

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ROWE PLASTIC SURGERY OF NJ LLC,

Plaintiff,

-against-

AETNA LIFE INSURANCE COMPANY,

Defendant.

Civil Action No.: 2:25-cv-15053-BRM-MAH

AMENDED COMPLAINT

Plaintiff Rowe Plastic Surgery of NJ LLC (“Plaintiff”), by and through its attorneys, Gottlieb & Greenspan, LLC, by way of Amended Complaint against Aetna Life Insurance Company (“Defendant”), alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff is a medical provider with a principal place of business at 89 Valley Road, Montclair, New Jersey 07042.
2. Upon information and belief, Defendant is engaged in providing and/or administering health care plans or policies in the State of New Jersey.
3. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under federal law, specifically under the Employment Retirement Income Security Act (“ERISA”) 29 U.S.C. § 1001 *et seq.* as the insurance policies at issue are governed by ERISA.
4. Venue is proper in the United States District Court for the District of New Jersey, pursuant to 28 U.S.C. § 1391, because a substantial part of the events giving rise to this action occurred within this district.

FACTUAL BACKGROUND

5. The Federal No Surprises Act (“NSA”) became effective January 1, 2022. The NSA creates for medical providers a direct right to payment from insurers and health plans of the amount an Independent Dispute Resolution (“IDR”) entity determines is owed for the medical services provided. *See* 42 U.S.C. § 300gg-111(c)(6). This amount must be paid within thirty days of the determination. *Id.*

6. The NSA is implemented and enforced by the combined efforts of the U.S. Department of Labor, Health and Human Services, and the Treasury (the “Departments”), which together created a mandatory federal dispute resolution process to determine pricing for medical services rendered by out-of-network (“OON”) medical providers for individuals who are covered by commercial insurance.

7. Under the NSA, a health plan has thirty (30) days from the date the bill is transmitted by the OON medical provider to pay or deny the claim. 42 U.S.C. § 300gg-112(a)(3)(A-B). Insurers are allowed to initially pay the OON medical provider what the law refers to as a Qualifying Payment Amount (“QPA”). If the OON medical provider does not accept the QPA as payment in full, the OON medical provider may initiate an “open negotiation period” to attempt to negotiate a higher amount. *Id.* § (b)(1)(A). If the negotiations fail, the OON medical provider may initiate the IDR process. *Id.* § (b)(1)(B).

8. 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 several statutory factors and selects one as the appropriate OON payment for the services provided. *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).

9. Plaintiff is a medical provider that specializes in plastic surgery.

10. On June 14, 2023, Dr. Sergio Perez, D.O., a plastic and reconstructive surgeon employed by Plaintiff, provided medical treatment to a 25-year-old female identified as L.P. (“Patient”) at Hudson Regional Hospital, located in Secaucus, New Jersey.

11. At the time of treatment, Patient was a member of a health plan administered by Defendant.

12. As an OON medical provider, Plaintiff does not have a network contract that would determine or limit payment for Plaintiff’s services to Defendant’s members.

13. However, since the services were rendered in a participating network facility, Patient’s treatment was subject to reimbursement pursuant to the NSA, 42 U.S.C. § 300gg-11 *et seq.*

14. After treating Patient, Plaintiff submitted a Health Insurance Claim Form (“HCFA”) medical bill to Defendant seeking payment for the procedure, itemized under Current Procedural Terminology (“CPT”) code 19318 in the amount of \$75,000.00.

15. In response to Plaintiff’s HCFA, Defendant allowed payment to Plaintiff in the amount of \$1,530.84 for CPT code 19318.

16. Plaintiff disputed Defendant’s payment determination and initiated the negotiation period called for by the NSA.

17. Because the dispute was not resolved during the negotiation period, Plaintiff initiated the IDR process to have the proper reimbursement amount determined by a neutral arbitrator. 42 U.S.C. § 300gg-111(c)(1-5).

18. Pursuant to the NSA, the IDR award identified herein is legally “binding upon the parties involved.” 42 U.S.C. § 300gg-111(c)(5)(E)(i)(I).

19. On December 4, 2024, the arbitrator ruled in Plaintiff’s favor under IDR reference number DISP-1638874, awarding Plaintiff \$75,000.00 for CPT code 19318, amounting to an additional \$73,469.16 over Defendant’s initial payment. *See Exhibit A*, attached hereto.

20. Defendant failed to issue the IDR determination payment to Plaintiff even though its deadline to do so was January 3, 2025.

21. As of the date of this Complaint, over 340 days have elapsed since Defendant’s deadline to submit the award payment to Plaintiff.

22. For DISP-1638874, Defendant has failed to pay \$73,469.16, which is currently due and owing.

23. Accordingly, Plaintiff has been damaged in the total amount of \$73,469.16.

24. The determination in the foregoing dispute concerns a health plan insured and/or administered by Defendant or one of its affiliates. Patient has assigned to Plaintiff the benefits under her health plan. Furthermore, the NSA created a right for OON providers to be paid directly by payors such as Defendant.

25. Despite the legal requirement that it pay the additional amount owed within thirty days, Defendant has failed to do so. As of the filing of this Complaint, the amount awarded, unpaid and past due by Defendant is \$73,469.16. Plaintiff seeks herein all unpaid, past due amounts as of the date the Court issues judgment, including interest, penalties and collection costs.

26. Moreover, Defendant’s failure to timely pay the IDR determination was an abuse of discretion. Plaintiff has suffered damages because of the nonpayment, including interest on the amount owed and collection costs.

27. In addition, Defendant has been unjustly enriched by retaining Plaintiff's funds and generating interest or investment income.

COUNT ONE

**IMPROPER DENIAL OF BENEFITS
(ERISA SECTION 502(A)(1)(B), 29 U.S.C. § 1332(A)(1)(B))**

28. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 27 of the Complaint as though fully set forth herein.

29. Plaintiff has been assigned the right to payment and benefits from Defendant's insured. Accordingly, Plaintiff steps into the shoes of, and is now considered an ERISA beneficiary pursuant to 29 U.S.C. § 1002(8) for the employer-based, ERISA governed plan Defendant is administering. As a beneficiary, Plaintiff is entitled to plan benefits and has standing to bring claims under ERISA. Defendant is responsible for NSA compliance for the plan it administers. Plaintiff is entitled to recover payment of plan benefits from Defendant in accordance with the IDR determination.

30. Payment of out-of-network benefits in accordance with the NSA is a benefit of all ERISA plans providing coverage for surprise or inadvertent services as defined by the NSA. It is Defendant's responsibility to administer that benefit for the ERISA plan it administers. Open negotiation, the IDR process, including submitting a position statement, and paying the IDR award from plan funds is what Defendant has agreed to do for a plan beneficiary in connection with administering Patient's benefit plans. Thus, when Defendant violates the NSA through its nonpayment of an IDR award for surprise or inadvertent medical services, it breaches its obligations to the employer-based plan it administers and to the plan beneficiary.

31. Defendant improperly denied plan benefits by failing to pay the IDR award within thirty (30) days of the decision as required by federal law. Defendant's action was in derogation

of Plaintiff's rights pursuant to law. This action 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 Plaintiff payment and benefits under the plan terms. Plaintiff has exhausted its administrative remedies by following the NSA's procedures and obtaining an IDR award.

32. Defendant's denial of payment and benefits upon the finality of the IDR determination was not a substantially justified decision, was arbitrary and capricious, was unsupported by substantial evidence, constituted an abuse of any discretion allowed, and was wrongful under all circumstances.

33. Plaintiff, as assignee, hereby asserts a claim under ERISA Section 502(a)(1)(B), 29 U.S.C. § 1332(a)(1)(B) to enforce its rights under the plan administered by Defendant, and to obtain the plan benefits, by compelling Defendant to use plan funds to pay Plaintiff the IDR award. Pursuant to 29 U.S.C. § 1132(g), Plaintiff further seeks an award of reasonable attorney's fees and costs incurred in bringing this action.

COUNT TWO

UNJUST ENRICHMENT

34. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 33 of the Complaint as though fully set forth herein.

35. Defendant received the benefit of the discharge of the Defendant's duties under the plan by Plaintiff providing the underlying medical services to Patient, Defendant's insured. *See Plastic Surgery Center, P.A. v. Aetna Life Insurance Co.*, 967 F.3d 218 (3d Cir. 2020). The medical services were provided at Plaintiff's expense and under circumstances that would make it unjust for Defendant to retain the benefit without commensurate compensation.

36. Defendant had reasonable notice that Plaintiff expected payment for the benefit conferred as it received an invoice for the services provided. Defendant appreciates, realizes and knows that the benefit was conferred because it issued an Explanation of Benefits. Thus, there was a direct connection between Plaintiff's impoverishment and Defendant's enrichment.

37. 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 days of the IDR decision being issued.

38. The NSA does not preempt a claim for unjust enrichment. *See Mod. Orthopaedics of NJ v. Premera Blue Cross*, Case No. 2:25-cv-01087 (BRM) (JSA), 2025 U.S. Dist. LEXIS 215824, at * 32 (D.N.J. Nov. 3. 2025) (citing *Kennedy v. UnitedHealth Grp. Inc.*, No. 25 CIV. 432, 2025 U.S. Dist. LEXIS 117870, 2025 WL 1725147 at *8-9 (S.D.N.Y. June 20, 2025) (holding breach of contract and unjust enrichment claims for failure to pay for patient's emergency care were not preempted by the NSA)). Indeed, at least one federal court has indicated that the proper remedy for a medical provider to recover unpaid IDR determinations issued against an insurance carrier is in fact unjust enrichment. *See Modern Orthopaedics*, 2025 U.S. Dist. LEXIS 215824, at *31-32 ("the NSA . . . says nothing that would preclude a provider from bringing suit under traditional state law causes of action . . . like unjust enrichment.").

39. Defendant improperly retained the benefit under the plan without payment to Plaintiff.

40. Defendant has continued to improperly retain the required payment for the services provided past thirty days, which allowed it to become further unjustly enriched by receiving interest and/or investment income because of the unlawful retention of the funds, which were unquestionably owed to Plaintiff.

41. It is against equity and good conscience to deprive Plaintiff of a remedy to enforce a “binding” IDR award issued in accordance with federal law.

42. Plaintiff hereby seeks payment of the IDR award as well as all benefits obtained by Defendant because Defendant did not timely pay the IDR award, including without limitation the interest or investment income generated by such funds.

CLAIM FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

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

Dated: December 15, 2025
Fair Lawn, New Jersey

GOTTLIEB & GREENSPAN, LLC
Attorneys for Plaintiff

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Exhibit A

IDR dispute status: Payment Determination Made
IDR reference number: DISP-1638874

ProPeer Resources, LLC has reviewed your Federal Independent Dispute Resolution (IDR) dispute with reference number **DISP-1638874** and has determined that Rowe Plastic Surgery of NJ LLC is the prevailing party in this dispute.

After considering all permissible information submitted by both parties, ProPeer Resources, LLC has determined that the out-of-network payment amount of **\$75,000.00** offered by Rowe Plastic Surgery of NJ LLC is the appropriate out-of-network rate for the item or service 19318 on claim number PDPC3ZCNB01 under this dispute.

ProPeer Resources, LLC based this determination on a review of the following:

Rowe Plastic Surgery of NJ LLC submitted an offer of \$75,000.00

Aetna submitted an offer of \$0.00

For each of the following determination factors, an “x” in the Initiating Party and/or Non-Initiating Party column means the party provided supporting information.

	Additional Circumstances	Initiating Party	Non-Initiating Party
1	The level of training, experience, and quality and outcomes measurements of the provider or facility that furnished such item or service (such as those endorsed by the consensus-based entity authorized in section 1890 of the Social Security Act)	X	
2	The market share held by the nonparticipating provider or facility or that of the plan or issuer in the geographic region in which the item or service was provided	X	
3	The acuity of the individual receiving such item or service or the complexity of furnishing such item or service to such individual	X	
4	The teaching status, case mix, and scope of services of the nonparticipating facility that furnished such item or service	X	
5	Demonstrations of good faith efforts (or lack of good faith efforts) made by the disputing parties to enter into network agreements and, if applicable, contracted rates between the disputing parties during the previous 4 plan years	X	
6	Additional information submitted by a party	X	X

Final Determination Rationale

Determination in favor of Rowe Plastic Surgery of NJ LLC was made in this case. All submitted information was reviewed and investigated thoroughly. The initiating party provided evidence of the level of training and experience of the provider, market share, acuity of the participant, teaching status/case mix, good faith efforts to negotiate and additional information. There was sufficient information provided by the non-initiating party to support additional information. In addition, QPA was reviewed and considered in the determination. The information submitted by Rowe Plastic Surgery of NJ LLC demonstrated the offer selected as the out-of-network rate is the offer that best represents the value of the qualified IDR item or service. The level of care provided was consistent with the initiating party's offer. Based on the preponderance of information, Rowe Plastic Surgery of NJ LLC is the prevailing party.

Next Step:

If any amount is due to either party, it must be paid **not later than 30 calendar days** after the date of this notification, as follows:

- **A plan, issuer, or Federal Employees Health Benefits (FEHB) Program carrier owes a payment to a non-participating provider or facility** when the amount of the offers selected by the certified IDR entity exceeds the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid or owed by the participant, beneficiary, or enrollee.
- **A non-participating provider or facility owes a refund to a plan, issuer or FEHB carrier** when the offer selected by the certified IDR entity is less than the sum of 1) any initial payment the plan, issuer, or FEHB carrier has paid to the non-participating provider or facility and 2) any cost sharing paid by the participant, beneficiary, or enrollee.

NOTE: The non-prevailing party is ultimately responsible for the certified IDR entity fee, which is retained by the certified IDR entity for the services performed. ProPeer Resources, LLC has determined that Aetna is the non-prevailing party in DISP-1638874 and is responsible for paying the certified IDR entity fee. The certified IDR entity fee that was paid by the prevailing party will be returned to Rowe Plastic Surgery of NJ LLC by the certified IDR entity within 30 business days of the date of this notification.

Pursuant to the Federal Employees Health Benefits Act at 5 U.S.C. 8902(p), Internal Revenue Code sections 9816(c)(5)(E) and 9817(b)(5)(D), Employee Retirement Income Security Act sections 716(c)(5)(E) and 717(b)(5)(D), and Public Health Service Act sections 2799A-1(c)(5)(E) and 2799A-2(b)(5)(D), and their implementing regulations at 5 CFR 890.114, 26 CFR 54.9816-8T (c)(4)(vii), 29 CFR 2590.716-8(c)(4)(vii) and 45 CFR 149.510(c)(4)(vii), this determination is legally binding unless there is fraud or evidence of intentional misrepresentation of material facts to the certified IDR entity by any party regarding the dispute.

The party that initiated the Federal IDR Process may not submit a subsequent Notice of IDR Initiation involving the same other party with respect to a claim for the same or similar item or service that was the subject of this dispute during the 90-calendar-day suspension period following the date of this email, also referred to as the “cooling off” period.

If the initiating party was a provider, the provider is identified by the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN). During the cooling off period, the provider may not submit a subsequent Notice of IDR Initiation involving the same non-initiating party with respect to a claim billed under the same NPI or TIN for the same or similar item or service.

The initiating party with respect to dispute number DISP-1638874 was Rowe Plastic Surgery of NJ LLC. The initiating party’s TIN is 833106529. The non-initiating party was Aetna. The 90-calendar day cooling off period begins on December 4, 2024 . Please retain this information for your records.

If the end of the open negotiation period for such an item or service falls during the cooling off period, either party may submit a Notice of IDR Initiation within 30 business days following the end of the cooling off period, as opposed to the standard 4-business-day period following the end of the open negotiation period. This 30-business-day period begins on the day after the last day of the cooling off period.

Resources

Visit the [No Surprises website](#) for additional IDR resources.

Contact information

For questions, contact ProPeer Resources, LLC. Include your IDR Reference number referenced above.

Thank you,

ProPeer Resources, LLC

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