

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HIGHMARK INC.,

Plaintiff,

v.

REMOTE NEUROMONITORING
PHYSICIANS, PC, and SPECIALTYCARE
IOM SERVICES, LLC,

Defendants.

Case No. 2:26-cv-01214-CCW

DEFENDANTS' REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS

POLSINELLI PC

*Joshua D. Arters (TN# 031340)
*Meaghan M. Gray (TN# 039432)
*Olivia D. Winnett (TN# 041461)
501 Commerce Street, Suite 1300
Nashville, Tennessee 37203
615-252-3923 (phone)
615-259-1573 (fax)
jarters@polsinelli.com
mgray@polsinelli.com
owinnett@polsinelli.com

Nipun J. Patel (PA# 208130)
Three Logan Square, Suite 2800
Philadelphia, Pennsylvania 19103
215-267-3001 (phone)
215-267-3002 (fax)
npatel@polsinelli.com

September 22, 2026

**Admitted Pro Hac Vice*

TABLE OF CONTENTS

I.	LAW AND ARGUMENT	1
A.	Highmark Still Fails to Satisfy <i>France</i> ’s Requirements for Fraud-Based Vacatur Under § 10(a)(1).	1
B.	Highmark’s § 10(a)(4) Theory Still Mistakes an Alleged Eligibility Error for an Excess of Power.	2
C.	Highmark’s State Law Claims Remain Impermissible Collateral Attacks.	4
D.	Highmark’s State Law Claims Still Fail on Their Own Terms.	5
II.	CONCLUSION.....	5

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Adorers of the Blood of Christ U.S. Province v. Transcon. Gas Pipe Line Co.</i> , 53 F.4th 56 (3d Cir. 2022)	5
<i>Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC</i> , No. 8:25-cv-01467-KES, 2026 WL 982629 (C.D. Cal. Apr. 9, 2026)	2
<i>France v. Bernstein</i> , 43 F.4th 367 (3d Cir. 2022)	1, 2
<i>Gov't Emps. Ins. Co. v. Patel</i> , 166 F.4th 280 (2d Cir. 2026)	2
<i>Great W. Mining & Min. Co. v. Fox Rothschild LLP</i> , 615 F.3d 159 (3d Cir. 2010).....	5
<i>Howsam v. Dean Witter Reynolds, Inc.</i> , 537 U.S. 79 (2002).....	3, 4
<i>Johnson v. Draeger Safety Diagnostics, Inc.</i> , 594 F. App'x 760 (3d Cir. 2014)	5
<i>Klay v. United Healthgroup, Inc.</i> , 376 F.3d 1092 (11th Cir. 2004)	3
<i>Oxford Health Plans LLC v. Sutter</i> , 569 U.S. 564 (2013).....	2, 3, 4
<i>State Farm Mut. Auto. Ins. Co. v. Tri-Borough N.Y. Med. Practice P.C.</i> , 120 F.4th 59 (2d Cir. 2024)	2
Statutes	
9 U.S.C. § 10(a)	1, 2, 4, 5
42 U.S.C. § 300gg-111(c)	3, 5
Other Authorities	
45 C.F.R. § 149.510(c)(1)(v) (2025).....	3
<i>FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021</i> <i>Implementation Part 55</i> (Aug. 19, 2022).....	1
<i>Federal Independent Dispute Resolution Operations</i> , 91 Fed. Reg. 33,900 (June 4, 2026)	1, 4

I. LAW AND ARGUMENT

Highmark still fails to establish a basis for vacatur under FAA § 10(a)(1) or § 10(a)(4), and its state law claims provide no alternative path. Much of its response focuses on high volume, compressed timelines, and difficulty detecting alleged cooling-off violations in real time. Those burdens do not provide a legal basis for this Court to disturb the IDREs’ determinations.

A. Highmark Still Fails to Satisfy *France*’s Requirements for Fraud-Based Vacatur Under § 10(a)(1).

Even apart from the Complaint’s fraud and materiality defects, Count I fails on nondiscoverability. *France* requires Highmark to show that the alleged fraud “was not discoverable through reasonable diligence before or during the arbitration[.]” *France v. Bernstein*, 43 F.4th 367, 378 (3d Cir. 2022). It has not. The Complaint alleges no effort Highmark made before or during IDR to determine whether cooling off applied to any challenged award, including the exemplar disputes. Nor does it allege that the information needed to identify the alleged cooling-off violations was unavailable during IDR. Quite the opposite. Highmark’s own allegations show that it reconstructed the alleged violations from records it possessed.¹

Highmark’s reliance on *France*’s observation that “[r]easonable diligence does not require parties to assume the other side is lying” does not change the analysis. Resp. at 4 (quoting *France*, 43 F.4th at 380). True. But that does not eliminate the diligence requirement. The movant in *France* exercised substantial diligence, only to receive false discovery responses and sworn testimony. 43 F.4th at 378–81. The fraud occurred “directly in response to the reasonable diligence that [the

¹ Highmark’s emphasis on the three-business-day objection period understates the time available to assess eligibility. See Resp. at 1, 5–6. The federal process contemplates eligibility review well before that deadline. The Departments explained that parties should use the 30-business-day open-negotiation period, which precedes IDR, to exchange information “to help identify whether the claims qualify for the Federal IDR process” and have reiterated that parties should “communicate early and often regarding eligibility.” *FAQs About Affordable Care Act and Consolidated Appropriations Act, 2021 Implementation Part 55* at 25 (Aug. 19, 2022), available at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/aca-part-55.pdf>; *Federal Independent Dispute Resolution Operations*, 91 Fed. Reg. 33,900, 33,942–43 (June 4, 2026).

movant] exercised[.]” *Id.* at 379. Here, the Complaint pleads no comparable inquiry.

Nor can Highmark cure that deficiency by invoking a broader fraudulent scheme. It argues that hundreds of overlapping IDRs had to be analyzed collectively under compressed timelines. Resp. at 5–6. Section 10(a)(1) does not authorize vacatur of a “scheme”; it authorizes vacatur where “the award was procured” by fraud. 9 U.S.C. § 10(a)(1). Packaging hundreds of awards into a “fraudulent scheme” does not relieve Highmark of that award-specific burden. Highmark confirms the problem by saying discovery may ultimately establish whether the alleged pattern extends to every entry in Exhibit A. Resp. at 14–15. Section 10(a)(1) requires Highmark to plead the basis for vacating the challenged IDR awards *now*, without discovery to determine whether one exists. Nor did Highmark need to uncover a *company-wide scheme* to determine whether a *particular dispute* was subject to cooling off. Aggregate burden does not substitute for the award-specific diligence *France* requires. *See Anthem Blue Cross Life & Health Ins. Co. v. HaloMD LLC*, No. 8:25-cv-01467-KES, 2026 WL 982629, at *6–8 & n.5 (C.D. Cal. Apr. 9, 2026) (analyzing nondiscoverability at the determination level).

State Farm and *Patel* do not change the result. *See* Resp. at 5. Both involved preliminary injunctions against fragmented RICO schemes, not § 10(a)(1)’s diligence requirement. *See generally State Farm Mut. Auto. Ins. Co. v. Tri-Borough N.Y. Med. Practice P.C.*, 120 F.4th 59 (2d Cir. 2024); *Gov’t Emps. Ins. Co. v. Patel*, 166 F.4th 280 (2d Cir. 2026). Neither held that aggregate difficulty establishes nondiscoverability for an individual award.

B. Highmark’s § 10(a)(4) Theory Still Mistakes an Alleged Eligibility Error for an Excess of Power.

Highmark agrees that § 10(a)(4) asks whether the arbitrator acted within its assigned authority, not whether it reached the correct result. *See* Resp. at 8; *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569–70 (2013). Nor does it dispute that IDREs determine eligibility. *See* Resp. at 9–

10. The question is whether an alleged error in that assigned determination means the IDRE exceeded its powers. The answer is no.

Cooling off’s mandatory nature does not change the analysis. Defendants do not contend an IDRE may find a dispute barred by cooling off and nevertheless issue a payment determination. The point is that whether cooling off applies is itself an eligibility determination, and the regulations assign that determination to the IDRE. 45 C.F.R. § 149.510(c)(1)(v) (2025). That assignment does not alter Congress’s eligibility requirements; it simply identifies who determines whether they are met. And the statutory reentry provision confirms that cooling off regulates when the same payment dispute may be submitted, not whether that dispute category lies outside federal IDR altogether. 42 U.S.C. § 300gg-111(c)(5)(E)(ii)–(iii).

Highmark’s theory collapses the eligibility determination into the excess of power it must establish. Highmark says cooling off barred these disputes, so the IDREs exceeded their powers by issuing the awards. Resp. at 8–13. But whether cooling off barred them is the very question assigned to the IDREs. Highmark therefore cannot establish an excess of power without first establishing that the IDREs decided eligibility incorrectly. That alleges error, not an excess of authority. *See Oxford*, 569 U.S. at 569–72.

Highmark cannot avoid the problem by labeling the disputes “nonarbitrable.” *See* Resp. at 9, 11 (citing *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092 (11th Cir. 2004)). *Klay* states what follows if a controversy is substantively nonarbitrable; it does not decide whether this temporary timing condition has that character. A court had already classified the relevant claims there, and the correctness of that classification was not before the Eleventh Circuit. *Id.* at 1095–96 & nn.2–3. The opinion’s own analysis recognizes *Howsam*’s distinction between substantive arbitrability and procedural prerequisites committed to the arbitrator. *Klay*, 376 F.3d at 1107–08. And *Howsam*

itself held that a rule making disputes ineligible for submission after a specified period presented a procedural question for the arbitrator. *See* Mem. in Supp. of Mot. at 11 (citing *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 81, 84–86 (2002)).

Nor does Highmark’s reliance on the “statutorily prohibited” language from the 2026 Final Rule fix the problem. *See* Resp. at 10–11. Defendants agree IDREs may not issue a payment determination on a dispute they deem ineligible. But that is not what occurred here. The IDREs permitted the disputes to proceed and issued payment determinations, necessarily finding them eligible. And the 2026 Final Rule confirms that this eligibility determination belongs to the IDRE, explaining that IDREs are “best positioned” to make it. 91 Fed. Reg. at 33,944. Nothing in the preamble interprets FAA § 10(a)(4) or converts an alleged cooling-off error into power never conferred.

Highmark contends that Defendants’ position would “foreclose § 10(a)(4) review whenever an IDRE first found a dispute eligible.” *See* Resp. at 13. That argument assumes the conclusion. The IDREs performed the assigned eligibility review and found the disputes eligible. Highmark nevertheless asks the Court to revisit the eligibility determinations, find them erroneous, and treat that conclusion as proof that the IDREs exceeded their powers. Highmark’s theory would turn every alleged cooling-off error into an excess-of-powers claim. *Oxford* forecloses that approach. *See* 569 U.S. at 569–72.

C. Highmark’s State Law Claims Remain Impermissible Collateral Attacks.

Highmark says Counts II through VI target Defendants’ conduct, not the IDREs’ determinations. *See* Resp. at 15–17. But the judicial task remains the same. Highmark cannot establish that Defendants falsely represented the disputes as eligible without first establishing their ineligibility. Its claimed payments, fees, and costs likewise require showing that the disputes “should not have been initiated.” *See* Resp. at 15. And Count VI asks the Court to police that same eligibility

question in future IDRs. *See* Compl. ¶¶ 104–06. The labels and remedies vary, but each theory requires the Court to revisit eligibility and conclude that the disputes should not have proceeded.

That is precisely what Congress barred in limiting judicial review of IDR determinations to the grounds incorporated from FAA § 10(a). 42 U.S.C. § 300gg-111(c)(5)(E)(i)(II). *Adorers* confirms parties cannot circumvent a prescribed review scheme through a later claim that requires the court to revisit issues “inescapably intertwined” with the underlying determination. *Adorers of the Blood of Christ U.S. Province v. Transcon. Gas Pipe Line Co.*, 53 F.4th 56, 65–67 (3d Cir. 2022). Highmark emphasizes that *Adorers* involved conduct authorized by FERC, but that does not change what its claims require the Court to do here. *See* Resp. at 16.

Nor do Highmark’s “source of injury” cases make its state-law claims independent. *See* Resp. at 15–16. *Great Western* and *Johnson* address whether a later federal claim is independent of a state-court judgment under the narrow *Rooker–Feldman* doctrine. *See generally Great W. Mining & Min. Co. v. Fox Rothschild LLP*, 615 F.3d 159 (3d Cir. 2010); *Johnson v. Draeger Safety Diagnostics, Inc.*, 594 F. App’x 760 (3d Cir. 2014). They do not address whether a litigant may use state-law claims to obtain review of IDR awards beyond Congress’s prescribed grounds.

D. Highmark’s State Law Claims Still Fail on Their Own Terms.

Highmark’s response does not cure the independent defects identified in Defendants’ opening brief. Calling its reliance “forced” gives away the point. It participated in IDR because the federal process “compelled” a response, not because it believed Defendants’ attestations. *See* Resp. at 23–24; Compl. ¶ 77. Counts II and III therefore still fail for lack of reliance. The remaining state-law claims fail for the reasons previously explained. *See* Mem. in Supp. of Mot. at 22–24.

II. CONCLUSION

Defendants’ Motion to Dismiss should be granted; the Complaint should be dismissed with prejudice; and the Court should award Defendants fees, costs, and litigation expenses.

Date: September 22, 2026

Respectfully submitted,

POLSINELLI PC

/s/ Joshua D. Arters

*Joshua D. Arters (TN# 031340)
*Meaghan M. Gray (TN# 039432)
*Olivia D. Winnett (TN# 041461)
501 Commerce Street, Suite 1300
Nashville, Tennessee 37203
615-252-3923 (phone)
615-259-1573 (fax)
jarters@polsinelli.com
mgray@polsinelli.com
owinnett@polsinelli.com

Nipun J. Patel (PA# 208130)
Three Logan Square, Suite 2800
Philadelphia, Pennsylvania 19103
215-267-3001 (phone)
215-267-3002 (fax)
npatel@polsinelli.com

Counsel for Defendants
**Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2026, a copy of the foregoing Defendants' Reply in Support of Motion to Dismiss was served on all counsel of record via the U.S. District Court for the Western District of Pennsylvania's CM/ECF system.

/s/ Joshua D. Arters