

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**GUARDIAN FLIGHT LLC and MED-
TRANS CORPORATION**

Plaintiffs,

v.

**HEALTH CARE SERVICE
CORPORATION**

Defendant.

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Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs Guardian Flight LLC (“Guardian”) and Med-Trans Corporation (“Med-Trans”) (together “Plaintiffs”) file this Complaint against Defendant Health Care Service Corporation (“HCSC”) and would respectfully show the Court as follows:

INTRODUCTION

1. HCSC is a licensee of the Blue Cross and Blue Shield (“BCBS”) Association and does business as BCBS in Texas, Oklahoma, Montana, New Mexico and Illinois. Plaintiffs have network agreements for HCSC’s Texas and Oklahoma operations. However, HCSC has refused to extend its network rates to its operations in Montana, Illinois or New Mexico. For those three states, HCSC simply uses the No Surprises Act (“NSA”) to underpay Plaintiffs, forcing them to use the federal Independent Dispute Resolution (“IDR”) process to obtain fair compensation. Unfortunately, even then, HCSC violates federal law and fails to timely pay its IDR awards. To date, it is nearly \$1 million behind. HCSC now forces Plaintiffs to file suit to obtain the money they are unquestionably owed.

PARTIES

2. Plaintiff Guardian Flight, LLC is a Delaware limited liability company. Its sole owner is GMR through a solely-owned limited liability holding company. GMR is a Delaware corporation with its principal place of business in Texas.

3. Plaintiff Med-Trans Corporation is a North Dakota corporation with its principal place of business in Texas.

4. Defendant Health Care Service Corporation is an Illinois Mutual Legal Reserve Company, organized under the laws of Illinois, and an independent licensee of Blue Cross and Blue Shield Association. Its principal place of business is 300 E. Randolph Street, Chicago, Illinois 60601. Health Care Service Corporation may be served with of process through its registered agent, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 75082.

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331-1332 as all plaintiffs are diverse from all defendants and the amount in controversy exceeds \$75,000. This Court also has subject matter jurisdiction under the NSA, which creates for air ambulance providers a direct, federal right to payment from insurers and health plans of the amount an Independent Dispute Resolution (“IDR”) entity determines is owed for the transport. *See* 42 U.S.C. § 300gg-112(b)(6). This amount must be paid within thirty days of the determination. *Id.*

6. Venue is proper under 28 U.S.C. § 1391(b)(1) because this is a judicial district in which Defendant is subject to personal jurisdiction. *See* 28 U.S.C. 1391(c)(2). Venue is proper under 28 U.S.C. § 1391(b)(2) because it is a judicial district in which a substantial part of the

events or omissions giving rise to the claim occurred as most of the transports in question were destined for this judicial district.

FACTUAL BACKGROUND

7. The air ambulance industry plays an integral role in the American healthcare system. Air ambulances often serve as the only lifeline connecting critically ill and injured patients to healthcare, particularly in rural areas. They transport trauma, stroke, heart attack, and burn patients and other emergent cases requiring critical care. Without air ambulances, more than 85 million Americans would not be able to reach a Level 1 or 2 trauma center within an hour when emergency care is needed. The delivery of on-demand, life-saving air ambulance services in emergencies requires substantial investments in specialized aircraft, air bases, technology, personnel, and regulatory compliance systems.

8. The NSA became effective January 1, 2022. It is implemented and enforced by the combined efforts of the U.S. Departments of Labor, Health and Human Services, and the Treasury (the “Departments”), which together created a mandatory federal dispute resolution process to determine pricing for all out-of-network (“OON”) emergency air ambulance transports of patients who are covered by commercial insurance.

9. Under the NSA, a health plan has thirty (30) days from the date the bill is transmitted by the provider to pay or deny the claim. 42 U.S.C. § 300gg-112(a)(3)(A-B). Insurers are allowed to initially pay to the OON provider whatever amount they choose. If the payment is too low, the provider may initiate an “open negotiation period” to attempt to negotiate a higher amount. *Id.* § (b)(1)(A). If the negotiations fail, the provider may initiate the IDR process. *Id.* § (b)(1)(B).

10. The IDR process requires both parties to submit position statements and proposed offers of payment for the services at issue to a third party IDR entity. *Id.* § (b)(5)(B)(i)(I). The IDR entity then evaluates both proposed offers based on a number of statutory factors and selects one as the appropriate OON payment for the transport. *Id.* § (b)(5)(C). After an IDR determination, the health plan is required to pay any amount owed within thirty (30) days. *Id.* § (c)(6).

11. Plaintiffs followed these steps for each of the transports at issue herein, most of which originated on the eastern border of New Mexico and ended within this judicial district. Each IDR proceeding resulted in Plaintiffs being owed additional payments for each out-of-network transport.

12. Each IDR determination concerns a health plan insured and/or administered by one or more divisions of HCSC operating under the Blue Cross and Blue Shield brand. For each transport, HCSC made an initial payment on the claim. HCSC does not disclose any information regarding its plans during the IDR process or on the Explanation of Payments (“EOP”) that accompany the initial payment. The patients who Plaintiffs transported have each assigned to Plaintiffs their benefits under their health plans. Furthermore, the NSA created a right for out-of-network providers to be paid directly by payors such as HCSC.

13. Despite the legal requirement that it pay the additional amounts owed within thirty days, HCSC has failed to do so. As of August 16, 2023, the amounts awarded, unpaid and past due by HCSC through one or more of its operating divisions is nearly \$1 million (before interest or penalties). Plaintiffs seek herein all unpaid, past due amounts as of the date the Court issues judgment, including interest, penalties and collection costs. A chart listing the dispute numbers for amounts late and unpaid as of August 16, 2023, is attached hereto as Exhibit “A.” Lists of

awards issued after this date that are not timely paid and for which Plaintiffs seek payment and damages herein may be obtained during discovery as the IDR process is ongoing.

14. With respect to self-funded plans administered by HCSC, the failure to timely pay IDR determinations was an abuse of discretion. Plaintiffs have suffered damages as a result of the nonpayment, including interest on the amounts owed and collection costs. In addition, HCSC has been unjustly enriched by retaining Plaintiffs' funds and generating interest or investment income.

COUNT ONE (ALL IDR DETERMINATIONS)
ACTION FOR NONPAYMENT OF IDR DETERMINATIONS
(42 U.S.C. § 300GG-112(B)(6))

15. Plaintiffs incorporate by reference as if fully restated all preceding paragraphs.

16. The NSA states that a determination of a certified IDR entity "shall be binding upon the parties involved" and that payment "shall be made directly to the nonparticipating provider not later than 30 days after the date on which such determination is made." *See* 42 U.S.C. 300gg-111(c)(5)(E), 112(b)(6). Thirty days passed without payment for all of the IDR determinations at issue herein. HCSC has not challenged the awards. It simply refuses to pay them.

17. Plaintiffs are entitled to have the IDR determinations converted into a federal judgment and the assistance of this Court in post-judgment collection efforts. It is further entitled to pre-judgment interest from the 31st day after each award was entered until the date judgment is entered and post-judgment interest thereafter until the judgment is satisfied.

COUNT TWO (APPLICABLE TO HCSC'S SELF-FUNDED BUSINESS)
IMPROPER DENIAL OF BENEFITS
(ERISA SECTION 502(A)(1)(B), 29 U.S.C. § 1332(A)(1)(B))

18. Plaintiffs incorporate by reference as if fully restated all preceding paragraphs.

19. Plaintiffs have been assigned the right to payment and benefits from HCSC's beneficiaries. Accordingly, Plaintiffs step into the shoes of, and are now considered, ERISA

beneficiaries pursuant to 29 U.S.C. § 1002(8) for any self-funded plans HCSC is administering. As beneficiaries, they are entitled to plan benefits and have standing to bring claims under ERISA. HCSC is responsible for NSA compliance for the plans it administers. Plaintiffs are entitled to recover payment of plan benefits (emergency services coverage) from HCSC per the IDR determinations.

20. Payment of out-of-network air ambulance transports in accordance with the NSA is a benefit of all ERISA plans providing coverage for emergency services. It is HCSC's responsibility to administer that benefit for the ERISA plans it administers. Open negotiations, the IDR process, including submitting position statements, and paying IDR awards from plan funds is what HCSC has agreed to do for plan beneficiaries in connection with administering their benefit plans. Thus, when HCSC violates the NSA through its nonpayment of IDR awards for air ambulance transports, it breaches its obligations to the self-funded plans it administers and to the plan beneficiaries.

21. HCSC improperly denied plan benefits by failing to pay the IDR awards within thirty (30) days of each decision as required by federal law. HCSC's actions were in derogation of Plaintiff's rights pursuant to law. These actions also constituted an abuse of discretion by: 1) not properly interpreting plan terms that are not ambiguous; 2) exercising discretion over non-discretionary plan terms; and 3) denying Plaintiffs payment and benefits under the plan terms. Plaintiffs have exhausted their administrative remedies by following the NSA's procedures and obtaining an IDR award.

22. HCSC's denials of payment and benefits upon the finality of IDR determinations were not substantially justified decision, were arbitrary and capricious, were unsupported by

substantial evidence, constituted abuse of any discretion allowed, and were wrongful under all the circumstances.

23. Plaintiffs, as assignee, hereby assert a claim under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1332(a)(1)(B) to enforce their rights under the self-funded plans administered by HCSC, and to obtain their plan benefits, by compelling HCSC to use plan funds to pay Plaintiffs the IDR awards. Pursuant to 29 U.S.C. § 1132(g), Plaintiffs further seek an award of reasonable attorney's fees and costs incurred in bringing this action.

COUNT THREE (ALL IDR DETERMINATIONS)
UNJUST ENRICHMENT

24. Plaintiffs incorporate by reference as if fully restated all preceding paragraphs.

25. HCSC received the benefit of air ambulance transports for its beneficiaries during times of emergent medical needs. In many situations, lives were saved or more serious conditions avoided (and thus the costs associated therewith). These transports were provided at Plaintiffs' expense and under circumstances that would make it unjust for HCSC to retain the benefit without commensurate compensation.

26. HCSC had reasonable notice that Plaintiffs expected payment for the benefit conferred as it received an invoice for the service provided. HCSC appreciates, realizes and knows that the benefit was conferred because it issued an explanation of benefits with partial payment. Thus, there was a direct connection between Plaintiff's impoverishment and HCSC's enrichment.

27. The dispute over the value of the benefit received was resolved in accordance with the IDR procedure in the NSA, which required payment within thirty ("30") days of the IDR decision being issued.

28. HCSC continued to improperly retain the required payment for the service provided past thirty days, which allowed it to become further unjustly enriched by receiving interest and/or investment income as a result of the unlawful retention of the funds, which were unquestionably owed to Plaintiffs.

29. Plaintiffs hereby seek payment of the awards as well as all benefits obtained by HCSC as a result of not timely paying the award, including without limitation the interest or investment income generated by such funds.

PRAYER

30. WHEREFORE, Plaintiffs respectfully prays for judgment against HCSC as follows:

- a. Enforce the IDR determinations and issue judgment for the total amount outstanding plus pre- and post-judgment interest per 28 U.S.C. § 1961;
- b. Award Plaintiffs their costs of suit herein and reasonable attorney's fees pursuant to ERISA Section 502(g)(1), 29 U.S.C. § 1132(g);
- c. Award Plaintiffs as damages the return on investment or interest rate realized by HCSC on the amount owed for each IDR award from the 31st day after each decision was issued until the date Plaintiffs received payment; and
- d. Award Plaintiffs their attorney's fees, costs, pre- and post-judgment interest, and any and all additional legal or equitable relief to which Plaintiffs may be entitled and this Court deems just and proper.

Dated: August 18, 2023

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek

Adam T. Schramek, Lead Counsel
Texas Bar No. 24033045
98 San Jacinto Boulevard
Suite 1100
Austin, TX 78701-4255
Telephone: (512) 474-5201
Facsimile: (512) 536-4598
adam.schramek@nortonrosefulbright.com

Abraham Chang
Texas Bar No. 24102827
Dewey J. Gonsoulin III
Texas Bar No. 24131337
1301 McKinney, Suite 5100
Houston, TX 77010-3095
Telephone: (713) 651-5151
Facsimile: (713) 651-5246
abraham.chang@nortonrosefulbright.com
dewey.gonsoulin@nortonrosefulbright.com

ATTORNEYS-IN-CHARGE FOR PLAINTIFFS

31.

DISP #	Call #	Days Late	GMR Entity	Amount Due
DISP-18703	0622000543A	252	Guardian Flight	\$98,308.12
DISP-209287	0222063943A	134	Med-Trans	\$33,919.54
DISP-204137	0222074833A	132	Med-Trans	\$29,240.00
DISP-202105	0622007785A	121	Guardian Flight	\$30,485.23
DISP-204179	0622014630A	121	Guardian Flight	\$30,655.49
DISP-226239	0222085077A	118	Med-Trans	\$6,520.48
DISP-229917	0622019435A	117	Guardian Flight	\$24,467.65
DISP-224233	0222052855A	117	Med-Trans	\$31,143.79
DISP-209289	0222063943A	117	Med-Trans	\$34,121.28
DISP-277602	0622028142A	96	Guardian Flight	\$1,194.03
DISP-259499	0622012870A	94	Guardian Flight	\$16,085.91
DISP-279497	0222029560A	94	Med-Trans	\$23,332.40
DISP-259496	0622012870A	92	Guardian Flight	\$20,840.00
DISP-273002	0222086727A	92	Med-Trans	\$21,835.82
DISP-277597	0622027210A	92	Guardian Flight	\$31,285.23
DISP-277605	0622028142A	92	Guardian Flight	\$37,285.23
DISP-250781	0222059191A	90	Med-Trans	\$40,618.00
DISP-279496	0222029560A	89	Med-Trans	\$19,502.60
DISP-286656	0222089711A	89	Med-Trans	\$21,314.48
DISP-309906	0222070516A	83	Med-Trans	\$37,002.28
DISP-226337	0222085771A	81	Med-Trans	\$2,999.89
DISP-169382	0222018754A	77	Med-Trans	\$793.40
DISP-250786	0222059191A	57	Med-Trans	\$34,630.00
DISP-325891	0222101785A	56	Med-Trans	\$24,295.00
DISP-264352	0222093298A	56	Med-Trans	\$29,342.90
DISP-360334	0222100046A	50	Med-Trans	\$29,748.40
DISP-406900	0223001671A	25	Med-Trans	\$36,717.60
DISP-350207	0222044540A	13	Med-Trans	\$43,365.80
DISP-264220	0622025500A	95	Guardian Flight	\$14,120.00
DISP-264224	0622025500A	95	Guardian Flight	\$5,253.00
DISP-421627	0322031326A	25	Guardian Flight	\$40,982.00
DISP-348164	0622027915A	32	Guardian Flight	\$67,178.00
DISP-348174	0622027915A	32	Guardian Flight	\$19,332.00
				\$937,915.55

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GUARDIAN FLIGHT LLC and MEDTRANS
CORPORATION

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Adam Schramek, Norton Rose Fulbright, 98 San Jacinto, Ste.
1100, Austin, TX 78701

DEFENDANTS

HEALTH CARE SERVICE
CORPORATION

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input checked="" type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	PROPERTY RIGHTS	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	PERSONAL PROPERTY	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 835 Patent - Abbreviated New Drug Application	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 880 Defend Trade Secrets Act of 2016	<input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692)
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 385 Property Damage Product Liability	SOCIAL SECURITY	<input type="checkbox"/> 485 Telephone Consumer Protection Act
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	Habeas Corpus:	<input type="checkbox"/> 864 SSID Title XVI	<input checked="" type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 510 Motions to Vacate Sentence		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 535 Death Penalty	FEDERAL TAX SUITS	<input type="checkbox"/> 896 Arbitration
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	Other:	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
	<input type="checkbox"/> 448 Education	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights		
		<input type="checkbox"/> 555 Prison Condition		
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 300gg-112(b)(6)

VI. CAUSE OF ACTION

Brief description of cause:
Enforce Federal Independent Dispute Resolution (IDR) determinations under the No Surprises Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Alfred Bennett & George Hanks, Jr. DOCKET NUMBER 4:23-cv-00805 and 826

DATE

8/18/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ Adam T. Schramek

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE