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
Appellee–Cross Appellant

consolidated with

No. 24-20204

Guardian Flight, LLC; REACH Air Medical Services, LLC; CALSTAR 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

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

A. **PARTIES**:

Defendant, Appellee-Cross Appellant:

Medical Evaluators of Texas ASO, LLC

Plaintiffs, Appellants-Cross Appellees:

Guardian Flight, LLC, REACH Air Medical Services, LLC, Calstar Air Medical Services, LLC, each a wholly owned subsidiary of Global Medical Response, Inc., through a holding company, Air Medical Group Holdings Company, LLC

Defendants-Appellees:

Aetna Health, Inc.
Kaiser Foundation Health Plan, Inc.

Amicus Curiae Movant (in the district court):

America's Health Insurance Plans

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STATEMENT REGARDING ORAL ARGUMENT

Because the issue is novel and of significant importance Appellee-Cross Appellant believes that oral argument would be helpful to the Court.

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STATEMENT OF JURISDICTION

The Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291 because the district court's order is a "final decision" as to the issues of (a) whether immunity should be extended to MET and (b) whether MET is a proper party under the No Surprises Act. *See Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed.2d 1528 (1949) and *Austin Municipal Secur., Inc. v. National Asso. of Sec. Dealers, Inc.*, 757 F.2d 676 (5th Cir. 1985).

The order meets all three tests for jurisdiction to apply: (a) the appeal will conclusively determine the disputed question, (b) resolve an important issue completely separate from the merits of the action, and (c) decide an issue effectively unreviewable on appeal from a final judgment. *See Austin Municipal Secur., Inc.*, 757 F.2d at 685; *see also Cohen*, 337 U.S. at 546.

In this case, appeal will conclusively determine whether MET is immune from suit due to its status as a judge-like decision-maker. The issue of MET's immunity is completely separate from the underlying issues of whether the QPA was properly applied or whether the Defendants-Appellees allegedly submitted misleading information during the Independent Dispute Resolution process. Finally, MET's immunity is effectively unreviewable on appeal because the public policy behind immunity—preventing undue influence from being exerted on neutral decision-makers through retaliatory lawsuits by immunizing those decision-makers from

suit—is thwarted by forcing the neutral decision-maker to go through a lawsuit to obtain the immunity.

This Appeal will also conclusively determine whether IDR entities under the NSA are proper parties to a suit. The determination is entirely separate from the underlying issues of whether the QPA was properly applied or whether the Defendants-Appellees allegedly submitted misleading information during the Independent Dispute Resolution process and is effectively unreviewable on appeal. If Congress did not intend for IDR entities to be parties to private causes of action, there is no jurisdictional basis for the suit in the district court.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

FIRST ISSUE

Whether the district court abused its discretion when it denied MET's motion to dismiss based on arbitrator immunity?

SECOND ISSUE

Whether the district court abused its discretion when it denied MET's motion to dismiss based on the argument that MET is not a proper party to the lawsuit because the NSA does not create a private cause of action against IDR entities?

THIRD ISSUE

Whether the district court abused its discretion when it dismissed only REACH Air's claims against MET and Kaiser based on res judicata and collateral estoppel, but not Calstar's and Guardian Air's claims against MET?

I.
STATEMENT OF FACTS

A. Background on No Surprises Act:

Congress enacted the No Surprises Act in 2020. 42 U.S.C. §§ 300gg-111-112. The purpose of the Act is to eliminate surprise medical billing. *Id*. The Act accomplishes that goal by establishing parity between in-network and out-of-network providers. If a patient's health insurance would cover air ambulance medical services by an in-network provider, the Act requires the health insurance carrier to extend that same cost-sharing benefits to out-of-network providers as well. 42 U.S.C. §§ 300gg-112(a)(1)-(2). The NSA takes the consumer out of the equation in payment disputes between insurers and providers. H.R. Rep. No. 116-615, at 55–58 (2020). The NSA prohibits providers from billing consumers directly for unpaid balances, known as "balance billing" or "surprise billing." 42 U.S.C. §§ 300gg-131(a)(1)-(2) (prohibiting providers from "bill[ing]" or "hold[ing] liable" an insured patient beyond "the cost-sharing requirement for such … services"), 300gg-135 (same for air ambulances). The NSA instead requires insurers to directly pay the providers subject to the conditions set out in the NSA. *See id*. §§ 300gg-111(b)(1)(C)–(D) (requiring insurers to remit payment directly to providers), 300gg-112(b)(6) (same for air ambulances).

The NSA provides a method for submitting air ambulance service claims. Once an air ambulance company submits a bill to the insurance carrier for air ambulance services, the carrier has thirty days to tell the provider whether it will pay or deny the claim. 42 U.S.C. § 300gg-112(a)(3). If the insurance carrier pays the claim, all is well. If the carrier denies the claim, however, the Act allows the parties to negotiate to determine an agreed upon payment for the services. 42 U.S.C. § 300gg-112(b)(1)(A).

If negotiations fail, the parties may initiate an independent dispute resolution ("IDR") with a certified IDR entity. 42 U.S.C. § 300gg-112(b)(2)(A). The parties may choose a mutually agreeable entity. If they are unable to agree on an IDR entity, one is randomly assigned. 42 U.S.C. § 300gg-112(b)(4). As part of the IDR process, each party submits the amount for the cost of air ambulance services rendered and any information requested by the IDR entity and/or any information related to the amount proposed to the IDR entity. 42 U.S.C. §§ 300gg-112(b)(5)(B), (C)(ii). The IDR entity then selects one of the two competing amounts. 42 U.S.C. § 300gg-112(b)(5)(A)(i).

In determining the amount to select, the IDR entity should consider that "qualifying payment amount" (the "QPA"). The QPA represents "the equivalent median in-network reimbursement rate or, if the insurer has no equivalent in-

network data, the median in-network rate for the geographic area." *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1079 (M.D. Fla. 2023).

B. **Air Ambulance Providers furnish services to patients nationwide**:[1]

Air ambulance providers such as Guardian Flight, REACH, and CALSTAR furnish life-saving emergency air-ambulance services to patients nationwide. ROA.24-20204.503 ¶13; ROA.22-20204.13–14 ¶16. The services rendered by these providers, and the amount of their compensation, is at the heart of this dispute.

C. Procedural History:

a. Aetna Dispute

On February 18, 2022, Guardian Flight transported a patient for emergency health care. The patient was insured by Aetna, with which Guardian Flight is out-of-network. ROA.24-20204.500-501 ¶ 4. Aetna allowed $31,965.53 for the services. ROA.24-20204.501 ¶4. Because Guardian Flight disagreed with the calculation, they initiated open negotiations. ROA.24-20204.501 ¶4, ROA.24-20204.509–511 ¶¶26–32. The parties proceeded to IDR and selected MET as their IDR entity. ROA.24-20204.501 ¶6, ROA.24-20204.516 ¶39. On October 12,

[1] There are two records in this consolidated appeal, 24-20051 and 24-20204. Because the cases were consolidated at the trial level, the record of 24-20204 contains all the pleadings in 24-20051. There, for clarity, all record cites will be to 24-20204.

2022, MET selected Aetna's calculation. ROA.24-20204.499 ¶1, ROA.24-20204.508 ¶24.

Guardian Flight disagreed with the award. As a result, Guardian Flight filed suit against Aetna and MET. ROA.24-20204.499-518.

Guardian Flight first alleged that Aetna obtained the determination because it made false statements of fact or used undue means. Guardian Flight based these claims on allegations that Aetna submitted an improbably low QPA to MET then refused to explain how it arrived at the QPA. Guardian Flight contended that Aetna's QPA was improbably low because it was inconsistent with market data and consisted with a practice of improperly calculating QPAs. ROA.24-20204.509–511 ¶¶26–32, ROA.24-20204.515 ¶35.

Second, Guardian Flight argued that MET exceeded its authority under the NSA by applying an illegal presumption in favor of Aetna. ROA.24-20204.515 ¶36. Guardian Flight also raised due process concerns related to the handling of the dispute. ROA.24-20204.516–517 ¶¶38–40. Guardian Flight asked the district court to vacate the IDR award and direct MET to rehear the claim. ROA.24-20204.517 ¶¶41–42.

MET and Aetna filed Rule 12(b)(6) Motions to Dismiss, arguing that Guardian Flight had failed to allege any viable grounds for vacatur of the IDR award. ROA.24-20204.546–549, ROA.24-20204.566–575. MET went a step further,

however, arguing that it was entitled to arbitrator immunity. ROA.24-20204.542–546.

b. Kaiser Dispute

REACH, CALSTAR, and Guardian Flight provided emergency air transport services for six different patients between January 17, 2022, and February 22, 2022; all were insured by Kaiser. ROA.24-20204.10 ¶¶3–4, ROA.24-20204.14–15 ¶¶17–22. All were also out-of-network. ROA.24-20204.10 ¶4. In April 2022 Kaiser allowed various amounts to be paid on each of the six claims. ROA.24-20204.22–23 ¶¶36–40. Because REACH, CALSTAR, and Guardian Flight disagreed with each of the allowed amounts, they initiated open negotiations. ROA.24-20204.23 ¶41.

Negotiations failed, the claims went to IDR, and MET was the IDR entity that decided what the air ambulance providers should be paid on each claim.

Unhappy with this result, REACH, CALSTAR, and Guardian Flight filed suit against MET and Kaiser. They alleged first that Kaiser obtained the IDR awards through false representations or undue means. This first contention was based on allegations that Kaiser submitted a second, lower QPA or a QPA lower than what was allowed, and concealed its QPA or details on how the QPA was calculated. ROA.24-20204.11 ¶6; ROA.24-20204.23 ¶41; ROA.24-20204.26 ¶47; ROA.24-20204.28–29 ¶51. Second, they alleged that MET exceeded its

authority under the NSA by applying an illegal presumption that favored Kaiser. ROA.24-20204.29 ¶52. Third, they raised due process concerns regarding the handling of the IDR disputes. ROA.24-20204.29–31 ¶¶54–56.

As in the Aetna lawsuit, they asked the district court to vacate the six awards and direct MET to rehear the claims. ROA.24-20204.31 ¶¶57–58. MET and Kaiser filed Rule 12(b)(6) Motions to Dismiss. ROA.24-20204.92–94, ROA.24-20204.112–120. The motions contended that the air ambulance providers failed to state variable grounds for vacatur of the awards. ROA.24-20204.92–94, ROA.24-20204.112–120. Kaiser further argued that the air ambulance providers complaint was procedurally defective, arguing that an IDR decision may only be challenged via a motion to vacate under the Federal Arbitration Act. ROA.24-20204.110–112. MET again argued that it was entitled to arbitrator immunity. ROA.24-20204.88–92.

c. *MET's argued it should be immune from suit*.

In its motions to dismiss, MET argued that it was entitled to an arbitrator's immunity. ROA24-20204-80-95 (Kaiser), ROA.24-20204.539-549 (Aetna). To that end, MET argued that the plain language of the NSA showed that the IDR process is arbitration. ROA.24-20204-88-92, ROA.24-20204.539-549. MET briefly discussed the NSA's IDR process. ROA.24-20204.81-82, ROA.24-20204.540. MET also discussed the NSA's legislative history, ROA.24-

20204.85-88. Once MET established that the IDR process was arbitration, it argued that it was entitled to the judicially created doctrine of arbitrator's immunity. ROA.24-20204.83-92.

MET also argued that Appellants failed to meet any of the requirements under the NSA and § 9 of the Federal Arbitration Act to set aside the award. ROA.24-20204.92-93, ROA.24-20204.546-547.

In its post-hearing brief, MET re-urged its argument that it was entitled to arbitrator's immunity. ROA.24.20204.845-850. MET elaborated on its immunity argument by apply the 3-part test adopted by this Court in *Austin Mun. Sec., Inc. v. National Ass'n of Sec. Dealers, Inc.*, 757 F.2d 676 (5th Cir. 1985). MET also briefly discussed the legislative history of the NSA and directed the district court to the Railroad Labor Act's inclusion of a mandatory statutory arbitration provision. ROA.24-20204-848-849.

After the decision in *Med. Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076, 1079 (M.D. Fla. 2023), MET raised two additional grounds for dismissal—first, under the NSA IDR entities are not proper parties to a civil lawsuit challenging the award and, second, that the *Med. Trans* decision barred Appellants' claims under the doctrine of collateral estoppel. ROA.1855-1860.

D. <u>The Order Granting the Motions to Dismiss</u>

The district court issued its Order ruling on the motions on January 5, 2024. ROA.24-20204.1866-1883. It denied MET's motion to dismiss as to the issue of arbitral immunity. ROA.24-20204.1879-1880. The district court concluded that because the NSA does not use the terms arbitration or arbitrators, the IDR process is not arbitration. ROA.24.20204-1879.1880.

The district court also rejected MET's argument that Plaintiffs allegations did not trigger review under section 10(a) of the FAA and that IDR entities are not proper parties to suits under the NSA. ROA.24-20204.1880-1881. The district court reasoned that since IDR entities' powers are derived from the NSA, and not a contractual agreement, and the Plaintiffs alleged that MET applied an illegal presumption, the Plaintiffs stated a claim that MET exceeded its powers under the NSA. ROA.24-20204.1880-1881. The district court also concluded that IDR entities were proper parties to a lawsuit because if the IDR entity's conduct fell within the scope of section 10(a) of the FAA, the parties must be able to assert claims against the IDR entity in order to obtain relief. ROA.24-20204.1880, n. 4.

The district court did grant the motion as to REACH based on collateral estoppel. The district court concluded that REACH was collaterally estopped from bringing a claim against MET because it was a party to the Florida lawsuit. ROA.24.20204.1874-1876. However, the district court also ruled that Calstar's

and Guardian Flight's claims were not barred by collateral estoppel because they were not parties to the Florida lawsuit and not in privity with the IDR entity in that lawsuit notwithstanding the fact that they were wholly owned subsidiaries of the same company that owned REACH, Global Medical Response, Inc. ("GMR"). ROA.24-20204.1876.

II.
SUMMARY OF ARGUMENT

What Congress created in the NSA was a process for resolving disputes, just as arbitrators and judges resolve suits. IDR entities perform functions like arbitrators just as arbitrators perform functions like judges—they decide disputes between two adverse parties and two competing claims—and like judges, and arbitrators, should be entitled to immunity.

Arbitrator immunity is a form of judicial or absolute immunity. It "is essential to protect decision-makers from undue influence and the process from reprisals by dissatisfied litigants." Because the role of an arbitrator is functionally equivalent to that of a judge, this Court and other federal circuit courts of appeal have consistently extended quasi-judicial immunity to arbitrators. The public policy behind arbitral immunity is also served by extending immunity to IDR entities. Furthermore, the plain language of the NSA and legislative history all support extending immunity to IDR entities and several federal courts, including

the Fifth Circuit, have recognized the IDR process as a form of statutorily mandated arbitration.

IDR entities are not proper parties to a lawsuit challenging an IDR award, and the NSA also does not create a private cause of action against such entities. Two United States District Courts, in Florida and Arizona, have reached this conclusion. Private rights of action must be created by Congress. The question is whether the NSA, either explicitly or by implication, evinces a Congressional intent to create a private right of action. Without clear evidence of such intent, courts may not create a cause of action. Here, the NSA expressly states that an IDR decision "shall not be subject to judicial review." Instead, the NSA creates a limited right of review, not a right to litigate.

Finally, Plaintiffs-Appellants' claims are barred by collateral estoppel. The district court's distinction between REACH on the one hand and Calstar and Guardian Flight on the other is nonsensical. The claims alleged by each against MET are identical to the claims alleged by REACH against the IDR entity in the Florida lawsuit. All three companies are wholly owned subsidiaries of a single parent company. To apply collateral estoppel to one and not the others leads to inconsistent results.

III.
ARGUMENT & AUTHORITY

A. Standard of Review

This Honorable Court reviews the denial of a Rule 12(b)(6) motion to dismiss *de novo*. *Bass v. Stryker Corp.*, 669 F.3d 501, 506 (5th Cir. 2012).

B. Issue One: MET should have arbitrator immunity because it performs functions similar to those of a judge by deciding disputed issues between two adverse parties and two competing claims.

A rose is a rose is a rose.[2]

'A rose is a rose is a rose' is a phrase often used to convey the idea that something is the same regardless of how you package it. Call it what you want, what Congress created in the No Surprises Act ("NSA") was a process for resolving disputes, just as arbitrators and judges resolve disputes. Perhaps that is why this Honorable Court and the United States District Courts for the Eastern District of Texas in a series of related cases consistently referred to the NSA's Independent Dispute Resolution ("IDR") process as "arbitration" and IDR entities as "arbitrators." *See Tex. Med. Ass'n v. United States HHS*, 110 F.4th 762 (5th Cir. 2024); *Tex. Med. Ass'n v. United States HHS*, 654 F. Supp. 3d 575 (E.D. Tex. 2023); *Texas 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*

[2] Gertrude Stein, *Sacred Emily* (1913.)

Servs., et al., No. 6:22-cv00162-JDK, 2022 WL 2959715 at *10 (E.D. Tex., June 26, 2022). Perhaps that is also why the House Labor and Education Committee called it arbitration in their report on the bill. H.R. REP. 116-615, 56 (Dec. 2, 2020), p. 56-57. And perhaps that is why the Department of Health and Human Services discussed arbitration in the rules it implemented. *See* Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980, 55985, 56,002, 56,050, 56,05-054 (Oct. 7, 2021). But what do they know? According to the district court here, because Congress did not call it arbitration, it is not arbitration. A rose is a rose is *not* a rose; it's a geranium. Just because the name and decision-making mechanisms are different, however, is not justification for declining to extend quasi-judicial arbitrator immunity to IDR entities where they perform a judge-like function.

Nonetheless, the district court concluded that MET was not entitled to arbitrator's immunity because (a) the IDR process is not arbitration and (b) Congress did not provide for IDR entity immunity in the NSA. The district court stated:

> The NSA clearly refers to entities presiding over IDRs, like MET, as IDR entities, not arbitrators. Similarly, the NSA calls for the parties to engage in IDRs, not arbitrations.

ROA.24-20051.1392; *Guardian Flight, LLC v. Aetna Health, Inc.*, No. 4:22-cv-0385, 2024 U.S. Dist. LEXIS 25690 * 23-24, ___ F. Supp. 3d ___ (S.D. Tex. Jan. 5, 2024).

The district court further stated, "It is the Court's belief that if Congress intended for the IDR process to receive the same protections as arbitrations, including immunity to protect IDR entities, it would have clearly stated so in the NSA." *Id*. The district court appears to have missed the fact that Congress also did not provide for arbitrator immunity in the Federal Arbitration Act; immunity is a court-created doctrine. Yet based on this simplistic analysis, the district court denied MET's motion to dismiss. *Id*. at 24. The district court's one-dimensional analysis ultimately elevates form over substance. IDR entities perform functions like arbitrators just as arbitrators perform functions like judges—they decide disputes between two adverse parties and two competing claims—and like judges, and arbitrators, should be entitled to immunity—by whatever name you choose to call it.

a. *Quasi-judicial arbitrator immunity is well-established in federal common law*.

Arbitrator immunity is nothing more than a form of judicial or absolute immunity. *Texas Brine Co., LLC v. Am. Arbitration Ass'n, Inc.*, No. 18-6610 Section "R", 2018 U.S. Dist. LEXIS 187972 * 4, 2018 WL 5773064 (E.D. La. Nov. 2, 2018) (Arbitral immunity, an absolute immunity related to judicial

immunity, applies to arbitrators because their role "is functionally equivalent to a judge's role.") (quoting *Olson v. Nat'l Ass'n of Sec. Dealers*, 85 F.3d 381, 382 (8th Cir. 1996)). Thus, because the role of an arbitrator is functionally equivalent to that of a judge, this Court and other federal circuit courts of appeal have consistently extended quasi-judicial immunity to arbitrators. *Austin Mun. Sec., Inc. v. National Ass'n of Sec. Dealers, Inc.*, 757 F.2d 676, 686-93 (5th Cir. 1985) (applying immunity to NASD arbitrators); *see also Lanza v. Fin. Indus. Regulatory Auth.*, 953 F.3d 159, 163 (1st Cir. 2020) ("Because the role of an arbitrator is functionally equivalent to that of a judge, courts consistently have extended quasi-judicial immunity to arbitrators and organizations that sponsor arbitrations"); *Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158-60 (10th Cir. 2007) ("The doctrine of arbitral immunity generally rests on the notion that arbitrators acting within their quasi-judicial duties are the functional equivalent of judges and, as such, should be afforded similar protection."); *Int'l Med. Grp., Inc. v. Am. Arbitration Ass'n*, 312 F.3d 833, 843-44 (7th Cir. 2002) ("arbitral immunity should apply when the arbitrator's authority is challenged because arbitrators will be dissuaded from serving if they can be caught up in the dispute and be saddled with the burdens of defending a lawsuit"); *New Eng. Cleaning Servs., Inc. v. Am. Arbitration Ass'n*, 199 F.3d 542, 545-46 (1st Cir. 1999) ("Because an arbitrator's role is functionally equivalent to a judge's

role, courts of appeals have uniformly extended judicial and quasi-judicial immunity to arbitrators.").

The U.S. Supreme Court identified several factors to evaluate whether quasi-judicial immunity should be applied: (a) the need to assure that the individual can perform his functions without harassment or intimidation; (b) the presence of safeguards that reduce the need for private damages actions as a means of controlling unconstitutional conduct; (c) insulation from political influence; (d) the importance of precedent; (e) the adversary nature of the process, and (f) the correctability of the error on appeal. *Cleavinger v. Saxner*, 474 U.S. 193, 201 (1985) (citing *Butz v. Economou*, 438 U.S. 478, 511 (1978). The U.S. Supreme Court provided an exhaustive list in *Antoine v. Byers & Anderson* identifying classes of individuals and entities entitled to judicial immunity, which includes arbitrators:

> Judicial Immunity . . . was an absolute immunity from all claims relating to the exercise of judicial functions. See, e.g., T. Cooley, Law of Torts 408-409 (1880). It extended not only to judges narrowly speaking, but to 'military and naval officers in exercising their authority to order courts-martial for the trial of their inferiors, or in putting their inferiors under arrest preliminary to trial; . . . to grand and petit jurors in the discharge of their duties as such; to assessors upon whom is imposed the duty of valuing property for the purpose of a levy of taxes; to commissioners appointed to appraise damages when property is taken under the right of eminent domain; to officers empowered to lay out, alter, and discontinue highways; to highway officers in deciding

> that a person claiming exemption from a road tax is not in fact exempt, or that one arrested is in default for not having worked out the assessment; to members of a township board in deciding upon the allowance of claims; ***to arbitrators***, and to the collector of customs in exercising his authority to sell perishable property, and in fixing upon the time for notice of sale.' *Id*., at 410-411 (footnotes omitted).

508 U.S. 429, 433 n. 8 (1993) (emphasis added). Clearly, quasi-judicial immunity extends to all types and classes of individuals and entities performing judge-like functions in a variety of contexts.

In *Austin Municipal Securities, Inc. v. Nat'l ass'n of Sec. Dealers, Inc.*, this Court further refined the *Butz* factors, distilling a tripartite formula: (a) whether the official's functions share the characteristics of the judicial process, (b) whether the official's activities are likely to result in recriminatory lawsuits by disappointed parties, and (c) whether sufficient safeguards exist in the regulatory framework to control unconstitutional conduct. *Austin Municipal Secur., Inc. v. National Asso. of Sec. Dealers*, 757 F.2d 676, 688 (5th Cir. 1985). In *Austin Mun. Secur., Inc.*, the Court found that the securities association and its disciplinary officers were entitled to absolute immunity from prosecution for personal liability on claims arising within the scope of their official duties.

The first *Austin* factor was met for the disciplinary officers since their role was both prosecuting and adjudicating securities law violations. Like the disciplinary officers in *Austin*, IDR entities under the No Surprises Act adjudicate

disputes based on two competing submissions. The *Austin* Court also held that the disciplinary officers met the second *Austin* factor, since they were likely targets for lawsuits due to their role in disciplining members for securities law violations. IDRs are likewise targets for lawsuits for their role in the IDR process, as evidenced by the lawsuits filed against them in Texas and Florida. Therefore, the first two factors are met here.

The district court was particularly concerned with the third factor—whether adequate safeguards existed. They do. First, the NSA itself sets strict requirements for the qualification of IDR entities. IDR entities are independent entities tasked with engaging in "baseball" style arbitration to decide between two competing bids. The overseeing government agency (primarily Health and Human Services, or HHS) must establish a process to certify (and recertify) IDR entities. 42 U.S.C.S. § 300gg-111(c)(4)(A)(i). The certification process must ensure that IDR entities have sufficient legal and medical knowledge and other expertise and sufficient staffing to make determination on a timely basis. *Id*. The IDR entity cannot be a party or employee or agent of a party, does not have a material, familial, financial, or professional relationship with a party, or have a conflict of interest with a party. 42 U.S.C.S. § 300gg-111(c)(4)(F).

Second, the process is both adversarial and subject to judicial review. The No Surprises Act first permits the parties to resolve the dispute among themselves.

If they do not, one or both can invoke the IDR process. They can then jointly select from a list of pre-approved IDR entities to decide their dispute. Only if they are unable to decide does HHS step in and randomly appoint an IDR entity. 42 U.S.C.S. § 300gg-111(c)(1)(A), (1)(B), (4)(F). Each party may submit to the IDR entity: (a) an offer and (b) such information as requested by the certified IDR entity relating to such offer, and (c) any information relating to such offer submitted by either party. If dissatisfied with the award, the aggrieved party may file an action to set it aside.

The Act provides four bases for setting aside an award: to wit, "in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9." As the Court is aware, those sections allow a court to set aside an arbitration award where (a) "the award was procured by corruption, fraud, or undue means ;" (b) "there was evident partiality or corruption in the arbitrators," (c) "the arbitrators were guilty of misconduct, …" or (d) "the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(1)-(4). And, as discussed further below, dissatisfied participants have an administrative remedy against IDR entities for noncompliance.

Given that the IDR process satisfies all three of *Austin's* factors, MET should be granted absolute immunity from prosecution. This would protect IDR entities from personal liability for claims that arise from their official duties.

b. *Public policy supports extending quasi-judicial arbitrator immunity to MET to protect the judicial-like functions MET exercise in the NSA's IDR process*.

In recognition of the role of an arbitrator, federal common law has created arbitrator immunity to protect the judicial-like functions of an arbitrator. *See Pfannenstiel v. Merrill Lynch, Pierce, Fenner & Smith*, 477 F.3d 1155, 1158 (10th Cir. 2007) (noting that every circuit that has considered arbitral immunity has recognized the doctrine); *Hawkins v. National Ass'n of Securities Dealers Inc.*, 149 F.3d 330, 332 (5th Cir.1998); *E. C. Ernst, Inc. v. Manhattan Const. Co. of Texas*, 551 F.2d 1026, 1033 (5th Cir. 1977) (The scope of his immunity should be no broader than this resemblance. The arbitrator "should be immune from liability only to the extent that his [or her] action is functionally judge-like."); *Hudnall v. Texas*, 2022 WL 3219423, *10 (W.D. Tex. Aug. 9, 2022); *Singleton v. Pittsburgh Bd. of Educ.*, 2012 WL 4069560, *7 (W.D. Pa. Aug. 13, 2012) (recommending the dismissal with prejudice of the claim against an arbitrator).

The rationale for arbitral immunity stems from sound policy considerations and the similarities of the role of an arbitrator and a judge. Decision-makers, such as arbitrators, should be free from bias or intimidation from a potential lawsuit by

a disgruntled litigant. *See Pfannenstiel*, 477 F.3d at 1159 (citing *Butz v. Economou*, 438 U.S. 478, 508-511 (1978)); *New England Cleaning Serv.*, 199 F.3d 542, 545 (1st Cir. 1999) (holding that arbitral immunity "is essential to protect decision-makers from undue influence and the process from reprisals by dissatisfied litigants."). "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).

"[T]he 'touchstone' for the doctrine's applicability has been performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-36 (1993). In this case there is no question Appellants-Plaintiffs are challenging a decisional act of the IDR entity MET. Like arbitrators, IDR entities such as MET are exercising decision-making functions over disputed issues in an adversarial context. The same public policy reasons behind immunizing arbitrators and judges from lawsuits apply with equal force to IDR entities—otherwise they will be subject to never-ending harassing lawsuits that risk eroding IDR entities' impartiality.

c. *The plain language and legislative history of the NSA shows Congress understood the IDR process to be arbitration; the HHS also viewed the process as arbitration*.

The plain language of the NSA shows that the IDR process is functionally equivalent to arbitration and that Congress and the implementing federal agencies understood it as such. The NSA provides that an independent neutral entity shall, after submission from the insurer and provider, decide on the final payment amount. 42 U.S. Code § 300gg-111(c)(5). It further provides that the IDR determination is binding on the parties and may only be overturned where fraudulent or misrepresented claims were submitted to the IDR, or under the four circumstances in the Federal Arbitration Act where an arbitrator's award may be vacated. 42 U.S. Code § 300gg-111(c)(5)(e).

The legislative history supports the conclusion that the IDR process is a form of arbitration. The Labor and Education Committee report on the No Surprises Act favorably compares the IDR process to arbitration:

> A key element of any solution to address surprise billing comprehensively is the payment rate, which is the amount that payers must remit to providers for out-of-network items and services. Two payment rate options have emerged as the predominant contenders to correct the market failure associated with surprise billing: (1) the benchmark rate model, and (2) the IDR process, also referred to as arbitration. Under a benchmark rate model, payments to providers for out-of-network items and services default to a pre-determined amount, such as a percentage of the Medicare rate (typically percent of Medicare) or the median contracted (in-network) rate

> in the geographic area where the service took place. In contrast, the IDR process is mediated by a third-party arbitrator, and legislation typically specifies guidance or criteria for the arbitrator to consider. A common approach is to use "baseball-style" arbitration, under which each side submits a price, and the arbitrator chooses one, with both sides bound by the decision.

H.R. REP. 116-615, 56 (Dec. 2, 2020), p. 56-57.

The implementing agencies also consider the IDR process to be "arbitration" as shown by the Rules they implemented. For example, the Rules require IDRs to provide documentation that their personnel have received arbitration training from the American Arbitration Association, American Health Law Association, or a similar entity. Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980, 56,050 (Oct. 7, 2021), at pg. 55985. To be certified, entities must also demonstrate that they possess sufficient arbitral and health care claims experience. *Id*. at 56002. The implementing agencies, like Congress, state the Federal IDR process relies on "baseball style arbitration" and explain how it differs from other forms of arbitration. *Id*. at 56050. Discussing conflicts of interest, the agencies state, "Under these interim final rules, the party that initiates the Federal IDR process is suspended from taking the same party to arbitration for an item or service that is the same or similar item or service as the qualified IDR item or service already subject to a certified IDR entity's determination for 90 calendar days following a payment determination." *Id*. at 56053-56054.

Finally, the implementing agencies state, "By prohibiting conflicts of interest, these interim final rules will help ensure that the selected certified IDR entity will take both parties into full consideration during arbitration and ensure that the resolution of the dispute is conducted fairly." *Id*. at 56054.

Current materials available online show that federal agencies consider the process to be arbitration. For example, the current application wording on the Center for Medicare & Medicaid Services ("CMS") website also calls IDREs arbitrators, stating "Organizations interested in being certified to conduct arbitration in the independent dispute resolution process will need to apply online and submit documentation to show they have the experience and staffing to adjudicate cases fairly and impartially."[3] The CMS Frequently Asked Questions Regarding the Federal Independent Dispute Resolution Process webpage is also peppered with references to the process as arbitration.[4]

d. *There is legislative precedent of statutorily mandated arbitration*.

Statutorily mandated arbitration is nothing new under the sun. Congress has previously enacted other statutes that mandate arbitration, such as the Railroad Labor Act ("RLA") and Federal Insecticide, Fungicide, and Rodenticide Act

[3] (https://www.cms.gov/nosurprises/help-resolve-payment-disputes/apply.
[4] *See* https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Guidance-FAQs-Federal-Independent-Dispute-Reolution-Process.pdf, e.g. Questions 32, 36, and 44.

(FIFRA). In 1932 the RLA was amended to include mandatory arbitration of certain disputes. The RLA evinces a strong preference for alternative dispute resolution and sharply limits judicial involvement in labor disputes. See *Tex. & New Orleans R.R. v. Bhd. of Ry. & S.S. Clerks*, 281 U.S. 548, 562-65 (1930).

Another example is the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C.S. §§ 136 et seq., which mandates binding arbitration to resolve certain disputes under FIFRA. 7 U.S.C. § 136a(c)(1)(F)(iii); *see Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985) (discussing FIFRA and its mandatory arbitration scheme). Nor is restricting the right of judicial review unconstitutional. *Id*. at 589-590 (discussing why FIFRA's statutory arbitration scheme is not unconstitutional because it serves a public interest in protecting public health). Like the RLA and FIFRA, the NSA mandates arbitration and seeks to address a matter of important public interest. The RLA seeks to prevent disruption to transportation networks by regulating labor relations, while FIFRA seeks to protect public health by requiring the sharing of pesticide data. The NSA, for its part, seeks to protect patients from unexpected medical bills by regulating billing practices. All three statutes contain provisions that limit judicial involvement in disputes, instead mandating alternative dispute resolution mechanisms.

MET would further note that Texas has a statute that refers to a very similar IDR process as 'arbitration.' Chapter 1467 of the Texas Insurance Code (styled Out-of-Network Claim Dispute Resolution ("CDR")) establishes a mandatory arbitration process for certain out-of-network claims. TEX. INS. CODE § 1467.001 et seq. The Code specifically defines arbitration to mean "a process in which an impartial arbitrator issues a binding determination in a dispute between a health benefit plan issuer or administrator and an out-of-network provider or the provider's representative to settle a health benefit claim." TEX. INS. CODE. § 1467.001(1-a). "Out-of-network provider" is defined to mean "a diagnostic imaging provider, emergency care provider, facility-based provider, or laboratory service provider that is not a participating provider for a health benefit plan." TEX. INS. CODE § (6-a). The Code establishes a Claim Dispute Resolution "CDR") process remarkably like the NSA's IDR process. The CDR process applies only with respect to a health benefit claim submitted by an out-of-network provider who is not a facility. TEX. INS. CODE § 1467.081.

The CDR also requires the Texas Department of Insurance Commissioner to administer the program and adopt forms, rules, and procedures necessary to administer the program, including the process of selecting an arbitrator, and to maintain a list of qualified arbitrators. TEX. INS. CODE § 1467.082. The CDR also states that the only issue before the arbitrator is the reasonable cost of the health

care services provided and specifies the criteria that the arbitrator must consider when making a decision. TEX. INS. CODE § 1467.083. It also provides the process by which the arbitrator is selected (voluntarily, if not, then chosen by the Commissioner), the process for demanding arbitration, who must participate, and the procedures. TEX. INS. CODE §§ 1467.084-1467.087. Discovery is not allowed. TEX. INS. CODE § 1467.087(b). It also provides for limited judicial review. TEX. INS. CODE § 1467.089. And although called a Claim Dispute Resolution process, the "process" is called "arbitration" and its decisionmakers are identified throughout as "arbitrators. TEX. INS. CODE § 1467.001 et seq.; *see also Michael Nazarian MD Assoc. LLC v. Aetna Life Ins. Co.*, No. 02-22-00109-CV, 2023 Tex. App. LEXIS 2796 *, 2023 WL 3114203 (Tex. App.—Fort Worth Apr. 27, 2023, pet. denied) (discussing the statute).

The similarities between Chapter 1467 and the NSA are striking. Yet in one the Texas legislature chose to call the dispute resolution entities "arbitrators" and dispute resolution as "arbitration," while Congress chose equivalent terms, "Independent Dispute Resolution," to describe the process and roles of decision-makers in the NSA IDR process. Texas legislators clearly understood the process to be a form of arbitration, and Congress did as well, as shown by its comparison of the process to "baseball-style" arbitration in committee reports and federal agencies' own use of the term arbitration.

e. *Numerous federal courts, including this Honorable Court, have called the NSA's IDR process "arbitration" and IDR entities "arbitrators*."

This Honorable Court has previously referred to the NSA's IDR process as arbitration. See *Tex. Med. Ass'n v. United States HHS*, 110 F.4th 762, 2024 U.S. App. LEXIS 19431 * (5th Cir. 2024). For example, the Court described the process, stating, "If the provider is dissatisfied, the parties then engage in a 30-day negotiation; if that fails, either party may initiate arbitration (referred to in the statute as the 'independent dispute resolution process') and '[t]he arbitration is a 'baseball style' process, in which the arbitrator ('IDR entity') must choose one of two offers as the out-of-pocket network rate." *Id*. at 2024 U.S. LEXIS 19431, * 6. The Court plainly recognized that the "independent dispute resolution process" was arbitration and that "IDR entit[ies]" were arbitrators. Throughout its opinion, this Court referred to the IDR process as arbitration and IDR entities as arbitrators. *Id*., *passim*. Although this Court did not expressly hold that the IDR process was arbitration, as will be shown, there is no sound reason for this Court to reverse course.

The U.S. District Courts for the Eastern District of Texas, in a series of related cases, have consistently referred to the IDR process as "arbitration." *See Texas 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. United States Dep't of Health & Hum.*

Servs., No. 6:22-CV-162-JDK, 2022 WL 2959715 (E.D. Tex. July 26, 2022). For example, in *Texas Med. Ass'n*, the district court, discussing the NSA, stated, "The Rule governs the arbitration process for resolving payment disputes between certain out-of-network providers and group health plans and health insurance issuers." *Texas Med. Ass'n*, 587 F. Supp. 3d at 533. Further discussing the NSA, the district court stated, "The arbitrator's selection of a payment amount is binding on the parties, and is not subject to judicial review, except under the circumstances described in the Federal Arbitration Act." *Id*. at 534. That Court further explained, "If Congress had wanted to restrict arbitrators' discretion and limit how they could consider the other factors, it would have said so—especially here, where Congress described the arbitration process in meticulous detail." *Id*.

Likewise, in *LifeNet*, the Court said that the NSA "requires the provider and insurer each to submit a proposed payment amount and explanation to an arbitrator in a 'baseball-style' arbitration." *LifeNet*, No. 6:22-CV-162-JDK, 2022 WL 2959715 at *2. And, as in *Texas Med. Ass'n*, the Court held that "The arbitrator's selection of a payment amount is binding on the parties and is not subject to judicial review, except under the circumstances described in the Federal Arbitration Act." *Id*. at *3.

In *GPS of N.J. M.D., P.C. v. Aetna, Inc.*, 2024 U.S. Dist. LEXIS 19434 *, 2024 WL 414042 (D.N.J. Feb. 5, 2024) the United States District Court for the

District of New Jersey referred to the IDR process as "arbitration" and IDR entities as "arbitrators." *Id*. And in *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, 2024 U.S. Dist. LEXIS 62018 *, 2024 WL 1461989 (D. Az. Apr. 4, 2024) the United States District Court for the District of Arizona also called the NSA's IDR process "arbitration," going so far as to call it "IDR arbitration." *Id*. at *4, 8.

Finally, the district court presents inconsistent logic in its decision to bar IDRs from arbitrator immunity while classifying IDRs as arbitrators under Section 10(a) of the FAA. The court states that the NSA does not contemplate IDRs to be arbitrators because the NSA uses the term "IDR entities" instead of "arbitrators." ROA.24.20051.1392-1393. However, per the court's own language, Section 10(a) of the FAA is "expressly incorporated into the NSA." ROA.24.20051.1393 n.4. The court clearly states that this section applies to "arbitrator's conduct." It is logically inconsistent to say that IDRs are arbitrators for one purpose but not another.

When describing how it interprets Section 10(a) as incorporated into the NSA, the Florida district court stated that the "understood meaning" of the terms within were incorporated as well. *Med-Trans*, 700 F. Supp. 3d at 1084. "When Congress uses language with a well-known meaning, [courts] generally presume that it was aware of and intended the statute to incorporate that understood

meaning." *Assad v. United States AG,* 332 F.3d 1321, 1329 (11th Cir. 2003). It makes no sense for the district court in this case to use the "understood meaning" of arbitration in one part of its analysis but not in another.

C. Issue Two: The NSA does not create a private cause of action against IDR entities.

In its supplemental briefing MET argued that the NSA does not create a private cause of action against IDR entities. ROA.24-20051.1369-71 ¶¶5-10. Two United States District Courts agree. In *Med-Trans*, the district court found that the NSA does not create a private cause of action against IDR entities. *Med-Trans,* 700 F. Supp. 3d at 1086. In reaching this conclusion, the district court stated:

> The United States has filed a statement of interest agreeing with C2C's claim of immunity and further arguing that the NSA does not create a cause of action against IDR entities. (citations omitted) The Court agrees.
>
> The NSA creates a limited right to judicial review of IDR decisions. It does not, however, create a cause of action to sue the IDR entity itself. See 42 § 300gg-111(c)(5)(E)(i). Nothing suggests that IDR entities are proper parties to suit under the NSA, so here the inquiry ends.

Id.

The district court in *FHMC LLC v. Blue Cross & Blue Shield of Ariz. Inc.*, 2024 U.S. Dist. LEXIS 62018 *, 2024 WL 1461989 reached a broader conclusion. There, the court held that an implied right of action was incongruous with the detailed statutory scheme found in the NSA and in which judicial review was

limited to specific instances. *Id*. at 8-9. The Arizona court dismissed on a Rule 12(b)(6) motion, but allowed the plaintiff leave to amend. *Id*.

Private rights of action under federal law must be created by Congress. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001); *Touche Ross & Co. v. Redington*, 442 U.S. 560, 578 (1979) (remedies available are those "that Congress enacted into law"). In addressing such a question, a court must determine whether the statute in question, either explicitly or by implication, evinces a congressional intent to create a private cause of action. *Touche Ross*, 442 U.S. at 568. Without clear evidence of such intent, courts may not create a cause of action "no matter how desirable . . . as a policy matter, or how compatible with the statute." *Sandoval*, 532 U.S. at 286-87.

The NSA does not expressly or impliedly create a private right of action. Analysis begins with the language of the statute itself. *Touche Ross*, 442 U.S. at 568. The NSA states:

> (E) Effects of determination.
>
> (i) In general. A determination of a certified IDR entity under subparagraph (A)—
>
> (I) shall be binding upon the parties involved, in the absence of a fraudulent claim or evidence of misrepresentation of facts presented to the IDR entity involved regarding such claim; and
>
> (II) ***shall not be subject to judicial review***, except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9, United States Code.

42 U.S.C. § 300gg-111(c)(5)(E) (emphasis added). The NSA's language "shall not be subject to judicial review" strongly suggests that Congress did not intend to create a private cause of action. Instead, it created a very limited right of review. Put another way, the statute creates a right to *review* an arbitration award, not *litigate* issues related to the award. Specifically, Section 10(a) allows a United States District Court to *set aside* an arbitration award under certain circumstances. While arbitrator misconduct is mentioned in this section, it is not explicitly or impliedly punishable by this particular provision. Simply put, there is no enforcement mechanism built into this section that would allow any plaintiff to sue an IDR. But this was not an oversight; Congress instead provided a different remedy for plaintiffs injured by IDRs.

The NSA sets out requirements for the certification of IDRs under the Act, s*ee generally* 42 U.S.C. § 300gg-111(c), and the Secretary of Health and Human Services (the "Secretary") may revoke an IDR's certification for a pattern of noncompliance with the Act. 42 U.S.C. § 300gg-111(c)(4)(C). Additionally, potential plaintiffs are specifically empowered to petition the Secretary for the denial or revocation of an IDR's certification for *any* noncompliance under Subsection 111(c):

> [A]n individual, provider, facility, or group health plan or health insurance issuer offering group or individual health insurance coverage may petition for a denial of a certification or a revocation of a certification with respect to an [IDR entity] for failure of meeting a requirement of this subsection.

42 U.S.C. § 300gg-111(c)(4)(C).

The *Med-Trans* court drew special attention to this remedy in its determination that the NSA does not provide a private right of action against IDRs. Specifically, the court stated that "the NSA gives the implementing executive agencies—not federal courts—the power and responsibility to audit QPAs and *investigate complaints*." *Med-Trans,* 700 F. Supp. at 1085 n.7 (emphasis added). Clearly, the statute provides relief from errant IDRs, and the presence of this specific remedy suggests that Congress intended that aggrieved parties to avail themselves of an administrative complaint process rather than judicial proceedings. The district court in this case relies heavily on the notion that Congress purposely excluded any remedies or protections that were not provided by the NSA. If this logic is to be followed, one must conclude that an administrative complaint is the sole avenue for resolving Plaintiffs-Appellants'.

D. Issue 3: Plaintiffs-Appellants' claims are barred by collateral estoppel.

In its supplemental briefing, MET also argued that Plaintiffs' claims were barred by collateral estoppel. Collateral estoppel precludes a party from litigating an issue already raised in an earlier action between the same parties if: (1) the issue at stake is identical to the one involved in the earlier action; (2) the issue was actually litigated in the prior action; and (3) the determination of the issue in

the prior action was a necessary part of the judgment in that action. *Stripling v. Jordan Prod. Co., LLC*, 234 F.3d 863, 868 (5th Cir. 2000).

The issues in the *Med-Trans* lawsuit are identical to the issues in this lawsuit. The Plaintiffs here allege that MET reviewed and applied illegal, vacated rules, and selected the offers closest to the purported QPA. The same allegation was made against the IDR entity in the *Med-Trans* lawsuit. Those plaintiffs claimed this was enough to trigger judicial review under 42 U.S.C. § 300gg–111 (c)(5)(E)(1).

Whether that claim was enough to trigger judicial review was also the issue actually litigated before the Florida Court in *Med-Trans.* Ultimately, that Florida district court decided that review under the NSA is extremely narrow and that it did not permit a lawsuit against IDR entities. Finally, whether an IDR entity can be sued under the NSA was a necessary part of the Florida court's Order dismissing the claims against the IDR entity with prejudice.

The plaintiffs in the lawsuits are effectively the same. The air ambulance companies that are plaintiffs in the Florida lawsuits and the air ambulance companies that are plaintiffs in the lawsuits before this Court are subsidiaries of Global Medical Response and are therefore in privity. They are represented by the same counsel. Complete identity of parties is not required in the Fifth Circuit, meaning that the privity between plaintiffs suffices. *Wehling v. Columbia*

Broadcasting System, 721 F.2d 506, 508 (5th Cir. 1983) ("Complete identity of parties in the two suits is not required"); *Harmon v. Bayer Bus. & Tech. Servs., L.L.C.*, No. H-14-1732, 2016 U.S. Dist. LEXIS 10622, 2016 WL 397684 * 13-14 (S.D. Tex. Jan. 29, 2016) ("If a litigant has fully and fairly litigated an issue, third parties unrelated to the original action can bar the litigant from relitigating that same issue in a subsequent suit through the principle of non-mutual collateral estoppel"). Plaintiffs had an opportunity to fully and fairly litigate the issue in the Florida Court.

Furthermore, where two suits are pending at the same time and address the same issues, the suit which first progresses to judgment collaterally estops relitigation of the claims in the second lawsuit. *Jones v. Sheehan, Young & Culp, P.C.*, 82 F.3d 1334, 1338 n. 3 (5th Cir. 1996). The Florida lawsuits, which, again, considered the same issues, proceeded to judgment first. Thus, Plaintiffs claims here are barred by collateral estoppel.

The district court agreed in part. The district court concluded that because REACH Air was a party in the *Med-Trans* lawsuit litigating the same claims, it was collaterally estopped. However, as to Guardian and Calstar, the district court concluded they were not estopped, notwithstanding the fact they were represented by the same counsel and were subsidiaries of Global Medical Response ("GMR"). Although all three companies are owned by GMR, the district court concluded

that Guardian and Calstar did not have the opportunity to litigate in the *Med-Trans* lawsuit. The district court held that "'privity is not established by the mere fact that persons may happen to be interested in the same question or in proving the same state of facts.'" ROA.24-200204.1876. The court further held, "just because Guardian Flight and Calstar are air ambulance providers like the Med-Trans plaintiffs, are affiliated subsidiaries of the same parent company, and are raising similar questions of law and fact as the issues in Med-Trans, it is not enough to establish privity between the plaintiffs." ROA.24-200204.1876.

MET respectfully disagrees. REACH Air, Guardian, and Calstar all level one claim against MET: that it gave unfair weight to the QPAs. This is the only allegation made against MET, and it is identical to the allegation made against the IDR in *Med-Trans.* Per the district court, REACH Air "[sought] a ruling on the exact same issues that have been ruled upon [in *Med-Trans*]," which included the allegation that the IDR unfairly favored the QPAs. ROA.24.20204.1875-1876. Per the district court, REACH Air is estopped from pursuing the same claim against MET. ROA.24.20204.1875-1876. Why is REACH Air estopped from pursuing a claim identical to Guardian's and Calstar's when Guardian and Calstar are not? The district court's logic is not only nonsensical; it is nonexistent.

Further, the district court fails to distinguish between the claim against MET and claims against Kaiser. For example, Plaintiffs-Appellants allege that

Kaiser misrepresented its QPAs during the IDR process. However, MET is not responsible for any misrepresentation on Kaiser's part; it cannot be. Nonetheless, the court decides that because the allegations against Kaiser might differ from those raised in *Med-Trans,* the allegation against MET is not precluded. This logic strains credulity as well; the presence of multiple defendants on one case does not bind them in every allegation.

Regardless, the factual differences between the two sets of cases are irrelevant; it is strictly, from MET's point-of-view, nothing more than a question of law. Does the NSA create a private cause of action against IDR entities and are they proper parties to the lawsuit? In that context, all these companies' affiliation under GMR's ownership is sufficient to create privity. To hold otherwise creates an unacceptable risk of inconsistent results. In fact, such an inconsistent result exists in this very lawsuit: Guardian Flight and Calstar can sue MET, but REACH cannot.

IV.
CONCLUSION AND PRAYER

NSA IDR entities are statutorily created arbitrators who decide disputes between parties. As such, to preserve their impartiality, they should be extended the protection of immunity from suit. The plain language of the NSA, as well as the legislative and agency history show that Congress and the federal agencies charged with enforcing the NSA consider the IDR process to be functionally

equivalent to arbitration. Furthermore, the NSA, by its own language, does not allow for judicial review except in very narrow circumstances pertaining to setting aside an award. And, because REACH has previously litigated identical issues in the United States District Court in Florida, and lost, the Plaintiffs-Appellants claims are barred by collateral estoppel.

Appellee-Cross Appellant Medical Evaluators of Texas ASO, LLC 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. Appellee-Cross Appellant also request that this Honorable Court affirm the decision of the district court as to collateral estoppel against REACH, but to reverse the denial of the motion to dismiss as to Calstar and Guardian Air on the issue of collateral estoppel and render judgment in favor of Medical Evaluators of Texas ASO, LLC.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 7, 2024, a true and correct copy of this corrected Appellant's Brief was served all attorneys of record, via Electronic Case Filing ("ECF") or First-Class Mail per the Federal Rules of Appellate Procedure.

/s/ *Joseph Leo 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 8,621 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(f).

This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 Point Font.

/s/ *Joseph Leo Lanza*

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October 7, 2024