatory to the extent that discovery is continuing, which exceeds the obligations of Rule 26(e), and reserves the right to use documents that are later discovered.

7. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it seeks disclosure of confidential trade secrets, and/or financial, commercial, strategic or proprietary information concerning Kaiser's business practices. Kaiser further objects to each Interrogatory to the extent that it seeks the disclosure of information that is subject to a confidentiality agreement or other restrictions or to a protective order entered in another action or proceeding, except in accordance with such confidentiality agreements, restrictions, or protective orders.

8. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it seeks the disclosure of information that would violate the legitimate privacy rights and expectations of Kaiser employees, directors, officers, affiliates or subsidiaries, both current and former, or other individuals or entities, including consumers, to the extent that such privacy rights or expectations are protected by law, contract, or public policy. Kaiser also objects to each

Interrogatory to the extent it seeks information pertaining to a non-party that is protected from disclosure by applicable privacy law and other privacy privileges.

9. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it would violate the legitimate privacy rights and expectations of Kaiser members.

10. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it assumes disputed facts or legal conclusions. Kaiser hereby denies any disputed facts or legal conclusions assumed by each instruction, definition, and Interrogatory.

11. Kaiser objects to each instruction, definition, and Interrogatory to the extent that it exceeds the permissible scope of discovery, in that it seeks information that is neither relevant to any claims or defenses in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

12. Kaiser objects to each instruction, definition, and Interrogatory to the extent it seeks information that is obtainable from some other source that is more convenient, less burdensome, or less expensive. Kaiser further objects to each instruction, definition, and Interrogatory to the extent that it seeks information already in the possession, custody or control of Plaintiff.

13. Kaiser objects to each instruction, definition, and Interrogatory to the extent they are overlapping, redundant, and/or duplicative.

14. Kaiser objects to each Interrogatory to the extent it seeks to impose on Kaiser the burden of proving Plaintiffs' claims and defenses. Plaintiffs, not Kaiser, bear the burden of demonstrating that the IDR awards at issue in this case should be vacated. *See Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998).

## **II. RESPONSES AND OBJECTIONS TO INTERROGATORIES, SET ONE**

### **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.

### **RESPONSE TO INTERROGATORY NO. 1:**

In addition to the foregoing General Objections and Objections to Certain Definitions, each of which is incorporated by this reference as though fully set forth herein, Kaiser objects to this Interrogatory to the extent that:

1. This Interrogatory is the subject of Kaiser's Motion to Disallow Discovery in this Matter, or Alternatively, For a Stay of Discovery ("Motion to Disallow or Stay"), ECF. No 29. At the very least, Kaiser objects to responding to this Interrogatory until the Court rules on this motion. Kaiser reserves the right to amend and/or supplement its answers after the Court rules.

2. It is overbroad, unduly burdensome, and harassing, because Kaiser's calculation of each QPA it submitted to MET in each IDR Dispute, and each QPA it claims it shared with Plaintiffs, are protected from disclosure by the Federal Arbitration Act and the No Surprises Act's IDR process. Further, Plaintiffs are well aware of the confidential nature of the documents sought. *See* ECF No. 1, ¶ 26.

3. It is vague and ambiguous in its use of the term "agreements."

4. It is vague and ambiguous in its use of the term "in response to RFP No. 3."

5. It seeks information that is not relevant to any parties' claims or defenses, nor proportional to the needs of the case.

6. It seeks disclosure of confidential trade secrets, and/or financial, commercial, strategic or proprietary information concerning Kaiser's business practices.

7. It is impermissibly compound.

8. It seeks information relating to the claims of non-party insureds, which is protected from disclosure by the right to privacy guaranteed by the Health Insurance Portability and Accountability Act of 1996.

9. It seeks to impose on Kaiser the burden of proving Plaintiffs' claims and defenses. Plaintiffs, not Kaiser, bear the burden of demonstrating that the IDR awards at issue in this case should be vacated. *See Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998).

Dated: February 24, 2023

/s/Megan McKisson  
Barclay R. Nicholson  
Bar No. 24013239  
SDTX No. 26373  
Erica C. Gibbons  
Bar No. 24109922  
SDTX No. 3348462  
700 Louisiana Street, Suite 2750  
Houston, Texas 77002  
Telephone: 713.431.7100  
Fax: 713.431.7101  
BNicholson@sheppardmullin.com  
EGibbons@sheppardmullin.com

-and-

Moe Keshavarzi (pro hac vice)  
California Bar No. 223759  
mkeshavarzi@sheppardmullin.com  
John F. Burns (pro hac vice)  
California Bar No. 290523  
jburns@sheppardmullin.com  
Megan McKisson (pro hac vice)

California Bar. No. 336003  
mmckisson@sheppardmullin.com  
SHEPPARD MULLIN RICHER &  
HAMPTON LLP  
333 South Hope Street, 43rd Floor  
Los Angeles, CA 90071-1422  
Telephone: 213-620-1780

*Attorneys for Defendant*  
*KAISER FOUNDATION HEALTH*  
*PLAN, INC.*



PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

On February 24, 2023, I served true copies of the following document(s) described as **DEFENDANT KAISER FOUNDATION HEALTH PLAN INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET ONE** on the interested parties in this action as follows:

Adam T. Schramek,  
NORTON ROSE FULBRIGHT US LLP  
98 San Jacinto Blvd. Ste.1100  
Austin, TX 78701-4255  
Telephone: (512) 474-5201  
[adam.schramek@nortonrosefulbright.com](mailto:adam.schramek@nortonrosefulbright.com)

Abraham Chang  
NORTON ROSE FULBRIGHT US LLP  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
[abraham.chang@nortonrosefulbright.com](mailto:abraham.chang@nortonrosefulbright.com)

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address [ehwalters@sheppardmullin.com](mailto:ehwalters@sheppardmullin.com) to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

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

Executed on February 24, 2023, at Los Angeles, California.

/s/Elisabeth Walters  
\_\_\_\_\_  
Elisabeth Walters

# EXHIBIT D

**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 RESPONSES AND  
OBJECTIONS TO PLAINTIFFS' REQUESTS FOR PRODUCTION, SET ONE**

Pursuant to Fed. R. Civ. P. 34, Defendant Kaiser Foundation Health Plan Inc. ("Kaiser" or "Defendant") hereby submit its responses and objections to Plaintiffs REACH Air Medical Services, LLC, et al. (collectively, "Plaintiffs")'s Requests for Production, Set One, pursuant to Federal Rule of Civil Procedure 34.

**I. GENERAL OBJECTIONS**

1. Kaiser objects to these Requests because they are the subject of Kaiser's Motion to Disallow Discovery in this Matter, or Alternatively, For a Stay of Discovery ("Motion to Disallow or Stay"), ECF. No 29. At the very least, Kaiser objects to responding to these Requests until the Court rules on Kaiser's motion. Kaiser reserves the right to amend and/or supplement its answers after the Court rules.

2. Kaiser objects to each instruction, definition, and Request to the extent that it purports to impose any requirement or discovery obligation that are inconsistent with those imposed by Federal Rule of Civil Procedure 26(e)(1), standing orders, case law, or any other

applicable law. Kaiser will supplement its responses, if appropriate, pursuant to the obligations imposed by Rule 26(e)(1).

3. Kaiser objects to each instruction, definition, and Request to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Any such disclosure by Kaiser is inadvertent and shall not constitute a waiver of any privilege.

4. Kaiser objects to each instruction, definition, and Request to the extent that it is overbroad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

5. Kaiser objects to each instruction, definition, and Request to the extent that it is vague, ambiguous, and indecipherable.

6. Kaiser objects to each instruction, definition, and Request to the extent that discovery is continuing, which exceeds the obligations of Rule 26(e), and reserves the right to use documents that are later discovered.

7. Kaiser objects to each instruction, definition, and Request to the extent that it seeks disclosure of confidential trade secrets, and/or financial, commercial, strategic or proprietary information concerning Kaiser's business practices. Kaiser further objects to each Request to the extent that it seeks the disclosure of information that is subject to a confidentiality agreement or other restrictions or to a protective order entered in another action or proceeding, except in accordance with such confidentiality agreements, restrictions, or protective orders.

8. Kaiser objects to each instruction, definition, and Request to the extent that it seeks the disclosure of information that would violate the legitimate privacy rights and expectations of Kaiser employees, directors, officers, affiliates or subsidiaries, both current and former, or other

individuals or entities, including consumers, to the extent that such privacy rights or expectations are protected by law, contract, or public policy. Kaiser also objects to each Request to the extent it seeks information pertaining to a non-party that is protected from disclosure by applicable privacy law and other privacy privileges.

9. Kaiser objects to each instruction, definition, and Request to the extent that it would violate the legitimate privacy rights and expectations of Kaiser members.

10. Kaiser objects to each instruction, definition, and Request to the extent that it assumes disputed facts or legal conclusions. Kaiser hereby denies any disputed facts or legal conclusions assumed by each instruction, definition, and Request.

11. Kaiser objects to each instruction, definition, and Request to the extent that it exceeds the permissible scope of discovery, in that it seeks information that is neither relevant to any claims or defenses in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

12. Kaiser objects to each instruction, definition, and Request to the extent it seeks information that is obtainable from some other source that is more convenient, less burdensome, or less expensive. Kaiser further objects to each instruction, definition, and Request to the extent that it seeks information already in the possession, custody, or control of Plaintiff.

13. Kaiser objects to each instruction, definition, and Request to the extent they are overlapping, redundant, and/or duplicative.

14. Kaiser objects to each Request to the extent it seeks to impose on Kaiser the burden of proving Plaintiffs' claims and defenses. Plaintiffs, not Kaiser, bear the burden of demonstrating that the IDR awards at issue in this case should be vacated. *See Trans Chem. Ltd. v. China Nat'l*

*Mach. Import & Export Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998).

## **II. OBJECTIONS TO CERTAIN DEFINITIONS**

1. 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.

**Objection:** Kaiser objects on the grounds that this purported definition is vague, ambiguous, and unintelligible. Kaiser further objects on the ground that the definition is overbroad, unduly burdensome, unreasonable, and oppressive. Kaiser further objects to this definition to the extent it purports to impose obligations on Kaiser different from or greater than those specified in the Federal Rules of Civil Procedure or other applicable law. Kaiser also objects to this definition to the extent it calls for the disclosure of information protected from discovery by the attorney-client privilege and/or work product doctrine.

2. “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.

**Objection:** Kaiser objects on the grounds that this purported definition is vague, ambiguous, and unintelligible. Kaiser further objects on the ground that the definition is overbroad, unduly burdensome, and unreasonable. Kaiser further objects to this definition to the extent it purports to impose obligations on Kaiser different from or greater than those specified in

the Federal Rules of Civil Procedure or other applicable law. Kaiser also objects to this definition to the extent it calls for the disclosure of information protected from discovery by the attorney-client privilege and/or work product doctrine.

3. 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.

**Objection:** Kaiser objects on the grounds that this purported definition is vague, ambiguous, and unintelligible. Kaiser further objects on the ground that the definition is overbroad, unduly burdensome, and unreasonable. Kaiser further objects to this definition to the extent it purports to impose obligations on Kaiser different from or greater than those specified in the Federal Rules of Civil Procedure or other applicable law. Kaiser also objects to this definition to the extent it calls for the disclosure of information protected from discovery by the attorney-client privilege and/or work product doctrine.

4. “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.

**Objection:** Kaiser objects on the grounds that this purported definition is vague, ambiguous, and unintelligible. Kaiser further objects on the ground that the definition is overbroad, unduly burdensome, and unreasonable. Kaiser further objects to this definition to the

extent it purports to impose obligations on Kaiser different from or greater than those specified in the Federal Rules of Civil Procedure or other applicable law. Kaiser also objects to this definition to the extent it calls for the disclosure of information protected from discovery by the attorney-client privilege and/or work product doctrine.

5. “You,” “Your,” and “Kaiser ” shall mean Kaiser Foundation Health Plan Inc. and any of its Representatives

**Objection:** Kaiser objects on the grounds that this purported definition is vague, ambiguous, and unintelligible. Kaiser further objects on the ground that the definition is overbroad, unduly burdensome, unreasonable, and oppressive, and renders the topics which use this term compound. Kaiser further objects to this definition to the extent it purports to impose obligations on Kaiser different from or greater than those specified in the California Code of Civil Procedure. Kaiser also objects to this definition to the extent it calls for the disclosure of information protected from discovery by the attorney-client privilege and/or work product doctrine. These responses are on behalf of Kaiser Foundation Health Plan, Inc., and not any other person or entity.

### **III. RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE**

#### **REQUEST FOR PRODUCTION NO. 1:**

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

#### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

In addition to the foregoing General Objections and Objections to Certain Definitions, each of which is incorporated by this reference as though fully set forth herein, Kaiser objects to this Request to the extent that:



1. This Request is the subject of Kaiser's Motion to Disallow Discovery in this Matter, or Alternatively, For a Stay of Discovery ("Motion to Disallow or Stay"), ECF. No 29. At the very least, Kaiser objects to responding to this Request until the Court rules on Kaiser's motion. Kaiser reserves the right to amend and/or supplement its answers after the Court rules.

2. It is overbroad, unduly burdensome, and harassing, because documents submitted to MET relating to the IDR disputes, including Kaiser's position statements, are protected from disclosure by the Federal Arbitration Act and the No Surprises Act's IDR process. Further, Plaintiffs are well aware of the confidential nature of the documents sought. *See* ECF No. 1, ¶ 26.

3. The defined term "Documents" is overbroad, unduly burdensome, and purports to seek privileged work product.

4. It seeks documents that are not relevant to any parties' claims or defenses, nor proportional to the needs of the case.

5. It seeks disclosure of confidential trade secrets, and/or financial, commercial, strategic or proprietary information concerning Kaiser's business practices.

6. It is vague and ambiguous in its use of the term "position statements."

7. It seeks information relating to the claims of non-party insureds, which is protected from disclosure by the right to privacy guaranteed by the Health Insurance Portability and Accountability Act of 1996.

8. It seeks to impose on Kaiser the burden of proving Plaintiffs' claims and defenses. Plaintiffs, not Kaiser, bear the burden of demonstrating that the IDR awards at issue in this case should be vacated. *See Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998).

**REQUEST FOR PRODUCTION NO. 2:**

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

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

In addition to the foregoing General Objections and Objections to Certain Definitions, each of which is incorporated by this reference as though fully set forth herein, Kaiser objects to this Request to the extent that:

1. This Request is the subject of Kaiser's Motion to Disallow Discovery in this Matter, or Alternatively, For a Stay of Discovery ("Motion to Disallow or Stay"), ECF. No 29. At the very least, Kaiser objects to responding to this Request until the Court rules on Kaiser's motion. Kaiser reserves the right to amend and/or supplement its answers after the Court rules.

2. It is overbroad, unduly burdensome, and harassing, because Documents and Communications relating to the IDR Disputes or IDR Determinations are protected from disclosure by the Federal Arbitration Act and the No Surprises Act's IDR process. Further, Plaintiff is well aware of the confidential nature of the documents sought. *See* ECF No. 1, ¶ 26.

3. The defined term "Documents" is overbroad, unduly burdensome, and purports to seek privileged work product.

4. The defined term "Communications" is overbroad, unduly burdensome, and purports to seek privileged work product.

5. It seeks documents that are not relevant to any parties' claims or defenses, nor proportional to the needs of the case.

6. It seeks disclosure of confidential trade secrets, and/or financial, commercial, strategic or proprietary information concerning Kaiser's business practices.

7. It is vague and ambiguous as to the specific Documents and Communications the Request purports to seek.

8. It seeks information relating to the claims of non-party insureds, which is protected from disclosure by the right to privacy guaranteed by the Health Insurance Portability and Accountability Act of 1996.

9. It seeks to impose on Kaiser the burden of proving Plaintiffs' claims and defenses. Plaintiffs, not Kaiser, bear the burden of demonstrating that the IDR awards at issue in this case should be vacated. *See Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998).

**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.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

In addition to the foregoing General Objections and Objections to Certain Definitions, each of which is incorporated by this reference as though fully set forth herein, Kaiser objects to this Request to the extent that:

1. This Request is the subject of Kaiser's Motion to Disallow Discovery in this Matter, or Alternatively, For a Stay of Discovery ("Motion to Disallow or Stay"), ECF. No 29. At the very least, Kaiser objects to responding to this Request until the Court rules on Kaiser's motion. Kaiser reserves the right to amend and/or supplement its answers after the Court rules.

2. It is overbroad, unduly burdensome, and harassing, because the network agreements Kaiser used to calculate each QPA it submitted to MET and each QPA it listed on the Explanation of Benefits or Payments is protected from disclosure by the Federal Arbitration Act and the No Surprises Act's IDR process. are protected from disclosure by the Federal Arbitration Act and the No Surprises Act's IDR process. Further, Plaintiff is well aware of the confidential nature of the documents sought. *See* ECF No. 1, ¶ 26.

3. The term "network agreements" is vague and ambiguous.

4. The term "Explanation of Benefits or Payments" is vague and ambiguous.

5. It seeks documents that are not relevant to any parties' claims or defenses, nor proportional to the needs of the case.

6. It seeks disclosure of confidential trade secrets, and/or financial, commercial, strategic or proprietary information concerning Kaiser's business practices.

7. The term "transports at issue" is vague and ambiguous.

8. It seeks information relating to the claims of non-party insureds, which is protected from disclosure by the right to privacy guaranteed by the Health Insurance Portability and Accountability Act of 1996.

9. It seeks to impose on Kaiser the burden of proving Plaintiffs' claims and defenses. Plaintiffs, not Kaiser, bear the burden of demonstrating that the IDR awards at issue in this case should be vacated. *See Trans Chem. Ltd. v. China Nat'l Mach. Import & Export Corp.*, 978 F. Supp. 266, 303 (S.D. Tex. 1997), *aff'd and adopted*, 161 F.3d 314 (5th Cir. 1998).

Dated: February 24, 2023

/s/Megan McKisson  
Barclay R. Nicholson  
Bar No. 24013239  
SDTX No. 26373  
Erica C. Gibbons  
Bar No. 24109922  
SDTX No. 3348462  
700 Louisiana Street, Suite 2750  
Houston, Texas 77002  
Telephone: 713.431.7100  
Fax: 713.431.7101  
BNicholson@sheppardmullin.com  
EGibbons@sheppardmullin.com

-and-

Moe Keshavarzi (pro hac vice)  
California Bar No. 223759  
mkeshavarzi@sheppardmullin.com  
John F. Burns (pro hac vice)  
California Bar No. 290523

jburns@sheppardmullin.com  
Megan McKisson (pro hac vice)  
California Bar. No. 336003  
mmckisson@sheppardmullin.com  
SHEPPARD MULLIN RICHER &  
HAMPTON LLP  
333 South Hope Street, 43rd Floor  
Los Angeles, CA 90071-1422  
Telephone: 213-620-1780

*Attorneys for Defendant*  
*KAISER FOUNDATION HEALTH PLAN,*  
*INC.*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

On February 24, 2023, I served true copies of the following document(s) described as **DEFENDANT KAISER FOUNDATION HEALTH PLAN INC.'S RESPONSES AND OBJECTIONS TO PLAINTIFFS' REQUEST FOR PRODUCTION, SET ONE** on the interested parties in this action as follows:

Adam T. Schramek,  
NORTON ROSE FULBRIGHT US LLP  
98 San Jacinto Blvd. Ste.1100  
Austin, TX 78701-4255  
Telephone: (512) 474-5201  
[adam.schramek@nortonrosefulbright.com](mailto:adam.schramek@nortonrosefulbright.com)

Abraham Chang  
NORTON ROSE FULBRIGHT US LLP  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
Telephone: (713) 651-5151  
[abraham.chang@nortonrosefulbright.com](mailto:abraham.chang@nortonrosefulbright.com)

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address ehwalters@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

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

Executed on February 24, 2023, at Los Angeles, California.

/s/Elisabeth Walters  
\_\_\_\_\_  
Elisabeth Walters

# EXHIBIT E



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.)

A P P E A R A N C E S

**COUNSEL FOR PLAINTIFFS:**

**ADAM T. SCHRAMEK, ESQ.**

Norton Rose Fulbright US, LLP  
98 San Jacinto Boulevard, Suite 1100  
Austin, TX 78701

**LANNY RUSSELL, ESQ.**

Smith Hulsey & Busey  
One Independent Drive, Suite 3300  
Jacksonville, FL 32202

**COUNSEL FOR DEFENDANT BLUE CROSS AND BLUE SHIELD OF FLORIDA:**

**TIMOTHY J. CONNER, ESQ.**

**JENNIFER A. MANSFIELD, ESQ.**

**TAYLOR FLEMING, ESQ.**

Holland & Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, FL 32202

**COUNSEL FOR DEFENDANT CAPITAL HEALTH PLAN, INC.:**

**RUEL W. SMITH, ESQ.**

**STEVEN D. LEHNER, ESQ.**

Hinshaw & Culbertson, LLP  
100 South Ashley Drive, Suite 500  
Tampa, FL 33602-5301

**COUNSEL FOR DEFENDANT KAISER FOUNDATION HEALTH PLAN, INC.:**

**MOHAMMAD KESHAVARZI, ESQ.**

Sheppard, Mullin, Richter & Hampton, LLP  
333 South Hope Street, 43rd Floor  
Los Angeles, CA 90071

**CHRISTIAN EDWARD DODD, ESQ.**

Hickey Smith, LLP  
10752 Deerwood Park Boulevard, Suite 100  
Jacksonville, FL 32256

A P P E A R A N C E S

(Continued)

**COUNSEL FOR DEFENDANT C2C INNOVATIVE SOLUTIONS, INC.:**

**MICHAEL T. FACKLER, ESQ.**  
**PIERCE GIBONEY, ESQ.**  
Milam, Howard, Nicandri & Gillam, P.A.  
14 East Bay Street  
Jacksonville, FL 32202

**ALSO PRESENT:**

**LISA HANSON, ESQ. (In-house Counsel/C2C)**  
**WALTER BATLA, ESQ. (C2C)**

**COURT REPORTER:**

**SHANNON M. BISHOP, RDR, CRR, CRC**  
221 North Hogan, #150  
Jacksonville, FL 32202  
Telephone: (904)549-1307  
dsmabishop@yahoo.com

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 MR. SCHRAMEK: Your Honor, the year-end contract --  
04:16 6 year-end, if you include defaults, we won ■ percent of the  
04:16 7 cases we submitted.

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, but the process was okay for the ■ percent that you won?

04:17 16 MR. SCHRAMEK: 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 in the █ percent that you won.

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. SCHRAHEK: 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.)

5 - - -

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 F

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

3 GUARDIAN FLIGHT, LLC	)	NO. 4-22-CV-3805
	)	
4	)	
5 VS.	)	Houston, Texas
	)	9:39 a.m.
	)	
6 AETNA HEALTH, INC., AND	)	March 3, 2023
7 MEDICAL EVALUATORS OF TEXAS	)	
ASO, LLC	)	

\*\*\*\*\*

**INITIAL PRETRIAL CONFERENCE**

**BEFORE THE HONORABLE ALFRED H. BENNETT**

**UNITED STATES DISTRICT JUDGE**

**VOLUME 1 OF 1**

\*\*\*\*\*

APPEARANCES:

FOR THE PLAINTIFF:

Mr. Adam Troy Schramek  
Norton Rose Fulbright US LLP  
98 San Jacinto Blvd., Suite 1100  
Austin, TX 78701  
Tel: 512-536-5232  
Email: Adam.schramek@nortonrosefulbright.com

Mr. Abraham Chang  
Mr. Dewey Gonsoulin  
Norton Rose Fulbright US LLP  
1301 McKinney St., Suite 5100  
Houston, TX 77010  
Tel: 713-651-5151  
Email: Abraham.chang@nortonrosefulbright.com  
Dewey.gonsoulin@nortonrosefulbright.com

1 FOR THE DEFENDANT AETNA HEALTH, INC.:

2 Ms. Mary Katherine Strahan  
Mr. David Hughes  
3 Hunton Andrews Kurth LLP  
600 Travis  
4 Suite 4200  
Houston, TX 77002  
5 Tel: 713-220-4125  
Email: Kstrahan@HuntonAK.com  
6 Dhughes@HuntonAK.com

7 FOR THE DEFENDANT MEDICAL EVALUATORS OF TEXAS ASO, LLC:

8 Mr. Joseph L. Lanza  
The Vethan Law Firm  
9 820 Gessner Rd.  
Suite 1510  
10 Houston, TX 77024  
Tel: 713-526-2222  
11 Email: Edocs@vwtexlaw.com

12 COURT REPORTER:

13 Ms. Kathleen K. Miller, CSR, RMR, CRR  
515 Rusk, Room 8004  
14 Houston, Texas 77002  
Tel: 713-250-5087  
15

16 Proceedings recorded by mechanical stenography.

17 Transcript produced by computer-assisted transcription.

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Cause Number 4-22-CV-3805, Guardian  
3 Flight vs. Aetna Health, Inc.

4 Counsel, your appearances -- first for the  
09:39:11 5 plaintiff, your appearances for the record.

6 MR. SCHRAMEK: Your Honor, Adam Schramek with  
7 Norton Rose Fulbright along with Abraham Chang and Dewey  
8 Gonsoulin.

9 THE COURT: Counselor, how are you?

09:39:23 10 MR. GONSOULIN: Doing well. How are you doing?

11 THE COURT: Doing well. Good to see you.

12 MS. STRAHAN: Good morning, Your Honor.

13 Katherine Strahan and David Hughes for Defendant Aetna Life  
14 Insurance Company.

09:39:32 15 THE COURT: Anyone else? Very well. Counsel,  
16 I have your rule -- there is a microphone.

17 MR. LANZA: Your Honor, I apologize. I  
18 apologize. I thought you were calling for appearances for  
19 plaintiff's counsel first. I am here representing one of  
09:39:51 20 the defendants, MET.

21 THE COURT: And your name?

22 MR. LANZA: Joe Lanza, L-A-N-Z-A.

23 THE COURT: Very well. Thank you, sir.

24 MR. LANZA: Thank you.

09:40:00 25 THE COURT: Any other appearances? Very well.

1 If you are not talking to me, you're free  
2 to have a seat.

3 I do have your Rule 26 filing, so if the  
4 plaintiff would like to give me an overview from their  
09:40:13 5 perspective.

6 MR. SCHRAMEK: Yes, Your Honor. This is one of  
7 two related cases that have been filed in the Southern  
8 District having to do with a challenge to an award under  
9 the No Surprises Act. The No Surprises Act went into  
09:40:25 10 effect January 1 of '22, and it has to do with  
11 out-of-network payments to providers.

12 We represent air -- an air ambulance  
13 company that provides life-saving transports to patients  
14 across the country, and this concerns one award that we  
09:40:37 15 believe was secured through undue means under the statute  
16 and --

17 THE COURT: Under what?

18 MR. SCHRAMEK: Undue means and material  
19 misrepresentations by Aetna, and also the application of an  
09:40:48 20 illegal standard by MET, which was the federal contractor  
21 that makes the decision of how much the payment should be.

22 And in particular with respect to MET,  
23 they cited in their decision the regulation that had been  
24 overturned and held illegal by Judge Kernodle in the  
09:41:04 25 Eastern District of Texas. And they did this months after



1 the decision went into effect invalidating these  
2 regulations.

3                   And what the regulations did was put the  
4 thumb on the scale and say, presume the insurer's offer is  
09:41:16 5 the appropriate payment for the transport. Your Honor,  
6 that's not allowed under the statute. That's not how the  
7 statute is written. That regulation was invalid and  
8 inappropriate. So it was invalidated, and yet MET  
9 continued to apply it, resulting in our loss of the payment  
09:41:33 10 that we believe was appropriate.

11                   And so, Your Honor, that is what this case  
12 is about, and I'll say it's one of the first in the nation  
13 to look at these issues and to decide how will a challenge  
14 to an IDR award go forward? What are the rules? What's  
09:41:45 15 the applicable standard? What's the scope of review?

16                   Defendants, of course, don't want any  
17 discovery. We believe discovery is appropriate because  
18 under the process -- there are some due process issues we  
19 raised in our pleadings. Under the process, we did not get  
09:41:59 20 to see Aetna's submission. We did not get to see Aetna's  
21 evidence. And so, of course, they don't want to have a  
22 judicial review of what they said or did in the proceeding.

23                   We don't think the statute works unless we  
24 have meaningful judicial review, and that is what we're  
09:42:13 25 here today for, Your Honor, to get a scheduling order and

1 to let the process go forward.

2 THE COURT: Couple of questions. You said one  
3 of two related cases. Where is the other case? What's the  
4 status of that case?

09:42:25 5 MR. SCHRAMEK: So, Your Honor, there is one of  
6 two in this district. So Judge Hanen has the other case.  
7 This was the first filed case, November 1st. Judge Hanen's  
8 was filed November 16th. We listed them as related in the  
9 pleadings. It says they're related on the electronic case  
09:42:40 10 file. We thought they were --

11 THE COURT: I believe you do have the case  
12 number that you have included in that --

13 MR. SCHRAMEK: It's 4:22-CV-3979, is the second  
14 case.

09:42:55 15 THE COURT: And that is with Judge Hanen? Yes,  
16 I see it here.

17 Is there a reason that these two cases are  
18 separate?

19 MR. SCHRAMEK: Not that we know of, Your Honor.

09:43:03 20 THE COURT: So for judicial efficiency, should  
21 they be together?

22 MR. SCHRAMEK: Your Honor, I believe so.

23 THE COURT: All right. This payment that you  
24 were referring to, how much are we talking about?

09:43:14 25 MR. SCHRAMEK: Your Honor, I don't have it in

1 front of me. I'm not sure of the file. The transports  
2 typically range between 30 and 80. This would not be under  
3 diversity. It is not the amount in controversy. We're  
4 filing an action for judicial review under the No Surprises  
09:43:28 5 Act which creates a statutory right to payment to an  
6 out-of-network provider because previously we don't have a  
7 contract.

8 All these tort theories, the federal  
9 government stepped in. They took away our right to balance  
09:43:38 10 bill the patient, so we can't send that bill to the  
11 patient. You probably saw that in the news.

12 Instead, we have to have our dispute with  
13 Aetna here, and we have a staturtory right for payment from  
14 Aetna for this dispute and a statutory right for judicial  
09:43:51 15 review.

16 THE COURT: I note that there are a number of  
17 motions pending. This is an initial conference, and so I  
18 am not going to do a deep, deep dive, but would it be  
19 helpful perhaps to set up a motion hearing sometime in the  
09:44:11 20 near future to do a deeper dive?

21 MR. SCHRAMEK: Your Honor, I do think it's  
22 appropriate. I think the Court would benefit from oral  
23 argument on the motions to dismiss and the issues that it  
24 raises.

09:44:20 25 THE COURT: And to determine whether or not

1 it's appropriate, perhaps, to merge or consolidate this  
2 case with Judge Hanen's case?

3 MR. SCHRAMEK: Correct. And, Your Honor, I  
4 mentioned in this court there is two. Nationwide there are  
09:44:31 5 five cases. Three are pending in the Middle District of  
6 Florida, which is where a different entity that makes  
7 decisions is headquartered; and two are here in Houston  
8 because MET is the defendant in these cases.

9 So the Houston cases, there is only two,  
09:44:43 10 and I do believe they would benefit from coordination. And  
11 I only mention that because in the Middle District of  
12 Florida, they were all assigned to the same judge and we're  
13 having joint hearings on the motion to dismiss as well.  
14 That is not until May.

09:44:55 15 THE COURT: Very well. Anything else you need  
16 to bring to my attention?

17 MR. SCHRAMEK: That is all, Your Honor.

18 THE COURT: Thank you, Counselor. For the  
19 defense?

09:45:03 20 MS. STRAHAN: Thank you, Your Honor. I  
21 represent Aetna Life Insurance Company in this matter, and  
22 Aetna does not believe that the cases should be  
23 consolidated and would like to be fully heard on that  
24 issue, Your Honor.

09:45:16 25 With respect to the particular allegations

1 here, how --

2 THE COURT: Let me stop you.

3 MS. STRAHAN: Yes.

4 THE COURT: Why should two cases with similar

09:45:24 5 facts, similar legal issues, proceed under two separate  
6 judges, which could result in two separate rulings on the  
7 same subject matter from the same Court?

8 MS. STRAHAN: Because, Your Honor, the only  
9 real issues here is, the way that Guardian Flight is trying

09:45:40 10 to challenge these decisions and these cases is to try to  
11 wedge its allegations within the very narrow provision for  
12 judicial review in the Federal Arbitration Act.

13 So the No Surprises Act incorporates the  
14 Federal Arbitration Act for judicial review which is, of  
09:45:57 15 course, a very narrow scope of review. And so in order to  
16 obtain that judicial review, they have alleged that each of  
17 these defendants in all of these cases have committed  
18 fraud, and those are based on very specific factual  
19 allegations.

09:46:10 20 In our case we don't believe those are  
21 sufficient to state a claim, but they're factual  
22 distinctions.

23 THE COURT: But even if that is true, with  
24 respect, two learned judges could reach two different  
09:46:25 25 conclusions, could they not?

1 MS. STRAHAN: Certainly, Your Honor. But --

2 THE COURT: Okay. So to the extent that you  
3 have two cases where you're asking two judges of the same  
4 court to reach decisions, it could result in two different  
09:46:40 5 outcomes, and why wouldn't the two cases benefit from  
6 having one outcome as opposed to two, potentially?

7 MS. STRAHAN: Potentially, Your Honor, yes,  
8 because these are factual distinctions that have to be  
9 decided under unique facts.

09:46:54 10 So in this case, you know, Aetna was the  
11 administrator for the plan in this case. In the other case  
12 it was a different administrator, and the factual  
13 allegations, as I understand them, between the allegations  
14 against Aetna and the other defendant are different.

09:47:09 15 So while plaintiff's strategy is the same,  
16 the factual allegations are unique, and that's what this  
17 case turns on essentially in order to get them within the  
18 ambit of the Federal Arbitration Act.

19 THE COURT: Counsel said this was one of, I  
09:47:28 20 guess, first wave of cases. I don't want to say it's a  
21 case of first impression, but to the extent that we're  
22 going to be establishing guideposts, even if you're talking  
23 about two separate sets of facts, two different entities,  
24 the guideposts would be applicable perhaps to both cases.

09:47:57 25 It seems to me that logically you would

1 want one judge setting the guidepost such that as these  
2 cases are considered in this instance and in later  
3 instances the guideposts remain the same, would you not?

09:48:17 4 MS. STRAHAN: Well, Your Honor, I certainly  
5 think that with respect to the legal issues, the precedent  
6 in one court, you know, could apply to the other court, you  
7 know, obviously. But I guess where we believe that these  
8 aren't appropriate for consolidation is the facts are  
9 unique and the defendants are unique.

09:48:32 10 THE COURT: All right. Let's put a pin in  
11 that. I know I interrupted you, and there were some other  
12 issues you want to talk about, so I'll let you return to  
13 what you were discussing.

14 MS. STRAHAN: Thank you, Your Honor.

09:48:44 15 With respect to, just briefly, the  
16 allegations that are being made by the plaintiff, again, we  
17 believe that what they're trying to do is to argue that  
18 Aetna somehow committed fraud in order to come within the  
19 ambit of the very narrow judicial review provided by the  
09:49:01 20 F.A.A.

21 For example, they have alleged that Aetna  
22 did not provide the plaintiff certain calculations that are  
23 required in the statute which, in fact, Aetna did provide  
24 those calculations. And then beyond that, there is just  
09:49:14 25 complete insufficiency to satisfy the federal pleading

1 standards, and I might add this same strategy has been  
2 applied against all the defendants in terms of the factual  
3 allegations. They are all based upon fraud.

4 In essence, we believe plaintiff is just  
09:49:30 5 trying to challenge the merits of the decision, which is  
6 exactly what Congress set up the No Surprises Act to  
7 provide a remedy for, which is an arbitration. And that  
8 remedy plaintiff is not happy with, but that doesn't  
9 provide judicial review, and there is no, respectfully,  
09:49:47 10 jurisdiction on this pleading.

11 THE COURT: Let's do this. Ms. Edwards --  
12 well, when does learned counsel believe that they would be  
13 prepared to come back, both counsel, and perhaps hold a  
14 motion hearing, and at that motion hearing take up the  
09:50:08 15 pending motions as well as an anticipated motion to  
16 consolidate the two cases, and so I can get specific -- a  
17 specific motion and a specific response to that concept?  
18 How long -- how far out do you think we need?

19 MR. SCHRAMEK: So, Your Honor, the motion to  
09:50:28 20 dismiss is fully briefed.

21 THE COURT: Right.

22 MR. SCHRAMEK: So that one is ready to go. On  
23 the motion to consolidate, you know, we can get something  
24 like that on file next week, no problem, and then, of  
09:50:38 25 course, just the fourteen day, or 21-day response. We are



1 going to cut it back.

2 THE COURT: I love partners. He said, I can  
3 get it done within a week and then look back at his  
4 associates.

09:50:49 5 (Laughter.)

6 MR. SCHRAMEK: Your Honor, out of fairness, my  
7 wife is due for a baby any day now, so I am going to rely  
8 heavily on them over the next 30 days. But again, about 30  
9 to 45 days out, I think everything will be fully briefed.

09:51:01 10 MS. STRAHAN: Your Honor, that time frame is  
11 fine with Aetna. The only thing I would ask, too, Your  
12 Honor, is that I believe we may have a dispute about  
13 discovery while the motion to dismiss is pending, and even  
14 ultimately the scope of discovery. I don't know if you  
09:51:14 15 would like for us to go ahead and file a motion to stay  
16 discovery, you know, in the same time frame. I just seek  
17 guidance on that.

18 THE COURT: Ms. Edwards, find a date about 45  
19 days out.

09:51:24 20 In regards to discovery, what would make  
21 the Rules of Federal Procedure inoperative to this case  
22 such that discovery should not be allowed? Because the  
23 default is that discovery is allowed.

24 MS. STRAHAN: Your Honor, because of the unique  
09:51:45 25 nature of the reviews under the F.A.A., that is what's

1 different here. It's certainly within the Court's  
2 discretion to stay discovery pending a motion to dismiss.  
3 And I think here it's even more --

09:52:00

4 THE COURT: Well, let me interrupt you for a  
5 moment.

6 MS. STRAHAN: Sure.

7 THE COURT: What specific discovery are we  
8 talking about?

09:52:05

9 MR. SCHRAMEK: So, Your Honor, we have very  
10 limited discovery that we will need for this. For example,  
11 we have asked and we have talked about this in our Rule 26,  
12 and we have listed it. It's a very narrow set of requests  
13 in our Rule 26 report, but things like the physician  
14 statement they provided, the calculation they provided of  
15 their average reimbursement, maybe some underlying  
16 information on that, but it is pretty minimal and for MET  
17 the first thing we are going to ask is who made the  
18 decision? Can I see their résumé? Very simple things like  
19 that. It's pretty narrow discovery, Your Honor.

09:52:21

09:52:37

20 THE COURT: So you are talking interrogatories?

21 MR. SCHRAMEK: Document requests. Certainly  
22 document requests. I will just note for the Court, as the  
23 Court is well aware, but there are many decisions saying  
24 that, you know, you don't automatically get a stay of

09:52:48

25 discovery. It is a high burden. Exceptions should be

1 rare. Just because a motion to dismiss is filed, everyone  
2 files them.

3                   We want to go forward and get this thing,  
4 you know, handled, and I actually think if we get a little  
09:52:58 5 bit of discovery done in the next 45 days, it might help on  
6 the consolidation issue as well on the motion we are going  
7 to be filing.

8                   MR. LANZA: May I be heard on the discovery  
9 issue?

09:53:08 10                  THE COURT: Yes.

11                  MR. LANZA: I represent Medical Evaluators of  
12 Texas. We are essentially an arbitrator under the statute,  
13 and arbitrators are -- generally have arbitrator immunity  
14 from liability, but also arbitration proceedings are  
09:53:21 15 confidential. And by ordering early discovery without the  
16 benefit of a ruling of whether or not we're going to be in  
17 this lawsuit or are entitled to immunity is forcing us to  
18 give up that confidentiality, and I don't think that is  
19 appropriate.

09:53:34 20                  I think we should wait until the Court  
21 makes a decision on the motion to dismiss. Ours is based  
22 on arbitrator immunity. If you decide against us, then we  
23 look at the discovery.

24                  THE COURT: Is the discovery that you are  
09:53:44 25 seeking against the arbitrator or against the defendant?

1 MR. SCHRAMEK: So, Your Honor, I just want to  
2 add a little context here. We don't agree that they are an  
3 arbitrator. This is not under the Federal Arbitration Act.  
4 They are a federal contractor implementing a statutory  
09:53:59 5 scheme and regulatory requirements. They are acting in the  
6 place of the regulator adjudicating the dispute, but they  
7 are not an arbitrator.

8 And under the Federal Arbitration Act, all  
9 the decisions that you have seen about how -- I know how  
09:54:09 10 hard it is to vacate an award under the Federal Arbitration  
11 Act, but the premise of all that is it is based on the  
12 agreement of the parties to arbitrate, the scope that they  
13 agree to arbitrate, the rules they agree to arbitrate.

14 This has been forced upon us by the  
09:54:21 15 federal government, and implemented through their  
16 contracting party. They are not an arbitrator. They are  
17 not entitled to immunity, Your Honor. And that is one of  
18 the things we will be talking about in our motion to  
19 dismiss. We have only asked -- we are not getting into  
09:54:32 20 the --

21 THE COURT: What say you in regards to your  
22 posture in the case as not an arbitrator, as he has  
23 outlined?

24 MR. LANZA: We say if you look at the  
09:54:43 25 legislative history of the act, if you look at the agency

1 commentary on the act, if you look at what some of the  
2 other courts have said, they all talk in terms of  
3 arbitration. And this is cited in our motion to dismiss.  
4 Legislative history, for example, says this is what is  
09:54:57 5 called a baseball style of arbitration.

6 THE COURT: All right. Let's do this. Out of  
7 abundance of caution, in regards to discovery from --  
8 What was the name of your party again? I  
9 apologize.

09:55:09 10 MR. LANZA: Medical Evaluators of Texas.

11 THE COURT: -- Medical Evaluators of Texas, any  
12 discovery is stayed pending ruling on the motion to  
13 dismiss.

14 In regards to any discovery from Aetna  
09:55:25 15 Health, if there is limited discovery that will assist you  
16 prior to the motion hearing specifically as to the motion  
17 to consolidate, that can go forward.

18 In regards to position statements that may  
19 have been offered to Medical Evaluators of Texas, that will  
09:55:47 20 be included in the stay. So I'm not sure what that might  
21 cover for you, but I am going to try to get you a quick  
22 hearing, so I can rule on this motion to dismiss, make a  
23 determination as to whether or not they are in or out, and  
24 I can get a fuller picture of their role as quote/unquote  
09:56:04 25 an arbitrator to make a determination as to whether or not

1 discovery should be allowed against them.

2                   So by way of a timing, you gave me two  
3 dates, just -- both are available?

4                   (Discussion off the record.)

09:56:25 5                   THE COURT: Okay. Either April the 21st or  
6 April the 28th. Any objections to either of those dates?

7                   MR. LANZA: No, Your Honor.

8                   MR. SCHRAMEK: No objection, Your Honor.

9                   MS. STRAHAN: Your Honor, the 21st -- I am  
09:56:40 10 traveling on the 28th, so if we could do it on the 21st, I  
11 would appreciate that.

12                   THE COURT: Very well. April the 21st, 9:00.  
13 That will be your motion hearing on the pending motions as  
14 well as an anticipated motion to consolidate.

09:56:56 15                   Let Judge Hanen know, to the extent you  
16 are seeking that, and obviously our chambers will confer  
17 about that before that such that I can have his input.  
18 With that being said, Counsel, anything else?

19                   MR. SCHRAMEK: Your Honor, I just want to ask  
09:57:11 20 what the setting will be on the 21st, how long we will have  
21 on your calendar, as it impacts preparation.

22                   THE COURT: I would anticipate no more than 90  
23 minutes to two hours. I believe -- Ms. Edwards, what day  
24 of the week is that?

09:57:30 25                   THE CASE MANAGER: That's a Friday, sir.

1 THE COURT: But you said that was clear, right?

2 THE CASE MANAGER: Yes.

3 THE COURT: Okay. And by 90 minutes, let's  
4 just call it 90 minutes for now. I mean judge 90 minutes,  
09:57:42 5 not lawyer 90 minutes.

6 MR. SCHRAMEK: Understood.

7 THE COURT: I will sign the proposed scheduling  
8 order in the meantime, and if there are any modifications  
9 we can take that up at the hearing as well.

09:57:57 10 Counsel, anything else?

11 MR. SCHRAMEK: Nothing, Your Honor.

12 THE COURT: Counselor?

13 MS. STRAHAN: No, Your Honor, just except for  
14 just clarification with respect to the discovery against  
09:58:04 15 Aetna, I just want to make sure I am complying with the  
16 orders.

17 THE COURT: Well, let me restate it better.

18 MS. STRAHAN: Okay.

19 THE COURT: There will be no discovery as to  
09:58:12 20 Medical Evaluators of Texas, or information submitted to  
21 Medical Evaluators of Texas. Other discovery may go  
22 forward.

23 MS. STRAHAN: Your Honor, if there is something  
24 that they are requesting from Aetna that is also protected  
09:58:25 25 by statute in terms of confidentiality, may we raise that

1 issue with Your Honor?

2 THE COURT: I think if it is raised by  
3 confidentiality, obviously.

4 MS. STRAHAN: Thank you, Your Honor.

09:58:33 5 MR. SCHRAMEK: And, Your Honor, Aetna was going  
6 to provide us with a protective order before today to look  
7 at so we could resolve that issue. We didn't get it, but I  
8 assume we will be able to agree to it and get it filed  
9 shortly.

09:58:45 10 MS. STRAHAN: Your Honor, I'm sorry, I was  
11 referring to the confidentiality in the statute, the No  
12 Surprises Act statute. We obviously will agree to  
13 certainly produce anything that is HIPPA related under the  
14 protective order. It's the statute that I was concerned  
09:58:58 15 with.

16 MR. SCHRAMEK: I am unaware of any  
17 confidentiality provisions in the statute, and I know it  
18 pretty well, Your Honor, so I don't know what they're  
19 talking about.

09:59:05 20 MS. STRAHAN: Well, there are some  
21 confidentiality provisions in the statute.

22 THE COURT: Why don't you -- both learned  
23 counsel confer, and if there is any issue, reach out back  
24 to me and I'll be happy to take a phone call, if necessary,  
09:59:15 25 to sort that out.



1 MS. STRAHAN: Thank you, Your Honor.

2 MR. SCHRAMEK: Thank you.

3 THE COURT: Anything else, Counselor?

4 MS. STRAHAN: No, Your Honor. Thank you.

09:59:18

5 THE COURT: Counselor?

6 MR. LANZA: No, Your Honor. Thank you.

7 THE COURT: Very well. Counsel, have a good  
8 weekend.

9 (Concluded at 9:59 a.m.)

10 COURT REPORTER'S CERTIFICATE

11

12 I, Kathleen K. Miller, certify that the foregoing is a  
13 correct transcript from the record of proceedings in the  
14 above-entitled matter.

15

16 DATE: March 15, 2023 /s/ Kathleen K. Miller

17 Kathleen K. Miller, RPR, RMR, CRR

18

19

20

21

22

23

24

25

	<b>8</b>	10:16, 11:16, 12:3 <b>alleged</b> [2] - 9:16, 11:21 <b>allowed</b> [4] - 5:6, 13:22, 13:23, 18:1 <b>along</b> [1] - 3:7 <b>also</b> [3] - 4:19, 15:14, 19:24 <b>am</b> [7] - 3:19, 7:18, 13:7, 17:21, 18:9, 19:15, 20:16 <b>ambit</b> [2] - 10:18, 11:19 <b>ambulance</b> [1] - 4:12 <b>amount</b> [1] - 7:3 <b>an</b> [18] - 4:4, 4:8, 4:12, 4:19, 5:14, 7:4, 7:5, 7:17, 12:7, 12:15, 15:12, 16:2, 16:7, 16:10, 16:16, 16:22, 17:25, 18:14 <b>AND</b> [1] - 1:6 <b>Andrews</b> [1] - 2:3 <b>anticipate</b> [1] - 18:22 <b>anticipated</b> [2] - 12:15, 18:14 <b>any</b> [9] - 3:25, 5:16, 13:7, 17:11, 17:14, 18:6, 19:8, 20:16, 20:23 <b>anyone</b> [1] - 3:15 <b>anything</b> [5] - 8:15, 18:18, 19:10, 20:13, 21:3 <b>apologize</b> [3] - 3:17, 3:18, 17:9 <b>APPEARANCES</b> [1] - 1:15 <b>appearances</b> [4] - 3:4, 3:5, 3:18, 3:25 <b>applicable</b> [2] - 5:15, 10:24 <b>application</b> [1] - 4:19 <b>applied</b> [1] - 12:2 <b>apply</b> [2] - 5:9, 11:6 <b>appreciate</b> [1] - 18:11 <b>appropriate</b> [7] - 5:5, 5:10, 5:17, 7:22, 8:1, 11:8, 15:19 <b>April</b> [3] - 18:5, 18:6, 18:12 <b>arbitrate</b> [3] - 16:12, 16:13 <b>arbitration</b> [4] - 12:7, 15:14, 17:3, 17:5 <b>Arbitration</b> [6] - 9:12, 9:14, 10:18, 16:3, 16:8, 16:10 <b>arbitrator</b> [9] - 15:12, 15:13, 15:22, 15:25, 16:3, 16:7, 16:16, 16:22, 17:25 <b>arbitrators</b> [1] - 15:13 <b>are</b> [46] - 3:9, 3:10, 4:1, 5:14, 5:18, 6:17, 6:24, 7:16, 8:4, 8:5, 8:7, 9:18, 9:20, 10:8, 10:14, 10:16, 11:2, 11:8, 11:9, 11:16, 11:22, 12:3, 12:25, 14:7, 14:17, 14:20, 14:23, 15:6, 15:12, 15:13, 15:14, 15:17, 15:24, 16:2, 16:4, 16:5, 16:7, 16:16, 16:19, 17:23, 18:3, 18:16, 19:8, 19:24, 20:20 <b>aren't</b> [1] - 11:8 <b>argue</b> [1] - 11:17 <b>argument</b> [1] - 7:23 <b>as</b> [20] - 6:8, 8:13, 10:6, 10:13, 11:1, 12:15, 14:22, 15:6, 16:22, 17:16, 17:23, 17:24, 17:25, 18:13, 18:14, 18:21, 19:9, 19:19 <b>ask</b> [3] - 13:11, 14:17, 18:19 <b>asked</b> [2] - 14:11, 16:19 <b>asking</b> [1] - 10:3 <b>ASO</b> [2] - 1:7, 2:7
<b>'22</b> [1] - 4:10	<b>80</b> [1] - 7:2 <b>8004</b> [1] - 2:13 <b>820</b> [1] - 2:9	
<b>/</b>		
<b>/s</b> [1] - 21:16	<b>9</b>	
<b>1</b>	<b>90</b> [5] - 18:22, 19:3, 19:4, 19:5 <b>98</b> [1] - 1:18 <b>9:00</b> [1] - 18:12 <b>9:39</b> [1] - 1:5 <b>9:59</b> [1] - 21:9	
<b>1</b> [3] - 1:13, 4:10 <b>1100</b> [1] - 1:18 <b>1301</b> [1] - 1:22 <b>15</b> [1] - 21:16 <b>1510</b> [1] - 2:9 <b>16th</b> [1] - 6:8 <b>1st</b> [1] - 6:7	<b>A</b>	
<b>2</b>	<b>a.m</b> [2] - 1:5, 21:9 <b>able</b> [1] - 20:8 <b>about</b> [13] - 5:12, 6:24, 10:23, 11:12, 13:8, 13:12, 13:18, 14:8, 14:11, 16:9, 16:18, 18:17, 20:19 <b>above</b> [1] - 21:14 <b>above-entitled</b> [1] - 21:14 <b>Abraham</b> [2] - 1:21, 3:7 <b>abraham.chang@nortonrosefulbright.com</b> [1] - 1:24 <b>abundance</b> [1] - 17:7 <b>across</b> [1] - 4:14 <b>act</b> [2] - 16:25, 17:1 <b>Act</b> [12] - 4:9, 7:5, 9:12, 9:13, 9:14, 10:18, 12:6, 16:3, 16:8, 16:11, 20:12 <b>acting</b> [1] - 16:5 <b>action</b> [1] - 7:4 <b>actually</b> [1] - 15:4 <b>Adam</b> [2] - 1:17, 3:6 <b>adam.schramek@nortonrosefulbright.com</b> [1] - 1:20 <b>add</b> [2] - 12:1, 16:2 <b>adjudicating</b> [1] - 16:6 <b>administrator</b> [2] - 10:11, 10:12 <b>AETNA</b> [2] - 1:6, 2:1 <b>Aetna</b> [17] - 3:3, 3:13, 4:19, 7:13, 7:14, 8:21, 8:22, 10:10, 10:14, 11:18, 11:21, 11:23, 13:11, 17:14, 19:15, 19:24, 20:5 <b>Aetna's</b> [2] - 5:20 <b>after</b> [1] - 4:25 <b>again</b> [3] - 11:16, 13:8, 17:8 <b>against</b> [7] - 10:14, 12:2, 15:22, 15:25, 18:1, 19:14 <b>agency</b> [1] - 16:25 <b>agree</b> [5] - 16:2, 16:13, 20:8, 20:12 <b>agreement</b> [1] - 16:12 <b>ahead</b> [1] - 13:15 <b>air</b> [2] - 4:12 <b>ALFRED</b> [1] - 1:11 <b>all</b> [12] - 6:23, 7:8, 8:12, 8:17, 9:17, 11:10, 12:2, 12:3, 16:8, 16:11, 17:2, 17:6 <b>allegations</b> [8] - 8:25, 9:11, 9:19, 10:13,	
<b>2023</b> [2] - 1:6, 21:16 <b>21-day</b> [1] - 12:25 <b>21st</b> [5] - 18:5, 18:9, 18:10, 18:12, 18:20 <b>26</b> [3] - 4:3, 14:11, 14:13 <b>28th</b> [2] - 18:6, 18:10		
<b>3</b>		
<b>3</b> [1] - 1:6 <b>30</b> [3] - 7:2, 13:8		
<b>4</b>		
<b>4-22-CV-3805</b> [2] - 1:3, 3:2 <b>4200</b> [1] - 2:4 <b>45</b> [3] - 13:9, 13:18, 15:5 <b>4:22-CV-3979</b> [1] - 6:13		
<b>5</b>		
<b>5100</b> [1] - 1:22 <b>512-536-5232</b> [1] - 1:19 <b>515</b> [1] - 2:13		
<b>6</b>		
<b>600</b> [1] - 2:3		
<b>7</b>		
<b>713-220-4125</b> [1] - 2:5 <b>713-250-5087</b> [1] - 2:14 <b>713-526-2222</b> [1] - 2:10 <b>713-651-5151</b> [1] - 1:23 <b>77002</b> [2] - 2:4, 2:14 <b>77010</b> [1] - 1:23 <b>77024</b> [1] - 2:10 <b>78701</b> [1] - 1:19		

**assigned** <sup>[1]</sup> - 8:12**assist** <sup>[1]</sup> - 17:15**assisted** <sup>[1]</sup> - 2:17**associates** <sup>[1]</sup> - 13:4**assume** <sup>[1]</sup> - 20:8**at** <sup>[10]</sup> - 5:13, 12:14, 13:3, 15:23, 16:24, 16:25, 17:1, 19:9, 20:7, 21:9**attention** <sup>[1]</sup> - 8:16**Austin** <sup>[1]</sup> - 1:19**automatically** <sup>[1]</sup> - 14:24**available** <sup>[1]</sup> - 18:3**average** <sup>[1]</sup> - 14:15**award** <sup>[4]</sup> - 4:8, 4:14, 5:14, 16:10**aware** <sup>[1]</sup> - 14:23**away** <sup>[1]</sup> - 7:9

---

**B**

---

**baby** <sup>[1]</sup> - 13:7**back** <sup>[4]</sup> - 12:13, 13:1, 13:3, 20:23**balance** <sup>[1]</sup> - 7:9**baseball** <sup>[1]</sup> - 17:5**based** <sup>[4]</sup> - 9:18, 12:3, 15:21, 16:11**be** <sup>[24]</sup> - 4:21, 6:21, 7:2, 7:18, 8:22, 8:23, 10:8, 10:22, 10:24, 12:12, 13:9, 13:22, 14:25, 15:7, 15:8, 15:16, 16:18, 17:20, 18:1, 18:13, 18:20, 19:19, 20:8, 20:24**because** <sup>[9]</sup> - 5:17, 7:6, 8:8, 8:11, 9:8, 10:8, 13:22, 13:24, 15:1**been** <sup>[5]</sup> - 4:7, 4:23, 12:1, 16:14, 17:19**before** <sup>[2]</sup> - 18:17, 20:6**BEFORE** <sup>[1]</sup> - 1:11**being** <sup>[2]</sup> - 11:16, 18:18**believe** <sup>[12]</sup> - 4:15, 5:10, 5:17, 6:11, 6:22, 8:10, 8:22, 9:20, 11:17, 12:12, 13:12, 18:23**belive** <sup>[2]</sup> - 11:7, 12:4**benefit** <sup>[4]</sup> - 7:22, 8:10, 10:5, 15:16**BENNETT** <sup>[1]</sup> - 1:11**better** <sup>[1]</sup> - 19:17**between** <sup>[2]</sup> - 7:2, 10:13**beyond** <sup>[1]</sup> - 11:24**bill** <sup>[2]</sup> - 7:10**bit** <sup>[1]</sup> - 15:5**Bld** <sup>[1]</sup> - 1:18**both** <sup>[4]</sup> - 10:24, 12:13, 18:3, 20:22**briefed** <sup>[2]</sup> - 12:20, 13:9**briefly** <sup>[1]</sup> - 11:15**bring** <sup>[1]</sup> - 8:16**burden** <sup>[1]</sup> - 14:25**But** <sup>[1]</sup> - 10:1**but** <sup>[16]</sup> - 7:18, 9:21, 9:23, 10:21, 11:7, 12:8, 13:8, 14:13, 14:16, 14:23, 15:14, 16:6, 16:11, 17:21, 19:1, 20:7**by** <sup>[13]</sup> - 2:16, 2:17, 4:19, 4:20, 4:24, 11:16, 11:19, 15:15, 16:14, 18:2, 19:3, 19:25, 20:2

---

**C**

---

**C** <sup>[1]</sup> - 3:1**calculation** <sup>[1]</sup> - 14:14**calculations** <sup>[2]</sup> - 11:22, 11:24**calendar** <sup>[1]</sup> - 18:21**call** <sup>[2]</sup> - 19:4, 20:24**called** <sup>[1]</sup> - 17:5**calling** <sup>[1]</sup> - 3:18**can** <sup>[9]</sup> - 12:16, 12:23, 13:2, 14:18, 17:17, 17:22, 17:24, 18:17, 19:9**can't** <sup>[1]</sup> - 7:10**CASE** <sup>[2]</sup> - 18:25, 19:2**case** <sup>[18]</sup> - 5:11, 6:3, 6:4, 6:6, 6:7, 6:9, 6:11, 6:14, 8:2, 9:20, 10:10, 10:11, 10:17, 10:21, 13:21, 16:22**cases** <sup>[16]</sup> - 4:7, 6:3, 6:17, 8:5, 8:8, 8:9, 8:22, 9:4, 9:10, 9:17, 10:3, 10:5, 10:20, 10:24, 11:2, 12:16**cause** <sup>[1]</sup> - 3:2**caution** <sup>[1]</sup> - 17:7**certain** <sup>[1]</sup> - 11:22**certainly** <sup>[5]</sup> - 10:1, 11:4, 14:1, 14:21, 20:13**CERTIFICATE** <sup>[1]</sup> - 21:10**certify** <sup>[1]</sup> - 21:12**challenge** <sup>[4]</sup> - 4:8, 5:13, 9:10, 12:5**chambers** <sup>[1]</sup> - 18:16**Chang** <sup>[2]</sup> - 1:21, 3:7**cited** <sup>[2]</sup> - 4:23, 17:3**claim** <sup>[1]</sup> - 9:21**clarification** <sup>[1]</sup> - 19:14**clear** <sup>[1]</sup> - 19:1**come** <sup>[2]</sup> - 11:18, 12:13**commentary** <sup>[1]</sup> - 17:1**committed** <sup>[2]</sup> - 9:17, 11:18**Company** <sup>[2]</sup> - 3:14, 8:21**company** <sup>[1]</sup> - 4:13**complete** <sup>[1]</sup> - 11:25**complying** <sup>[1]</sup> - 19:15**computer** <sup>[1]</sup> - 2:17**computer-assisted** <sup>[1]</sup> - 2:17**concept** <sup>[1]</sup> - 12:17**concerned** <sup>[1]</sup> - 20:14**concerns** <sup>[1]</sup> - 4:14**Concluded** <sup>[1]</sup> - 21:9**conclusions** <sup>[1]</sup> - 9:25**confer** <sup>[2]</sup> - 18:16, 20:23**CONFERENCE** <sup>[1]</sup> - 1:10**conference** <sup>[1]</sup> - 7:17**confidential** <sup>[1]</sup> - 15:15**confidentiality** <sup>[6]</sup> - 15:18, 19:25, 20:3, 20:11, 20:17, 20:21**Congress** <sup>[1]</sup> - 12:6**considered** <sup>[1]</sup> - 11:2**consolidate** <sup>[5]</sup> - 8:1, 12:16, 12:23, 17:17, 18:14**consolidated** <sup>[1]</sup> - 8:23**consolidation** <sup>[2]</sup> - 11:8, 15:6**context** <sup>[1]</sup> - 16:2**continued** <sup>[1]</sup> - 5:9**contract** <sup>[1]</sup> - 7:7**contracting** <sup>[1]</sup> - 16:16**contractor** <sup>[2]</sup> - 4:20, 16:4**controversy** <sup>[1]</sup> - 7:3**coordination** <sup>[1]</sup> - 8:10**correct** <sup>[2]</sup> - 8:3, 21:13**could** <sup>[7]</sup> - 9:6, 9:24, 9:25, 10:4, 11:6, 18:10, 20:7**counsel** <sup>[9]</sup> - 3:4, 3:15, 3:19, 10:19, 12:12, 12:13, 19:10, 20:23, 21:7**Counsel** <sup>[1]</sup> - 18:18**Counselor** <sup>[2]</sup> - 8:18, 21:3**counselor** <sup>[3]</sup> - 3:9, 19:12, 21:5**country** <sup>[1]</sup> - 4:14**couple** <sup>[1]</sup> - 6:2**course** <sup>[4]</sup> - 5:16, 5:21, 9:15, 12:25**COURT** <sup>[52]</sup> - 1:1, 2:12, 3:2, 3:9, 3:11, 3:15, 3:21, 3:23, 3:25, 4:17, 6:2, 6:11, 6:15, 6:20, 6:23, 7:16, 7:25, 8:15, 8:18, 9:2, 9:4, 9:23, 10:2, 10:19, 11:10, 12:11, 12:21, 13:2, 13:18, 14:4, 14:7, 14:20, 15:10, 15:24, 16:21, 17:6, 17:11, 18:5, 18:12, 18:22, 19:1, 19:3, 19:7, 19:12, 19:17, 19:19, 20:2, 20:22, 21:3, 21:5, 21:7, 21:10**Court** <sup>[5]</sup> - 7:22, 9:7, 14:22, 14:23, 15:20**court** <sup>[4]</sup> - 8:4, 10:4, 11:6**Court's** <sup>[1]</sup> - 14:1**courts** <sup>[1]</sup> - 17:2**cover** <sup>[1]</sup> - 17:21**creates** <sup>[1]</sup> - 7:5**CRR** <sup>[2]</sup> - 2:13, 21:17**CSR** <sup>[1]</sup> - 2:13**cut** <sup>[1]</sup> - 13:1

---

**D**

---

**D** <sup>[1]</sup> - 3:1**DATE** <sup>[1]</sup> - 21:16**date** <sup>[1]</sup> - 13:18**dates** <sup>[2]</sup> - 18:3, 18:6**David** <sup>[2]</sup> - 2:2, 3:13**day** <sup>[3]</sup> - 12:25, 13:7, 18:23**days** <sup>[4]</sup> - 13:8, 13:9, 13:19, 15:5**decide** <sup>[2]</sup> - 5:13, 15:22**decided** <sup>[1]</sup> - 10:9**decision** <sup>[6]</sup> - 4:21, 4:23, 5:1, 12:5, 14:18, 15:21**decisions** <sup>[5]</sup> - 8:7, 9:10, 10:4, 14:23, 16:9**deep** <sup>[2]</sup> - 7:18**deeper** <sup>[1]</sup> - 7:20**default** <sup>[1]</sup> - 13:23**Defendant** <sup>[1]</sup> - 3:13**DEFENDANT** <sup>[2]</sup> - 2:1, 2:7**defendant** <sup>[3]</sup> - 8:8, 10:14, 15:25**defendants** <sup>[5]</sup> - 3:20, 5:16, 9:17, 11:9,

12:2  
**defense** [1] - 8:19  
**determination** [2] - 17:23, 17:25  
**determine** [1] - 7:25  
**Dewey** [2] - 1:21, 3:7  
**Dewey.gonsoulin@nortonrosefulbright.com** [1] - 1:24  
**dhughes@HuntonAK.com** [1] - 2:6  
**did** [7] - 4:25, 5:3, 5:19, 5:20, 5:22, 11:22, 11:23  
**didn't** [1] - 20:7  
**different** [7] - 8:6, 9:24, 10:4, 10:12, 10:14, 10:23, 14:1  
**discovery** [26] - 5:17, 13:13, 13:14, 13:16, 13:20, 13:22, 13:23, 14:2, 14:7, 14:10, 14:19, 14:25, 15:5, 15:8, 15:15, 15:23, 15:24, 17:7, 17:12, 17:14, 17:15, 18:1, 19:14, 19:19, 19:21  
**discretion** [1] - 14:2  
**discussing** [1] - 11:13  
**discussion** [1] - 18:4  
**dismiss** [11] - 7:23, 8:13, 12:20, 13:13, 14:2, 15:1, 15:21, 16:19, 17:3, 17:13, 17:22  
**dispute** [4] - 7:12, 7:14, 13:12, 16:6  
**distinctions** [2] - 9:22, 10:8  
**DISTRICT** [3] - 1:1, 1:1, 1:12  
**district** [1] - 6:6  
**District** [4] - 4:8, 4:25, 8:5, 8:11  
**dive** [2] - 7:18, 7:20  
**diversity** [1] - 7:3  
**DIVISION** [1] - 1:2  
**do** [13] - 4:3, 4:8, 4:10, 6:11, 7:18, 7:20, 7:21, 8:10, 11:17, 12:11, 12:18, 17:6, 18:10  
**document** [2] - 14:21, 14:22  
**does** [2] - 8:22, 12:12  
**doesn't** [1] - 12:8  
**doing** [3] - 3:10, 3:11  
**don't** [13] - 5:16, 5:21, 5:23, 6:25, 7:6, 9:20, 10:20, 13:14, 14:24, 15:18, 16:2, 20:18, 20:22  
**done** [2] - 13:3, 15:5  
**due** [2] - 5:18, 13:7

---

## E

---

**E** [2] - 3:1  
**each** [1] - 9:16  
**early** [1] - 15:15  
**Eastern** [1] - 4:25  
**edocs@vwtextlaw.com** [1] - 2:11  
**Edwards** [3] - 12:11, 13:18, 18:23  
**effect** [2] - 4:10, 5:1  
**efficiency** [1] - 6:20  
**either** [2] - 18:5, 18:6  
**electronic** [1] - 6:9  
**else** [5] - 3:15, 8:15, 18:18, 19:10, 21:3  
**Email** [4] - 1:20, 1:24, 2:5, 2:11

**entities** [1] - 10:23  
**entitled** [3] - 15:17, 16:17, 21:14  
**entity** [1] - 8:6  
**essence** [1] - 12:4  
**essentially** [2] - 10:17, 15:12  
**establishing** [1] - 10:22  
**EVALUATORS** [2] - 1:6, 2:7  
**Evaluators** [6] - 15:11, 17:10, 17:11, 17:19, 19:20, 19:21  
**even** [4] - 9:23, 10:22, 13:13, 14:3  
**everyone** [1] - 15:1  
**everything** [1] - 13:9  
**evidence** [1] - 5:21  
**exactly** [1] - 12:6  
**example** [3] - 11:21, 14:10, 17:4  
**except** [1] - 19:13  
**exceptions** [1] - 14:25  
**extent** [3] - 10:2, 10:21, 18:15

---

## F

---

**F.A.A** [2] - 11:20, 13:25  
**fact** [1] - 11:23  
**facts** [4] - 9:5, 10:9, 10:23, 11:8  
**factual** [6] - 9:18, 9:21, 10:8, 10:12, 10:16, 12:2  
**fairness** [1] - 13:6  
**far** [1] - 12:18  
**Federal** [7] - 9:12, 9:14, 10:18, 13:21, 16:3, 16:8, 16:10  
**federal** [5] - 4:20, 7:8, 11:25, 16:4, 16:15  
**file** [4] - 6:10, 7:1, 12:24, 13:15  
**filed** [5] - 4:7, 6:7, 6:8, 15:1, 20:8  
**files** [1] - 15:2  
**filing** [3] - 4:3, 7:4, 15:7  
**find** [1] - 13:18  
**fine** [1] - 13:11  
**Firm** [1] - 2:8  
**first** [7] - 3:4, 3:19, 5:12, 6:7, 10:20, 10:21, 14:17  
**five** [1] - 8:5  
**FLIGHT** [1] - 1:3  
**Flight** [2] - 3:3, 9:9  
**Florida** [2] - 8:6, 8:12  
**FOR** [4] - 1:1, 1:16, 2:1, 2:7  
**for** [30] - 3:4, 3:5, 3:13, 3:18, 5:5, 5:25, 6:20, 7:4, 7:13, 7:14, 8:18, 9:11, 9:14, 10:11, 11:8, 11:21, 12:7, 13:7, 13:15, 14:4, 14:10, 14:16, 14:22, 17:4, 17:21, 19:4, 19:13  
**forced** [1] - 16:14  
**forcing** [1] - 15:17  
**foregoing** [1] - 21:12  
**forward** [5] - 5:14, 6:1, 15:3, 17:17, 19:22  
**fourteen** [1] - 12:25  
**frame** [2] - 13:10, 13:16  
**fraud** [3] - 9:18, 11:18, 12:3

**free** [1] - 4:1  
**Friday** [1] - 18:25  
**from** [11] - 4:4, 7:13, 7:22, 8:10, 9:7, 10:5, 15:14, 17:7, 17:14, 19:24, 21:13  
**front** [1] - 7:1  
**Fulbright** [3] - 1:18, 1:22, 3:7  
**fuller** [1] - 17:24  
**fully** [3] - 8:23, 12:20, 13:9  
**future** [1] - 7:20

---

## G

---

**G** [1] - 3:1  
**gave** [1] - 18:2  
**generally** [1] - 15:13  
**Gessner** [1] - 2:9  
**get** [14] - 5:19, 5:20, 5:25, 10:17, 12:16, 12:23, 13:3, 14:24, 15:3, 15:4, 17:21, 17:24, 20:7, 20:8  
**getting** [1] - 16:19  
**give** [2] - 4:4, 15:18  
**go** [7] - 5:14, 6:1, 12:22, 13:15, 15:3, 17:17, 19:21  
**going** [9] - 7:18, 10:22, 13:1, 13:7, 14:17, 15:6, 15:16, 17:21, 20:5  
**GONSOULIN** [1] - 3:10  
**Gonsoulin** [2] - 1:21, 3:8  
**good** [3] - 3:11, 3:12, 21:7  
**government** [2] - 7:9, 16:15  
**GUARDIAN** [1] - 1:3  
**Guardian** [2] - 3:2, 9:9  
**guess** [2] - 10:20, 11:7  
**guidance** [1] - 13:17  
**guidepost** [1] - 11:1  
**guideposts** [3] - 10:22, 10:24, 11:3

---

## H

---

**H** [1] - 1:11  
**had** [1] - 4:23  
**handled** [1] - 15:4  
**Hanen** [3] - 6:6, 6:15, 18:15  
**Hanen's** [2] - 6:7, 8:2  
**happy** [2] - 12:8, 20:24  
**hard** [1] - 16:10  
**has** [5] - 4:10, 6:6, 12:1, 16:14, 16:22  
**have** [31] - 3:16, 4:2, 4:3, 4:7, 5:21, 5:24, 6:11, 6:12, 6:25, 7:6, 7:12, 7:13, 9:16, 9:17, 10:3, 10:8, 11:21, 13:12, 14:9, 14:11, 14:12, 15:13, 16:9, 16:19, 17:2, 17:19, 18:17, 18:20, 21:7  
**having** [3] - 4:8, 8:13, 10:6  
**headquartered** [1] - 8:7  
**Health** [2] - 3:3, 17:15  
**HEALTH** [2] - 1:6, 2:1  
**heard** [2] - 8:23, 15:8  
**hearing** [7] - 7:19, 12:14, 17:16, 17:22, 18:13, 19:9  
**hearings** [1] - 8:13  
**heavily** [1] - 13:8

held<sup>[1]</sup> - 4:24  
 help<sup>[1]</sup> - 15:5  
 helpful<sup>[1]</sup> - 7:19  
 here<sup>[10]</sup> - 3:19, 5:25, 6:16, 7:13, 8:7, 9:1, 9:9, 14:1, 14:3, 16:2  
 high<sup>[1]</sup> - 14:25  
 HIPPA<sup>[1]</sup> - 20:13  
 his<sup>[2]</sup> - 13:3, 18:17  
 history<sup>[2]</sup> - 16:25, 17:4  
 hold<sup>[1]</sup> - 12:13  
 Honor<sup>[45]</sup> - 3:6, 3:12, 3:17, 4:6, 5:5, 5:11, 5:25, 6:5, 6:19, 6:22, 6:25, 7:21, 8:3, 8:17, 8:20, 8:24, 9:8, 10:1, 10:7, 11:4, 11:14, 12:19, 13:6, 13:10, 13:12, 13:24, 14:9, 14:19, 16:1, 16:17, 18:7, 18:8, 18:9, 18:19, 19:11, 19:13, 19:23, 20:1, 20:4, 20:5, 20:10, 20:18, 21:1, 21:4, 21:6  
 HONORABLE<sup>[1]</sup> - 1:11  
 hours<sup>[1]</sup> - 18:23  
 Houston<sup>[6]</sup> - 1:23, 2:4, 2:10, 2:14, 8:7, 8:9  
 HOUSTON<sup>[1]</sup> - 1:2  
 houston<sup>[1]</sup> - 1:4  
 how<sup>[12]</sup> - 3:9, 3:10, 4:21, 5:6, 5:13, 6:24, 9:1, 12:18, 16:9, 18:20  
 Hughes<sup>[2]</sup> - 2:2, 3:13  
 Hunton<sup>[1]</sup> - 2:3

---

## I

---

i<sup>[1]</sup> - 21:12  
 I<sup>[67]</sup> - 3:1, 3:16, 3:17, 3:18, 3:19, 4:3, 6:11, 6:16, 6:22, 6:25, 7:16, 7:17, 7:21, 7:22, 8:3, 8:10, 8:11, 8:20, 10:13, 10:19, 10:20, 11:4, 11:7, 11:11, 12:1, 12:16, 13:2, 13:7, 13:9, 13:11, 13:12, 13:14, 13:16, 14:3, 14:18, 14:22, 15:4, 15:8, 15:11, 15:18, 15:20, 16:1, 16:9, 17:8, 17:21, 17:22, 17:24, 18:9, 18:10, 18:17, 18:19, 18:22, 18:23, 19:4, 19:7, 19:15, 20:2, 20:7, 20:10, 20:14, 20:16, 20:17, 20:18  
 I'll<sup>[3]</sup> - 5:12, 11:12, 20:24  
 I'm<sup>[3]</sup> - 7:1, 17:20, 20:10  
 IDR<sup>[1]</sup> - 5:14  
 if<sup>[17]</sup> - 4:1, 4:3, 9:23, 10:22, 13:14, 15:4, 15:22, 16:24, 16:25, 17:1, 17:15, 18:10, 19:8, 19:23, 20:2, 20:23, 20:24  
 illegal<sup>[2]</sup> - 4:20, 4:24  
 immunity<sup>[4]</sup> - 15:13, 15:17, 15:22, 16:17  
 impacts<sup>[1]</sup> - 18:21  
 implemented<sup>[1]</sup> - 16:15  
 implementing<sup>[1]</sup> - 16:4  
 impression<sup>[1]</sup> - 10:21  
 IN<sup>[1]</sup> - 1:1  
 in<sup>[64]</sup> - 4:7, 4:22, 4:23, 4:24, 5:9, 5:12, 5:19, 5:22, 6:6, 6:8, 6:12, 6:25, 7:3, 7:9, 7:11, 7:19, 8:4, 8:5, 8:7, 8:8, 8:11,

8:21, 9:6, 9:12, 9:15, 9:17, 9:20, 10:4, 10:10, 10:11, 10:17, 11:2, 11:6, 11:10, 11:18, 11:23, 12:2, 12:4, 13:16, 13:20, 14:11, 14:13, 15:5, 15:16, 16:5, 16:18, 16:21, 16:22, 17:2, 17:3, 17:7, 17:14, 17:18, 17:20, 17:23, 19:8, 19:25, 20:11, 20:17, 20:21, 21:13  
 inappropriate<sup>[1]</sup> - 5:8  
 INC<sup>[2]</sup> - 1:6, 2:1  
 Inc<sup>[1]</sup> - 3:3  
 included<sup>[2]</sup> - 6:12, 17:20  
 incorporates<sup>[1]</sup> - 9:13  
 information<sup>[2]</sup> - 14:16, 19:20  
 initial<sup>[1]</sup> - 7:17  
 INITIAL<sup>[1]</sup> - 1:10  
 inoperative<sup>[1]</sup> - 13:21  
 input<sup>[1]</sup> - 18:17  
 instance<sup>[1]</sup> - 11:2  
 instances<sup>[1]</sup> - 11:3  
 instead<sup>[1]</sup> - 7:12  
 insufficiency<sup>[1]</sup> - 11:25  
 Insurance<sup>[2]</sup> - 3:14, 8:21  
 insurer's<sup>[1]</sup> - 5:4  
 interrogatories<sup>[1]</sup> - 14:20  
 interrupt<sup>[1]</sup> - 14:4  
 interrupted<sup>[1]</sup> - 11:11  
 into<sup>[3]</sup> - 4:9, 5:1, 16:19  
 invalid<sup>[1]</sup> - 5:7  
 invalidated<sup>[1]</sup> - 5:8  
 invalidating<sup>[1]</sup> - 5:1  
 is<sup>[71]</sup> - 3:16, 4:6, 5:4, 5:7, 5:11, 5:12, 5:17, 5:24, 6:3, 6:5, 6:13, 6:15, 6:17, 7:3, 7:17, 8:4, 8:6, 8:7, 8:8, 8:9, 8:14, 8:17, 9:9, 9:10, 9:14, 9:23, 10:15, 11:8, 11:17, 11:24, 12:4, 12:5, 12:7, 12:8, 12:9, 12:20, 12:22, 13:7, 13:10, 13:12, 13:13, 13:23, 13:25, 14:16, 14:17, 14:23, 14:25, 15:1, 15:17, 15:18, 15:21, 15:24, 16:3, 16:10, 16:11, 16:17, 17:3, 17:4, 17:12, 17:15, 18:24, 19:23, 19:24, 20:2, 20:13, 20:23, 21:12  
 issue<sup>[6]</sup> - 8:24, 15:6, 15:9, 20:1, 20:7, 20:23  
 issues<sup>[7]</sup> - 5:13, 5:18, 7:23, 9:5, 9:9, 11:5, 11:12  
 it's<sup>[10]</sup> - 5:12, 6:13, 7:21, 8:1, 10:20, 14:1, 14:3, 14:12, 14:19, 20:14  
 its<sup>[1]</sup> - 9:11

---

## J

---

Jacinto<sup>[1]</sup> - 1:18  
 January<sup>[1]</sup> - 4:10  
 Joe<sup>[1]</sup> - 3:22  
 joint<sup>[1]</sup> - 8:13  
 Joseph<sup>[1]</sup> - 2:8  
 Judge<sup>[6]</sup> - 4:24, 6:6, 6:7, 6:15, 8:2, 18:15  
 judge<sup>[3]</sup> - 8:12, 11:1, 19:4

JUDGE<sup>[1]</sup> - 1:12  
 judges<sup>[3]</sup> - 9:6, 9:24, 10:3  
 judicial<sup>[10]</sup> - 5:22, 5:24, 6:20, 7:4, 7:14, 9:12, 9:14, 9:16, 11:19, 12:9  
 jurisdiction<sup>[1]</sup> - 12:10  
 just<sup>[14]</sup> - 11:15, 11:24, 12:4, 12:25, 13:16, 14:22, 15:1, 16:1, 18:3, 18:19, 19:4, 19:13, 19:14, 19:15

---

## K

---

K<sup>[4]</sup> - 2:13, 21:12, 21:16, 21:17  
 Katherine<sup>[2]</sup> - 2:2, 3:13  
 Kathleen<sup>[4]</sup> - 2:13, 21:12, 21:16, 21:17  
 Kernodle<sup>[1]</sup> - 4:24  
 know<sup>[14]</sup> - 6:19, 10:10, 11:6, 11:7, 11:11, 12:23, 13:14, 13:16, 14:24, 15:4, 16:9, 18:15, 20:17, 20:18  
 kstrahan@HuntonAK.com<sup>[1]</sup> - 2:5  
 Kurth<sup>[1]</sup> - 2:3

---

## L

---

L<sup>[2]</sup> - 2:8, 3:22  
 L-A-N-Z-A<sup>[1]</sup> - 3:22  
 LANZA<sup>[9]</sup> - 3:17, 3:22, 3:24, 15:8, 15:11, 16:24, 17:10, 18:7, 21:6  
 Lanza<sup>[2]</sup> - 2:8, 3:22  
 later<sup>[1]</sup> - 11:2  
 laughter<sup>[1]</sup> - 13:5  
 Law<sup>[1]</sup> - 2:8  
 lawsuit<sup>[1]</sup> - 15:17  
 lawyer<sup>[1]</sup> - 19:5  
 learned<sup>[3]</sup> - 9:24, 12:12, 20:22  
 legal<sup>[2]</sup> - 9:5, 11:5  
 legislative<sup>[2]</sup> - 16:25, 17:4  
 let<sup>[6]</sup> - 6:1, 9:2, 11:12, 14:4, 18:15, 19:17  
 let's<sup>[4]</sup> - 11:10, 12:11, 17:6, 19:3  
 liability<sup>[1]</sup> - 15:14  
 Life<sup>[2]</sup> - 3:13, 8:21  
 life<sup>[1]</sup> - 4:13  
 life-saving<sup>[1]</sup> - 4:13  
 like<sup>[6]</sup> - 4:4, 8:23, 12:24, 13:15, 14:13, 14:18  
 limited<sup>[2]</sup> - 14:10, 17:15  
 listed<sup>[2]</sup> - 6:8, 14:12  
 little<sup>[2]</sup> - 15:4, 16:2  
 LLC<sup>[3]</sup> - 1:3, 1:7, 2:7  
 LLP<sup>[3]</sup> - 1:18, 1:22, 2:3  
 logically<sup>[1]</sup> - 10:25  
 long<sup>[2]</sup> - 12:18, 18:20  
 look<sup>[7]</sup> - 5:13, 13:3, 15:23, 16:24, 16:25, 17:1, 20:6  
 loss<sup>[1]</sup> - 5:9  
 love<sup>[1]</sup> - 13:2

---

## M

---

made<sup>[2]</sup> - 11:16, 14:17

**make** [4] - 13:20, 17:22, 17:25, 19:15  
**makes** [3] - 4:21, 8:6, 15:21  
**MANAGER** [2] - 18:25, 19:2  
**many** [1] - 14:23  
**March** [2] - 1:6, 21:16  
**Mary** [1] - 2:2  
**material** [1] - 4:18  
**matter** [3] - 8:21, 9:7, 21:14  
**may** [5] - 13:12, 15:8, 17:18, 19:21, 19:25  
**May** [1] - 8:14  
**maybe** [1] - 14:15  
**McKinney** [1] - 1:22  
**me** [9] - 4:1, 4:4, 7:1, 9:2, 10:25, 14:4, 18:2, 19:17, 20:24  
**mean** [1] - 19:4  
**meaningful** [1] - 5:24  
**means** [2] - 4:15, 4:18  
**meantime** [1] - 19:8  
**mechanical** [1] - 2:16  
**MEDICAL** [2] - 1:6, 2:7  
**medical** [1] - 17:10  
**Medical** [5] - 15:11, 17:11, 17:19, 19:20, 19:21  
**mention** [1] - 8:11  
**mentioned** [1] - 8:4  
**merge** [1] - 8:1  
**merits** [1] - 12:5  
**MET** [6] - 3:20, 4:20, 4:22, 5:8, 8:8, 14:16  
**microphone** [1] - 3:16  
**Middle** [2] - 8:5, 8:11  
**might** [3] - 12:1, 15:5, 17:20  
**Miller** [4] - 2:13, 21:12, 21:16, 21:17  
**minimal** [1] - 14:16  
**minutes** [5] - 18:23, 19:3, 19:4, 19:5  
**misrepresentations** [1] - 4:19  
**modifications** [1] - 19:8  
**moment** [1] - 14:5  
**months** [1] - 4:25  
**more** [2] - 14:3, 18:22  
**morning** [1] - 3:12  
**motion** [22] - 7:19, 8:13, 12:14, 12:15, 12:17, 12:19, 12:23, 13:13, 13:15, 14:2, 15:1, 15:6, 15:21, 16:18, 17:3, 17:12, 17:16, 17:22, 18:13, 18:14  
**motions** [4] - 7:17, 7:23, 12:15, 18:13  
**Mr** [4] - 1:17, 1:21, 1:21, 2:8  
**mr** [1] - 2:2  
**MR** [34] - 3:6, 3:10, 3:17, 3:22, 3:24, 4:6, 4:18, 6:5, 6:13, 6:19, 6:22, 6:25, 7:21, 8:3, 8:17, 12:19, 12:22, 13:6, 14:9, 14:21, 15:8, 15:11, 16:1, 16:24, 17:10, 18:7, 18:8, 18:19, 19:6, 19:11, 20:5, 20:16, 21:2, 21:6  
**Ms** [3] - 12:11, 13:18, 18:23  
**MS** [20] - 3:12, 8:20, 9:3, 9:8, 10:1, 10:7, 11:4, 11:14, 13:10, 13:24, 14:6, 18:9, 19:13, 19:18, 19:23, 20:4, 20:10,

20:20, 21:1, 21:4  
**ms** [2] - 2:2, 2:13  
**much** [2] - 4:21, 6:24  
**my** [2] - 8:16, 13:6

---

## N

---

**N** [2] - 3:1, 3:22  
**name** [2] - 3:21, 17:8  
**narrow** [5] - 9:11, 9:15, 11:19, 14:12, 14:19  
**nation** [1] - 5:12  
**nationwide** [1] - 8:4  
**nature** [1] - 13:25  
**near** [1] - 7:20  
**necessary** [1] - 20:24  
**need** [3] - 8:15, 12:18, 14:10  
**network** [2] - 4:11, 7:6  
**news** [1] - 7:11  
**next** [3] - 12:24, 13:8, 15:5  
**no** [9] - 12:9, 12:24, 18:7, 18:8, 18:22, 19:13, 19:19, 21:4, 21:6  
**NO** [1] - 1:3  
**No** [6] - 4:9, 7:4, 9:13, 12:6, 20:11  
**Norton** [3] - 1:18, 1:22, 3:7  
**not** [29] - 4:1, 5:6, 5:19, 5:20, 6:19, 7:1, 7:2, 7:3, 7:18, 7:25, 8:14, 8:22, 9:25, 11:3, 11:22, 12:8, 13:22, 15:16, 16:3, 16:7, 16:16, 16:17, 16:19, 16:22, 17:20, 17:23, 17:25, 19:5  
**note** [2] - 7:16, 14:22  
**nothing** [1] - 19:11  
**November** [2] - 6:7, 6:8  
**now** [2] - 13:7, 19:4  
**number** [2] - 6:12, 7:16  
**Number** [1] - 3:2

---

## O

---

**O** [1] - 3:1  
**objection** [1] - 18:8  
**objections** [1] - 18:6  
**obtain** [1] - 9:16  
**obviously** [4] - 11:7, 18:16, 20:3, 20:12  
**of** [73] - 3:19, 4:6, 4:10, 4:11, 4:19, 4:21, 4:25, 5:9, 5:12, 5:15, 5:16, 5:21, 5:22, 6:2, 6:3, 6:4, 6:5, 6:19, 7:1, 7:6, 7:16, 8:5, 8:11, 9:14, 9:15, 9:16, 9:17, 10:3, 10:18, 10:19, 10:20, 10:21, 10:23, 11:19, 12:2, 12:5, 12:24, 13:6, 13:14, 13:21, 13:24, 13:25, 14:12, 14:14, 14:24, 15:5, 15:11, 15:16, 16:6, 16:11, 16:12, 16:17, 16:25, 17:1, 17:2, 17:5, 17:6, 17:7, 17:8, 17:10, 17:11, 17:19, 17:24, 18:2, 18:6, 18:24, 19:20, 19:21, 19:25, 20:16, 21:13  
**OF** [4] - 1:1, 1:6, 1:13, 2:7  
**off** [1] - 18:4  
**offer** [1] - 5:4  
**offered** [1] - 17:19

**okay** [4] - 10:2, 18:5, 19:3, 19:18  
**on** [28] - 5:4, 6:9, 7:23, 8:13, 8:23, 9:6, 9:18, 10:17, 12:10, 12:22, 12:24, 13:8, 13:17, 14:16, 15:5, 15:6, 15:8, 15:21, 15:22, 16:11, 17:1, 17:12, 17:22, 18:10, 18:13, 18:20, 18:21  
**one** [12] - 3:19, 4:6, 4:14, 5:12, 6:2, 6:5, 10:6, 10:19, 11:1, 11:6, 12:22, 16:17  
**only** [5] - 8:9, 8:11, 9:8, 13:11, 16:19  
**opposed** [1] - 10:6  
**or** [12] - 5:22, 7:25, 8:1, 12:25, 15:16, 15:17, 15:25, 17:23, 17:25, 18:5, 19:20  
**oral** [1] - 7:22  
**order** [7] - 5:25, 9:15, 10:17, 11:18, 19:8, 20:6, 20:14  
**ordering** [1] - 15:15  
**orders** [1] - 19:16  
**other** [9] - 3:25, 6:3, 6:6, 10:11, 10:14, 11:6, 11:11, 17:2, 19:21  
**our** [10] - 5:9, 5:19, 7:9, 7:12, 9:20, 14:11, 14:13, 16:18, 17:3, 18:16  
**ours** [1] - 15:21  
**out** [10] - 4:11, 7:6, 12:18, 13:6, 13:9, 13:19, 17:6, 17:23, 20:23, 20:25  
**out-of-network** [2] - 4:11, 7:6  
**outcome** [1] - 10:6  
**outcomes** [1] - 10:5  
**outlined** [1] - 16:23  
**over** [1] - 13:8  
**overturned** [1] - 4:24  
**overview** [1] - 4:4

---

## P

---

**p** [1] - 3:1  
**particular** [2] - 4:22, 8:25  
**parties** [1] - 16:12  
**partners** [1] - 13:2  
**party** [2] - 16:16, 17:8  
**patient** [2] - 7:10, 7:11  
**patients** [1] - 4:13  
**payment** [6] - 4:21, 5:5, 5:9, 6:23, 7:5, 7:13  
**payments** [1] - 4:11  
**pending** [7] - 7:17, 8:5, 12:15, 13:13, 14:2, 17:12, 18:13  
**perhaps** [4] - 7:19, 8:1, 10:24, 12:13  
**perspective** [1] - 4:5  
**phone** [1] - 20:24  
**physician** [1] - 14:13  
**picture** [1] - 17:24  
**pin** [1] - 11:10  
**place** [1] - 16:6  
**PLAINTIFF** [1] - 1:16  
**plaintiff** [6] - 3:5, 4:4, 11:16, 11:22, 12:4, 12:8  
**plaintiff's** [2] - 3:19, 10:15  
**plan** [1] - 10:11  
**pleading** [2] - 11:25, 12:10



**pleadings** [2] - 5:19, 6:9  
**position** [1] - 17:18  
**posture** [1] - 16:22  
**potentially** [2] - 10:6, 10:7  
**precedent** [1] - 11:5  
**premise** [1] - 16:11  
**preparation** [1] - 18:21  
**prepared** [1] - 12:13  
**presume** [1] - 5:4  
**PRETRIAL** [1] - 1:10  
**pretty** [3] - 14:16, 14:19, 20:18  
**previously** [1] - 7:6  
**prior** [1] - 17:16  
**probably** [1] - 7:11  
**problem** [1] - 12:24  
**Procedure** [1] - 13:21  
**proceed** [1] - 9:5  
**proceeding** [1] - 5:22  
**proceedings** [3] - 2:16, 15:14, 21:13  
**process** [4] - 5:18, 5:19, 6:1  
**produce** [1] - 20:13  
**produced** [1] - 2:17  
**proposed** [1] - 19:7  
**protected** [1] - 19:24  
**protective** [2] - 20:6, 20:14  
**provide** [5] - 11:22, 11:23, 12:7, 12:9, 20:6  
**provided** [3] - 11:19, 14:14  
**provider** [1] - 7:6  
**providers** [1] - 4:11  
**provides** [1] - 4:13  
**provision** [1] - 9:11  
**provisions** [2] - 20:17, 20:21  
**put** [2] - 5:3, 11:10

---

## Q

---

**questions** [1] - 6:2  
**quick** [1] - 17:21  
**quote/unquote** [1] - 17:24

---

## R

---

**R** [1] - 3:1  
**raise** [1] - 19:25  
**raised** [2] - 5:19, 20:2  
**raises** [1] - 7:24  
**range** [1] - 7:2  
**rare** [1] - 15:1  
**Rd** [1] - 2:9  
**reach** [3] - 9:24, 10:4, 20:23  
**ready** [1] - 12:22  
**real** [1] - 9:9  
**reason** [1] - 6:17  
**record** [3] - 3:5, 18:4, 21:13  
**recorded** [1] - 2:16  
**referring** [2] - 6:24, 20:11  
**regards** [5] - 13:20, 16:21, 17:7, 17:14, 17:18

**regulation** [2] - 4:23, 5:7  
**regulations** [2] - 5:2, 5:3  
**regulator** [1] - 16:6  
**regulatory** [1] - 16:5  
**reimbursement** [1] - 14:15  
**related** [5] - 4:7, 6:3, 6:8, 6:9, 20:13  
**rely** [1] - 13:7  
**remain** [1] - 11:3  
**remedy** [2] - 12:7, 12:8  
**report** [1] - 14:13  
**REPORTER** [1] - 2:12  
**REPORTER'S** [1] - 21:10  
**represent** [3] - 4:12, 8:21, 15:11  
**representing** [1] - 3:19  
**requesting** [1] - 19:24  
**requests** [3] - 14:12, 14:21, 14:22  
**required** [1] - 11:23  
**requirements** [1] - 16:5  
**resolve** [1] - 20:7  
**respect** [6] - 4:22, 8:25, 9:24, 11:5, 11:15, 19:14  
**respectfully** [1] - 12:9  
**response** [2] - 12:17, 12:25  
**restate** [1] - 19:17  
**result** [2] - 9:6, 10:4  
**resulting** [1] - 5:9  
**return** [1] - 11:12  
**review** [11] - 5:15, 5:22, 5:24, 7:4, 7:15, 9:12, 9:14, 9:15, 9:16, 11:19, 12:9  
**reviews** [1] - 13:25  
**right** [9] - 6:23, 7:5, 7:9, 7:13, 7:14, 11:10, 12:21, 17:6, 19:1  
**RMR** [2] - 2:13, 21:17  
**role** [1] - 17:24  
**Room** [1] - 2:13  
**Rose** [3] - 1:18, 1:22, 3:7  
**RPR** [1] - 21:17  
**Rule** [3] - 4:3, 14:11, 14:13  
**rule** [2] - 3:16, 17:22  
**rules** [2] - 5:14, 16:13  
**Rules** [1] - 13:21  
**ruling** [2] - 15:16, 17:12  
**rulings** [1] - 9:6  
**Rusk** [1] - 2:13  
**résumé** [1] - 14:18

---

## S

---

**S** [1] - 3:1  
**said** [7] - 5:22, 6:2, 10:19, 13:2, 17:2, 18:18, 19:1  
**same** [8] - 8:12, 9:7, 10:3, 10:15, 11:3, 12:1, 13:16  
**San** [1] - 1:18  
**satisfy** [1] - 11:25  
**saving** [1] - 4:13  
**saw** [1] - 7:11  
**say** [5] - 5:4, 5:12, 10:20, 16:21, 16:24  
**saying** [1] - 14:23

**says** [2] - 6:9, 17:4  
**scale** [1] - 5:4  
**scheduling** [2] - 5:25, 19:7  
**scheme** [1] - 16:5  
**Schramek** [2] - 1:17, 3:6  
**SCHramek** [24] - 3:6, 4:6, 4:18, 6:5, 6:13, 6:19, 6:22, 6:25, 7:21, 8:3, 8:17, 12:19, 12:22, 13:6, 14:9, 14:21, 16:1, 18:8, 18:19, 19:6, 19:11, 20:5, 20:16, 21:2  
**scope** [4] - 5:15, 9:15, 13:14, 16:12  
**seat** [1] - 4:2  
**second** [1] - 6:13  
**secured** [1] - 4:15  
**see** [5] - 3:11, 5:20, 6:16, 14:18  
**seek** [1] - 13:16  
**seeking** [2] - 15:25, 18:16  
**seems** [1] - 10:25  
**seen** [1] - 16:9  
**send** [1] - 7:10  
**separate** [4] - 6:18, 9:5, 9:6, 10:23  
**set** [3] - 7:19, 12:6, 14:12  
**sets** [1] - 10:23  
**setting** [2] - 11:1, 18:20  
**shortly** [1] - 20:9  
**should** [8] - 4:21, 6:20, 8:22, 9:4, 13:22, 14:25, 15:20, 18:1  
**sign** [1] - 19:7  
**similar** [2] - 9:4, 9:5  
**simple** [1] - 14:18  
**sir** [2] - 3:23, 18:25  
**so** [30] - 4:3, 5:8, 5:11, 5:21, 6:5, 6:6, 6:20, 6:22, 7:10, 7:17, 8:9, 9:13, 9:15, 10:2, 10:10, 10:15, 11:12, 12:16, 12:19, 12:22, 13:7, 14:9, 14:20, 16:1, 17:20, 17:22, 18:2, 18:10, 20:7, 20:18  
**some** [5] - 5:18, 11:11, 14:15, 17:1, 20:20  
**somehow** [1] - 11:18  
**something** [2] - 12:23, 19:23  
**sometime** [1] - 7:19  
**sorry** [1] - 20:10  
**sort** [1] - 20:25  
**Southern** [1] - 4:7  
**SOUTHERN** [1] - 1:1  
**specific** [5] - 9:18, 12:16, 12:17, 14:7  
**specifically** [1] - 17:16  
**St** [1] - 1:22  
**standard** [2] - 4:20, 5:15  
**standards** [1] - 12:1  
**state** [1] - 9:21  
**statement** [1] - 14:14  
**statements** [1] - 17:18  
**STATES** [2] - 1:1, 1:12  
**statutory** [1] - 7:13  
**status** [1] - 6:4  
**statute** [12] - 4:15, 5:6, 5:7, 5:23, 11:23, 15:12, 19:25, 20:11, 20:12, 20:14, 20:17, 20:21

**statutory** [3] - 7:5, 7:14, 16:4  
**stay** [4] - 13:15, 14:2, 14:24, 17:20  
**stayed** [1] - 17:12  
**stenography** [1] - 2:16  
**stepped** [1] - 7:9  
**stop** [1] - 9:2  
**STRAHAN** [20] - 3:12, 8:20, 9:3, 9:8, 10:1, 10:7, 11:4, 11:14, 13:10, 13:24, 14:6, 18:9, 19:13, 19:18, 19:23, 20:4, 20:10, 20:20, 21:1, 21:4  
**Strahan** [2] - 2:2, 3:13  
**strategy** [2] - 10:15, 12:1  
**style** [1] - 17:5  
**subject** [1] - 9:7  
**submission** [1] - 5:20  
**submitted** [1] - 19:20  
**such** [3] - 11:1, 13:22, 18:17  
**sufficient** [1] - 9:21  
**Suite** [4] - 1:18, 1:22, 2:4, 2:9  
**sure** [4] - 7:1, 14:6, 17:20, 19:15  
**Surprises** [6] - 4:9, 7:4, 9:13, 12:6, 20:12

---

## T

---

**take** [3] - 12:14, 19:9, 20:24  
**talk** [2] - 11:12, 17:2  
**talked** [1] - 14:11  
**talking** [7] - 4:1, 6:24, 10:22, 14:8, 14:20, 16:18, 20:19  
**Tel** [5] - 1:19, 1:23, 2:5, 2:10, 2:14  
**terms** [3] - 12:2, 17:2, 19:25  
**TEXAS** [3] - 1:1, 1:6, 2:7  
**Texas** [9] - 1:4, 2:14, 4:25, 15:12, 17:10, 17:11, 17:19, 19:20, 19:21  
**than** [1] - 18:22  
**thank** [9] - 3:23, 3:24, 8:18, 8:20, 11:14, 20:4, 21:1, 21:4, 21:6  
**Thank** [1] - 21:2  
**that** [92] - 4:7, 4:13, 4:14, 4:21, 4:23, 5:7, 5:10, 5:11, 5:24, 6:4, 6:12, 6:15, 6:17, 6:19, 6:23, 7:10, 7:11, 7:16, 7:23, 8:6, 8:11, 8:14, 8:17, 8:22, 8:23, 9:9, 9:16, 9:23, 10:2, 10:8, 10:21, 10:25, 11:1, 11:5, 11:7, 11:11, 11:16, 11:17, 11:21, 11:22, 11:24, 12:7, 12:8, 12:12, 12:14, 12:17, 12:22, 12:24, 13:10, 13:12, 13:17, 13:22, 13:23, 13:25, 14:10, 14:16, 14:19, 14:24, 15:18, 15:24, 16:2, 16:9, 16:11, 16:12, 16:17, 17:15, 17:17, 17:18, 17:19, 17:20, 18:11, 18:13, 18:16, 18:17, 18:18, 18:24, 19:1, 19:9, 19:24, 19:25, 20:7, 20:13, 20:14, 20:25, 21:12  
**that's** [4] - 5:6, 10:16, 18:25  
**THE** [57] - 1:1, 1:1, 1:11, 1:16, 2:1, 2:7, 3:2, 3:9, 3:11, 3:15, 3:21, 3:23, 3:25, 4:17, 6:2, 6:11, 6:15, 6:20, 6:23, 7:16, 7:25, 8:15, 8:18, 9:2, 9:4, 9:23, 10:2, 10:19, 11:10, 12:11, 12:21, 13:2,

13:18, 14:4, 14:7, 14:20, 15:10, 15:24, 16:21, 17:6, 17:11, 18:5, 18:12, 18:22, 18:25, 19:1, 19:2, 19:3, 19:7, 19:12, 19:17, 19:19, 20:2, 20:22, 21:3, 21:5, 21:7  
**their** [6] - 4:4, 4:23, 14:15, 14:18, 16:15, 17:24  
**them** [6] - 6:8, 10:13, 10:17, 13:8, 15:2, 18:1  
**then** [4] - 11:24, 12:24, 13:3, 15:22  
**theories** [1] - 7:8  
**there** [18] - 3:16, 5:18, 6:5, 6:17, 7:16, 8:4, 8:9, 11:11, 11:24, 12:9, 14:23, 17:15, 19:8, 19:19, 19:23, 20:20, 20:23  
**these** [12] - 5:1, 5:13, 6:17, 7:8, 8:8, 9:10, 9:17, 10:8, 11:1, 11:7  
**they** [27] - 4:23, 4:25, 5:21, 5:22, 6:10, 6:21, 7:9, 8:10, 8:12, 9:16, 9:25, 11:21, 12:3, 12:12, 14:14, 16:2, 16:4, 16:5, 16:6, 16:12, 16:13, 16:16, 17:2, 17:23, 19:24  
**they're** [4] - 6:9, 9:21, 11:17, 20:18  
**thing** [3] - 13:11, 14:17, 15:3  
**things** [3] - 14:13, 14:18, 16:18  
**think** [11] - 5:23, 7:21, 7:22, 11:5, 12:18, 13:9, 14:3, 15:4, 15:18, 15:20, 20:2  
**this** [32] - 4:6, 4:14, 4:25, 5:11, 6:6, 6:7, 6:23, 7:2, 7:14, 7:17, 8:1, 8:4, 8:21, 10:10, 10:11, 10:16, 10:19, 11:2, 12:1, 12:10, 12:11, 13:21, 14:10, 14:11, 15:3, 15:17, 16:3, 16:14, 17:3, 17:4, 17:6, 17:22  
**those** [4] - 9:18, 9:20, 11:24, 18:6  
**thought** [2] - 3:18, 6:10  
**three** [1] - 8:5  
**through** [2] - 4:15, 16:15  
**thumb** [1] - 5:4  
**time** [2] - 13:10, 13:16  
**timing** [1] - 18:2  
**to** [128] - 3:11, 4:1, 4:2, 4:4, 4:8, 4:10, 4:11, 4:13, 4:22, 5:9, 5:13, 5:14, 5:20, 5:21, 5:25, 6:1, 6:24, 7:5, 7:9, 7:10, 7:12, 7:18, 7:19, 7:20, 7:23, 7:25, 8:1, 8:12, 8:13, 8:16, 8:23, 8:25, 9:10, 9:15, 9:21, 10:2, 10:4, 10:6, 10:8, 10:17, 10:20, 10:21, 10:22, 10:24, 10:25, 11:5, 11:6, 11:12, 11:15, 11:17, 11:18, 11:25, 12:5, 12:6, 12:13, 12:15, 12:17, 12:19, 12:22, 12:23, 13:1, 13:7, 13:9, 13:13, 13:15, 13:20, 13:21, 14:2, 14:17, 15:1, 15:3, 15:7, 15:16, 15:17, 15:21, 16:1, 16:10, 16:12, 16:13, 16:17, 16:18, 16:21, 17:3, 17:7, 17:12, 17:14, 17:16, 17:17, 17:18, 17:19, 17:21, 17:22, 17:23, 17:25, 18:6, 18:14, 18:15, 18:19, 18:23, 19:14, 19:15, 19:19, 19:20, 20:6, 20:8, 20:11, 20:12, 20:24, 20:25  
**today** [2] - 5:25, 20:6

**together** [1] - 6:21  
**too** [1] - 13:11  
**took** [1] - 7:9  
**tort** [1] - 7:8  
**transcript** [1] - 21:13  
**Transcript** [1] - 2:17  
**transcription** [1] - 2:17  
**transport** [1] - 5:5  
**transports** [2] - 4:13, 7:1  
**traveling** [1] - 18:10  
**Travis** [1] - 2:3  
**Troy** [1] - 1:17  
**true** [1] - 9:23  
**try** [2] - 9:10, 17:21  
**trying** [3] - 9:9, 11:17, 12:5  
**turns** [1] - 10:17  
**two** [22] - 4:7, 6:3, 6:6, 6:17, 8:4, 8:7, 8:9, 9:4, 9:5, 9:6, 9:24, 10:3, 10:4, 10:5, 10:6, 10:23, 12:16, 18:2, 18:23  
**TX** [4] - 1:19, 1:23, 2:4, 2:10  
**typically** [1] - 7:2

---

## U

---

**ultimately** [1] - 13:14  
**unaware** [1] - 20:16  
**under** [16] - 4:8, 4:15, 4:17, 5:6, 5:18, 5:19, 7:2, 7:4, 9:5, 10:9, 13:25, 15:12, 16:3, 16:8, 16:10, 20:13  
**underlying** [1] - 14:15  
**understand** [1] - 10:13  
**understood** [1] - 19:6  
**undue** [2] - 4:15, 4:18  
**unique** [5] - 10:9, 10:16, 11:9, 13:24  
**UNITED** [2] - 1:1, 1:12  
**unless** [1] - 5:23  
**until** [2] - 8:14, 15:20  
**up** [5] - 7:19, 12:6, 12:14, 15:18, 19:9  
**upon** [2] - 12:3, 16:14  
**us** [5] - 13:15, 15:17, 15:22, 16:14, 20:6  
**US** [2] - 1:18, 1:22

---

## V

---

**vacate** [1] - 16:10  
**very** [13] - 3:15, 3:23, 3:25, 8:15, 9:11, 9:15, 9:18, 11:19, 14:9, 14:12, 14:18, 18:12, 21:7  
**Vethan** [1] - 2:8  
**VOLUME** [1] - 1:13  
**vs** [1] - 3:3  
**VS** [1] - 1:4

---

## W

---

**wait** [1] - 15:20  
**want** [9] - 5:16, 5:21, 10:20, 11:1, 11:12, 15:3, 16:1, 18:19, 19:15  
**was** [16] - 4:15, 4:20, 5:3, 5:7, 5:8, 5:10, 6:7, 6:8, 10:10, 10:12, 10:19, 17:8,



19:1, 20:5, 20:10, 20:14  
**wave** <sup>[1]</sup> - 10:20  
**way** <sup>[2]</sup> - 9:9, 18:2  
**we** <sup>[51]</sup> - 4:12, 4:14, 5:10, 5:17, 5:18, 5:19, 5:20, 5:23, 6:8, 6:10, 6:19, 6:24, 7:6, 7:10, 7:12, 7:13, 9:20, 11:7, 11:16, 12:4, 12:18, 12:23, 12:25, 13:12, 14:7, 14:9, 14:10, 14:11, 14:12, 14:17, 15:3, 15:4, 15:6, 15:12, 15:20, 15:22, 16:2, 16:18, 16:19, 16:24, 18:10, 18:20, 19:9, 19:25, 20:7, 20:8, 20:12  
**we're** <sup>[5]</sup> - 5:24, 7:3, 8:12, 10:21, 15:16  
**wedge** <sup>[1]</sup> - 9:11  
**week** <sup>[3]</sup> - 12:24, 13:3, 18:24  
**weekend** <sup>[1]</sup> - 21:8  
**well** <sup>[20]</sup> - 3:10, 3:11, 3:15, 3:23, 3:25, 8:13, 8:15, 11:4, 12:12, 12:15, 14:4, 14:23, 15:6, 18:12, 18:14, 19:9, 19:17, 20:18, 20:20, 21:7  
**went** <sup>[2]</sup> - 4:9, 5:1  
**were** <sup>[6]</sup> - 3:18, 6:10, 6:24, 8:12, 11:11, 11:13  
**what** <sup>[20]</sup> - 4:17, 5:3, 5:11, 5:14, 5:22, 5:24, 10:16, 11:13, 11:17, 12:6, 13:20, 14:7, 16:21, 17:1, 17:4, 17:8, 17:20, 18:20, 18:23, 20:18  
**what's** <sup>[4]</sup> - 5:14, 5:15, 6:3, 13:25  
**when** <sup>[1]</sup> - 12:12  
**where** <sup>[4]</sup> - 6:3, 8:6, 10:3, 11:7  
**whether** <sup>[4]</sup> - 7:25, 15:16, 17:23, 17:25  
**which** <sup>[8]</sup> - 4:20, 7:5, 8:6, 9:6, 9:14, 11:23, 12:5, 12:7  
**while** <sup>[2]</sup> - 10:15, 13:13  
**who** <sup>[1]</sup> - 14:17  
**why** <sup>[3]</sup> - 9:4, 10:5, 20:22  
**wife** <sup>[1]</sup> - 13:7  
**will** <sup>[15]</sup> - 5:13, 13:9, 14:10, 14:22, 16:18, 17:15, 17:19, 18:13, 18:16, 18:20, 19:7, 19:19, 20:8, 20:12  
**with** <sup>[21]</sup> - 3:6, 3:7, 4:8, 4:10, 4:22, 6:15, 7:12, 8:2, 8:25, 9:4, 9:23, 11:5, 11:15, 12:8, 13:11, 18:18, 19:14, 19:15, 20:1, 20:6, 20:15  
**within** <sup>[5]</sup> - 9:11, 10:17, 11:18, 13:3, 14:1  
**without** <sup>[1]</sup> - 15:15  
**works** <sup>[1]</sup> - 5:23  
**would** <sup>[15]</sup> - 4:4, 7:2, 7:18, 7:22, 8:10, 8:23, 10:24, 10:25, 11:3, 12:12, 13:11, 13:15, 13:20, 18:11, 18:22  
**wouldn't** <sup>[1]</sup> - 10:5  
**written** <sup>[1]</sup> - 5:7

8:15, 8:18, 8:20, 9:2, 10:2, 10:10, 10:25, 11:3, 11:6, 11:11, 11:12, 11:13, 11:14, 12:18, 12:23, 13:14, 13:16, 14:4, 14:20, 14:24, 15:4, 15:22, 15:24, 16:9, 16:21, 16:24, 16:25, 17:1, 17:15, 17:21, 18:2, 18:15, 19:1, 20:4, 20:22, 21:1, 21:2, 21:4, 21:6  
**you're** <sup>[3]</sup> - 4:1, 10:3, 10:22  
**your** <sup>[9]</sup> - 3:4, 3:5, 3:16, 3:21, 4:3, 16:21, 17:8, 18:13, 18:21  
**Your** <sup>[45]</sup> - 3:6, 3:12, 3:17, 4:6, 5:5, 5:11, 5:25, 6:5, 6:19, 6:22, 6:25, 7:21, 8:3, 8:17, 8:20, 8:24, 9:8, 10:1, 10:7, 11:4, 11:14, 12:19, 13:6, 13:10, 13:11, 13:24, 14:9, 14:19, 16:1, 16:17, 18:7, 18:8, 18:9, 18:19, 19:11, 19:13, 19:23, 20:1, 20:4, 20:5, 20:10, 20:18, 21:1, 21:4, 21:6

---

## Z

---

**Z** <sup>[1]</sup> - 3:22

---

## Y

---

**yes** <sup>[6]</sup> - 4:6, 6:15, 9:3, 10:7, 15:10, 19:2  
**yet** <sup>[1]</sup> - 5:8  
**you** <sup>[55]</sup> - 3:9, 3:10, 3:11, 3:18, 3:23, 3:24, 4:1, 6:2, 6:11, 6:12, 6:23, 7:11,