IN THE UNITED STATES DISTRICT COURT
FOR THE 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 Action No. 1:25-cv-00388-MWM** **District Judge: Matthew W. McFarland**

REPLY IN SUPPORT OF DEFENDANTS MPOWERHEALTH PRACTICE MANAGEMENT, LLC, EVOKES, LLC, MIDWEST NEUROLOGY, LLC, ONE CARE MONITORING, LLC, AND VALUE MONITORING LLC'S MOTION TO DISMISS THE AMENDED COMPLAINT

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In their Motion to Dismiss, the Provider Defendants established that Anthem's lawsuit must be dismissed—the claims are barred by the No Surprises Act itself, collateral estoppel, the Noerr-Pennington doctrine, Rule 9(b), and the claims' requisite elements. Anthem's scattershot opposition merely confirms that required result.

Anthem does not dispute that it had *multiple* opportunities to be heard and contest the IDR proceedings brought against it. Indeed, it needed to "provide information regarding the Federal IDR process's inapplicability through the Federal IDR portal" if it "believe[d] that the Federal IDR process [was] not applicable." 45 C.F.R. § 149.510(c)(1)(iii) (Oct. 7, 2021). Dissatisfied with some of those arbitrations' results, Anthem asks this federal Court to rewrite the parts of the No Surprises Act it dislikes. But Congress used the No Surprises Act to create the IDR process where medical providers and insurers can efficiently resolve payment disputes, and it purposely designed that scheme to be final and not judicially reviewable—both for efficiency and to avoid flooding federal courts with complicated insurance disputes.[1] Despite Congress's dictate, Anthem now repackages unfavorable results as sprawling civil RICO and other claims, attempting to relitigate binding awards and to deter the Providers from using the federally mandated process. It does not get another bite at the apple. Anthem's losing strategy in those proceedings should not become a winning strategy on collateral attack in this Court—or a basis to undo Congress's will.

ARGUMENT

Anthem's opposition confirms this case should be dismissed for multiple reasons. ***First***, Anthem's rhetoric reinforces that this lawsuit is an attempt to enlist this Court in rewriting the No

[1] While Anthem complains of a "flood" of IDR claims, it now has filed a multitude of lawsuits in federal courts around the country all seeking to upend the IDR results it dislikes. *See Blue Cross Blue Shield Healthcare Plan of Ga., Inc. v. HaloMD, Inc., et al.*, No. 25-cv-02919 (N.D. Ga.); *Anthem Blue Cross Life & Health Ins. Co., et al. v. HaloMD LLC, et al.*, No. 25-cv-01467 (C.D. Cal.); *Anthem Health Plans of Va., Inc. v. AGS Health, Inc., et al.*, No. 25-cv-00804 (W.D. Va.). *See also Blue Cross Blue Shield of Tex. v. Zotec Partners, LLC*, No. 25-cv-00186 (E.D. Tex.); *Blue Cross Blue Shield of Tex. v. HaloMD, LLC, et al.*, No. 25-cv-00132 (E.D. Tex.).

Surprises Act via litigation (rather than legislation). ***Second***, Anthem's lawsuit improperly seeks to relitigate IDR proceedings it lost—which the No Suprises Act and several judicial doctrines forbid. ***Third***, all of Anthem's claims fail in any event for various claim-specific reasons.

I. Anthem Improperly Seeks to Rewrite the No Surprises Act via Lawsuit and Mischaracterizes the Scheme It Imposes.

Pervading Anthem's entire response brief is a criticism of the comprehensive scheme Congress imposed under the No Surprises Act—disparaging aspects of the scheme like the incentives for IDREs, the effectiveness of processes, the thoroughness of reasoning provided for determinations, and (from Anthem's perspective) the provider-favorable results. *See, e.g.*, Opp. 1, 3–7, 33. And this is unsurprising, because Anthem recognizes that it loses this case (and many IDR disputes) under the law that Congress enacted, so it must try to evade it.

But as courts have consistently recognized in considering the No Surprises Act, "the wisdom of Congress's policy choice is beyond [courts'] judicial ken." *Guardian Flight, L.L.C. v. Health Care Serv. Corp.*, 140 F.4th 271, 277 (5th Cir. 2025) ("*Guardian Flight I*"). Congress established the IDR process to resolve payment disputes like those at issue here, and "Congress decides who decides." *Fire-Dex, LLC v. Admiral Ins. Co.*, 139 F.4th 519, 526 (6th Cir. 2025). Indeed, "when Congress wants to mandate particular dispute resolution procedures it knows exactly how to do so." *Adell v. Cellco P'ship*, 2022 WL 1487765, at *4 (6th Cir. May 11, 2022) (citation modified). Courts thus cannot "rewrite a statute just because they believe that doing so would better effectuate Congress's purposes." *Keen v. Helson*, 930 F.3d 799, 806 (6th Cir. 2019). So Anthem's complaints concerning the type and amount of procedure are properly directed to Congress, who "designed the IDR process to create an efficient and streamlined vehicle for a certain category of disputes, all designed to minimize costs." *Reach Air Med. Servs. LLC v. Kaiser Found. Health Plan Inc.*, 160 F.4th 1110, 1119 (11th Cir. 2025) (citation modified). Equally

important, Congress did not want litigation, discovery, and trial in federal court over IDREs' "binding" decisions. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).

Anthem's specific criticisms are also unfounded. Anthem contends that IDREs "are not neutral parties when evaluating eligibility," Opp. 40, and complains that they "are not paid unless they decide that a dispute is eligible for IDR," Opp. 6. Under Anthem's position, though, every paid arbitrator would be biased against every defendant. That is not the law. And Anthem does not seek vacatur under 9 U.S.C. § 10(a)(2) for "evident partiality" of "the arbitrators." Nor could it, as it does not allege that this high bar was met in any of the thousands of arbitrations at issue. *See Reach Air*, 160 F.4th at 1119. Congress also built safeguards into the Act to ensure procedural integrity: Regulators must ensure that IDREs are free from any conflict of interest with the parties, 42 U.S.C. § 300gg-111(c)(4)(F)(i)(III), and IDREs must show expertise in arbitration, claims administration, managed care, billing and coding, and health care law, as well as adequate staffing and fiscal integrity, 42 U.S.C. § 300gg-111(c)(4)(A); 45 C.F.R. § 149.510(e)(2)(i)–(iii), (vi). Despite that expertise, Anthem wrongly contends that IDR "bears no resemblance to" arbitration, Opp. 4, even though Anthem's own complaint refers to IDR as arbitration multiple times. *E.g.*, Am. Compl., R. 25, PageID# 132, 149, 158, 161. As do agency regulations. *See* 45 C.F.R. § 149.510. And the only thing "one-sided" about the IDR process (Opp. 33, 50) is Anthem's skewed narrative, which is flatly contradicted by the regulations and agency guidance, and also Anthem's own pleadings. *See* Mot. 2–6. Most notably, Anthem had several opportunities to provide plan information and other documents related to eligibility—which it, not the Providers, had (*see id.*)—as well as provide reasonable payment amounts (which it apparently failed to do).

II. Anthem Improperly Seeks a Do-Over of IDRE Determinations that Anthem Lost.

Once Anthem turns to the merits, its brief merely confirms that each claim repackages an attack on IDR determinations that Anthem already lost. But Congress and settled law preclude

such collateral litigation. *First*, the judicial-review bar in the No Surprises Act eliminates this Court's subject-matter jurisdiction for almost all of the claims here. *Second*, issue preclusion prevents Anthem from relitigating eligibility disputes it lost in prior proceedings. *Third*, Noerr-Pennington prevents Anthem's attempt to impose liability for the Providers' constitutionally protected activity.

A. This Court Lacks Subject-Matter Jurisdiction Over Most of Anthem's Claims.

Anthem agrees—as it must—that Congress plainly stated its intent to strip federal courts of jurisdiction to review determinations made in IDR processes under § 300gg-111(c)(5)(E)(i). Mot. 12–13. Anthem instead contends that this case can proceed because this judicial-review bar applies only to IDREs' "payment" determinations, not any other aspect of the underlying arbitration process. Opp. 21. And Anthem further asserts that this bar still allows litigants to repackage their claims under a different name. Opp. 24. Neither argument has merit.

1. The No Surprises Act Judicial-Review Bar Applies Here.

Anthem's core argument to salvage subject-matter jurisdiction is that Congress somehow only stripped jurisdiction for the specific *payment* determinations, not *eligibility* determinations (or, apparently, any other non-payment determination). But Anthem invents this distinction by segregating the IDR process between—on one side—rulings ordering one party to pay the other a certain amount—and on the other side—questions like eligibility and everything else. No court has accepted such a made-for-this-litigation-exception to the broad bar on judicial review or even characterized the IDR process in this bifurcated way. Nor should this Court be the first to do so.

For starters, Anthem improperly attempts to "read[] into the provision a limitation" on a bar to judicial review "that the language nowhere mentions." *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016). The text and structure of the No Surprises Act both reject that approach.

The provision states, "[a] determination of a certified IDR entity under subparagraph (A) . . . shall not be subject to judicial review." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). This "determination" includes the decisions about eligibility because "subparagraph A" of § 300gg-111(c)(5) encompasses all of the IDRE's work. The provision states that within 30 days of being appointed, the IDRE must rule on the dispute and select one of the parties' submissions as the appropriate payment amount. No other section of the statute addresses eligibility rulings. Indeed, if an IDRE ruled that a dispute was ineligible, it would not select any amount to award. Thus, selecting one of the proposed amounts, as required by the statute, to issue an award is entirely predicated upon first making an eligibility finding.

In truth, Anthem's lawsuit *is* a challenge to the "payment determination"; Anthem argues that the IDREs should not have ordered it to pay the Providers because the disputes were ineligible. Nothing in the No Surprises Act permits Anthem's attempted evasion of the judicial-review bar. Courts routinely read similar bars to include predicate determinations absent contrary text. *See Novo Nordisk Inc. v. Sec'y U.S. Dep't of Health & Hum. Servs.*, 154 F.4th 105, 112 (3d Cir. 2025) (preluding judicial review because "an argument that CMS did not comply with a statutory mandate in making a particular determination is still a challenge to that determination").

Anthem asserts that the statutory language does not *specifically* state that "IDREs resolve eligibility." *See* Opp. 22. But that omits both the governing regulations and broader statutory context. Congress *did* specifically provide that the agencies would "establish by regulation" the "dispute resolution process" for this scheme. 42 U.S.C. § 300gg-111(c)(2)(A). That regulatory scheme facilitates the overarching "payment" determination that is binding and excluded from judicial review. *Id.* And it is under this statutory authorization that the governing agency has required IDREs to determine eligibility as a predicate to issuing an award to either side. *See*

45 C.F.R. § 149.510(c)(1)(v).[2] Anthem's own complaint thus must acknowledge that IDREs are not only authorized but *required* to assess and rule on eligibility. That reality further confirms that eligibility determinations—as part of the entire IDR regulatory process—cannot be second-guessed in federal court unless they fall within the narrow circumstances permitted by Congress.

Finally, the "consequences" further "underscore[] the implausibility of [Anthem's] interpretation." *Van Buren v. United States*, 593 U.S. 374, 393–94 (2021). Anthem does not dispute that Congress passed the No Surprises Act and created the IDR process, in part, to help efficiently resolve these complex out-of-network disputes. Mot. 15. Nor does Anthem dispute that Congress preferred "an administrative enforcement mechanism" to "handle most award disputes instead of throwing open the floodgates of litigation." *Guardian Flight I*, 140 F.4th at 277. So Congress channeled the disputes into an IDR process that "shall be binding," 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I), paired with "a strictly limited form of judicial review" for collateral challenges, *Guardian Flight I*, 140 F.4th at 277. Anthem's manufactured exclusion to Congress's jurisdictional restriction would swallow the rule, inviting piecemeal collateral attacks on anything deemed a "non-payment" aspect of the IDR process. Congress imposed no such self-defeating exclusion from its own scheme; this Court should not create such an exclusion either.

In the end, Anthem identifies nothing in the text or structure of the No Surprises Act that decouples ultimate payment determinations from predicate eligibility (or other preliminary) determinations to suggest that the judicial-bar provision is limited in the way that Anthem needs to proceed. That is because no such bifurcation exists—nothing in the statutory scheme separates predicate determinations (like eligibility) from the ultimate payment determination.

[2] Agency guidance also reinforces that IDREs must assess eligibility. *See* HHS et al., *Federal Independent Dispute Resolution (IDR) Process Guidance for Disputing Parties* 17 (updated Dec. 2023), https://www.cms.gov/files/document/federal-idr-guidance-disputing-parties-march-2023.pdf.

And if there were any doubt, Anthem's claims are foreclosed for the additional reason that Anthem *is* admittedly challenging payment determinations—not just eligibility determinations. Anthem has chosen to explicitly (and repeatedly) intertwine its claims on the basis that IDREs awarded "inflated" amounts and the like. *See, e.g.*, Am. Compl., R. 25, PageID# 131–32, 160–61, 171, 187, 189, 191, 194. That alone confirms Anthem seeks judicial review barred by the Act.

2. The Judicial Bar Limits Potential Challenges to Only Vacatur Claims and Excludes Impermissible Collateral Attacks Like Anthem's Here.

Despite the judicial-review bar's application here, Anthem next insists that the "NSA does not incorporate any of the FAA's procedural provisions, much less impose them as exclusive remedies." Opp. 24. This argument is a red herring. Whether or not other provisions of the FAA are incorporated, Congress in the No Surprises Act made clear any challenge to a "determination of a certified IDR entity . . . shall not be subject to judicial review, except in a case described in" subparagraph (a) of § 10 of the FAA. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); *see* 9 U.S.C. § 10(a). And subparagraph (a) of § 10 provides only that a court "may make an order vacating the award" in certain limited circumstances. 9 U.S.C. § 10(a). So that section alone sets up the "exclusive" basis of "vacatur" for challenging certain awards. *Bachman Sunny Hill Fruit Farms, Inc. v. Producers Agric. Ins. Co.*, 57 F.4th 536, 541 (6th Cir. 2023). The Providers need not (and do not) invoke § 6, § 9, § 12, or any other section of the FAA to enforce the judicial-review bar that Congress provided in the No Suprises Act. *Contra* Opp. 24–25.

Because most of Anthem's claims fall outside that limited provision, the judicial-review bar applies. Indeed, Anthem's affiliate (represented by the same counsel as here) recently made this very point to another federal court: "'[t]he NSA expressly *bars* judicial review of IDR awards *except* as to the specific provisions borrowed from the FAA' pertaining to *vacatur*." *T.V. Seshan v. Bluecross Blueshield Ass'n*, No. 25-cv-00499, Dkt. No. 43 at 6 (S.D.N.Y. July 3, 2025)

(emphasis original) (citing *Guardian Flight I*); *id.* at 8 ("[T]he NSA states that IDR determinations 'shall not be subject to judicial review, except in a case described in' the FAA's vacatur provisions." (quoting 42 U.S.C. § 300gg-111(c)(5)(E)(II))). Anthem's affiliate was correct.[3]

Similarly, Anthem contends that this lawsuit is not actually a collateral attack on the IDR proceedings. Opp. 26–28. But that argument ignores reality. Anthem's repeated critique of Congress's scheme—challenging the IDRE's incentives and the propriety of their determinations—reinforces that this case is indeed a collateral attack on those proceedings. *See supra*, Part I. And Anthem's specific choice to allege "vacatur" in the "alternative" to all other claims—and its concession that this *entire case* falls within those contemplated by the vacatur provisions, Opp. 26—puts it beyond doubt that the judicial-review bar facially applies to what Anthem is seeking to achieve with its non-vacatur claims. Am. Compl., R. 25, PageID# 200–01; *cf. Tex. Brine Co. v. Am. Arb. Ass'n*, 955 F.3d 482, 489 (5th Cir. 2020) ("Alleging wrongdoing that would justify vacatur is a sign of a collateral attack.").

The Sixth Circuit has rejected the exact gambit that Anthem tries here and deemed repackaged challenges to arbitration proceedings barred by similar judicial-review limits. Mot. 13–15; *see, e.g.*, *Corey v. N.Y. Stock Exch.*, 691 F.2d 1205, 1211–13 (6th Cir. 1982); *Decker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 205 F.3d 906, 909–11 (6th Cir. 2000). Others have done the same. *See, e.g.*, *Tex. Brine Co.*, 955 F.3d at 489–90; *Gulf Petro Trading Co. v. Nigerian Nat'l Petroleum Corp.*, 512 F.3d 742, 747–50 (5th Cir. 2008). To borrow from the *Gulf Petro* court, "[t]hough cloaked in a variety of federal and state law claims, [Anthem's] complaint amounts to no more than a collateral attack on the Final Award itself." 512 F.3d at 750.

[3] Regardless, whether packaged as vacatur or not, Anthem cannot satisfy any of the bases that Congress permitted for piercing the bar on judicial review. *See infra*, Part III.C.

Anthem responds that it is seeking *some* relief that goes beyond what it could have sought in the underlying IDR proceedings. Opp. 27–28. But that changes nothing. Anthem cannot "bypass the exclusive and comprehensive nature of the" No Surprises Act by suing in federal court but tweaking the scope of the claims to collaterally attack the underlying arbitration procedures. *Decker*, 205 F.3d at 911. Doing so "artificially narrows the term 'judicial review' that Congress used in the NSA." *Guardian Flight I*, 140 F.4th at 275 n.3. Indeed, much of the additional relief Anthem seeks here reinforces the collateral nature of this lawsuit—seeking, for example, injunctive relief that certain IDRE awards are *non-binding* and preventing Defendants from continuing to seek to enforce certain awards. *See* Am. Compl., R. 25, PageID# 202–03; Opp. 63. And that is why courts still deem challenges improper even if the claims are aggregated or the relief sought differs. *See, e.g.*, *Tex. Brine*, 955 F.3d at 484–85, 489 (claims for "damages and equitable relief" were still an impermissible collateral attack); *Ibarzabal v. Morgan Stanley DW, Inc.*, 2007 WL 9753006, at *3–4 (S.D.N.Y. Dec. 5, 2007) (rejecting class action attacking defendant's alleged conduct in multiple prior arbitrations); *Quintana v. Morgan Stanley DW, Inc.*, 2005 WL 8155929, at *4 (S.D. Fla. Dec. 8, 2005) (similar); *Nazar v. Wolpoff & Abramson, LLP*, 530 F. Supp. 2d 1161, 1166, 1169 (D. Kan. 2008) (similar where "overall thrust" was that "alleged wrongdoing tainted the arbitration proceedings and resulted in an erroneous award"). Just so here.

In sum, this Court lacks subject-matter jurisdiction except over the vacatur claim—the sole (and narrowly circumscribed) avenue Congress provided for challenging IDR proceedings.

B. Issue Preclusion Bars Anthem from Relitigating the IDREs' Determinations.

Even if this Court had subject-matter jurisdiction to address Anthem's challenges to IDREs' eligibility determinations, Anthem's improper attempt to relitigate those determinations is foreclosed by issue preclusion. *See* Mot. 16–17. Anthem does not dispute that Congress did nothing to disturb the presumption that this doctrine applies to this context; indeed, Anthem's

many criticisms of this scheme again suggest a frustration with Congress's choice to establish IDREs' binding authority. Mot. 17. Nor does Anthem dispute that the IDRE determinations resulted in final judgments on the merits. *Id.* And none of Anthem's responses on the other elements support its effort to relitigate eligibility determinations in this forum.[4]

1. Eligibility Issue Raised. Anthem does not deny that it had all the requisite information to contest eligibility, that it presented such information during the IDR process, or that the IDRE necessarily ruled against Anthem on eligibility for all of the contested awards. Mot. 17.[5]

Anthem's sole response is that it did not argue to arbitrators that Defendants were committing "fraud" related to eligibility. Opp. 35. But Anthem cannot avoid issue preclusion by tacking on the label "fraud" to this argument. The process's legal requirements establish that the IDREs necessarily *disagreed* with Anthem's position that these particular disputes were ineligible. Asking this Court to reexamine these predicate determinations, as Anthem does here, is barred.

2. Eligibility Necessary to the Outcome. Anthem notably does not dispute that IDREs must by law determine that a dispute is eligible before awarding any amount to the Providers. *See* 45 C.F.R. § 149.510(c)(1)(v). Nor does Anthem dispute that it had several opportunities (and obligations) throughout the process to submit information on—and objections to—a given claim's eligibility, Mot. 2–6, as Anthem's own complaint and response brief confirm, *see, e.g.*, Am. Compl., R. 25, PageID# 159, 176; Opp. 11, 26, 35, 49–50. Anthem also does not deny that IDREs regularly determine that submitted claims are ineligible. Mot. 4–5 & n.6.

[4] Anthem conclusorily contends that there is a threshold problem that Defendants have not submitted any underlying "decision" to support this doctrine. Opp. 34–35. But Anthem itself has put forth that many IDRE decisions have resolved eligibility against Anthem. *See* Opp. 10; Am. Compl., R. 25, PageID# 152, 159, 162. So this argument is foreclosed by Anthem's pleadings.

[5] If Anthem ever *did not* provide this information to the IDREs related to the eligibility dispute, then Anthem waived any dispute about eligibility in this Court. *See Holtec Int'l Corp. v. Mich. State Util. Workers Council*, 160 F.4th 723, 729 (6th Cir. 2025) (rejecting procedural argument as waived because "[o]nly *after* the arbitrator rendered an adverse decision did [the plaintiff] cry foul" and courts "'strongly discourage[ ]' this sort of sandbagging").

Anthem responds that IDREs "have no obligation to verify Defendants'" attestations or "consider the nature and substance of Anthem's objections" before ruling against Anthem on eligibility. Opp. 35. But nothing tells IDREs to rely solely on the initiating party's threshold attestation in determining eligibility—especially given its qualified "to the best of my knowledge" language, Am. Compl., R. 25, PageID# 197. Nor is there any plausible basis to assume IDREs did so when Anthem (the party with eligibility information) supplied documents suggesting otherwise. Just the opposite—agency guidance confirms that IDREs "must review the information submitted in . . . the notification from the non-initiating party claiming the Federal IDR Process is inapplicable, if one has been submitted, to determine whether the Federal IDR Process applies."[6]

Regardless, the mere fact that a party's objections were unsuccessful supplies no basis to assume eligibility is not actually litigated. Again, Anthem does not dispute that IDREs *must* determine eligibility for every claim. *See supra*, 10. And it does not matter that IDREs might not provide an explanation on eligibility in every case, as "[a]rbitrators are not required to explain their decisions" at all. *Dawahare v. Spencer*, 210 F.3d 666, 669–70 (6th Cir. 2000) (arbitrator did not manifestly disregard law by "simply designat[ing]" damages "without detailed explanation"); *Leviathan Grp. LLC v. Delco LLC*, 2025 WL 884085, at *2 (6th Cir. Mar. 21, 2025) (similar).

3. Opportunity to Be Heard. Anthem protests that it did not have a full and fair opportunity to be heard. Opp. 36–38. But the fact that Anthem *often* lost does not mean that it had no opportunity to be heard. Tellingly, Anthem does not allege that IDREs *always* make the wrong decision on eligibility, just that Anthem "estimates" that "almost half" of these decisions

[6] *See supra*, n.2 at 17. Anthem merely argues that this Court should "disregard [the Defendants'] reliance on nonbinding guidance" that cuts against Anthem's arguments here. Opp. 34. But the fact that federal agencies are refining processes in these proceedings shows again that Anthem is lobbying the wrong body by bringing this lawsuit. And even if adopted later, this still undermines any conclusion that IDREs were somehow *not* assessing eligibility information supplied by insurers or that they were categorically *incapable* of doing so as a matter of law.

were errors. Opp. 10. And Anthem again does not dispute that it had *several* opportunities in each IDR process to contest eligibility. Nor does Anthem dispute that it—as the insurer with plan information—has an informational advantage over the Providers to dispute eligibility and provide relevant information during the IDR process. So it is unclear what "opportunities" were "unavailable in the first action" when it comes to contesting eligibility. Opp. 37 (citation omitted).

Anthem instead recycles the same tired criticisms about the IDREs' financial interests and the thoroughness of the proceedings. Opp. 34, 36. But those do not undermine the many opportunities Anthem had to contest eligibility or the IDREs' obligation to correctly determine whether all claims are in fact eligible. And regardless, the IDR *does* have meaningful checks on impartiality: IDREs are certified, non-initiating parties can object to the IDRE selected for any reason, and CMS will select a randomized IDRE if the parties cannot agree. *See* 45 C.F.R. § 149.510(c)(1)(i), (iv) (Oct. 7, 2021); *see also Avraham Plastic Surgery LLC v. Aetna, Inc.*, 2025 WL 3779084, at *4 (E.D.N.Y. Dec. 30, 2025) (IDRE is "a neutral decisionmaker making a binding judgment to resolve a dispute between two parties," which "makes them virtually indistinguishable from arbitrators and functionally akin to judges"). Anthem cites no authority—or anything about the proceedings—suggesting that issue preclusion is categorically inapplicable under these circumstances.[7] All told, issue preclusion bars all of Anthem's claims beyond the vacatur claim.

C. The Noerr-Pennington Doctrine Also Bars Anthem's Claims.

Noerr-Pennington also independently precludes the Providers' liability. Although Anthem suggests in passing that the Noerr-Pennington's applicability is a fact question inappropriate at this stage, Opp. 28–29, Anthem is wrong. Many courts in the Sixth Circuit, including ones cited by

[7] Anthem's reliance on *Staub* (Opp. 37) is misplaced because that court was interpreting Kentucky law, not federal law. *Staub v. Nietzel*, 2023 WL 3059081, at *5–6 (6th Cir. Apr. 24, 2023). Nor is there any basis to determine that the congressionally authorized proceedings in this case are meaningfully comparable to the Kentucky prison proceedings at issue there. *See id.*

Anthem, make clear that cases should be dismissed when the Noerr-Pennington doctrine applies as a matter of law. *See, e.g.*, *Geomatrix, LLC v. NSF Int'l*, 82 F.4th 466, 481 (6th Cir. 2023) (affirming dismissal based on Noerr-Pennington); *VIBO Corp. v. Conway*, 669 F.3d 675, 686 (6th Cir. 2012) (same); *see also J.M. Smucker Co. v. Hormel Food Corp.*, 526 F. Supp. 3d 294, 309 (N.D. Ohio 2021) (similar). Indeed, the doctrine's purpose is to protect petitioners of government proceedings from intrusive discovery and liability. Anthem's claims here fall squarely within its ambit. Mot. 24–27. Neither of Anthem's responses establish otherwise. Opp. 28–33.

1. IDR Proceedings Are First-Amendment Protected. Anthem wrongly argues that IDREs do not qualify as government entities under Noerr-Pennington. Opp. 29–31. But Anthem elsewhere concedes that the alleged conduct directly involves federal agencies. *See* Opp. 42 ("Before Defendants can deceive IDREs, they must first deceive the Departments."). Anthem's characterization of IDREs also contradicts its own pleadings, which allege that "HHS administers the IDR initiation process" and that "[a]ny submission made through this system is a statement made to the federal government" subject to 18 U.S.C. § 1001. Am. Compl., R. 25, PageID# 147.

In any event, the IDR process is a congressionally mandated, quasi-public arbitration administered by a federal agency. *See Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 506–07 (1988) (doctrine applies to "efforts to persuade an independent decisionmaker"); *Pa. State Univ. v. Keystone Alts. LLC*, 2020 WL 4677246, at *3–4 (M.D. Pa. 2020) (same for dispute-resolution procedures established by government body); *Eurotech, Inc. v. Cosmos Eur. Travels Aktiengesellschaft*, 189 F. Supp. 2d 385, 392–93 (E.D. Va. 2002) (same). IDREs are "persons []accountable to the public" endowed "with[] official authority," *Allied Tube*, 486 U.S. at 502, and thus the doctrine applies. But even if IDREs themselves were not considered government actors, the doctrine still applies when the government adopts "as its own the conclusions reached" by a

private organization and that adoption injures a plaintiff. *Geomatrix*, 82 F.4th at 480 (citation modified). That occurred here because, according to Anthem, "the government delegated authority to private companies to referee a highly limited and expedited dispute resolution process," Opp. 31, and Anthem's purported harm resulted from that delegated process.

2. "Fraud" Exception Does Not Apply. Anthem next contends that it may invoke a "fraudulent misrepresentations" exception to Noerr-Pennington. Opp. 31–33. Not so.

To begin, Anthem musters only manipulated quotes from a few Sixth Circuit cases making passing references to "misrepresentations" and "fraud" in *dicta*—not any cases that actually apply this purported exception to foreclose Noerr-Pennington's protection in circumstances resembling those here. Opp. 31–32 (citing *Wise v. Zwicker & Assocs., P.C.*, 780 F.3d 710, 719 n.5 (6th Cir. 2015); *Westmac, Inc. v. Smith*, 797 F.2d 313, 317–18 (6th Cir. 1986); *Potters Med. Ctr. v. City Hosp. Ass'n*, 800 F.2d 568, 580 (6th Cir. 1986)). That is because no such case exists in this Circuit.

The out-of-circuit cases Anthem cites actually interpreting this exception confirm that it is limited and only applies to material misrepresentations, not the alleged positions the Providers took in the arbitrations here. *See, e.g., Balt. Scrap Corp. v. David J. Joseph Co.*, 237 F.3d 394, 402 (4th Cir. 2001). This exception cannot apply if the alleged frauds "do not infect the core of a case" such that "the outcome would have been the same." *Id.* (citation modified). Courts thus require, for example, a showing that the adjudicator could not "detect the alleged false representation itself." *Aventis Pharma S.A. v. Amphastar Pharms., Inc.*, 2009 WL 8727693, at *13 (C.D. Cal. Feb. 17, 2009). That standard is not met. As explained, Anthem concededly submitted objections to eligibility. Even if IDREs repeatedly ruled against Anthem—or even under Anthem's implausible theory that IDREs *ignored* this allegedly pertinent information—that does not mean that IDREs did not have the information to assess statements regarding eligibility.

And regardless, Anthem's complaint goes far beyond purported misstatements about eligibility. Anthem also repeatedly claims that Defendants petitioned the IDR more often than Anthem thinks is appropriate and sought more money than Anthem thinks is fair. Am. Compl., R. 25, PageID# 131–33, 152–54, 156–61, 171, 187, 189, 191, 194. These allegations do not involve fraudulent misrepresentations and thus fall squarely within Noerr-Pennington's ambit.

III. All of Anthem's Claims Fail on the Merits in Any Event.

Beyond all of the fundamental defects above, each of Anthem's claims fail on the merits for the various reasons discussed in the Providers' motion to dismiss. Namely, all of Anthem's claims (which are fraud-based) flunk Rule 9(b)'s requirements. And Anthem's claims fail for claim-specific reasons as well, including its civil RICO claims, its vacatur claim, and all others.

A. Anthem's Amended Complaint Flouts Rule 9(b)'s Particularity Requirements.

Across the board, Anthem's claims fail Rule 9(b)'s particularity requirements. Anthem baldly asserts that thousands of individual proceedings were supposedly subject to fraud without providing the requisite details to sustain such sweeping claims. Anthem fails to satisfy Rule 9(b) in alleging the Providers' role, proximate causation, and Anthem's purported injury. Mot. 17–24. The lack of particularity belies the scope and breadth of Anthem's (shifting) fraud theories.

The Eleventh Circuit's recent opinion in the No Surprises Act context emphasized the high bar Rule 9(b) sets. *See Reach Air*, 160 F.4th at 1121–23. There, like here, the plaintiff failed to provide "precisely what statements" were at issue, the "time and place of each such statement and the person responsible for making . . . them," and "the manner in which" they "misled the plaintiff." *Id.* (citation omitted). Indeed, as in *Reach Air*, Anthem does not even attempt to argue that it complied with Rule 9(b) as to the "thousands" of unidentified IDR rulings that it "estimates" were wrong. *See* Opp. 10. That is particularly telling, given that Anthem has the most information about health plans its members use (*i.e.*, the supposed reason claims were ineligible for IDR), and

Anthem of course has information regarding any IDRs it attacks here. Indeed, Anthem suggests it can file a complaint bereft of details regarding thousands of individual arbitrations and obtain intrusive and expensive discovery on each of them. That is not the law.

And while Anthem seeks to reframe some of its Rule 9(b) failures by claiming it provided a few "examples," Opp. 44, it does nothing to justify its allegations lumping all Defendants together contrary to Rule 9(b). *See U.S. ex rel. Kramer v. Doyle*, 2022 WL 1186182, at *7 (S.D. Ohio Apr. 21, 2022) (plaintiff cannot use "allegations of fraud that lump all defendants together").

B. Anthem Fails to Allege a Civil RICO Claim.

Anthem's civil RICO claims fail for several reasons. Mot. 27–29. In particular, Anthem cannot overcome the litigation-activities doctrine and lack of proximate causation.

Litigation Activities. Anthem does not dispute that the "overwhelming weight of authority" rejects any attempt to find liability for civil RICO claims based on litigation activities, including for arbitrations. *Pompy v. Moore*, 2024 WL 845859, at *15–16 (E.D. Mich. Feb. 28, 2024); *see also, e.g.*, *Kim v. Kimm*, 884 F.3d 98, 104–05 (2d Cir. 2018) (collecting cases). Anthem obliquely contends that the Sixth Circuit has never applied this doctrine, Opp. Summ. iv, 39, but that is not true, *see, e.g.*, *Melton v. Blankenship*, 2009 WL 87472, at *2–3 (6th Cir. Jan. 13, 2009) (affirming holding that litigation "filings can not be considered RICO predicate acts"). And neither of Anthem's proposed distinctions warrant an exception to this doctrine. Opp. 39–43.

First, Anthem invokes supposed "policy" reasons for manufacturing an exception to this doctrine in this context. Opp. 40–41. But none of Anthem's cases have adopted an exception like Anthem proposes here. Nor should this Court be the first to do so. As explained, Anthem is wrong that preclusion doctrines do not apply to these proceedings that Congress deemed "binding." *Contra* Opp. 41; *supra*, Part II.B. And Anthem does not even dispute that it has refused to invoke the mechanisms that allow it to seek to cure any supposed "jurisdictional error[s]" in the underlying

proceeding, *infra*, n.10 at 3—instead seeking the spectacle and perceived leverage of a civil RICO claim. None of this supports a new exception to the litigation-activities doctrine.

Second, Anthem claims that this doctrine does not apply where a party deceives a third party (like HHS). Opp. 41–42. But out of the gate, this argument contradicts Anthem's earlier arguments that this case *does not* involve the federal government for purposes of the Noerr-Pennington doctrine. *See supra*, 13. In any event, none of these cases support Anthem's proposed exception in this case. Anthem relies principally on *United States v. Lee*, Opp. 41–42, but that case involved documents never filed in court and "not at all directed toward influencing the courts." 427 F.3d 881, 890 (11th Cir. 2005). The defendants there never initiated litigation and never intended to do so; rather, filing suit would have hindered their scheme. *See id.* That differs from the allegations here, which all stem from fully adjudicated IDRs.

Nor does it matter that this case involves multiple litigations rather than just one. *Contra* Opp. 42–43. Subsequent caselaw forecloses that exact argument. In *Dees v. Zurlo*—cited by Anthem—plaintiffs attempted to distinguish *Kim* because it involved only one lawsuit, whereas the plaintiffs' allegations stemmed from multiple proceedings. 2024 WL 2291701, at *5–6 (N.D.N.Y. May 21, 2024). The district court rejected that distinction, holding that RICO claims cannot proceed where the "gravamen of Plaintiffs' complaint concerns [prior] litigation" and "[t]here are no allegations . . . that are entirely unrelated to litigation." *Id.* at *7. The Second Circuit affirmed, noting that the alleged fraudulent conduct was "directly related to the initiation or continuance of legal proceedings." *Dees v. Knox*, 2025 WL 485019, at *2 (2d Cir. Feb. 13, 2025).[8] So too here. The alleged predicate conduct is all litigation-related, so the doctrine applies.

[8] Anthem's unexplained reliance on *Carroll* is similarly misplaced. Opp. 41. That case has been overtaken by *Dees* to the extent Anthem suggests the litigation-activities doctrine applies only to a single underlying litigation, and that case involved predicate activity outside of litigation in any event. *See Carroll v. U.S. Equities Corp.*, 2020 WL 11563716, at *9 (N.D.N.Y. 2020).

Proximate Cause. Anthem cannot dispute that its civil RICO claim needs "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes v. Sec. Inv. Prot. Corp.*, 503 U.S. 258, 268 (1992). Nor can Anthem dispute that neutral IDREs performed an independent investigation, found eligibility satisfied, and then selected the offers at issue—thereby causing the "harm" alleged in this case (rather than preventing that harm). Mot. 21. Or that Anthem's own actions (*e.g.*, the offer amounts it submitted) fed into those adverse determinations. *See Reach Air*, 160 F.4th at 1124 (noting that "baseball-style arbitration in IDR means that the selection of [one party]'s figure may have been the result of [the second party]'s offer being unreasonably high"). And even though Anthem criticizes IDREs' incentives, it never claims they were somehow directly engaged in the "fraud" alleged. That reality is dispositive here, because "[w]hen a third party that could have prevented the harm acts to cause the harm instead, then the chain of causation is broken." *NOCO Co. v. OJ Com., LLC*, 35 F.4th 475, 485 (6th Cir. 2022).[9]

It gets worse. To escape one disconnect between the purported injury and Defendants' actions, Anthem contends that fees for the *initiation* of claims caused injury. Opp. 50. But besides ignoring that filing multiple claims is not illegal, that injects *more* disconnect from what it must prove for its wire fraud-based claims—that the harm was caused "by reason of" eligibility misrepresentations. Anthem's focus on volume and the *filing* of claims makes its proximate-cause link even more attenuated. And finally, Anthem also does not dispute that it still retains the ability to re-open and undo the awards for purported jurisdictional defects.[10] None of Anthem's cases holds that proximate cause is satisfied in attenuated circumstances like those here. Opp. 48–49.

[9] None of Anthem's attempts to distinguish this case hold any water—*e.g.*, that it involved Ohio law and the summary-judgment stage. Opp. 49. What matters is that the controlling legal principles—that intervening actors break the causal chain—apply with full force here.

[10] CMS, *Federal Independent Dispute Resolution (IDR) Technical Assistance for Certified IDR Entities and Disputing Parties* 1, 3 (June 2025), https://www.cms.gov/files/document/idr-ta-errors-after-dispute-closure.pdf.

Anthem's main response yet again repeats the same refrain about how IDREs allegedly did not address all of the information Anthem supplied on eligibility, thus nullifying the IDREs' role as an intervening actor in this multi-step civil RICO theory. Opp. 50. But again, Anthem is wrong about IDREs' role in determining eligibility. *See supra*, 10. So this argument fails.

C. Anthem Fails to Allege a Vacatur Claim.

As explained, the sole limited avenue Congress provide for parties like Anthem that seek relief after a No Surprises Act IDR loss is through a vacatur claim. But neither of Anthem's two bases for vacatur satisfy the rigorous requirements. Mot. 30–31.

Anthem's main response is that the other *procedural* requirements under the FAA do not apply for its vacatur claim. Opp. 38–39; *see also* Opp. 24–26. But Defendants argue that Anthem's claim falters under the *substantive* requirements of § 10, which Congress directly incorporated. 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). And courts—even ones cited by Anthem—directly acknowledge that these substantive requirements (and the caselaw interpreting them) apply when challenging an IDRE award. *See Reach Air*, 160 F.4th at 1120–24 (incorporating caselaw interpreting the rigorous requirements for vacatur under § 10 and the need to satisfy 9(b)).

At most, Anthem argues in a few conclusory paragraphs—never engaging with Defendants' contrary caselaw, Mot. 30–31—that the vacatur claim satisfies § 10. Opp. 26. But neither of Anthem's theories survive the rigorous requirements for upending IDRE determinations.

For the fraud theory under § 10(a)(1), Anthem does not dispute that this claim fails if IDREs (or Anthem) could have uncovered the purported fraud. Mot. 30; *see Int'l Bhd. of Teamsters, Local 519 v. UPS*, 335 F.3d 497, 503 (6th Cir. 2003); *Bauer v. Carty & Co.*, 246 F. App'x 375, 377 (6th Cir. 2007) (noting same test applies to vacatur for undue means). Anthem's sole response boils down to the claim that IDREs did not "ha[ve] all the material information" or "actually address[]" eligibility. Opp. 26. But yet again, that is plain wrong. *See supra*, 10–11.

More broadly, there is no basis to upend these awards *en masse*—especially given Congress's restriction on challenges to IDR awards and Rule 9(b)'s application. *See supra*, Parts I.A, III.A.

For the § 10(a)(4) exceeding-authority theory, the question is whether arbitrators had *authority* to decide the threshold issue (here, eligibility)—not whether they ruled correctly. *See Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 429 F.3d 640, 650 (6th Cir. 2005); *Solvay Pharms., Inc. v. Duramed Pharms., Inc.*, 442 F.3d 471, 476 (6th Cir. 2006); *see also Reach Air*, 160 F.4th at 1119 (Section 10(a)(4) applies "only when an arbitrator strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice." (quotation modified)). And as the Sixth Circuit explained—in a case cited by Anthem *rejecting* vacatur—"legal errors by arbitrators are to be tolerated so long as the arbitrator has even arguably construed or interpreted the" pertinent law. *Leviathan Grp.*, 2025 WL 884085, at *4. Vacatur thus requires showing that the arbitrator clearly had no authority to decide eligibility, not that they wrongly decided eligibility. IDREs clearly *do* have such authority. There is no basis to vacate.

D. All of Anthem's Other Claims Fail.

As previously explained, none of Anthem's other claims can proceed for various claim-specific reasons apart from the general lack of particularity under Rule 9(b). Mot. 31–34. Anthem's defense of the state-law claims also runs afoul of Ohio's litigation privilege, which shields Provider's alleged statements with IDR proceedings. *See, e.g.*, *Newman v. Univ. of Dayton*, 172 N.E.3d 1122, 1136–38 (Ohio Ct. App. 2021) (foreclosing claims based on this privilege).

CONCLUSION[11]

For these reasons, this Court should dismiss Anthem's Amended Complaint with prejudice.

[11] The Providers also incorporate all of the arguments raised by the other defendants, including those reiterating why Ohio's Anti-Slapp statute required Anthem to pay attorney fees, as argued in the Providers' motion. And Anthem does not dispute that this Court lacks personal jurisdiction over MPower if the ERISA and civil RICO claims were dismissed. *See* Opp. 17.

Dated: January 15, 2026

JONES DAY

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 15, 2026, a true and accurate copy of the foregoing was filed through the Court's CM/ECF system and will be sent electronically to the registered participants.

/s/ Michael R. Gladman
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