

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

ELECTRICAL MEDICAL TRUST, *et al.*,

Plaintiff,

vs.

U.S. ANESTHESIA PARTNERS, INC., *et al.*,

Defendant.

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CAUSE NO. 4:23-CV-04398

ORAL ARGUMENT REQUESTED

**NON-PARTY GALLAGHER BASSETT SERVICES, INC.’S RESPONSE TO
U.S. ANESTHESIA PARTNERS’ CROSS-MOTION TO COMPEL (DOC. 187)**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Non-Party, **Gallagher Bassett Services, Inc. (“Gallagher”)** and files this its Response to U.S. Anesthesia Partners’ Cross-Motion to Compel Gallagher Bassett Services, Inc. to Comply with Subpoena (Doc. 187) and would show as follows:

I.

SUBPOENA IS EGREGIOUS

U.S. Anesthesia Partners (“U.S. Anesthesia”) made a virtually identical argument in its Response to Gallagher’s Motion to Quash and for Protection. (Doc. 186). Non-party Gallagher filed a Motion to Quash and for Protection seeking protection from an overly broad subpoena; the positions set forth in those pleadings are incorporated herein by reference. (Docs. 181 and 189). Essentially, U.S. Anesthesia is asking Gallagher to conduct an unspecified search of hundreds of thousands of claims files. One of the most egregious points is that U.S. Anesthesia should possess all the information in its own files about claims that it billed for services rendered. Instead of conducting a search of its own records, U.S. Anesthesia essentially asks that Gallagher, a non-party, do U.S. Anesthesia’s research for it by serving this unduly burdensome, vague, ambiguous,

harassing, and overly broad subpoena. Further, the subpoena is disproportionate to the needs of the case, encompasses non-relevant material, and seeks proprietary information, confidential business records, as well as information protected by HIPAA. Therefore, the Court should not grant the Cross-Motion to Compel, but rather the subpoena should be quashed as requested by Gallagher. (Doc. 181).

The subpoena on its face is objectionable as it fails to identify any specific claims it seeks information on pertaining to the subject matter of this lawsuit. Instead, the subpoena Requests for Production No. 1-4 seek “all documents” in twenty one different categories of confidential business records for seventy different undefined clients of Gallagher. Request for Production No. 5 seeks “all documents and communications” with any named plaintiff. Request for Production No. 6 seeks “all documents” in six categories of documents with any provider of anesthesia services in Texas (not even limited to U.S. Anesthesia). Request for Production No. 7 seeks “all documents” in four categories related to legislation and laws for payment of anesthesia services. Requests for Production 8-11 seek “all documents and communications related to Direct Employer Contracts” related to anesthesia services for seventy different undefined clients of Gallagher.

The fact that the requested subpoena is not directed toward the merits of the lawsuit, but rather to support U.S. Anesthesia’s opposition to a class certification is even more of a reason to deny this overly broad and unduly burdensome subpoena. This is further demonstrated by the affidavit of Mr. Wall, who explains that Gallagher does not set payments schedules or charges for any particular medical service, but rather simply is a third party administrator which adjusts claims. See Exhibit A. As Gallagher is not an insurer and does not issue insurance policies or ERISA plans, its involvement is even further removed. See Exhibit A. Since U.S. Anesthesia theoretically bills for services rendered by using federal and state guidelines, that in and of itself is evidence to

challenge the class certification based on commonality and predominance requirements without subjecting non-parties to such overly broad and unduly burdensome subpoenas. Therefore, the Court should not compel Gallagher to respond to this subpoena.

II.

STANDARD OF REVIEW

Rule 45 provides that when a party serves a subpoena on a non-party, the serving party to “take reasonable steps” to avoid imposing undue burden or expense on the non-party. FED. R. CIV. P. 45. Rule 45 enables the Court to enforce the duty to limit a subpoena served on a non-party. *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 448 (N.D. Tex. 2015). A court is permitted to quash or modify a subpoena if the subpoena seeks disclosure of privileged or protected information or subjects a person or entity to undue burden. FED. R. CIV. P. 45(d)(3)(A)(iii)-(iv); *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

The Court considers the following factors when addressing whether a non-party subpoena imposes an undue burden: “(1) relevance of the information requested; (2) the need of the party for the documents; (3) the breadth of the document request; (4) the time period covered by the request; (5) the particularity with which the party describes the requested documents; and (6) the burden imposed.” *Wiwa*, 392 F.3d at 817-18, citing, *Williams v. City of Dallas*, 178 F.R.D. 103, 109 (N.D. Tex. 1998). A subpoena that is facially overbroad amounts to an undue burden. *Id.* “Courts have found that a subpoena for documents from a non-party is facially overbroad where the subpoena’s document requests ‘seek all documents concerning the parties to [the underlying] action, regardless of whether those documents relate to that action and regardless of date’; ‘[t]he requests are not particularized’; and ‘[t]he period covered by the requests is unlimited.’” *Am. Fed’n of Musicians of the U.S. & Can. v. Skodam Films, LLC*, 313 F.R.D. 39, 45 (N.D. Tex.

2015)(citing, *Wiwa*, 392 F.3d at 818; *In re O'Hare*, Mis. A. No. H-11-05539, 2012 WL 1377891, at *2 (S.D. Tex. Apr. 19, 2012); *Turnbow v. Life Partners, Inc.*, No. 3:11-cv-1030-M, 2013 WL 1632794, at *1 (N.D. Tex. Apr. 16, 2013)). Clearly, the subpoena served on Gallagher does not seek particularized requests. The subpoena fails to meet the proportionality analysis required for subpoenas served on non-parties.

III.

EXHIBIT

Gallagher's Response to Cross-Motion to Compel is supported by the affidavit of Cameron Wall, which is attached hereto as Exhibit A.

IV.

MOTION TO COMPEL SHOULD BE DENIED

Gallagher has no direct involvement in the subject matter of this litigation. Gallagher is not an insurance company and does not issue insurance policies or ERISA plans. See Exhibit A, A. Instead, Gallagher is simply a third party administrator that adjusts claims on behalf of clients. See Exhibit A. The majority of such claims are governed by various state workers' compensation statutes that have their own fee guidelines. Gallagher does not set payment schedules regarding the amount that should be or may be charged for any particular medical service. See Exhibit A. Theoretically, U.S. Anesthesia is aware of these fee guidelines and only submits billing in compliance with such fee guidelines, therefore, U.S. Anesthesia should already possess the documents to defend itself against the allegations in this matter. Additionally, Gallagher does not make medical decisions with regard to medical necessity. See Exhibit A.

Gallagher did not broker any insurance policies or ERISA plans; nor does Gallagher create documents related to payment of specific claim amounts. See Exhibit A. The uncontested

evidence is that Gallagher does not aggregate the data sought by U.S. Anesthesia in the subpoena. See Exhibit A. The subpoena requests confidential documentation, including documents provided by an insurance broker and final renew packages from the plan – yet U.S. Anesthesia fails to identify why such broad requests for information are proportional especially considering that U.S. Anesthesia itself should possess responsive documentation to defend itself in the litigation. U.S. Anesthesia wholly disregards the proportionality analysis that must be conducted when evaluating whether the non-party subpoena is appropriate. FED. R. CIV. P. 26(b)(1). Proportionality factors “are not talismanic”; rather, “they are to be applied in a common sense, and practical manner.” *Vallejo v. Amgen, Inc.*, 903 F.3d 733, 744 (8th Cir. 2018).

The fact that U.S. Anesthesia cannot even identify specific clients that it seeks information on bolsters the fact that this non-party subpoena is nothing more than a fishing expedition. “Rule 26(b) ‘has never been a license to engage in an unwieldy, burdensome, and speculative fishing expedition.’” *Crosby v. La. Health Serv. & Indem. Co.*, 647 F.3d 258, 264 (5th Cir. 2011)(quoting, *Murphy v. Deloitte & Touche Grp. Ins. Plan*, 619 F.3d 1151, 1163 (10th Cir. 2010). While U.S. Anesthesia cites to *Tamburrino v. United Healthcare Ins. Co.*, No. 21-12766 (D.N.J. Jan. 28, 2026), that case did not involve the scope of a subpoena to a third party. (Doc. 187-1). The requested subpoena document requests are overly broad, abusive, pose an undue burden, seek confidential trade secret and business information, and seek documentation that is irrelevant to the issues to be determined in this lawsuit. See Exhibit A. Rule 45 sets forth several mandatory grounds under which a Court must quash a subpoena served on a non-party and refuse to compel such a non-party to respond. Because the subpoena served on Gallagher requires disclosure of privileged or other protected matter and constitutes an undue burden, the Cross-Motion to Compel should be denied and the subpoena should be quashed.

A. Subpoena Seeks Confidential Proprietary and Privileged Materials

The Court should refuse to compel Gallagher to respond to the subpoena as it requires disclosure of privileged or other protected matter. FED. R. CIV. P. 45(d)(3)(A)(iii). U.S. Anesthesia also failed to establish that the documents it seeks from Gallagher are relevant or proportional to its discovery needs or why it is in need of these documents to develop its defenses.

The subpoena is also objectionable in that it requests Gallagher to produce the confidential business information of Gallagher's clients as well as private healthcare information concerning countless individuals who did not seek treatment with U.S. Anesthesia. One significant concern is that the requested information seeks information related to competitors of U.S. Anesthesia. Additionally, business contracts often contain confidentiality clauses, which would bar production of any such documents. The requests are also broad enough to encompass HIPAA protected medical records of individual patients – many of whom never even sought medical treatment with U.S. Anesthesia. U.S. Anesthesia has failed to explain how these requests for confidential proprietary and protected documents are relevant or proportional to the claims that are the subject matter of this litigation to warrant such an egregious invasion of confidential records of non-parties. Thus, the Motion to Compel should be denied.

Simply, the breadth of U.S. Anesthesia's requests are excessive and unreasonable. The subpoena is not limited in time or even to claims in which U.S. Anesthesia performed services. The requests lack particularity and are vague and the burden, expense and inconvenience to Gallagher is significant. U.S. Anesthesia has not demonstrated why it is necessary to invade confidential, propriety and privileged business information and the confidential medical information for individuals who have no involvement in this litigation. Therefore, the Cross-Motion to Compel should be denied.

B. Subpoena Amounts to an Undue Burden

U.S. Anesthesia fails to explain to the Court why it is unable to gather the information from its own files. U.S. Anesthesia expresses disbelief that Gallagher cannot easily identify this information, yet U.S. Anesthesia does not counter with why it too cannot easily locate this information in its own records. In contrast to U.S. Anesthesia's simple rejection of Gallagher's evidence, Gallagher actually supported its position with sworn testimony. See Exhibit A. Further, while U.S. Anesthesia states that it is not requesting a search of individual claim files, Gallagher's affidavit confirms that is the only way to search for documents responsive to the subpoena. See Exhibit A.

The Court should not compel production of documents under the subpoena in that it subjects Gallagher, a non-party, to an undue burden. See Exhibit A. The Court is afforded broad discretion in analyzing whether a subpoena places an undue burden on a non-party. FED. R. CIV. P. 26(c)(1) and 45(d)(1); *Samurai Glb., LLC v. Landmark Am. Ins. Co.*, No. 3:20-cv-3718-D, 2023 WL 8627527, at *1 (N.D. Tex. Dec. 13, 2023). A subpoena is overbroad if it "sweepingly pursue[s] material with little apparent or likely relevance." *Concord Boat Corp. v. Brunswick Corp.*, 169 F.R.D. 44 (S.D.N.Y. 1996). Compelling disclosure of documents which are not properly discoverable, however slight, amounts to an undue burden. *AF Holdings, LLC v. Does 1-1058*, 752 F.3d 990, 995 (D.C. Cir. 2014). A subpoena served on a non-party seeking "all documents" is facially overbroad. *Hossfeld v. Allstate Inc. Co.*, No. 4:24-mc-142, 2025 WL 2323918, at *2 (E.D. Tex. Aug. 12, 2025), citing *Am. Fed'n of Musicians*, 313 F.R.D. at 44; *Wiwa*, 392 F.3d at 818; *O'Hare*, 2012 WL 1377891, at *2; *Turnbow*, 2013 WL 1632794, at *1. In the subpoena at issue, all eleven requests for production seek "all documents" or "all documents and communications." These requests are not particularized, are not limited by any date, and do not

relate the subject matter of this lawsuit, therefore, the subpoena should be Court should not compel compliance with the subpoena. *See, Am. Fed'n of Musicians*, 313 F.R.D. at 44; *Wiwa*, 392 F.3d at 818.

The affidavit of Mr. Wall demonstrates that it would be an undue hardship to compile all of the documents requested in the subpoena. See Exhibit A. Gallagher simply does not aggregate its records to allow conducting a search for the requests as propounded by U.S. Anesthesia. Mr. Wall provided sworn testimony that the “information sought is not available in a format that can be queried within Gallagher’s electronic system” and that “Gallagher’s claim system does not contain information that can identify information as requested by the discovery requests, through computer-based queries.” See Exhibit A. Mr. Wall pointed out that Gallagher does not maintain a list or organize its client based on the size and type of client. See Exhibit A. Nor does Gallagher maintain a list of clients based on the number of the client’s potential beneficiaries. See Exhibit A.

As Mr. Wall’s affidavit confirms that only way to obtain this information would be a hand search of all claims. See Exhibit A. Mr. Wall averaged the time it would take to review a claim file for identifying information of anesthesia services and determined on average it would take 66.75 minutes per claim to review all files for this information. See Exhibit A. U.S. Anesthesia’s own Response to Gallagher’s Motion to Quash notes that Gallagher receives over 800,000 new claims annually. (Doc. 186, Pg. 4). Since U.S. Anesthesia seeks information over an 8 year period, U.S. Anesthesia is inquiring into 6,400,000 claims – that is not narrowly tailored. At 66.75 minutes per claim, it would take 427,200,000 minutes or 7,120,000 hours to conduct a review of eight years of claim files to isolate files responsive to U.S. Anesthesia’s discovery requests. It is disingenuous for U.S. Anesthesia says it did not request such an extensive review, when its own evidence shows Gallagher receives 800,000 annual new claims over an eight year period. Gallagher simply cannot

speculate how many claims would have to be reviewed before responsive claims are identified. While U.S. Anesthesia expresses disbelief at this figure, Mr. Wall's testimony is uncontested. It is equally unbelievable that U.S. Anesthesia would not have access to its own records and billing guidelines and thus it attempts to subject third parties to do the work for U.S. Anesthesia.

As noted above and in the prior filings, the bulk of U.S. Anesthesia's request do not make a request for review of records of a specific client. U.S. Anesthesia could review its own records and identify specific clients of Gallagher; instead of even undertaking that simple task, U.S. Anesthesia attempts to place the burden on Gallagher to do the work for U.S. Anesthesia. For example, Requests for Production 1-4 and 8-11 do not even identify any specific client from which or about whom U.S. Anesthesia seeks information. See Exhibit A. Gallagher simply does not maintain a list of clients or client's insureds based on the size of the client, the nature of the client's work, the number of beneficiaries or insured employees, or categorize the beneficiaries by State. See Exhibit A. Nor does Gallagher segregate carriers or their insureds based on whether they are a federal or state governmental entity. See Exhibit A. Thus, these discovery requests would require Gallagher to contact all of its clients and insureds of insurance carriers for whom Gallagher adjusts claims to seek the nature of their business, and the number of potential beneficiaries located within Texas. See Exhibit A. It is unknown whether these entities would even respond or how long it would take them to respond. See Exhibit A. Then Gallagher would have to attempt to locate documentation on the twenty-one categories of requested documentation as well as "all documents and communications related to Direct Employer Contracts" for the Gallagher clients for all anesthesia services in Texas. See Exhibit A.

The difficulty in identifying potential responsive Gallagher clients is not the only burdensome aspect of this subpoena. As Mr. Wall's affidavit details, responding to the subpoena

would then require a review of every single claim to determine whether an individual sought anesthesia services and then produce all explanation of benefits related to anesthesia services in Texas (Requests 1-4(o)); all “claims adjustment history showing reasons for denials, reductions or payment delays for claims for anesthesia services, in Texas” (Requests 1-4(p)); “any claims and associated documents involving the administration of anesthesiology services” (Requests 1-4(s)). See Exhibit A. This request is so broad as to involve any individual who sought anesthesiology services, regardless of which anesthesiologist performed the service. So even if a patient sought anesthesia services with a competitor of U.S. Anesthesia, it requests that Gallagher turn over the confidential information of these individual patients.

Requests 1-4 also seek confidential business records of Gallagher and/or its clients on the following topics: “a. Administrative Services Agreements, including statements of work or scope of services documents such as exhibits, appendices, amendments, restatements, etc.; b. The Group Health Plan Document, including any documents treated as part of the plan; c. Certificate of Coverage Booklet/Evidence of Coverage Booklet; d. Claims Processing Agreements; e. Preferred Provider Agreements; f. Bundles Payment Arrangements; g. Reference-Based Pricing Agreements; h. Shared Savings Arrangements; i. Stop-Loss Insurance Contract/Reinsurance Policy terms and pricing (including, but not limited to, scope of coverage, deductible (individual and aggregate), premium, attachment point, maximum liability, covered expenses, exclusions); j. Summary Plan Descriptions, including any Summary of Material Modifications (“SMMs); k. New Client or Client Onboarding Questionnaires; l. Plan Booklets; m. Cross Plan Offset information including but not limited to documents sufficient to show how credits or debits are determined for each such client and for each such client, the steps taken to adjust, account, recover or otherwise reconcile over or under payments made by You or any other Third Party Administrator on behalf

of another plan; n. Coordination of Benefits Information; . . . q. Fee schedules (whether charged by an arbitrator, payor, or other third-party managing the arbitration process) associated with any and all stages of the out-of-network provider payment independent dispute resolution process, including the open negotiation period, required by the Federal No Surprises [sic] Act and/or the Texas equivalent; r. Protocols – including those constraining or other governing those described in RFP #1(q) – addressing or otherwise referring to any and all stages of the out-of-network provider payment independent dispute resolution process, including the open negotiation period, required by the Federal No Surprises [sic] Act and/or the Texas equivalent; t. Any external communications, including, but not limited to with your clients or Commercial Healthcare Insurers, concerning reimbursement rates for Anesthesia Services and/or costs of Anesthesia Services, in the State of Texas; and u. Documents and data files sufficient to show deductibles and how they are determined for each client.” Requests 8-11 seek “all Documents and Communications related to Direct Employer Contracts for Your clients for Anesthesia Services between You, on the one hand, and employers or brokers in Texas on the other.” U.S. Anesthesia fails to explain to the Court how this information furthers it’s discovery needs, therefore, the subpoena is over broad and not proportional.

Request for Production No. 5 requests “all documents and communications” between Gallagher and any named Plaintiff. As worded, the document could be interpreted to involve any plaintiff in any lawsuit ever filed. See Exhibit A. This request is also broad enough to require production of an email as vague as “Did you see the Houston Texan game last night.” Request for Production No. 6 is further objectionable in that it asks for “all documents reflecting or relating to provider networks for Anesthesia Services in Texas and asks for six different categories of information, which have no relevance to the claims against U.S. Anesthesia. See Exhibit A.

Request for Production No. 6 is also not limited to any number or category of client. Thus, the request would require Gallagher to search every client who may have had a beneficiary located in Texas and then provide the six categories of information. The request is also not limited to U.S. Anesthesia, but rather seeks documentation for any anesthesia services performed in Texas, even if a client never had a beneficiary seek care with U.S. Anesthesia. This request also seeks confidential business records regarding entities that have no relationship to U.S. Anesthesia. Most agreements with third parties have confidentiality clauses. Further, producing such documents could be detrimental to competitors of both Gallagher and its clients. For example, a different provider of anesthesia services would not want its confidential business information produced to U.S. Anesthesia, a competitor.

Request for Production No. 7 is objectionable in that it seeks “all documents reflecting or relating to regulatory compliance or changes in law affecting Your administration of claims for Anesthesia Services in Texas” for four different categories. To the extent this request seeks federal or state legislation or laws, U.S. Anesthesia has equal access to such legislation or laws. This request also presents an undue burden in that it is not narrowly tailored to seek a specific document. Production of internal policies, procedures concerning implementation of regulatory requirements and any analysis of how legislation and laws impact out of network anesthesia claims, seeks confidential business information, the disclosure of which will not further any discovery needs in the case at bar.

The subpoena is not narrowly tailored to the specific claims in this matter. Requests for production of “all documents” are improper. *In re O’Hare*, 2012 WL 1377891, at *2. The unreasonable breadth of the subpoena is apparent on the face of the subpoena. The sweeping requests for production encompass virtually every document, medical bill, medical record or

communication in every claim handled by Gallagher and would require a review of all claims to even determine whether the claim involved anesthesia services, then a deeper dive to identify responsive documents. This overbreadth is the exact type of fishing expedition that courts routinely condemn as unduly burdensome and inappropriate – especially as directed to a non-party. *Wiwa*, 392 F.3d at 818 (the breadth of a document request is a key factor in assessing whether a subpoena is unduly burdensome).

The scope of the subpoena seeks wholly irrelevant or documents only tangentially related to the litigation. For example, contracts with Gallagher clients or claim information for anyone in Texas who received anesthesia services from any health care provider vastly exceeds the scope of what is necessary to resolve the issues in this lawsuit. The subpoena also seeks sensitive financial, business and healthcare information from clients of Gallagher or patients. The unreasonable breadth and undue burden of U.S. Anesthesia’s requests are apparent on the face of the subpoena, and therefore, the Motion to Compel should be denied.

U.S. Anesthesia has categorically refused to limit the scope of the subpoena by identifying specific claims it would like information on in response to the subpoena. A request for a company to search massive records to identify categories of documents and then further narrow the broad categories to specific claims is improper. But U.S. Anesthesia has consistently maintained that Gallagher must search its records to identify Gallagher clients. Especially given the fact that this requested information is only requested to refute a class certification, and as U.S. Anesthesia has not conducted the proportionality analysis, the Motion to Compel should be denied.

U.S. Anesthesia must be able to identify why it is in need of the documents and its importance to the litigation. *Andra*, 312 F.R.D. at 449. It has not done so. Per Rule 45, Courts should “make an effort to impose reasonable discovery limits” on discovery particularly when the

burden or expense of the proposed discovery outweighs its likely benefit. As demonstrated herein, the scope of these requests in the subpoena on their face are improper in that they are not limited in time or scope and do not seek discovery proportional to U.S. Anesthesia's discovery needs. This supports the objection that the requested topics of the subpoena are overly broad, unduly burdensome, and harassing. Accordingly, U.S. Anesthesia's Cross-Motion to Compel should be denied.

V.

OBJECTIONS

Gallagher objects to Requests for Production 1-4 on the following grounds:¹ Gallagher objects to these requests for production, which are identical other than the category of client sought. These requests fail to adequately identify the Gallagher clients from whom the discovery is sought. There is no basis to support U.S. Anesthesia's request for Gallagher to sort through its vast number of clients in an effort to identify the size of the client and the number of beneficiaries each client may have located in the State of Texas. Gallagher would have no way of identifying this information within its own records. These requests are further objectionable as they are not limited in time or scope. These requests are facially overbroad and it would be unduly burdensome to require Gallagher to compile responsive records. These requests are also objectionable as they seek confidential proprietary and privileged business records, including records of Gallagher clients. These requests are so broad that they implicate individual patient's HIPAA protected privacy rights. Gallagher objects to these discovery requests as being vague, ambiguous, overly

¹ These objections are identical to the objections set forth in Gallagher Motion to Quash and for Protection, but are reiterated here again as a precaution given U.S. Anesthesia's filing of a separate motion on the subpoena.

broad, harassing and unduly burdensome. Gallagher objects to these requests as seeking documents, which are not relevant or proportional to the discovery needs in this litigation.

Gallagher objects to Request for Production No. 5 on the grounds that a request for production of “all documents and communications between You, on the one hand, and any named Plaintiffs, on the other” is vague, ambiguous, overly broad, burdensome, and harassing. A request for production of “all documents and communications” is not narrowly tailored and constitutes a fishing expedition. The request is broad enough to encompass even casual communications that have nothing to do with the subject matter of this litigation. Further, the request is broad enough to seek communications with entities who are not a party to this litigation, thus, it is not proportional to the discovery needs of this lawsuit. Gallagher objects to the production of confidential and proprietary business records and confidential HIPAA protected healthcare information. Gallagher objects as this request seeks documents which are not relevant or proportional to the discovery needs in this lawsuit.

Gallagher objects to Request for Production No. 6 on the grounds that the request is overly broad, burdensome and harassing. Gallagher further objects that the request is vague and ambiguous and amounts to nothing more than a fishing expedition. Gallagher asserts that the request for production is not relevant or proportional to the discovery needs in this lawsuit. This request is not limited to information regarding U.S. Anesthesia or the subject matter of this lawsuit, nor is there any limitation of time or scope of the subpoena. This request seeks “all documents” regarding anesthesia services provided in Texas for six categories of information. It is not limited to the subject matter of this lawsuit.

Gallagher objects to Request for Production No. 7 on the grounds that it seeks production of legislation and laws regarding payment of anesthesia services. U.S. Anesthesia has equal access

to legislation and laws and the request is vague and ambiguous because it is not narrowly tailored and seeks “all documents.” Gallagher further objects to the extent this request seeks confidential and proprietary business records of Gallagher. U.S. Anesthesia has not made a showing of how this request is relevant or proportional to the discovery needs in this case. The request is objectionable as being overly broad, vague and ambiguous. It would be unduly burdensome for Gallagher to have to speculate as to what legislation and laws U.S. Anesthesia seeks documents regarding and then to attempt to locate any such responsive document.

Gallagher objects to Requests for Production 8-11 on similar grounds to Requests for Production 1-4. Requests for Production 8-11 seek “all Documents and Communications related to Direct Employer Contracts for Your clients for Anesthesia Services between You, on the one hand, and employers or brokers in Texas on the other” for four different categories of clients. The request for “all documents and communications” is not defined with particularity and is vague and ambiguous. The requests are also overly broad, unduly burdensome and harassing. These requests fail to adequately identify the Gallagher clients from whom the discovery is sought. There is no basis to support U.S. Anesthesia’s request for Gallagher to sort through its vast number of clients in an effort to identify the size of the client and the number of beneficiaries each client may have located in the State of Texas. Gallagher would have no way of identifying this information within its own records. These requests are further objectionable as they are not limited in time or scope. These requests are facially overbroad and it would be unduly burdensome to require Gallagher to compile responsive records. These requests are also objectionable as they seek confidential proprietary and privileged business records, including records of Gallagher clients. These requests are so broad that they implicate individual patient’s HIPAA protected privacy rights. Gallagher

objects to these requests as seeking documents, which are not relevant or proportional to the discovery needs in this litigation.

VI.

REQUEST FOR PAYMENT

Gallagher has established that it would be a burden to respond to this discovery – especially considering that the discovery sought is disproportionate to the claims in this litigation. Therefore, to the extent the Court permits any aspect of this subpoena, Gallagher requests that it be compensated for the time and legal fees associated with responding to the subpoena. FED. R. CIV. P. 45(d)(1). As the affidavit of Mr. Wall demonstrates, Gallagher will incur significant costs and expenses to comply with the subpoena will involve review of millions of pages of documents and countless number of individual claim files. See Exhibit A. This would take months to comply with the subpoena and would result in a significant disruption of Gallagher’s daily business operations. In keeping with the rules of civil procedure and caselaw, a non-party, such as Gallagher, should not be forced to bear the financial burden of complying with overly broad and unduly burdensome subpoenas, particularly when the requesting party has failed to take reasonable steps to minimize this burden by even searching its own files for responsive information. *Andra Grp.*, 2015 WL 1636602, at *5. Therefore, U.S. Anesthesia should be charged with paying all costs associated with responding to this subpoena.

VII.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Non-Party **GALLAGHER BASSETT SERVICES, INC.** hereby respectfully prays that U.S. Anesthesia’s Cross-Motion to Compel be

in all things denied, and the Court provide **GALLAGHER BASSETT SERVICES, INC.** with such other relief to which it is justly entitled, and for which it will ever pray.

Respectfully submitted,

AYERS & AYERS

By: /s/ Deanne C. Ayers

Deanne C. Ayers

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**ATTORNEYS FOR NON-PARTY GALLAGHER
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AI CERTIFICATE

The undersigned preparer of this filing certifies that no portion of the filing was drafted by Artificial Intelligence (“AI”) nor was AI utilized in drafting the foregoing document.

/s/ Deanne C. Ayers

Deanne C. Ayers

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing document has been this the 25th day of February, 2026, served on each party who has appeared herein, by and through its attorney of record, via e-service.

/s/ Deanne C. Ayers

Deanne C. Ayers

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

ELECTRICAL MEDICAL TRUST, et al., §

Plaintiff, §

VS. §

CASE NO. 4:23-CV-04398

U.S. ANESTHESIA PARTNERS, INC., §
et al., §

Defendants. §

AFFIDAVIT/DECLARATION OF GALLAGHER BASSETT

BEFORE ME, the undersigned authority, personally appeared Cameron Wall, who, being by me duly sworn, deposes as follows:

1. My name is Cameron Wall. I am over the age of eighteen, have never been convicted of a felony or crime involving moral turpitude. The facts contained herein are true and correct based on my personal knowledge.

1. I am employed by Gallagher Bassett Services Inc. ("Gallagher"). My job title is Litigation Counsel. In that capacity and based on my tenure with Gallagher, I am familiar with the use of its computer system, claims handling, use of vendors, personnel matters, claim processing, retention of documents, and file retention. I am familiar with the manner in which Gallagher stores and retrieves records and the records and costs associated with the retrieval, review, and production of documents. I am the authorized representative for Gallagher for the purpose of determining costs and time involved in responding to discovery submitted in this litigation.

2. I have personal knowledge of the matters set forth in this declaration. Gallagher is a third-party administrator that adjusts claims on behalf of its clients. Gallagher is not an insurance company and does not issue insurance policies or ERISA plans. Gallagher is not an insurance broker. Gallagher does not make medical decisions with regard to medical necessity. Gallagher does not set payment schedules regarding the amount that should be or may be charged for any particular medical service.

3. I have reviewed the subpoena to produce served on Gallagher by U.S. Anesthesia Partners, Inc., ("U.S. Anesthesia") which is dated December 3, 2025. See Exhibit 1. The documents requested are not relevant or proportional to any discovery needs in this case. The documents requested in the subpoena are overly broad, unduly burdensome, and harassing. The requested documents seek confidential and proprietary

business records of Gallagher and its clients and/or business associates. As Gallagher does not aggregate data of the nature requested by the subpoena, Gallagher would be compelled to conduct a survey of every one of its branch offices and potentially all clients in order to attempt to comply with the subpoena.

4. Gallagher does not aggregate data of the nature requested in the subpoena served by U.S. Anesthesia. The information sought is not available in a format that can be queried within Gallagher's electronic system. Gallagher's claim system does not contain information that can identify information as requested by the discovery requests, through computer-based queries.

5. U.S. Anesthesia's request does not identify any specific client for which it seeks documents. Instead, the subpoena asks that Gallagher identify and pick 70 different clients to provide documentation based on the size and type of the client. (See Requests for Production 1-4). U.S. Anesthesia then asks for twenty-one different categories of documents for each of those 70 different clients. These categories are not limited to U.S. Anesthesia or the subject matter of this lawsuit. Nor are these requests limited in time. These requests seek documentation, including documents provided by an insurance broker and final renewal packages from the plan(s).

6. Gallagher does not maintain a list of clients based on the number of a client's potential beneficiaries. Gallagher also does not maintain a list of the number of a client's beneficiaries that are located in Texas. Gallagher does not segregate clients based on whether they are a federal or state governmental entity. Thus, these discovery requests would require Gallagher to contact all of its clients and insureds of its carrier clients to ask the nature of their business, and the number of the client's beneficiaries located within Texas. It is unknown whether these entities would even respond or how long it would take them to respond. Then Gallagher would have to attempt to locate documentation on the twenty-one categories of requested documentation.

7. Requests for Production 5-7 are also overly broad and do not specifically identify the requested documents. Requests for Production 5-7 do not contain any limitation of time or subject matter.

8. Request for Production No. 5 requests "all documents and communications" between Gallagher and any named Plaintiff. As worded, the document could be interpreted to involve any plaintiff in any lawsuit ever filed and is not limited to medical care, claim handling or pricing of medical care.

9. Request for Production No. 6 is objectionable in that it asks for "all documents reflecting or relating to provider networks for anesthesia services in Texas and asks for six different categories of information, which have no relevance to the claims against U.S. Anesthesia. Request for Production No. 6 is not limited to any number or category of client. Thus, the request would require Gallagher to search every client who may have had a beneficiary located in Texas and then provide the six categories of information. The request is also not limited to U.S. Anesthesia but rather seeks

documentation for any anesthesia services performed in Texas, even if a client never had a beneficiary seek care with U.S. Anesthesia. This request also seeks confidential business records regarding entities that have no relationship to U.S. Anesthesia. Most agreements with third parties have confidentiality clauses. Further, producing such documents could be detrimental to both Gallagher and its clients from a market/business competition point of view.

10. Request for Production No. 7 is objectionable in that it seeks “all documents reflecting or relating to regulatory compliance or changes in law affecting Your administration of claims for Anesthesia Services in Texas” for four different categories. To the extent this request seeks federal or state legislation or laws, U.S. Anesthesia has equal access to such legislation or laws. This request also presents an undue burden in that it is not narrowly tailored to seek a specific document. Production of internal policies, procedures concerning implementation of regulatory requirements and any analysis of how legislation and laws impact out of network anesthesia claims, seeks confidential business information, the disclosure of which will not further any discovery needs in the case at bar.

11. Similarly to Requests for Production 1-4, Requests for Production 8-10 ask for Gallagher to identify clients that fall within a certain category and then provide “all documents and communications.” These requests are not narrowly tailored or limited in time or scope. In addition to the difficulties in identifying the clients as discussed above in paragraphs 5-6 (which are incorporated herein), Requests for Production 8-11 are also unduly burdensome. Gallagher cannot specifically identify the precise category of documents requested. These requests are also objectionable in that seek confidential and proprietary business documents between Gallagher and its clients and other providers of anesthesia services who have no involvement in the subject matter of this lawsuit. Further, to the extent such documents contain confidentiality clauses, Gallagher would need protection from discovery or be subjected to a breach of agreement claim. Production of these requested documents would also subject competitors of U.S. Anesthesia to unfair competition by allowing their direct competitor access to their confidential business records.

12. The subpoena fails to identify any particular client of Gallagher for whom records are sought. Instead, Gallagher is to review its files to determine what files fall within the scope of the subpoena. By way of example to demonstrate the time involved in this process, Gallagher has previously conducted reviews to determine the time expenditure to review claim files to isolate information for subpoena responses. Gallagher has determined that it takes an average of 66.75 minutes to review each claim file.

13. Even using the average time for review, it would take 302,378,434.50 hours to review only the workers’ compensation files opened by Gallagher beginning November 21, 2013, through November 21, 2023. Gallagher arrives at this figure by multiplying the average time to review a file (66.75 minutes) by the number of workers’ compensation files Gallagher opened during this time period. The projected calculation does not take into account the number of hours to administratively gather the files and oversee the

review. Given the request for documents served, Gallagher would have to retain temporary staffers to complete the review. Contract adjusters are typically paid up to \$25.00 per hour. This would cost (302,378,434.50 hours to review times \$25.00 per hour) an burdensome amount and does not include expenses associated with the space and computer access for the review to occur. Additionally, Gallagher's attorneys would have to review any documents identified to confirm whether they truly are responsive to the request and oversee redaction of confidential information.

14. Claim files include highly confidential, proprietary, and privileged information regarding Gallagher, insurers, employers, workers, third parties, pending claims, pending litigation, protected medical information and confidential financial information. Many jurisdictions require that claim file material be maintained as confidential records. This data would have to be reviewed, and confidential, privileged, and proprietary data would need to be redacted.

15. The estimates contained herein are based on Gallagher's best good faith effort to gather information about the costs and time frame associated with responding to the discovery requests based on the information known at the time of the signing of this affidavit and are subject to modification should additional information be learned.

FURTHER AFFIANT SAITH NOT.

SIGNED this 14 day of January 2026.

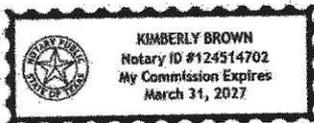
Cameron Wall

Cameron Wall (Jan 14, 2026 12:58:52 CST)

Cameron Wall, Affiant

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

BEFORE ME, the undersigned authority, appeared Cameron Wall, known to me to be the person whose name is subscribed hereto and who stated to me under oath that he/she signed the foregoing instrument for the purpose and considerations therein expressed. to certify which witness may hand and seal of office on this 14th day of January 2026.



Kimberly A. Brown

Kimberly A. Brown (Jan 25, 2026 13:48:36 CST)

Remote Notary Public, State of Texas
My Commission Expires: 03/31/2027

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

ELECTRICAL MEDICAL TRUST, *et al.*,

Plaintiff,

vs.

U.S. ANESTHESIA PARTNERS, INC., *et al.*,

Defendant.

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CAUSE NO. 4:23-CV-04398

ORAL ARGUMENT REQUESTED

**ORDER ON U.S. ANESTHESIA PARTNERS, INC.’S CROSS-MOTION TO
COMPEL NON-PARTY GALLAGHER BASSETT SERVICES, INC.
TO COMPLY WITH SUBPOENA**

ON THIS DATE, came on for consideration U.S. Anesthesia Partners, Inc.’s Cross-Motion to Compel Non-Party Gallagher Bassett Services, Inc. to Comply with Subpoena. Having considered the Motion, any response, reply and the pleadings on file, the Court hereby DENIES U.S. Anesthesia Partners, Inc.’s Cross- Motion to Compel Non-Party Gallagher Bassett Services, Inc. to Comply with Subpoena:

Dated: _____

UNITED STATES DISTRICT COURT JUDGE