No. 24-20051
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Guardian Flight, LLC,
Plaintiff-Appellee
v.
Medical Evaluators of Texas ASO, LLC
Defendant–Appellant

consolidated with

No. 24-20204
Guardian Flight, LLC; REACH Air Medical Services, LLC; CLASTAR Air Medical Services, LLC
Plaintiffs-Appellants

v.
Aetna Health, Incorporated; Kaiser Foundation Health Plan, Incorporated,
Defendants-Appellees

Appeal from the United States District Court for the
Southern District of Texas, Houston Division, Hon. Alfred H. Bennett
Civil Action Numbers 4:22-cv-03805 and 4:22-cv-03979

MEDICAL EVALUATORS OF TEXAS ASO, LLC'S REPLY TO GUARDIAN FLIGHT, LLC ET AL'S RESPONSE BRIEF

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TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

INTRODUCTION

Appellants Medical Evaluators of Texas ASO, LLC ("MET") submit this Reply Brief in response to the Cross-Brief filed by Appellee Guardian Flight, LLC in this cause.

From the outset, MET has never questioned that remanding vacated Independent Dispute Resolution (IDR) awards and protecting Certified Independent Dispute Resolution Entities (CIDREs) with arbitrator immunity are fundamental to the fair and efficient operation of the No Surprises Act (NSA). Such remand is implicit in MET's argument for arbitrator immunity. MET's focus always has been and remains on the detrimental effect of suing CIDREs because such suits destroy the NSA's overarching goal of quick and inexpensive dispute resolution. Recent developments—including the positions now taken by the government and Guardian in their Cross-Brief—affirm what MET has argued all along. This consistency underscores the strength and soundness of MET's position, grounded in well-established arbitration principles and judicial precedent.

This brief seeks to highlight how MET's stance has not only aligned with these emerging positions but has been the foundation upon which a coherent framework for IDR proceedings under the NSA must rest. By reiterating MET's long-held

arguments, this brief clarifies the path forward for the Court to ensure fairness and efficiency within the IDR process.

REMAND ON VACATUR OF IDR AWARD

MET has consistently argued that vacatur of an IDR award should result in remand to the IDR entity for rehearing, a position now echoed by the government and Guardian.

The Federal Arbitration Act (FAA) provides clear authority for this remedy. Section 10(e) of the FAA states that courts may, at their discretion, direct rehearings upon vacating an arbitration award if the agreement timeline permits. This mechanism ensures procedural fairness, maintains efficiency, and avoids unnecessary litigation burdens.

Guardian interestingly brings up the United States' position, arguing for a process by which the Court's decision to vacate the IDR award would trigger an automatic rehearing of the issue by the IDR. MET agrees entirely with this line of thinking. This is because this automatic rehearing process *already exists* for arbitrations. On vacatur and remand, the Court may, *in its discretion*, direct a rehearing by the arbitrators if the time within which the agreement that required the award to be made has not expired. 9 U.S.C.S §10(e) (emphasis added). Other courts have already taken advantage of this system. MET's position is supported by the decision in *Kashner Davidson Sec. Corp. v. Mscisz,* in which the First Circuit Court

of Appeals reversed a District Court's decision to affirm an arbitration award and remanded to the District Court for entry of an order vacating the award. *Kashner Davidson Sec. Corp. v. Mscisz*, 601 F.3d 19, 21 (1st Cir. 2010). The District Court obliged, vacating the award and directing the original arbitrator to rehear the case. *Id*. By advocating for remand, MET has consistently sought to align judicial remedies with statutory intent, ensuring that parties can achieve meaningful relief without reopening or duplicating proceedings.

The positions taken by Guardian and the government reinforce MET's argument, though MET's advocacy for this approach predated these endorsements. The statutory silence within the NSA regarding rehearings does not preclude courts from employing established arbitration principles. By recognizing remand as a discretionary remedy, the Court can resolve statutory ambiguities, promote judicial economy, and provide equitable outcomes for all parties. This process would solve the issues for both parties. For Guardian, their only reason for including MET in the original action, in their own words, was to preserve the Court's ability to order MET to rehear the issue. Guardian sought no monetary liability from MET, just a simple rehearing. For MET, this process would allow for IDR decisions to be appealed without having to include the IDR entity on the case, and incurring fees in answering and appearing in the case.

ARBITRATOR IMMUNITY

From the beginning, MET has emphasized the critical importance of arbitrator immunity for CIDREs. During the Motion Hearing on April 21, 2023, MET argued "the issue for [MET] is very narrow. It's whether we are entitled to immunity similar to that of an arbitrator. And as the Court is no doubt aware, our mutual immunity is nothing but an extension of the doctrine of judicial immunity, which has been implied in a number of different contexts to persons other than judges and arbitrators." (ROA.24-20204.2033). This protection ensures that IDR entities can operate without fear of litigation, safeguarding the neutrality and independence essential to their quasi-judicial role. The First Circuit in *New England Cleaning Servs., Inc. v. American Arbitration Ass'n* affirmed that arbitrator immunity is fundamental to maintaining the integrity of arbitration proceedings. *New England Cleaning Servs., Inc. v. American Arbitration Ass'n,* 199 F.3d 542, 545 (1st Cir. 1999).

Guardian, in their Cross-Brief, argue that MET's argument for arbitrator immunity puts the cart before the horse. However, as the IDR entity MET is, also justifiably, less concerned with the process by which Guardian can obtain its remedy and more concerned with the potential liability it could face should IDR entities not be granted arbitrator immunity.

Guardian's arguments questioning the applicability of arbitrator immunity fail to account for the functional equivalence of CIDREs to traditional arbitrators. MET has consistently pointed to the regulatory framework under the NSA, where the Department of Health and Human Services explicitly likens IDR processes to arbitration. See *Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55980, 55985, 56002 (Oct. 7, 2021). However, in their Cross-Brief, Guardian fails to respond to any of MET's arguments that go to explaining why this Guardian argument is not persuasive. First, the NSA admittedly does not refer to the IDR process explicitly as arbitration. That being said, there is a host of evidence referring to the IDR process as an arbitration. The House Labor and Education Committee directly referred to the IDR process as arbitration in their report on the Bill. H.R. REP. 116-615, 56 (Dec. 2, 2020), p. 56-57. The Department of Health and Human Services also discussed arbitration in the rules it implemented regarding IDRs. *See* Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55980, 55985, 56002, 56050, 5605-054 (Oct. 7, 2021). In this Honorable Court and the United States District Courts for the Eastern District of Texas, the Court referred to IDR proceedings in a series of cases as "arbitrations", and IDR entities as "arbitrators". *See Tex. Med. Ass'n v. United States HHS*, 110 F. 4th 762 (5th Circuit 2024); *Tex. Med. Ass'n v. United States HHS*, 654 F. Supp. 3d 575 (E.D. Tex. 2023); *Tex. Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 587 F. Supp 3d 528 (E.D. Tex. 2022),

appeal dismissed, No. 22-40264, 2022 WL 15174345 (5th Cir. Oct. 24, 2022); *Lifenet Inc. v. U.S. Dept. of Health & Human Servs., et al.,* No. 6:22-cv00162-JDK, 2022 WL 2959725 at *10 (E.D. Tex. June 26, 2022). If this evidence seems familiar, that is because it is. MET, in its *Appellee-Cross Appellant Medical Evaluators of Texas ASO, LLC's Brief* on October 7, 2024, brought up this exact same evidence. Guardian failed to respond to any of this evidence, and this demonstrates that Guardian does not really care about the outcome of this argument, so long as they have a path to recovery.

Though Guardian may only care about the arbitrator immunity ruling as a means to an end, the issue is vitally important to MET. Should the Court find that IDR entities are not entitled to arbitrator immunity, Guardian will have its path to recovery and MET will likely be ordered to render new IDR proceedings. As Guardian states, since they are not seeking any monetary liability from MET, this obviates "MET's 'policy' concerns about IDR entity 'liability'". See Guardian Br. 48.

In this singular case, it would. However, the entire point of a policy argument is that it must be considered on a broader scale than just this singular case, and this is what Guardian fails to consider in their Cross-Brief. While Guardian is solely focused on their path to rehearing of the matter by the IDR entity, the next Plaintiff

that appeals an IDR award may not. Denying arbitrator immunity keeps the door open to monetary liability, in addition to the preservation of a path to rehearing.

The point of arbitrator immunity is to preserve the impartiality of the decision-maker. Whether Guardian believes IDR entities to be arbitrators or not, it cannot deny that IDR entities are decision-makers. Should disgruntled litigants have a cause of action against their IDR decision-makers, it would necessarily create the possibility for undue and improper influences on the decision-making process. *Pfannensteil v. Merril Lynch, Pierce, Fenner, & Smith*, 477 F. 3d 1155, 1159 (10th Cir. 2007). "If [arbitrators'] decisions can thereafter be questioned in suits brought against them by either party, there is a real possibility that their decisions will be governed more by the fear of such suits than by their own unfettered judgment as to the merits of the matter they must decide." *Lundgren v. Freeman*, 307 F.2d 104, 117 (9th. Cir. 1962).

Furthermore, even if appeals to vacate and remand IDR awards do not include requests for monetary liability, the mere inclusion of the IDR entity as party to the suit imposes a financial obligation. The IDR entity must submit an answer and appear in the case in the same way that any defendant would, and this carries with it costs in time and legal fees that would not be present if IDR entities are entitled to arbitrator immunity.

Allowing litigation against CIDREs would compromise their independence and deter participation in the IDR process, a result antithetical to the NSA's objectives. As the Ninth Circuit observed in *Lundgren v. Freeman,* "Arbitrators must be free to exercise their judgment without fear of retribution." *Lundgren v. Freeman*, 307 F.2d 104, 117 (9th. Cir. 1962). By safeguarding arbitrator immunity, the Court can protect the integrity of the IDR framework and ensure that CIDREs can continue to fulfill their critical role. In truth, and by Guardian's own words in the Cross-Brief, should Guardian be granted an alternative path to its remedy (automatic rehearing on vacatur of the IDR award), "…perhaps it would be appropriate for MET to have immunity akin to an arbitrator or judge." See Guardian Br. 43.

This again demonstrates that Guardian is not really opposed to arbitrator immunity and is only opposed insofar as it denies them a path to a remedy at law. In this way, MET's arbitrator immunity argument actually helps Guardian's case. It demonstrates that allowing IDR entities to be available to prospective plaintiffs as party to the appeal challenging the IDR award is not a realistic path to the desired remedy. This leaves only one viable option: that, on vacatur of the IDR award, the Court has the ability to order automatic rehearing of the matter by the IDR entity.

While Guardian now accepts that immunity may be warranted if rehearing mechanisms are in place, MET's arguments have consistently demonstrated that arbitrator immunity is indispensable regardless of procedural safeguards. This

consistency reinforces the robustness of MET's position and its alignment with judicial precedent.

Judicial precedent from Florida and Arizona strongly supports MET's longstanding position on remand and arbitrator immunity. These cases highlight the judiciary's recognition of the need to harmonize the NSA's statutory framework with established arbitration principles, further validating MET's arguments. In *FHMC LLC v. Blue Cross & Blue Shield of Arizona*, the court directly addressed the statutory silence within the NSA regarding remand upon vacatur. *FHMC LLC v. Blue Cross & Blue Shield of Arizona* No. CV-20-00725-PHX-DWL, 2024 WL 152357 (D. Ariz. Jan. 15, 2024). The court emphasized that this silence does not undermine the applicability of FAA principles, which provide courts with discretionary authority to remand awards to ensure equitable resolution. The Arizona court's ruling highlights how remand promotes fairness and judicial efficiency, echoing MET's long-held argument that statutory ambiguities should not preclude well-established arbitration remedies.

Similarly, in *Med-Trans Corp. v. Capital Health Plan, Inc.*, the Middle District of Florida underscored the importance of judicial remedies like vacatur and remand in maintaining the balance Congress intended under the NSA. The court noted that these remedies align with the legislative purpose of resolving disputes fairly and efficiently while ensuring that parties receive meaningful relief. *Med-Trans Corp. v.*

Capital Health Plan, Inc., No. 4:20-cv-00067-MW-MAF, 700 F. Supp. 3d 1076 (N.D. Fla. 2024). By endorsing FAA principles in the NSA context, the Florida court's reasoning affirms MET's position and highlights the broader judicial consensus on this issue.

These cases reinforce MET's argument that remand upon vacatur is not only permissible but essential to preserving the integrity of the IDR process. MET's consistent advocacy for this approach demonstrates a forward-thinking interpretation of the NSA, ensuring that it functions as intended while providing equitable outcomes for all parties involved. By integrating these precedents, the Court can confidently adopt a framework that respects statutory intent and arbitration principles.

CONCLUSION AND PRAYER

Guardian now recognize what MET has argued all along: that remanding vacated IDR awards and protecting CIDREs with arbitrator immunity are critical to the equitable and effective implementation of the NSA. By adopting MET's position, the Court can ensure that the IDR process operates as Congress intended, balancing fairness, efficiency, and judicial discretion. MET's consistent advocacy for these principles underscores their necessity in achieving just outcomes for all parties.

Based on the arguments presented in Appellants' Opening Brief and, in this Reply, Appellant respectfully requests that this Honorable Court reverse the decision

of the district court as to the issue of arbitrator immunity and reverse the district court as to its rulings on whether IDR entities are proper parties to lawsuits and render judgment in favor of Medical Evaluators of Texas ASO, LLC. Appellant also requests that this Honorable Court reach the decision that a vacatur of the IDR award allows the district court to direct a rehearing to the IDR entity, allowing for satisfaction of the goals of both Appellant and Appellee Guardian Flight.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 27, 2024, a true and correct copy of this Defendant-Appellant's Reply Brief was served onto all attorneys of record, via Electronic Case Filing ("ECF") or First-Class Mail per the Federal Rules of Appellate Procedure:

/s/ *Joseph Lanza*
Joseph Leo Lanza

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because: this brief contains 2889 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f).

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November 27, 2024