

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

ELECTRICAL MEDICAL TRUST, *et al.*, §
§
Plaintiff, §
§
vs. § CAUSE NO. 4:23-CV-04398
§
U.S. ANESTHESIA PARTNERS, INC., *et al.*, §
§
Defendant. § **ORAL ARGUMENT REQUESTED**

**NON-PARTY GALLAGHER BASSETT SERVICES, INC.’S REPLY TO PLAINTIFF’S
RESPONSE TO MOTION TO QUASH SUBPOENA AND MOTION FOR PROTECTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Non-Party, **Gallagher Bassett Services, Inc.** (“Gallagher”) and files this its Reply to Plaintiff’s Response to Motion to Quash Subpoena and Motion for Protection:

I. Defendant Does Not Explain Why Such Discovery Is Proper Against A Non-Party

When assessing the scope of a subpoena served on a non-party, the Court has broad discretion when evaluating whether compliance with the subpoena amounts to 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). Further, the request for production of “all documents” on broad subjects have been held to be improper requests to a non-party. *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 v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004); *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)).

Defendant has not shown why non-party Gallagher should be compelled to incur the significant time and expense to respond to the broad categories of documents sought in the subpoena. Most significantly, theoretically Defendant should already been in possession of its own records reflecting the reimbursements for the subject matter of the lawsuit. A non-party should not be compelled to perform the work Defendant needs to support its defenses to the lawsuit. It almost appears that Defendant is conducting a fishing expedition in hopes that the non-party will package the evidence Defendant needs instead of requiring Defendant to search its own files to gather documents to support its position. That is not a proper use of a non-party subpoena.

Non-party Gallagher has no direct involvement in the subject matter of this lawsuit. Requiring Gallagher to search for and compile responsive documents would severely disrupt Gallagher's business. It would cause Gallagher undue hardship and financial burden to respond to the subpoena. Further, responding to the subpoena would expose Gallagher to potential confidentiality, HIPAA and business risks for the disclosure of requested documents. A Court is permitted to quash a subpoena seeking such confidential information. FED. R. CIV. P. 45(d)(3)(B); *In re Remington Arms Co., Inc.*, 952 F.2d 1029, 1032 (8th Cir. 1991).

II. Defendant Has Not Established Relevance or Addressed Proportionality Factors

Defendant 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). "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)). In evaluating the proportionality of a discovery subpoena, the following factors should be considered: "the importance of the issues at stake in the action, the amount in controversy, the parties relative access

to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefits.” 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).

Especially as applied to a non-party, the proportionality considers must be given even more emphasis than for a party. Defendant simply has failed to inform the Court why it would be appropriate to shift Defendant's burden of defending this lawsuit to non-parties who have no involvement in the litigation. Especially since Defendant cannot specifically identify why Defendant cannot glean this information from its own files.

III. Subpoena Would Be An Undue Burden

While Defendant's Response questions the supporting evidence demonstrating the difficulty in responding to the subpoena, Defendant's conclusory statement that it should not take that long lacks any factual basis. Gallagher is not required to keep its records in a format that is readily available to Defendant. Gallagher submitted an affidavit detailing with specificity how it reached its determination of how long it would take to search for responsive information. This evidence is uncontested. In fact, Defendant's Response notes that Gallagher receives over 800,000 new claims annually. Doc. 186, Pg. 4. Since Defendant seeks information over an 8 year period, Defendant is inquiring into 6,400,000 claims – that is not narrowly tailored.

Gallagher is a third party administrator who adjusts individual claims on behalf of clients. Gallagher simply does not compile the type of data sought by Defendant. Responding to the subpoena would require review of claim files individually in an attempt to locate responsive documents. The subpoena is even more objectionable in that Defendant does not even attempt to

define clients to review for responsive documents. Instead, Defendant asks a non-party to attempt to identify categories of clients, randomly select claims for those clients and produce “all documents.” Defendant fails to even define how the requested documents are relevant to the discovery needs in this lawsuit. Defendant must be able to identify why it is in need of the documents and its importance to the litigation. *Andra Group, LP v. JDA Software Group, Inc.*, 312 F.R.D. 444, 449 (N.D. Tex. 2015). Because the subpoena is overbroad on its face and not particularized, Gallagher requests that the Court quash the subpoena entirely.

IV. Cost Shifting is Warranted if Subpoena is Not Quashed

In the event the subpoena is not quashed, Gallagher is entitled to payment of the costs associated with responding to the subpoena. *Andra*, 312 F.R.D. at 458-59 (non-parties 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). Accordingly, Gallagher requests payment for the time, business disruption and legal fees incurred in order to respond to the subpoena.

V. Defendant’s Response Confirms Conferral Was Performed

While Defendant asserts that no conferral on the motion occurred, Defendant’s Response disproves that allegation.¹ Defendant’s Response confirms that the parties conferred on December 10, 2025 and January 13, 2026. Doc. 186, Page 4. Defendant’s Response also states that it conferred on a Cross-Motion on the same subject; it is illogical to say that the parties conferred on the Cross-Motion but not the Motion to Quash and for Protective Order. A conferral does not mean that Gallagher must simply agree with any proposal by Defendant, not matter how

¹ Although Defendant directed Gallagher to confer with its counsel, Alex Allred, Gallagher has now learned that Mr. Allread was not authorized to appear in this matter until January 29, 2026 (Doc. 185).

unreasonable. The fact that Defendant refused to agree to a more reasonable, limited scope of the subpoena and instead chose to file a Cross-Motion demonstrates that no agreement could be reached necessitating the need for the filing of this Motion to Quash Subpoena and Motion for Protection.

WHEREFORE, PREMISES CONSIDERED, Non-Party **GALLAGHER BASSETT SERVICES, INC.** hereby respectfully prays that the subpoena served on Gallagher be quashed and not reissued, 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

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AI CERTIFICATE

The undesigned 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 14th day of January, 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