UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

COMMUNITY INSURANCE COMPANY D/B/A ANTHEM BLUE CROSS AND BLUE SHIELD, Plaintiff, v. HALOMD, LLC, ALLA LAROQUE, SCOTT LAROQUE, MPOWERHEALTH PRACTICE MANAGEMENT, LLC, EVOKES, LLC, MIDWEST NEUROLOGY, LLC, ONE CARE MONITORING, LLC, and VALUE MONITORING LLC, Defendants.	Civil Case No. 1:25-cv-00388-MWM District Judge: Matthew W. McFarland

DEFENDANT HALOMD'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Federal Statutes

State Statutes

Federal Rules

Federal Regulations

Other Authorities

I. Preliminary Statement.

If there was any question why Anthem brought this case, Anthem's opposition answers it. This case is not about fraud or any illicit enterprise on the part of HaloMD, LLC ("HaloMD") or any of the other Defendants. This case—and all of the identical cases filed by Anthem's affiliates against other health care providers and hospitals across the country—is about preserving Anthem's power and control.[1] It is an attempt by Anthem to chill the use of the No Suprises Act's ("NSA") independent dispute resolution ("IDR") process and hamstring those that must access it.

Anthem is losing in the IDR process, 85% of the time. Amend Compl., ECF No. 25 at PageID 151, 160. Independent dispute resolution entities ("IDRE") are overwhelmingly determining that Anthem's offers and payment rates are indefensible and unfair. Indeed, in every IDR proceeding that is purportedly at issue in this case, the IDRE reviewed the evidence submitted by the parties and made a payment determination on the merits.

Try as Anthem might in its opposition to support its claims and fabricated theories of liability, Anthem may not ignore federal rules, the clear statutory text of the NSA, and existing regulatory processes. The positions asserted by Anthem in its opposition are contrary to both the law and the positions taken by Anthem's affiliates and its counsel in other actions. For the following reasons, and for those many reasons offered by HaloMD in its motion to dismiss, this Court should dismiss the entirety of Anthem's amended complaint with prejudice and award HaloMD attorneys' fees pursuant to Ohio Rev. Code § 2747.01 *et seq*.

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[1] Apart from the other actions identified by HaloMD in its motion to dismiss, Anthem's affiliates recently launched two more lawsuits against other health care providers and hospitals who initiate large numbers of IDR proceedings. *See Anthem Blue Cross and Blue Shield et ano. v. AGS Health et al.*, No. 7:25-cv-00804 (E.D. Va.); *Anthem Blue Cross Life and Health Insurance Company et ano. v. Prime Healthcare Services et al.*, No. 8:26-cv-00023 (C.D. Cal.); *see also* Defendant HaloMD's Motion to Dismiss Anthem's Amended Complaint ("HaloMD MTD"), ECF No. 45 at PageID 692 (noting the other actions filed by Anthem's affiliates against HaloMD).

II. Anthem Cannot Plausibly Plead Fraud by Misrepresenting the IDR Process.

In its opposition, Anthem describes the IDR process as an "honor system, under which providers self-certify dispute eligibility." Anthem's Opposition to Defendants' Motions to Dismiss ("Opp."), ECF No. 47 at PageID 885, 887-89. Anthem's description of the IDR process contradicts federal regulations and clear federal agency directives. The Court does not have to accept Anthem's legal mischaracterizations. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (when ruling on motions to dismiss, courts need not accept as true legal conclusions lacking further factual support, or legal conclusions couched as factual allegations).

To initiate the IDR process, an initiating party must attest that it believes that the items and services under dispute qualify for resolution via the IDR process. 45 C.F.R. § 149.510(b)(2)(iii)(A)(6) (Oct. 7, 2021); HaloMD's Request for Judicial Notice ("HaloMD RJN"), Ex. A (Notice of IDR Initiation Form), ECF No. 45-3 at PageID 742 (containing the attestation of belief of eligibility). But the party initiating the IDR process does not determine eligibility—that determination is granted to the IDRE and the IDRE alone.

There is a specific process designed to address eligibility which is established by regulation and discussed repeatedly throughout guidance documents published by federal agencies.[2] *See* 45

[2] In the Request for Judicial Notice initially filed by HaloMD, HaloMD attached two agency guidance documents applicable to IDR proceedings for services furnished before October 25, 2022. ECF. Nos. 39-4, 39-5. In December 2023, federal agencies updated their guidance documents for services furnished after October 25, 2022. ECF. Nos. 45-4, 45-5. While both the prior and the updated guidance documents contain materially identical guidance related to eligibility determinations by IDREs, because Anthem only identifies IDR proceedings for services furnished after October 25, 2022 in its Amended Complaint, HaloMD filed its errata to substitute the prior guidance documents with the updated guidance documents. ECF No. 42. HaloMD subsequently re-filed its Motion to Dismiss and Request for Judicial Notice with the updated guidance documents. ECF No. 45.

C.F.R. §§ 149.510(c)(1)(iii), (v) (Oct. 7, 2021); HaloMD RJN, Ex. B, ECF No. 45-4 at PageID 760, § 5.5 (providing agency guidance in instances when the non-initiating party believes the IDR process does not apply); HaloMD RJN, Ex. C, ECF No. 45-5 at PageID 799-801, § 4.4 (same), § 4.6.2 (providing guidance to IDREs determining whether the IDR process applies to the dispute). This process requires IDREs to determine eligibility in every single IDR proceeding. IDREs are not required (or instructed) to rely on the initiating party's attestation. Instead, IDREs are directed to request and evaluate evidence related to eligibility from the parties. *Id*. The IDRE is only authorized to proceed if the documentation shows that the dispute is eligible.

Anthem cannot plausibly state a claim by misrepresenting these explicit processes.

III. Anthem Cannot Challenge Agency Implementation of the IDR Process Through Fraud Claims.

Like Anthem's pleading, much of Anthem's opposition is devoted to complaining about the NSA and the IDR process. Anthem protests that the IDR process does not have: (i) more discovery, more evidentiary requirements, more hearings, more testimony, more transparency, and more process in general (*i.e.*, more burdens that Anthem can leverage); (ii) a different process to resolve eligibility disputes; (iii) a different way of compensating IDREs; and (iv) ceilings on offers submitted by disputing parties.[3] Opp., ECF No. 47 at PageID 887-90. But Anthem is not Congress or a federal agency. Nor is the Court. Anthem's dissatisfaction with the IDR process is not the

[3] Anthem alleges that HaloMD is liable, in part, because HaloMD submits offers exceeding billed charges in the IDR process. But multiple federal judges recently concluded that the NSA does not restrict the value of offers that disputing parties may submit in the IDR process. These conclusions were made in cases in which Anthem's affiliates (and its counsel of record in this case) contended that the NSA permits parties to submit zero-dollar offers. *See Plastic & Reconstructive Surgery Grp. v. Aetna, Inc.*, No. 3:25-CV-211-SVN, 2025 WL 3786117, at *3 (D. Conn. Dec. 31, 2025) (noting that the court was unaware of any restriction on offers to IDREs); *Avraham Plastic Surgery LLC et al. v. Aetna, Inc. et al.*, No. 25-CV-784, 2025 WL 3779084, at * (E.D.N.Y. Dec. 30, 2025) (magistrate's report and recommendation noting that the NSA requires an IDRE to select a zero-dollar offer if the IDRE believes the zero-dollar offer is the more appropriate offer).

basis for a legal claim against HaloMD or any other Defendant. Anthem has ample channels to lobby the government. Simply because Congress and federal agencies did not create Anthem's preferred IDR process does not entitle Anthem to manufacture claims of fraud.

Anthem's argument that the Court should disregard the agency guidance offered by HaloMD only reinforces that Anthem is attempting to use this action to collaterally attack the IDR process itself. The guidance materials offered by HaloMD were published by federal agencies to provide explanation and direction to disputing parties and IDREs regarding the IDR process, including the process for determining eligibility. HaloMD RJN, Ex. A-E, ECF No. 45-3 to 45-7. While the IDR process is central to every single allegation in this lawsuit, Anthem argues that the Court should disregard this guidance because it is "nonbinding,"[4] "is not evidence of a full and fair process," and it "contradicts the plain language of the NSA." Opp., ECF No. 47 at PageID 918. In support, Anthem cites *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) ("*Loper Bright*"). Opp., ECF No. 47 at PageID 918 n. 13.

In *Loper Bright*, the Supreme Court overruled the *Chevron* doctrine and held that the Administrative Procedure Act ("APA") requires courts to exercise their independent judgment in deciding whether federal agencies have acted within their statutory authority. *Loper Bright*, 603 U.S. at 412. But Anthem did not bring this suit under the APA against federal agencies. If Anthem believes that federal agencies have impermissibly implemented the IDR process, the APA provides

[4] The standard U.S. Department of Health & Human Services ("HHS") disclaimer appearing in the IDR process guidance documents has a complicated history. The former regulation that required the disclaimer in all HHS guidance documents, 45 CFR § 1.3, was repealed on July 25, 2022, and was only in effect from January 6, 2021, to August 4, 2022. *See* HHS, Final Rule, *Department of Health and Human Services Repeal of HHS Rules on Guidance, Enforcement, and Adjudication Procedure*, 87 Fed. Reg. 44002-40025 (Jul. 25, 2025). But critically, it does not change that the guidance documents reflect: (i) federal agency implementation of the IDR process, and (2) federal agency expectations for IDR proceedings.

a mechanism for Anthem to assert that claim. Indeed, federal agency implementation of the IDR process already has been—and currently is—the subject of many such challenges. *See*, *e.g.*, *Texas Med. Ass'n v. United States Dep't of Health & Hum. Servs.*, 110 F.4th 762 (5th Cir. 2024) (affirming the vacatur of certain IDR process regulations because they conflicted with the NSA).

In this case, Anthem has asserted fraud claims against private parties. Any position that Anthem may take with respect to the validity of federal agency implementation of the IDR process is irrelevant for purposes of the Court's evaluation of whether Anthem has sufficiently stated its fraud claims.[5] The guidance documents explain and describe existing IDR processes. Anthem offers no legitimate reason why the Court should disregard them.

IV. The NSA's Judicial Review Prohibition Bars Anthem's Claims.

In arguing that the NSA's judicial review provision does not bar Anthem's claims, Anthem contends that the NSA's "extremely narrow" judicial review prohibition does not apply to IDRE eligibility determinations. Opp., ECF No. 47 at PageID 907. Anthem's effort to carve out IDR eligibility determinations misreads the NSA's statutory text and is incompatible with its structure.

Prior to making a payment determination, IDREs must first resolve numerous threshold issues (*e.g.*, whether timing requirements were satisfied, whether parties paid required fees, *etc*.). Neither the NSA nor implementing regulations bifurcate IDRE determinations into reviewable and unreviewable functions. Eligibility is a gateway determination that the IDRE must make in every IDR proceeding. Treating that gateway as severable from the payment determination effectively asks this Court to rewrite the NSA and render the NSA's judicial review prohibition meaningless.

Anthem is wrong to insist that there is a general presumption of judicial review that applies here. As Anthem acknowledges, the presumption may be overcome by "clear and convincing

[5] Anthem implicitly concedes as much by not responding to HaloMD's argument that the guidance documents offered by HaloMD are incorporated by reference into Anthem's complaint.

indications that Congress meant to foreclose review." Opp., ECF No. 47 at PageID 905. Here, Congress incorporated provisions of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 10(a)(1)-(4), as the exclusive grounds for vacatur of IDRE determinations. That specific statutory provision limiting judicial oversight is the necessary "clear and convincing" indication.

While multiple federal district and circuit courts have held that the NSA expressly limits judicial review of IDR awards to the grounds provided in 9 U.S.C. §§ 10(a)(1)-(4), no federal court has held that a disputing party is entitled to judicial review of eligibility determinations. *See*, *e.g.*, *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1117 (11th Cir. 2025) ("*Reach Air*") ("…judicial review of IDR awards is limited to the grounds available under the FAA,…and cannot be expanded to include circumstances where facts may be misrepresented to the IDR arbitrator."); *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 275 (5th Cir. 2025) ("*Guardian Flight I*") ("The NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA") (emphasis in original).[6] Anthem's contention that the NSA permits collateral attacks because the NSA does not incorporate the FAA's procedural provisions is similarly meritless. Opp., ECF No. 47 at PageID 908-12. The NSA's judicial review prohibition prohibits Anthem's claims regardless of whether the FAA's procedural provisions apply to a claim for vacatur of an IDR award.

Even Anthem must appreciate the implausibility of its argument, as Anthem's counsel and Anthem's affiliates have relied upon the NSA's judicial review prohibition to dismiss claims when healthcare providers seek to compel payment after Anthem's affiliates refuse to pay IDR awards. *See*, *e.g.*, *T.V. Seshan M.D., P.C. v. Blue Cross Blue Shield Ass'n*, No. 25-CV-1255 (CS), 2025 WL

[6] *Guardian Flight I* was appealed to the Supreme Court, which recently denied certiorari. *See Guardian Flight, L.L.C . v. Health Care Serv. Corp.* No. 25-441, 2026 WL 79855 (U.S. Jan. 12, 2026) (publication pending).

3496382 (S.D.N.Y. Dec. 5, 2025) (granting Blue Cross Blue Shield Association's motion to dismiss the plaintiff's complaint to compel payment of IDR awards because the NSA precludes judicial review). Anthem thus is in the awkward position of arguing in this case that the NSA's judicial review prohibition permits Anthem's claims when Anthem believes IDREs wrongly decided eligibility, but arguing in other cases that the NSA's judicial review prohibition prohibits health care providers from asserting claims when Anthem's affiliates do not pay IDR awards.

Further, the question of whether the NSA incorporates the FAA's procedure for vacatur is far from settled. In arguing as much, Anthem primarily relies on a Middle District of Florida decision, *Med-Trans Corp. v. Cap. Health Plan, Inc.*, 700 F. Supp. 3d 1076 (M.D. Fla. 2023) ("*Med-Trans*"). Even the *Med-Trans* court—which only decided whether the NSA created a private cause of action to enforce IDR awards—acknowledged that "the FAA does control judicial review of IDR decisions." *Id*. at 1084. Further, in the appeal of the *Med-Trans* decision, the Eleventh Circuit did not even address whether the NSA incorporates the FAA's procedural requirements for vacating an IDR payment determination. *See Reach Air*, 160 F.4th 1110.

And while it is true that some other federal courts have held that the NSA does not incorporate the FAA's process for confirming arbitration awards, 9 U.S.C. § 9, all such courts have held as much while simultaneously holding that the NSA's judicial review prohibition prohibited the plaintiffs' claims. *See Guardian Flight, L.LC. I*, 140 F.4th 271 (holding that the NSA explicitly barred judicial review of IDR awards and created no private right of action); *but see Guardian Flight LLC v. Aetna Life Ins. Co.*, 789 F. Supp. 3d 214 (D. Conn. 2025) (holding that the NSA created a private cause of action to enforce IDR awards but affirming that the NSA prohibits courts from "entertain[ing] collateral attacks on [IDR] awards").

No court has ever interpreted the NSA to permit challenges to IDR awards except via a vacatur claim in narrow circumstances. The Court should decline Anthem's invitation to do what the NSA plainly prohibits, and what no other federal court has ever done.

V. Anthem Cannot Escape the *Noerr-Pennington* Doctrine.

Anthem's arguments against the application of the *Noerr-Pennington* doctrine both misstate the law and contradict Anthem's own allegations in this case.

First, contrary to Anthem's contention, courts in the Sixth Circuit routinely dismiss claims under the *Noerr-Pennington* doctrine at the pleading stage. *See Ashley Furniture Indus., Inc. v. Am. Signature, Inc.*, No. 2:11-CV-427, 2015 WL 12999664, at *4 (S.D. Ohio Mar. 12, 2015) (listing district court decisions in the Sixth Circuit dismissing claims under the *Noerr-Pennington* doctrine on motions to dismiss). Anthem offers no explanation as to why the Court may not resolve the question of *Noerr-Pennington* applicability now. The Court absolutely can, and should.

Second, contrary to Anthem's contention, the Sixth Circuit has applied the *Noerr-Pennington* doctrine to bar fraud and other tort claims under state law. *See*, *e.g.*, *Geomatrix, LLC v. NSF Int'l*, 82 F.4th 466, 487 (6th Cir. 2023) ("*Geomatrix*") (affirming the dismissal of fraud and tort claims under the *Noerr-Pennington* doctrine); *see also EQMD, Inc. v. Farm Bureau Gen. Ins. Co. of Michigan*, No. 19-13698, 2021 WL 843145, at *4-8 (E.D. Mich. Mar. 5, 2021) ("*EQMD*") (dismissing RICO counts based on the *Noerr-Pennington* doctrine and noting that other circuits "have universally held" that *Noerr-Pennington* immunity applies to RICO claims).

Third, Anthem argues that the *Noerr-Pennington* doctrine is inapplicable because IDR proceedings involve "private payment disputes before private companies." Opp., ECF No. 47 at PageID 913. But Anthem also alleges in its pleading:

> HHS administers the IDR initiation process. Any submission made through this system is a statement made to the federal government, and any attestation made as part of the submission process is also made to the federal government.

Amend. Compl., ECF No. 25 at PageID 147. Anthem again cannot have it both ways.

Anthem's further attempt to distinguish the precedent cited by HaloMD in support of *Noerr-Pennington* applicability misses the point. In *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972), the plaintiff highway carrier alleged that the defendant highway carriers were liable because they allegedly engaged in concerted action to oppose the plaintiff's applications to state and federal transportation commissions. In holding that the *Noerr-Pennington* doctrine applied to the alleged conduct, the Supreme Court stated:

> The same philosophy [protecting attempts to influence the legislative or executive branches] governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.
>
> It would be destructive of rights of association and of petition to hold that groups with common interests may not…use the channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their business and economic interests....

Trucking Unlimited, 404 U.S. at 510–11; *see also Geomatrix,* 82 F.4th 466 (applying the *Noerr-Pennington* doctrine in connection with alleged conduct involving a non-government organization that set wastewater standards and certified wastewater products).

The IDR process was established by Congress and is administered by federal agencies. The Centers for Medicare & Medicaid Services ("CMS") certifies and oversees IDREs. *See* 45 CFR §§ 149.510(e)-(f) (Oct. 7, 2021). That IDREs act as arbitrators and make payment determinations rather than administrative law judges is immaterial for purposes of application of the *Noerr-Pennington* doctrine. *See generally, Guardian Flight, L.L.C. v. Med. Evaluators of Texas ASO, L.L.C.*, 140 F.4th 613, 622–623 (5th Cir. 2025) ("*Guardian Flight II*") (concluding that IDREs are protected by arbitral immunity for their role in the IDR process). The same philosophy

articulated by the Supreme Court in *Trucking Unlimited* extends the *Noerr-Pennington* doctrine to IDR proceedings.

Fourth, Anthem's contentions that its claims are permitted due to a "fraud exception" to the *Noerr-Pennington* doctrine have no merit. The Sixth Circuit has not explicitly acknowledged a "fraud exception" to the *Noerr-Pennington* doctrine separate and apart from the "sham exception." *See EQMD*, 2021 WL 843145, at *6 (noting that the Supreme Court "left unanswered the question of whether a fraud exception exists in the context of *Noerr-Pennington* immunity."). But regardless, Anthem has not actually alleged any "willful submission of false facts." *Potters Med. Ctr. v. City Hosp. Ass'n*, 800 F.2d 568, 580 (6th Cir. 1986).

Here, Anthem alleges only that HaloMD submitted attestations of belief of eligibility in connection with allegedly ineligible disputes. Even assuming Anthem's allegations to be true, the alleged conduct does not amount to a factual misrepresentation that would otherwise "deprive [an IDR proceeding] of its legitimacy." *EQMD*, 2021 WL 843145, at *6-7. The IDR process itself contemplates that IDREs will evaluate eligibility independent of a disputing party's attestation, which is itself a legal conclusion. Anthem has a right to object to eligibility during the IDR process and Anthem admits that it often exercises that right. Just because an IDRE may have overruled Anthem's objections does not mean that the IDR proceeding was illegitimate or that the alleged conduct "infected the core" of the IDR proceeding. *See EQMD*, 2021 WL 843145, at *6-8 (determining that any fraud exception to the *Noerr-Pennington* doctrine, if such exception existed, would not apply to the plaintiff's claims because, among other reasons, the plaintiff had an opportunity to challenge the defendant's contentions).

VI. Anthem is Collaterally Estopped from Relitigating Eligibility.

Anthem indefensibly argues that the Court should disregard CMS guidance in support of its contention that collateral estoppel does not apply to IDRE eligibility determinations. Under

controlling Sixth Circuit precedent and Ohio law, issue preclusion applies to quasi-judicial administrative determinations if the parties had an adequate opportunity to litigate the disputed issue. *Anderson v. City of Blue Ash*, 798 F.3d 338, 351 (6th Cir. 2015), quoting *State ex rel. Schachter v. Ohio Pub. Emps. Ret. Bd.*, 905 N.E.2d 1210, 1216 (2009). "An arbitration award has the same preclusive effect as a court judgment for the matters it decided." *Ford Hull-Mar Nursing Home, Inc. v. Marr, Knapp, Crawfis & Assoc., Inc.*, 138 Ohio App. 3d 174, 181 (2000).

CMS: (i) directs IDREs to review all information relating to eligibility submitted by parties (including objections) when making eligibility determinations; and (ii) requires IDREs to determine eligibility in every IDR proceeding. *See* 45 C.F.R. §§ 149.510(c)(1)(iii), (v) (Oct. 7, 2021); HaloMD's RJN, Ex. B, ECF No. 45-4 at PageID 760 § 5.5; HaloMD's RJN, Ex. C, ECF No. 45-5 at PageID 799-801, §§ 4.4, 4.6.2. That the IDRE is not obligated to issue a written eligibility determination is immaterial. This is not a case where the Court is "unable to discern what the previous court [had] already decided," leaving open a "genuine issue of fact." *Garner v. Dep't. of Def.*, 2:18-cv-1545, 2020 WL 209310, at *5 (S.D. Ohio Jan. 14, 2020). The fact that the IDRE issued a payment determination is evidence that the IDRE determined eligibility.

Because eligibility is a threshold issue that must be determined by an IDRE prior to a payment determination—and because parties to IDR proceedings have multiple opportunities to challenge eligibility—the issue of eligibility is litigated and necessary to every payment determination. Further, the Sixth Circuit has held that partiality in an arbitration "will be found only where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration." *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 278 F.3d 621, 626 (6th Cir. 2002). Anthem may want federal agencies to deploy a different process for paying and policing IDREs, but Anthem cannot broadly claim partiality because it does not like CMS's existing processes.

VII. Anthem Fails to Allege Grounds for a Vacatur Claim.

Anthem's argument with respect to its vacatur claim is contrary to fundamental pleading rules, the opinions of other circuit courts, and the legal positions of its own affiliates.

Anthem argues that it may plead vacatur across an indeterminate universe of IDR awards because the NSA does not expressly incorporate the FAA's procedural provisions. Opp., ECF No. 47 at PageID 922-3. But Fed. R. Civ. P. 8 and 9(b) are independent of the FAA. No federal court has held that a claim for vacatur of an IDR award is exempt from Fed. R. Civ. P. 8 and 9(b).

The Eleventh Circuit's opinion in *Reach Air*, 160 F.4th 1110, is useful.[7] In *Reach Air*, the Eleventh Circuit addressed pleading requirements in connection with a claim for vacatur of IDR awards. The plaintiff air ambulance services provider sought to vacate an IDR award on the grounds that: (a) the award was procured by fraud, and (b) the IDRE exceeded its powers (*i.e.*, the exact same grounds that Anthem asserts in this action). Specifically, the plaintiff alleged that: (i) the defendant insurer misrepresented the relevant median contracted rate (otherwise known as the "qualifying payment amount" or "QPA") during the IDR proceeding and (ii) the IDRE impermissibly applied an illegal presumption in favor of the allegedly misrepresented QPA.

The district court granted the defendant healthcare insurer's motion to dismiss for failure to state a claim for vacatur. The plaintiff appealed, and the Eleventh Circuit affirmed. In affirming, the Eleventh Circuit ruled that, with respect to the contention that the IDRE exceeded its powers under 9 U.S.C. § 10(a)(4):

> "It is not enough to show that the arbitrator committed an error – or even a serious error…Under our current scheme, an arbitrator's actual reasoning is of such little

[7] The *Reach Air* opinion was issued in the appeal of the *Med-Trans* decision relied upon by Anthem. The *Med-Trans* district court simultaneously dismissed two different cases brought by air ambulance services providers seeking to vacate IDR awards. After both plaintiffs appealed, Med-Trans Corporation settled its dispute and its appeal was dismissed, leaving only Reach Air Medical Services LLC's appeal pending. *Reach Air*, 160 F.4th at 1124, n.1.

> importance to our review that it need not be explained -- the decision itself is enough…Our sole question under § 10(a)(4) is whether the arbitrator (even arguably) performed the assigned task, not whether she got the outcome right or wrong."

Reach Air, 160 F.4th at 1119-20 (internal quotations and citations omitted).

Applying these principles, the Eleventh Circuit concluded that the plaintiff had not plausibly pleaded any ground for vacatur. After first determining that "none of the[] circumstances [in which an arbitrator exceeds its authority], or anything even remotely resembling them [were] present," the Eleventh Circuit rejected the plaintiff's "conclusory argument" that the IDRE exceeded its authority. *Id*. The court further concluded that the plaintiff had not sufficiently alleged fraud as a basis for vacatur as required by Fed. R. Civ. P. 9(b). *Id*. at 1121-23 (noting that the complaint failed to allege numerous key details including: the "time and place of each statement and the person responsible for making" the statement, "the manner in which the [fraudulent statements] misled" the plaintiff, what the insurer "obtained as a result of the alleged fraud," and how the alleged misrepresentation was connected to the IDRE's determination).

Here, Anthem's claim for vacatur is even weaker. Apart from a handful of IDR proceedings, Anthem alleges no facts with respect to the "thousands of knowingly ineligible IDR disputes" that it seeks to vacate. Amend. Compl., ECF No. 25 at PageID 131. Anthem also fails to allege any concrete facts that would establish that HaloMD engaged in fraudulent conduct, let alone any conduct that was not discoverable during the course of any IDR proceeding.

Anthem cites no authority suggesting that the submission of information believed to be true at the time of submission amounts to "fraud" within the meaning of the FAA. Nor does Anthem allege any facts establishing that HaloMD subjectively believed that any attestations were false and submitted the attestations anyway. At any rate, eligibility is squarely within the IDRE's authority to decide. IDREs must make eligibility determinations in every IDR proceeding. *See* 45

C.F.R. §§ 149.510(c)(1)(iii), (v) (Oct. 7, 2021); HaloMD's RJN, Ex. B, ECF No. 45-4 at PageID 760 § 5.5; HaloMD's RJN, Ex. C, ECF No. 45-5 at PageID 799-801, §§ 4.4, 4.6.2.

Anthem's affiliates and its counsel have made the same arguments in seeking dismissal of claims for vacatur of IDR awards brought by other healthcare providers against Anthem's affiliates when Anthem prevails in the IDR process. In *Avraham Plastic Surgery LLC et al. v. Aetna, Inc. et al.*, No. 25-CV-784, 2025 WL 3779084 (E.D.N.Y. Dec. 30, 2025) ("*Avraham*"), the petitioner healthcare providers asserted a vacatur claim for 108 IDR awards based on allegations that the IDRE misapplied the law and exceeded its powers by selecting "zero-dollar" offers submitted by the defendants, including several Anthem affiliates. On behalf of Anthem's affiliates, Anthem's counsel argued that: (i) the court should sever the action into individual proceedings because the 108 IDR awards at issue involved "different parties, patients, and services that have nothing to do with each other;" and (ii) the NSA's judicial review prohibition prohibited judicial review of IDR awards based on alleged legal errors. *Id*. at *6-10. The magistrate judge agreed and recommended that the court deny the petitioners' petition because "legal error is not one of the limited circumstances by which a court can vacate [an IDR award under the NSA]."[8] *Id.* at *6.

Anthem again is in the suspect position of arguing in this case that it may pursue a vacatur claim *en masse* because IDREs wrongly decided eligibility, but arguing in other cases that healthcare providers may not do so based on allegations that IDREs committed other legal errors.

VIII. Anthem Fails to Plausibly Allege a RICO Violation.

None of Anthem's arguments overcome Anthem's failure to plausibly plead RICO violations.

[8] Because the magistrate recommended denial of the petition, the magistrate also recommended that the court find the motion to sever brought by Anthem's affiliates to be moot.

A. The Litigation Activities Doctrine Bars Anthem's RICO Claims.

While Anthem concedes that courts "generally do not allow litigation filings to serve as a basis for RICO predicates acts," Anthem asks the Court to nevertheless permit Anthem's RICO claims to proceed because: (i) "the Sixth Circuit has not applied the litigation activities doctrine;" (ii) "policy reasons behind the doctrine do not remotely apply to IDR;" and (iii) Defendants allegedly deceived not just IDREs, but also federal agencies and other insurers. Opp., ECF No. 47 at PageID 923-4. None of Anthem's arguments have merit.

First, Anthem is wrong with respect to Sixth Circuit precedent. The Sixth Circuit has considered whether litigation activities can be considered RICO predicate acts and agreed that they cannot. *See Melton v. Blankenship*, No. 08-5346, 2009 WL 87472, at *3 (6th Cir. Jan. 13, 2009) (the Sixth Circuit agreeing that "filings can not be considered RICO predicate acts").

Second, from a policy perspective, Anthem's theory would invite parties who lose in the IDR process (especially well-funded healthcare insurance companies) to relitigate and collaterally attack thousands of IDRE determinations by re-labeling their adversaries' submissions as "wire fraud." That is precisely the type of retaliatory action that the litigation activities doctrine is intended to prevent. *See generally, Kim v. Kimm*, 884 F.3d 98, 104-05 (2d Cir. 2018) (explaining the policy arguments supporting the litigation activities doctrine).

In the IDR process, CMS assigned responsibility for eligibility determinations to IDREs. The IDR process provides non-initiating parties with multiple opportunities to object to eligibility, and IDREs must evaluate eligibility in every IDR proceeding. CMS has further created a reconsideration process to resolve jurisdictional errors. *See* HaloMD's RJN, Ex. E, ECF No. 45-7. Allowing Anthem to rely on IDR initiations to weaponize RICO would upend the entire NSA regulatory framework. No policy consideration favors such an outcome.

Third, the cases relied upon by Anthem to argue against application of the litigation activities doctrine are readily distinguishable. In *United States v. Lee*, 427 F.3d 881 (11th Cir. 2005), the defendants never actually filed, or intended to file, a lawsuit. *Id*. at 890. In *Carroll v. U.S. Equities Corp.*, No. 18-cv-667, 2020 WL 11563716, at *9 (N.D.N.Y. Nov. 30, 2020), the defendants committed a variety of additional acts that "went beyond any of the particular disputes between the litigants." *Id.* at *9. Here, Anthem's RICO claims are all based on submissions in connection with initiated IDR proceedings. The litigation activities doctrine thus bars them.

B. Anthem Cannot Establish Proximate Causation.

IDREs make eligibility determinations and payment determinations, in that order. In arguing that it has "plainly" pleaded causation to support a RICO claim, Anthem fails to meaningfully address the IDREs' role. Instead, Anthem attempts to escape the import of *NOCO Co. v. OJ Com., LLC*, 35 F.4th 475 (6th Cir. 2022), by arguing that IDRE reliance on the attestations submitted by HaloMD "was not only foreseeable but intended." Opp., ECF No. 47 at PageID 933. But for proximate cause purposes, it is the outcome of each IDR proceeding that is unforeseeable given: (a) the IDREs' mandate to determine eligibility and select an offer of payment, and (b) Anthem's positions with respect to all IDRE determinations. The IDREs' independent decision-making thus broke the causal chain in every case.

IX. Anthem May Not Rely on ERISA to Restrict Access to the IDR Process.

Anthem further argues that it has pleaded a violation of the Employee Retirement Income Security Act of 1974 ("ERISA") by alleging that Defendants "failed to properly initiate or engage in open negotiations prior to initiating the IDR Process" and by pleading that Defendants "submit false[] [sic]…information" to initiate IDR proceedings. Opp., ECF No. 47 at PageID 939. In support of its contentions, Anthem cites: 29 U.S.C. § 1185e(c)(1)(B) (providing that disputing

parties may access the IDR process if open negotiations fail); 29 U.S.C. § 1185e(c)(2)(A) (directing federal agencies to establish the IDR process); 29 C.F.R. § 2590.716-8(b)(2)(i) (providing that disputing parties may initiate the federal IDR process); 29 C.F.R. § 2590.716-8(b)(2)(iii)(A) (providing what must be included in the notice of IDR initiation).

While IDREs make payment determinations only in eligible disputes, none of the authorities cited by Anthem provide that it is an ERISA violation to initiate IDR proceedings. Indeed, Anthem's ERISA claim is little more than a veiled attempt by Anthem to try to restrict the Defendants' ability to access the IDR process.

X. Anthem Fails to Demonstrate That It Has Plausibly Stated Any Claim with Particularity.

In addition, Anthem's opposition does not demonstrate why the Court should not dismiss all of Anthem's causes of action pursuant to Fed. R. Civ. P. 12(b) for the other many reasons argued in HaloMD's Motion to Dismiss, including because Anthem fails to plausibly plead any of its claims with the requisite particularity to satisfy Fed. R. Civ. P. 8 and 9(b).

XI. HaloMD Is Entitled to Its Fees Under Ohio's UPEPA.

Finally, contrary to Anthem's contention, HaloMD is entitled to recover its attorney's fees under Ohio's recently enacted Uniform Public Expression Protection Act ("UPEPA"), Ohio Rev. Code § 2747.01 *et seq*. Anthem's argument disregards the choice-of-law framework adopted by the Sixth Circuit for determining whether UPEPA's fee-shifting provision applies in federal court.

A. UPEPA's Fee-Shifting Provision Is Substantive.

While no court in the Sixth Circuit has addressed application of UPEPA's fee-shifting provision in a federal action, other federal courts often enforce fee-shifting provisions of other states' anti-SLAPP statutes. *Accord, Paucek v. Shaulis*, 349 F.R.D. 498, 514-9 (D.N.J. 2025) (defendant prevailing under Rule 12 or Rule 56 can recover fees under state anti-SLAPP statute);

Adelson v. Harris, 774 F.3d 803, 809 (2d Cir. 2014) (enforcing state anti-SLAPP fee shifting and immunity provisions); *see also U.S. ex rel. Newsham v. Lockheed Missiles & Space Co.*, 190 F.3d 963, 973 (9th Cir. 1999) (anti-SLAPP statute "serve[s] an interest not directly addressed by the Federal Rules").

In determining whether a state law applies in a federal action, courts first consider whether there is a "direct collision" between the state law and the federal rule. *Albright v. Christensen*, 24 F.4th 1039, 1044 (6th Cir. 2022). If the state law conflicts with the federal rule, the federal rule governs if it does "not abridge, enlarge or modify any substantive right." *Id.* at 1044-45. Alternatively, if there is no conflict, courts conduct an analysis to determine if the application of the state law promotes the twin aims set forth in *Erie Railroad Co. v. Tompkins*, 304. U.S. 64 (1938) ("*Erie*"): namely, the "discouragement of forum-shopping and avoidance of inequitable administration of the laws." *Albright*, 24 F.4th at 1045 (internal citation omitted).

Since UPEPA's fee-shifting provision, Ohio Rev. Code § 2747.05(A), is tethered to the underlying merits of a claim, it is substantive. *See First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 529-530 (6th Cir. 2002) (distinguishing the general fee-shifting provision in Ohio Rev. Code § 2323.51 from substantive fee-shifting schemes tethered to the underlying merits of a claim). Further, while there may be a "direct collision" between some UPEPA provisions and federal procedural rules, UPEPA's fee-shifting provision does not conflict with any federal procedural rule. Since there is no conflict between UPEPA's fee-shifting provision and any federal rule, UPEPA's fee-shifting provision applies in federal court.

Both *Erie* objectives are advanced by this Court's enforcement of UPEPA's fee-shifting provision. Otherwise, litigants would rush to federal courts to avoid potential application of UPEPA. Enforcing UPEPA is also consistent with the Ohio Legislature's express mandate for

courts to "broadly construe and apply" UPEPA to protect the right to petition. *See* Ohio Rev. Code § 2747.06(B).

The non-binding decision upon which Anthem relies to argue against the application of UPEPA, *Croce v. Sanders*, 459 F. Supp. 3d 997 (S.D. Ohio 2020) ("*Croce*"), is inapposite. In *Croce,* the court reasoned in dicta that even if it invoked Indiana's Anti-SLAPP Act (inapplicable here), the defendant could not recover his fees because he prevailed on a motion for summary judgment rather than a "preliminary motion" (*i.e.*, legal fees would not be limited due to preliminary disposition of the action). *Id.* Here, HaloMD expressly invoked the protections of UPEPA, including Ohio Rev. Code § 2747.04, in its preliminary motion to dismiss and argued that Anthem's claims are barred by UPEPA. ECF No. 45 at PageID 723. That HaloMD invoked UPEPA through a motion brought pursuant to Fed. R. Civ. P. 12(b) does not alter the analysis.

B. UPEPA Applies to Anthem's State Law Claims.

Anthem's attenuated arguments suggesting that UPEPA does not apply also fail. Anthem's claims do not arise from communications relating to the sale of any HaloMD services—they arise from the initiation of IDR proceedings. If Ohio Rev. Code § 2747.01(C)(3) broadly encompassed any communication made by any party engaged in the sale of goods or services, the exception would swallow the rule. Further, Anthem's contention that its claims are not based on communications made in (or under consideration or review in) "judicial, administrative or other governmental proceedings" is contradicted by its own pleading.[9] The IDR process is created by federal statute and IDREs are regulated by CMS. *See also Avraham*, 2025 WL 3779084, at *4 ("The NSA may designate IDR decisionmakers as "[]IDREs" rather than "arbitrators" and uses the term "IDR" rather than "arbitration," but the role of a []IDRE as a neutral decisionmaker making

[9] *See supra*, § 5 (discussing the applicability of the *Noerr-Pennington* doctrine).

a binding judgment to resolve a dispute between two parties makes them virtually indistinguishable from arbitrators and functionally akin to judges."). Anthem cannot seriously dispute that IDR proceedings are "judicial, administrative or other governmental proceedings" for purposes of UPEPA.

XII. Conclusion.

For these additional reasons, this Court should dismiss the entirety of Anthem's amended complaint with prejudice and award HaloMD attorneys' fees pursuant to Ohio Rev. Code § 2747.01 *et seq*.

Respectfully submitted,

NIXON PEABODY LLP

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/s/ Michael J. Summerhill
Michael J. Summerhill, Bar No. 69996, Trial Attorney
70 West Madison St., Suite 5200
Chicago, IL 60602.4378
Tel: (312) 977-9224
msummerhill@nixonpeabody.com

Jonah D. Retzinger (admitted *pro hac vice*)
Christopher D. Grigg (admitted *pro hac vice*)
Brock J. Seraphin (admitted *pro hac vice*)
April C. Yang (admitted *pro hac vice*)
300 South Grand Avenue, Suite 4100
Los Angeles, CA 90071
Tel: (213) 629-6000
jretzinger@nixonpeabody.com

Counsel for Defendant HaloMD, LLC

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2026, a copy of the foregoing DEFENDANT HALOMD'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS ANTHEM'S AMENDED COMPLAINT was electronically filed with the Clerk of the United States District Court for the Southern District of Ohio, Western Division, using the CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

/s/ Heidi Gutierrez
Heidi Gutierrez