

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

ELECTRICAL MEDICAL TRUST, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 4:23-cv-04398

**ORAL ARGUMENT
REQUESTED**

**USAP’S REPLY IN SUPPORT OF CROSS-MOTION TO COMPEL NON-PARTY
GALLAGHER BASSETT SERVICES INC. TO COMPLY WITH SUBPOENA**

INTRODUCTION

Gallagher’s opposition memorandum (Dkt. 198, “Opposition” or “Opp.”) rests on two flawed premises: (1) that USAP can accomplish its objectives by simply searching its own files; (2) that complying with the Subpoena would require a Herculean seven-million-hour review. Both arguments fail. *First*, USAP’s own records cannot substitute for Gallagher’s because they answer entirely different questions. *Second*, Gallagher’s burden calculation is not a measure of what USAP asked for, it is a measure of Gallagher’s refusal—for months—to simply pick up the phone.

ARGUMENT

I. USAP’S OWN DOCUMENTS CANNOT SUBSTITUTE FOR TPA FILES

Gallagher first insists that USAP should “search[] its own files” rather than burdening a non-party. Opp. at 1–2, 7, 17. This argument fundamentally misunderstands what USAP seeks and why.

USAP’s billing records are one-sided. They reflect merely what USAP billed and what was ultimately paid. Those records reveal nothing about the payor side of the transaction—how Gallagher’s client plans were structured to pay for anesthesia claims, what Administrative Services Agreements (“ASAs”) or fee schedules governed those payments, how individual claims were adjudicated and adjusted, or what Gallagher and its clients communicated about reimbursement

rates for Texas anesthesia services, including from other anesthesia providers. Those documents were never in USAP's possession because USAP was never a party to them.

These documents are plainly relevant to this dispute. Plaintiffs allege that USAP's conduct uniformly inflated prices across all class members. USAP's position is that payment amounts varied dramatically based on individualized plan structures, negotiated contracts, and payor-specific claims protocols—differences that should defeat Plaintiffs' ability to prove injury and damages with common evidence. *See Robinson v. Texas Auto. Dealers Ass'n*, 387 F.3d 416, 423 (5th Cir. 2004) (emphasizing the “realities of the haggling that ensues in the American market” as a relevant factor for class certification in the antitrust context). That is, the evidence that will prove or disprove Plaintiffs' uniformity theory—that market conditions predominate among similarly situated plans—lives in Gallagher's (and other TPAs') documents, not USAP's. Gallagher's plan-level documents, ASAs, fee schedules, Direct Employer Contracts, and claims adjustment histories are simply not duplicates of USAP's files: they are portions of the story—including related to pricing for other anesthesia providers—that USAP's records will never tell.

Gallagher's argument, taken to its logical end, would immunize any TPA from a third-party subpoena so long as the serving party has its own billing data. No court has adopted that rule.

II. GALLAGHER'S PERCEIVED BURDEN IS OF ITS OWN MAKING

The centerpiece of Gallagher's Opposition is Mr. Wall's affidavit and calculation that a full review of “6.4 million claims” over eight years would take 7,120,000 hours. *See Opp.* at 8. This figure has nothing to do with what USAP sought, and Gallagher never engaged with USAP long enough to figure that out.

The record tells a simple story: USAP first served its Subpoena and then, for months, sought only the most basic engagement: a cost-and-response proposal followed by a substantive meet-and-confer. Gallagher's counsel repeatedly promised to provide said proposal, but then continuously went silent. *See e.g. Exhibit A*. Counsel likewise refused USAP's repeated requests to meet and confer. *See Exhibit B*. Indeed, it wasn't until February 5, 2026—after Gallagher had

moved to quash—that Gallagher’s counsel finally responded. *Id.* The parties finally met (somewhat successfully) on February 26, but have thus far been unable to reach an acceptable compromise. *See generally* **Exhibit C**.

As reiterated during that call, Gallagher’s burden objections related to the sampling selection (of clients) are a red herring. Gallagher claims that it “does not maintain a list or organize its client[s] based on the size and type of client.” Opp. at 8. USAP has offered *multiple* accommodations to resolve this objection, including either a) that Gallagher could provide its sampling based on self-identified “large,” “medium,” and “small”-sized clients, or b) that Gallagher could simply offer up a list of clients and USAP could choose a sampling for them. *See* Ex. C at 1.; Opposition to Motion to Quash (Dkt. 186), at 8–9. Simply put, even if these objections are genuine, they have already been addressed by USAP. Despite these offerings, Gallagher has maintained its position that it is unable and unwilling to identify its clients and cannot therefore search for responsive material. Gallagher is a sophisticated business; that position strains credulity and is neither an objection nor a good faith reason for refusing to comply.

Gallagher’s burden calculation also mischaracterizes the Subpoena itself. The primary documents USAP seeks—ASAs, plan documents, Group Health Plan Documents, fee schedules, Direct Employer Contracts, and external communications about anesthesia reimbursement—are plan-level business records maintained at the client file level. They are not plausibly stored claim-by-claim. Mr. Wall’s 66.75 minutes-per-claim calculation addresses just that—a claim-by-claim scrub that USAP never demanded, but expressly offered to avoid through a targeted client list and a tiered sampling protocol. Gallagher’s Opposition does not acknowledge, let alone rebut, either offer.

Moreover, Gallagher’s Opposition further ignores the plain text of the Subpoena. Gallagher complains that USAP’s requests “are not limited by any date” (Opp. at 7), but Instruction 2 plainly limits the requests to “the period January 1, 2018 to the present.” Dkt 181-1 at 11. And far from requiring documents from “any plaintiff in any lawsuit ever filed” (Opp. at 11), USAP’s use of the term “Plaintiffs” is clearly cabined in Definition # 20 to Plaintiffs “Electrical Medical Trust and

Plumbers Local Union No. 68 Welfare Fund.” Dkt 181-1 at 4. A simple reading of the plain language of the Subpoena reveals most of Gallagher’s burden objections to be baseless.

Non-parties seeking protection under Rule 45 must engage in good faith with narrowing efforts—they cannot manufacture crushing burden by refusing every accommodation and then pointing to the resulting avalanche as grounds for relief. *Andra Grp., LP v. JDA Software Grp., Inc.*, 312 F.R.D. 444, 449 (N.D. Tex. 2015) (noting that the party moving to quash “has the burden of proof to demonstrate ‘that compliance with the subpoena would be unreasonable or oppressive’”) (quoting *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004)); see also FED. R. CIV. P. 45(d)(1) (requiring the serving party to take reasonable steps to avoid undue burden). USAP has made narrowing proposals in good faith. Gallagher chose not to negotiate with USAP or file timely responses and objections; it must now comply with the Subpoena.

III. EVEN IF ANY BURDEN REMAINS, THE COURT SHOULD NARROW THE SUBPOENA, NOT QUASH IT

To the extent the Court finds any of the requests overbroad as drafted, the appropriate remedy is modification, not quashing. See FED. R. CIV. P. 45(d)(3)(A); *Wiwa*, 392 F.3d at 818. USAP remains willing to: (1) provide Gallagher with a curated list of clients to search from; (2) accept a tiered sampling of “large, mid-size, and small” clients *selected by Gallagher*; and/or (3) share reasonable production costs. If nothing else, the Court should order the parties to meet and confer within seven days to implement such a framework, with an order compelling production of at least plan-level documents (ASAs, SPDs, fee schedules, Direct Employer Contracts) on a rolling basis within thirty days.¹

CONCLUSION

For the foregoing reasons, USAP respectfully requests that this Court issue an order: a) granting USAP’s Cross-Motion to Compel; b) granting USAP’s reasonable attorneys’ fees and

¹ HIPAA and confidentiality concerns are addressed by the existing Protective Order and do not justify quashing. See 45 C.F.R. § 164.512(e); see Cross-Motion to Compel (Dkt. 187), at 9.

costs associated with bringing this Cross-Motion; and c) any such other and further relief as the Court deems appropriate.

DATED: March 4, 2026

Respectfully submitted,

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Kenneth M. Fetterman (D.C. Bar No. 474220) (Pro Hac Vice)
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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March, 2026, I caused to be filed the foregoing Reply in support of Cross-Motion to Compel with the Court through ECF filing, which caused a copy to be sent to all counsel of record.

/s/ Julianne Jaquith

EXHIBIT A

From: Aseem Chipalkatti
Sent: Saturday, January 17, 2026 8:26 PM
To: Deanne Ayers; Kimberly Brown
Cc: Picard, Alyssa J.; Jack Simms; Alex Allred
Subject: RE: Electrical Medical Trust v. U.S. Anesthesia Partners

Deanne,

On January 13's meet-and-confer, you stated that your paralegal, Kimberly Brown, had sent us a cost and response proposal pertaining to our September 29 subpoena to Gallagher's brokerage arm. When we informed you that we had never received any such cost and response proposal, you promised to send it "within an hour" and also make yourself available for a follow-up discussion. We **still** have not received Gallagher's cost and response proposal, and you have not responded to our follow-up messages.

Your continued evasion of our attempts to meet-and-confer on this subpoena leaves us no other choice but to believe that you are not operating in good-faith. It has been months and USAP has yet to see any documents from Gallagher. Please provide us with your availability for a meet and confer to on this issue as soon as possible.

Thanks,

Aseem

Aseem Chipalkatti (*he/him*)
Associate
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From: Aseem Chipalkatti
Sent: Tuesday, January 13, 2026 4:22 PM
To: Deanne Ayers <dayers@ayersfirm.com>; Kimberly Brown <kim@ayersfirm.com>
Cc: Picard, Alyssa J. <apicard@kellogghansen.com>; Jack Simms <jacksimms@quinnemanuel.com>; Alex Allred <alexallred@quinnemanuel.com>
Subject: RE: Electrical Medical Trust v. U.S. Anesthesia Partners

Deanne,

On today's meet-and-confer, you indicated that you or Kim would be sending the cost and response proposal for the Gallagher broker subpoena within an hour. We have not yet seen this come across. Please transmit this by the close of business, today, so that we might review and respond.

Thank you,

Aseem

Aseem Chipalkatti (he/him)
Associate
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From: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Sent: Monday, January 12, 2026 7:56 AM
To: Deanne Ayers <dayers@ayersfirm.com>
Cc: Kimberly Brown <kim@ayersfirm.com>
Subject: Re: Electrical Medical Trust v. U.S. Anesthesia Partners

Yes, that works

Aseem Chipalkatti (he/him)
Associate
Quinn Emanuel Urquhart & Sullivan, LLP

From: Deanne Ayers <dayers@ayersfirm.com>
Sent: Monday, January 12, 2026 7:34:37 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Cc: Kimberly Brown <kim@ayersfirm.com>
Subject: Re: Electrical Medical Trust v. U.S. Anesthesia Partners

[EXTERNAL EMAIL from dayers@ayersfirm.com]

Aseem-

My afternoon tomorrow is booked. Tomorrow I have 10ET open. Can you accommodate?

Sent from my iPhone

On Jan 9, 2026, at 11:55 PM, Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com> wrote:

Hi Deanne,

Sorry to have missed your earlier message. Are you free at either 2:30 PM or 3:00 PM Eastern on the 13th?

Thanks,

Aseem

Aseem Chipalkatti (*he/him*)

Associate

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From: Deanne Ayers <dayers@ayersfirm.com>

Sent: Friday, January 9, 2026 9:34 PM

To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>

Cc: Kimberly Brown <kim@ayersfirm.com>

Subject: Re: Electrical Medical Trust v. U.S. Anesthesia Partners

[EXTERNAL EMAIL from dayers@ayersfirm.com]

Following back, Deanne

Sent from my iPhone

On Jan 8, 2026, at 12:46 PM, Deanne Ayers <dayers@ayersfirm.com> wrote:

Aseem:

Are you available for a call to discuss the expense issue? I have availability at any time on 1/13. Is there a time that date that would work for you?

Deanne C. Ayers
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Licensed in Arizona | Colorado | Kentucky | Massachusetts | Minnesota | Montana | New York | Oklahoma | South Dakota | Texas

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EXHIBIT B

From: Jack Simms
Sent: Thursday, February 5, 2026 12:15 PM
To: Deanne Ayers
Cc: Julie Tebbets; Deanne Ayers; Julianne Jaquith; Alex Allred; Shane Flanagan; Liz Devaney; Aseem Chipalkatti
Subject: FW: Electrical

Deanne,

Thank you for your email. As we have previously advised you, we have never received from you or anyone at your firm a proposal with estimated costs. We have reviewed our email and Mimecast systems and represent to you, again, we have never received it. During our January 13 meet-and-confer, you claimed that your paralegal had sent us a cost proposal in mid-December. We told you that we had received no such proposal, and you promised to send it within an hour. But we have received neither a proposal nor a response to our emails of January 13, 17, 19, and 27 asking for an update on that proposal and to meet-and-confer about the substance of the subpoena.

Please send us your proposed cost estimate by the close of business Friday, February 6 so that we may review and share with our client. We can then discuss the other elements of your proposal you suggest below. Again, we appreciate your email, look forward to your response, and working to resolve this efficiently. Please direct all future correspondence to my direction.

Thank you,

Jack

Jack Simms
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From: Deanne Ayers <dayers@ayersfirm.com>
Sent: Thursday, February 5, 2026 12:01:09 AM
To: Aseem Chipalkatti <aseemchipalkatti@quinnemanuel.com>
Subject: Electrical

[EXTERNAL EMAIL from dayers@ayersfirm.com]

Hello Aseem-

Has your client agreed to proceed to pay the estimated costs? Likewise, please advise whether your client will limit the request to Texas and five total clients. I am available to schedule a call. Best- Deanne Ayers

Sent from my iPhone

EXHIBIT C

quinn emanuel trial lawyers | austin, tx

300 West 6th Street, Suite 2010, Austin, Texas 78701 | TEL (737) 667 6100; FAX (737) 667 6110

WRITER'S DIRECT DIAL NO.
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jacksimms@quinnemanuel.com

February 26, 2026

CONFIDENTIAL
VIA E-MAIL

Deanne C. Ayers
Ayers & Ayers
4205 Gateway Drive, Suite 100
Colleyville, TX 76034

Re: *Electrical Medical Trust, et al. v. United States Anesthesia Partners, et al.*, No. 4:23-cv-04398; Gallagher <> USAP Motion Practice

Dear Deanne:

Thank you for making time to speak with us this morning. We write to memorialize the key points of our discussion and to confirm the path forward we've agreed upon, with the hope of resolving USAP's outstanding subpoenas to your clients.

Gallagher has expressed a concern—which we respectfully disagree with—that the documents it holds may not be of the type or relevance USAP is ultimately seeking. To address that concern cooperatively, we agreed on today's call that Gallagher will produce, as a threshold matter, three complete client files responsive to the subpoena¹—one for a “small” client, one for a “mid-sized” client, and one for a “large” client—with identifying information appropriately redacted. This will allow us to “look under the hood” so to speak and confirm whether Gallagher's files contain the categories of documents we believe they do (and are seeking), which will inform

¹ Meaning Gallagher Bassett will search for and produce as available that client's: Administrative Services Agreements, including statements of work or scope of services documents such as exhibits, appendices, amendments, restatements, etc.; The Group Health Plan Document, including any documents treated as part of the plan; Certificate of Coverage Booklet/Evidence of Coverage Booklet; Claims Processing Agreements; Preferred Provider Agreements; Bundled Payment Arrangements; Reference-Based Pricing Agreements; Shared Savings Arrangements; and all other documents listed in Request for Production No. 1.

our further discussions about scope. We thank you for that accommodation and look forward to receiving those files promptly.

For the avoidance of doubt, this agreement is without prejudice to any position either party has taken or may take, and neither side waives any rights under the subpoena, the Federal Rules of Civil Procedure, or any pending motion. We reiterate our upcoming motion and discovery deadlines as the reason for our urgency.

We recognize that you are in trial next week, and we respect the demands that places on your schedule. However, as discussed, our Reply ISO USAP's Cross-Motion to Compel is due next week, and the current briefing before the Court necessarily informs how we characterize Gallagher's cooperation—or lack thereof—in that filing and future correspondence with the Court. Given the active motion practice and the impending deadline, we must respectfully request that Gallagher produce the three sample client files described above by **Thursday, March 5, 2026**. We understand from our discussions that you are able to contact your client's corporate counsel and instruct them to pull these documents. Given that context, we believe this is a reasonable and limited ask that should be achievable even in light of your trial schedule.

We remain committed to resolving this matter cooperatively and appreciate your willingness to engage today. Please do not hesitate to reach out if you have any questions. USAP reserves all rights.

Best regards,

/s/ Jack Simms

Jack A. Simms, Jr.