

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 et al.,

Defendants.

1:25-cv-00388-DRC

**PLAINTIFF’S MOTION FOR LEAVE TO FILE RESPONSE TO
DEFENDANTS’ FIFTH NOTICE OF SUPPLEMENTAL AUTHORITY**

On June 22, 2026, Defendants¹ filed a Motion for Leave to File Fifth Notice of Supplemental Authority (“Motion,” at ECF No. 62), which included Defendants’ Fifth Notice of Supplemental Authority (“Fifth Notice,” at ECF No. 62-1) and the Ruling on Motion to Dismiss Counterclaims from the case of *Guardian Flight LLC, et al. v. Aetna Life Insurance Company, et al.*, No. 3:24-cv-00680-MPS, 2026 WL 1734646 (D. Conn. June 16, 2026) (“Decision”, at ECF No. 62-2). If the Court grants Defendants’ Motion, Anthem respectfully requests that the Court grant Anthem leave to file a response to the Fifth Notice. A copy of Anthem’s proposed response is attached as **Exhibit A**.

This district frequently permits parties to file responses to notices of supplemental authority. *See, e.g., Miller v. A2 Healthcare, L.L.C.*, No. 1:05-cv-607, 2007 U.S. Dist. LEXIS 106559, at *3 (S.D. Ohio Jan. 12, 2007) (explaining “district courts in the Sixth Circuit frequently permit” parties to file responses to notices of supplemental authority); *Kennedy v. Lady Jane’s Haircuts for Men Holding Co., LLC*, No. 1:23cv493, 2024 U.S. Dist. LEXIS 173554, at *2 (S.D.

¹ Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (“Opp.” at ECF No. 47).

Ohio Sep. 25, 2024) (considering response to notice of supplemental authority); *McPheeters v. United Servs. Auto. Ass'n*, 549 F. Supp. 3d 737, 740 (S.D. Ohio 2021) (same); *Kondash v. Kia Motors Am., Inc.*, No. 1:15-cv-506, 2019 U.S. Dist. LEXIS 226510, at *6 (S.D. Ohio Dec. 16, 2019) (same). Relatedly, the Southern District “has routinely found good cause to exist to permit a party to file a sur-reply to address an issue raised for the first time in a reply brief.” *Geiger v. Pfizer, Inc.*, 271 F.R.D. 577, 580 (S.D. Ohio 2010) (citation omitted).

As explained in Anthem’s response to the Fifth Notice, the Decision is wrong and did not address the issues before this Court. Unlike the state law claims at issue in the Decision, Anthem asserts federal RICO and ERISA claims that Defendants do not and cannot argue are preempted by the NSA. The Decision also makes several critical errors: it inverts the Supreme Court’s standard of review by asking whether the NSA “authorizes” the challenged claims rather than whether Congress unequivocally foreclosed judicial review of the challenged conduct; it disregards the plain text of the NSA, which solely limits judicial review of the IDRE’s payment determination and does not contemplate or compensate IDREs for eligibility decisions; and it erroneously reads the FAA’s “exclusive procedure” into the NSA in violation of fundamental principles of statutory interpretation.

If the Court grants Defendants’ Motion but denies Anthem leave to file a response, Anthem will have no opportunity to raise these critical errors to the Court. Accordingly, if the Court grants Defendants’ Motion, Anthem requests that the Court grant leave to file the attached short response to the Fifth Notice explaining why the Court should decline to follow the Decision. *Kennedy*, 2024 U.S. Dist. LEXIS 173554, at *2; *McPheeters*, 549 F. Supp. 3d at 740; *Kondash*, 2019 U.S. Dist. LEXIS 226510, at *6; *Miller*, 2007 U.S. Dist. LEXIS 106559, at *3; *see Geiger*, 271 F.R.D. at 580.

For the foregoing reasons, Anthem respectfully requests that if the Court grants Defendants' Motion, that the Court grant Anthem leave to file the attached Response to Defendants' Fifth Notice of Supplemental Authority and for any other relief the Court deems appropriate.

Dated: June 26, 2026

Respectfully Submitted,

/s/ Jason T. Mayer

Martin J. Bishop (*pro hac vice*)

Illinois Bar No. 6269425

Alexandra M. Lucas (*pro hac vice*)

Illinois Bar No. 6313385

Jason T. Mayer (*pro hac vice*)

Illinois Bar No. 6309633

Crowell & Moring LLP

300 N. LaSalle Drive

Suite 2500

Chicago, IL 60654

Tel: (312) 321-4200

mbishop@crowell.com

alucas@crowell.com

jmayer@crowell.com

Zachary B. Kizitaff (*pro hac vice*)

Pennsylvania Bar No. 327568

Crowell & Moring LLP

600 Fifth Street NW

Washington, DC 20001

Tel: (202) 624-2500

zkizitaff@crowell.com

Ali Razzaghi (0080927)

Ariel M. Fox (0100904)

Richard J. Sarcone (0100775)

Frost Brown Todd LLP

3300 Great American Tower

301 East Fourth Street

Cincinnati, Ohio 45202

Tel: (513) 651-6800

arazzaghi@fbtlaw.com

afox@fbtlaw.com

rsarcone@fbtlaw.com

*Attorneys for Plaintiff Community Insurance
Company d/b/a Anthem Blue Cross and Blue
Shield*

CERTIFICATE OF SERVICE

I, Jason T. Mayer, hereby certify that on June 26, 2026, I filed a copy of the foregoing document with the Court's CM/ECF system, which will serve an electronic notification of the filing to all counsel of record.

/s/ Jason T. Mayer

EXHIBIT A

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 et al.,

Defendants.

1:25-cv-00388-DRC

**PLAINTIFF’S RESPONSE TO
DEFENDANTS’ FIFTH NOTICE OF SUPPLEMENTAL AUTHORITY¹**

Guardian Flight LLC v. Aetna Life Insurance Company, No. 3:24-cv-00680-MPS, 2026 WL 1734646 (D. Conn. June 16, 2026) (“*Aetna*”) is wrong and did not address the issues before this Court.

Aetna involved only *state law* claims arising from (1) ineligible claims, (2) bifurcated claims, and (3) material misrepresentations in payment offers. *Id.* at *2. The providers argued that the “federal law preempts” these state law claims. *Id.* at *3. The court agreed, reasoning that “[a]lthough these counterclaims are consistent with the NSA’s rejection of awards derived by fraud, the statute specifies an exclusive procedure to challenge such awards” (*i.e.*, FAA vacatur). *Id.* at *4.

Here, Anthem alleges that Defendants engaged in a racketeering scheme to initiate thousands of ineligible disputes with knowingly false attestations in violation of RICO and ERISA, two *federal laws* that expressly authorize this action. AC at ¶¶ 1-12, 206-30, 291-98. Defendants here do not and cannot argue that the NSA preempts Anthem’s *federal* claims. *See* 2026 WL 1734646, at *4 (conflict preemption applies “where the state law at issue stands as an obstacle to” federal law) (citation and quotes omitted). And because no party argued that the text of the NSA

¹ Capitalized terms have the same meaning provided in Anthem’s Memorandum of Law in Opposition to Defendants’ Motions to Dismiss (“Opp.” at ECF No. 47).

solely limits judicial review of the IDRE's payment determination, and not any scheme or decision regarding ineligible disputes, the parties had no reason to address the issues presented here.²

Aetna also makes several critical errors to reach its flawed conclusion. First, it inverts the Supreme Court's standard of review. Courts must evaluate whether Congress unequivocally foreclosed review of the challenged conduct. *Opp.* at 21-22. *Aetna* instead evaluated whether the NSA "authorizes state-law actions for fraud and misrepresentation." 2026 WL 1734646, at *4.

Second, *Aetna* disregards the plain text of the NSA. Per the NSA, IDREs are selected to perform a single task: "select one of the offers submitted" as the payment determination. 42 U.S.C. § 300gg-111(c)(5)(A). Congress tied IDRE fees directly to the payment determination process. *Id.* § 300gg-111(c)(5)(F). And Congress solely limited judicial review of "[a] determination of a certified IDR entity under subparagraph (A)" (*i.e.*, the payment determination). *Id.* § 300gg-111(c)(5)(E)(i)(II). Given that the NSA does not contemplate or compensate IDREs for performing any task other than making a payment determination, Congress could not have clearly and convincingly foreclosed judicial review of eligibility "decision," much less a racketeering scheme involving thousands of ineligible disputes. *See Opp.* at 21-23.

Third, *Aetna* relies on dicta from other district courts to erroneously find that the NSA "specifies an exclusive procedure to challenge [IDR] awards." 2026 WL 1734646, at *4. But unlike other federal laws, which expressly incorporate the FAA's procedures, the NSA only limits judicial review of the IDRE's selection of the payment determination "except in a case described in any of paragraphs (1) through (4) of section 10(a) of title 9." 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II); *compare with, e.g.*, 5 U.S.C. § 580(c). *Aetna*'s decision to read the FAA's "exclusive procedure" into the NSA violates fundamental principles of statutory interpretation. *See Opp.* at 24-26.

² That is particularly significant for the *Aetna* court, which had previously refused to consider arguments not raised by the parties even though they would have changed the court's decision. No. 3:24-cv-00680-MPS, at ECF No. 295.

Dated: June 26, 2026

Respectfully Submitted,

/s/ Jason T. Mayer

Martin J. Bishop (*pro hac vice*)

Illinois Bar No. 6269425

Alexandra M. Lucas (*pro hac vice*)

Illinois Bar No. 6313385

Jason T. Mayer (*pro hac vice*)

Illinois Bar No. 6309633

Crowell & Moring LLP

300 N. LaSalle Drive

Suite 2500

Chicago, IL 60654

Tel: (312) 321-4200

mbishop@crowell.com

alucas@crowell.com

jmayer@crowell.com

Zachary B. Kizitaff (*pro hac vice*)

Pennsylvania Bar No. 327568

Crowell & Moring LLP

600 Fifth Street NW

Washington, DC 20001

Tel: (202) 624-2500

zkizitaff@crowell.com

Ali Razzaghi (0080927)

Ariel M. Fox (0100904)

Richard J. Sarcone (0100775)

Frost Brown Todd LLP

3300 Great American Tower

301 East Fourth Street

Cincinnati, Ohio 45202

Tel: (513) 651-6800

arazzaghi@fbtlaw.com

afox@fbtlaw.com

rsarcone@fbtlaw.com

*Attorneys for Plaintiff Community Insurance
Company d/b/a Anthem Blue Cross and Blue
Shield*