

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GUARDIAN FLIGHT LLC, et al.,

Plaintiffs,

v.

**AETNA LIFE INSURANCE
COMPANY, et al.,**

Defendants.

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Civil Action No. 3:24-cv-00680-MPS

**PLAINTIFFS’ REPLY IN SUPPORT OF MOTION TO
DISMISS DEFENDANT AETNA’S AMENDED COUNTERCLAIMS**

Aetna has cobbled together regulatorily-permitted activity (filing IDR proceedings for each disputed line-item charge), an uncontroverted statement (average pilot hours), genuinely-held matters of opinion (“state of the art” aircraft), an attestation of eligibility made “to the best of my knowledge,” and a quibble over whether Plaintiffs’ commercial network participation is 60% or 70% in an attempt to concoct a counterclaim. Its allegations fall woefully short of stating any actionable claim, which in any event would be preempted by the No Surprises Act (“NSA”) and the Airline Deregulation Act (“ADA”). Aetna’s sole avenue to avoid paying for an IDR award is to seek vacatur under the NSA on a claim-by-claim basis, which it has not done. Its counterclaims should be dismissed.

ARGUMENTS & AUTHORITIES

I. The NSA provides Aetna’s sole remedy to challenge IDR awards or processes.

Without citation to any case authority, Aetna would have this Court believe that it can assert state-law claims for affirmative relief and damages based on Plaintiffs’ alleged conduct *during the IDR process*. This is wrong. The NSA provides the sole remedy (vacatur, not damages) for any awards improperly secured through fraud, undue means, or material misrepresentations. The IDR process is heavily regulated and Aetna’s state-law claims are preempted.

IDR awards are binding and “*shall not be subject to judicial review*, except” under the grounds stated in the Federal Arbitration Act. 42 USC § 300gg-111(c)(5)(E)(i)(II) (emphasis added). Aetna has previously asserted that “the standard to obtain relief under the FAA is extraordinarily high.” *Guardian Flight, LLC v. Aetna Health, Inc. et al.*, No. 4:22-cv-03805, Doc. 12 at 8 (S.D. Tex. 2022) (“*Guardian Flight I*”). This is presumably why it has not attempted to vacate any award at issue in this proceeding under one of those enumerated grounds. Aetna’s failure to even *attempt* to satisfy the applicable standard means that any judicial review of those awards or the process that led to them is barred by the NSA. Aetna argues that “[v]acatur under the FAA is a remedy for ‘bad faith’ during a *particular* arbitration proceeding...and not for “*systemic* misconduct, obscured within thousands of IDR proceedings.” Doc. 300 at 6–7 (emphasis in original). This argument is nonsense and lacks any legal support or citation. The NSA provides the exclusive mechanism to obtain judicial review of an IDR award or the process that led to it.

In support of its claims, Aetna cites the NSA provision that IDR awards are binding “in the absence of a fraudulent claim or evidence of misrepresentation of facts.¹” Doc. 300 at 5. Of course, Aetna has elsewhere argued that this provision does not create an independent basis for judicial review of IDR awards, which is limited to vacatur proceedings. *Guardian Flight I*, Doc. 43 at 2–4; Doc. 294 at 6. Aetna’s argument was accepted by the district court and affirmed on appeal. *Guardian Flight I*, 711 F. Supp. 3d 662 (S.D. Tex. 2024); *affirmed in relevant part* 140 F.4th 613 (5th Cir. 2025). Its about face here is disingenuous at best. In any case, nothing in this federal-law provision authorizes *state-law* actions for fraud or misrepresentation. The NSA itself provides the sole means to challenge an IDR determination.

¹ Plaintiffs sought vacatur of an Aetna IDR award under this ground in *Guardian Flight I*.

Aetna argues that “‘imposing state law remedies’...would ‘not create any obstacles to the NSA’s purposes or objectives’” because “‘fraudulent claims or claims based on misrepresentations of fact are not binding under the NSA” and “‘ineligible claims [are not] subject to the NSA in the first place.” Doc. 300 at 6 (internal citation omitted). Again, this is wrong. Vacatur is the sole means for judicial review of IDR awards and the process that led to them. Aetna is attempting to use state law to create a new standard of judicial review of IDR awards and processes. This clearly conflicts with, and is preempted by, the NSA’s requirements.

II. The ADA preempts Aetna’s attempts to recover “overpayments” for “inflated” IDR awards.

The ADA preempts Aetna’s counterclaims because they directly “relate to” Plaintiffs’ prices and services. Aetna argues that its counterclaims are not preempted “because they do not implicate the underlying price.” Doc. 300 at 10. In support, it relies on *Brown v. United Air Lines, Inc.*, in which the court held that the ADA did not preempt a challenge to “an intentionally-misleading [baggage] fee that deceives customers into believing they are paying a tip or gratuity to the skycaps.” 656 F. Supp. 2d 244, 249 (D. Mass. 2009) (citation omitted). *Brown* is irrelevant as this proceeding has nothing to do with air ambulance customers being misled about the purpose of any fee being paid. Instead, Aetna seeks to regulate through state law *how* Plaintiffs participate in IDR (single versus batched filings) and how they describe *the value* of their services, all in an attempt to decrease the amount of payments they are receiving through IDR awards. It is hard to imagine a claim that more directly “relates” to an air carrier’s “prices” or “services.” See *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 767 (4th Cir. 2018) (ADA preemption “clearly covers more than just a state’s attempt to regulate the price of a ticket”); *Valley Med Flight, Inc. v. Dwelle*, 171 F. Supp. 3d 930, 941 (D.N.D. 2016) (ADA preempts state law designed to influence air-ambulance providers’ choice to go in-network).

While Aetna contends that Plaintiffs do not assert ADA preemption based on their “services,” that is simply wrong. *See* Doc. 294 at 10. Aetna’s Opposition admits that it is attempting to regulate Plaintiffs’ services. *See* Doc. 300 at 19 (Section E.3. “Aetna plausibly alleges that ***Plaintiffs’ misstatements in position statements were designed to misrepresent service value*** and constitute actionable fraud” (emphasis added)). Aetna even wants to create through state law a rule that if air carriers like Plaintiffs describe their investments in safety during IDR, they must also disclose any accidents that have occurred so as not to “overstate” the safety of their services. It is hard to imagine a more direct attempt to create a “binding standard of conduct” on an air carrier than this. And contrary to its arguments, generally applicable state laws are preempted by the ADA. *See Watson v. Air Methods Corp.*, 870 F.3d 812, 817 (8th Cir. 2017) (“The statute pre-empts...generally applicable laws that indirectly relate to air carriers’ rates, routes, or services.” (citation omitted)); *Kansas v. Garcia*, 589 U.S. 191, 218 (2020) (Breyer, J. Concurring) (“even generally applicable and facially neutral state laws may be preempted when applied in a particular [way].”)

Lastly, Aetna tries to distinguish *Ferrell v. Air Evac EMS, Inc.*, 900 F.3d 602 (8th Cir. 2018) and *Stout v. Med-Trans Corp.*, 313 F. Supp. 3d 1289 (N.D. Fla. 2018) by arguing that “Aetna’s allegations do not require any determination of whether Plaintiffs’ pricing practices are unjust.” Doc. 300 at 12. But that is exactly what Aetna is asking this Court to do—examine the statements in Plaintiffs’ IDR submissions to assess whether Plaintiffs are misrepresenting the value of their services and thus should be paid less for them. Aetna even admits as much in its Opposition when it states that Plaintiffs’ statement that their aircraft are “state-of-the-art” is a “price-relevant comparator[.]” Doc. 300 at 21. Aetna is contesting the value of the services Plaintiffs provide, the premise for its contention that IDR awards are “inflated.” Such a claim is preempted by the ADA.

III. Aetna fails to establish CUTPA's applicability to Plaintiffs.

Aetna is required to affirmatively establish that CUTPA applies to Plaintiffs. To do this, it must (1) tie Plaintiffs' conduct "to a form of trade or commerce intimately associated with Connecticut," *Uniroyal Chem. Co. v. Drexel Chel. Co.*, 931 F. Supp. 132, 140 (D. Conn. 1996), and (2) overcome choice of law principles. Doc. 294 at 11–13. Aetna does neither.

Aetna relies on *Cohen v. Roll-A-Cover, LLC*, 27 A.3d 1 (Conn. App. 2011). However, "[i]n *Cohen*, it was clear the defendants had engaged in ***unfair or deceptive acts in the state of Connecticut...***" *Harris v. LAZ Parking Ltd., LLC*, 2025 WL 473654, at *9 (D. Conn. Feb. 12, 2025) (citation omitted) (emphasis added). Where "[d]efendants' alleged acts do not involve trade or commerce...in Connecticut[,]" CUTPA does not apply. *Id.* Here, Plaintiffs alleged unfair or deceptive acts are the "false representations and omissions of material fact" during IDR, Doc. 291 at ¶ 43, and Aetna does not allege that any of these acts took place in Connecticut.

Second, Aetna asserts that Plaintiffs' choice of law argument has "no legal basis" because Plaintiffs have not "identified the law of another state that *might* apply to Aetna's claims." Doc. 300 at 13–14 (emphasis in original). Aetna misses the point. "In order to sufficiently allege CUTPA violations, [a plaintiff] must allege facts to establish that [defendants] are subject to CUTPA." *Sethi v. Yagildere*, 2015 WL 600926, at *7 (Conn. Super. Ct. Jan. 15, 2015). Once again, Aetna's reliance on *Cohen* is misplaced. There, the defendants conceded that tortious conduct committed within the state is actionable under CUTPA, but argued that a choice of law analysis would render CUTPA inapplicable because the ascertainable loss was felt by plaintiffs elsewhere. *Cohen*, 27 A.3d at 16. In short, CUTPA's applicability had already been established. *Id.* Here, Aetna has not established CUTPA's applicability, so Aetna's argument that Plaintiffs failed to identify a conflicting law is inapt. Moreover, several Plaintiffs maintain their principal places of business in Texas. Aetna could not assert a claim under the Texas Deceptive Trade Practices Act

because it does not qualify as a consumer for two distinct reasons. It did not “seek or acquire” goods or services, and it is a business with “assets of \$25 million or more.” TEX. BUS. COM. CODE § 17.45(4). Aetna’s Texas-based counsel certainly knew this when they instead asserted CUTPA.

IV. CUTPA exempts Plaintiffs’ alleged “unbundling.”

CUTPA exempts Aetna’s claim premised on “overwhelming the IDR process by submitting separate IDR submissions” for base and mileage charges because the Departments expressly allow it and prefer that practice. Doc. 294 at 18. Aetna argues that its claim concerns the “pattern” of “Plaintiffs unbundl[ing] their IDR submissions, effectively doubling the number of disputes, multiplying the administrative burden, and forcing payors to incur unnecessary IDR fees and resources, all to inflate the overall recovery available to Plaintiffs.” *Id.* This argument attempts a distinction without a difference. The “pattern,” *id.*, is filing separate base and mileage payment disputes exactly like the Departments currently allow. Doc. 294 at 18. Aetna’s argument that “[n]o regulatory body would sanction Plaintiffs’ abuse of process” makes zero sense when the applicable regulatory body previously mandated the exact practice of which it complains.

V. Aetna has failed to state a fraud claim.

A. Aetna fails to allege facts that Plaintiffs’ IDR attestations were knowingly false or made with reckless indifference to the truth.

Aetna argues that because some IDR disputes are determined to be ineligible, then Plaintiffs must have “signed the attestation knowing the claims were false or were recklessly indifferent to the truth.” Doc. 300 at 17. Aetna relies on a single allegation: that Plaintiffs “possess all relevant information to determine claim eligibility...” *Id.* (quoting Doc. 291 at ¶ 5). This is classic legal conclusion masquerading as factual allegation. Aetna fails to allege *what facts* are needed to determine eligibility, *where* those facts are located, or how Plaintiffs *possessed* those facts by the statutory deadline to initiate an IDR proceeding. And while Aetna attempts to force

this Court to close its eyes to the complexity of IDR eligibility determinations and the role health plans are supposed to play in that process, Doc. 300 at 3, this Court can of course take judicial notice of documents published by the federal government on its websites. *See Casey v. Odwalla, Inc.*, 338 F. Supp. 3d 284, 294 (S.D.N.Y. 2018) (“Courts may take judicial notice of public documents or matters of public record.” (citation omitted)).

The one explanation Aetna attempts to offer is that the attestation is submitted after the 30-day open negotiation period, and thus Plaintiffs “should have known” the disputes were ineligible. *Id.* at 16. But this argument assumes that Aetna is actually participating in the ONP process and providing eligibility information to Plaintiffs on every payment dispute during ONP. The Court will of course find no such factual allegations in Aetna’s pleadings because it does not happen. Indeed, CMS records reflect that Aetna is often, more than any other insurer in America, not even telling the federal government what type of health plan the payment dispute concerns, much less providing any of the other health plan-specific information needed to determine eligibility.² Eligibility determinations are complex, Doc. 294 at 20–24, and the mere fact that some payment disputes are determined ineligible, without more, is inadequate as a matter of law to support an allegation of fraudulent attestation.³

² See <https://www.cms.gov/nosurprises/policies-and-resources/reports>.

³ Aetna spends nearly a page distinguishing *United States v. Bernstein*, 533 F.2d 775 (2d Cir. 1976) which Plaintiffs cited for the proposition that an attestation made to the best of one’s knowledge is insufficient to state a fraud claim. Aetna fails to address Plaintiffs’ other case, *Newman v. Silver*, 553 F. Supp. 485, 498 (S.D.N.Y. 1982), *aff’d in part, vacated in part*, 713 F.2d 14 (2d Cir. 1983) (finding “no cause of action for fraud has been proven” where fraud claim was premised on statement made “to the best of [defendant’s] knowledge” and “there [was] no indication that [defendant] did not believe the truth of statements when they were made.”).

B. Aetna fails to explain how Plaintiffs knowingly misrepresented the value of their transport services.

Aetna argues that Plaintiffs’ representation regarding pilot hours is “materially overstated” and lacks “qualifiers.” Doc. 300 at 21. Aetna’s response fails to explain how a statement regarding the average number of hours Plaintiffs’ pilots have flown is false because they may hire pilots with experience less than the average. This allegation does not even make sense, much less support a fraud claim.

Similarly confounding is Aetna’s allegation that referring to Plaintiffs’ air ambulance fleet as being “state of the art” was fraud. Despite sworn deposition testimony explaining *in detail* why Plaintiffs believe this to be true, Aetna (for the first time in its amended counterclaim) claims fraud.⁴ Doc. 294 at 24. Aetna certainly has not made any factual allegations that Plaintiffs *knew* their fleet was not state of the art (presumably under Aetna’s criteria, whatever that might be) when the statements were made. And as previously noted, matters of opinion like this cannot support a fraud claim. Doc. 294 at 24; *Scinto v. Shandex Corporation*, 2022 WL 1658179, at *20 (Conn Super. Ct. May 24, 2022) (“Statements of opinion...are not actionable...reliance on opinions is per se unjustifiable....)).

Finally, Aetna argues that if the amount of Plaintiffs’ commercial business that is in-network was 60% instead of 70%, then it must be fraud. Doc. 300 at 20. First, Aetna never alleges that the difference between these two percentages is material. Second, it attempted to selectively quote from the Ms. Berkowitz’s deposition transcript and hide from the court the full discussion on this point.⁵ As Aetna acknowledged in related litigation, the standard for vacatur due to fraud

⁴ Plaintiffs cite to Mr. Dralle’s testimony not as a substantive grounds to dismiss Aetna’s fraud claim, but in support of Plaintiffs’ proposition that the phrase “state-of-the-art” is an opinion.

⁵ The court is free to consider the additional deposition testimony from Ms. Berkowitz that Plaintiffs provided in their Motion. *See Alexander v. Murdoch*, No. 10 CIV. 5613 PAC JCF,

is “extraordinarily high,” *Guardian I*, Doc. 12 at 8, and its attempt now to allege fraud without facts should be rejected.

C. Aetna cannot rely on a statement it never saw.

Aetna argues that it “relied on the accuracy and integrity of the information Plaintiffs provided during the IDR process when preparing its submissions and further relied on the assumption that the award was binding when issuing payment.” Doc. 300 at 21. But Aetna does not explain how it *possibly* could have relied on statements it never saw. The IDR submission process is blind. If anything, it was the IDR entity that relied on Plaintiffs’ alleged misrepresentations, not Aetna. That is fatal to Aetna’s fraud claim. *See Olson v. MLB*, 447 F. Supp. 3d 159, 171 (S.D.N.Y. 2020) (explaining that “plaintiffs have failed to allege with any specificity *that they even saw or heard plaintiffs’ misrepresentations* such that these misrepresentations could have caused them to enter [certain] contests they otherwise would not have entered.”) (emphasis added); *In re Fyre Festival Litigation*, 399 F. Supp. 3d 203, 217 (S.D.N.Y. 2019) (“Because there is no assertion that any plaintiff saw, read, or otherwise noticed Atkins’ April 27, 2017 Tweet, *there is no allegation that there was actual reliance at all.*” (internal quotations and citations omitted) (emphasis added)).

VI. Aetna has failed to state a CUTPA claim.

Aetna has failed to state a CUTPA claim because it has failed to satisfy the pleading requirements of Rule 9(b). *See supra* Section V.; Doc. 294 at Section IV.A, 29–30. But regardless of Rule 9(b), Aetna still fails to state a claim. It does not identify any public policy offended by

2011 WL 2802923, at *3 (S.D.N.Y. July 14, 2011) (“In considering a motion to dismiss, a court may consider the pleadings, but may also consider documents ‘integral to the complaint,’ *or documents necessarily relied on by the plaintiff in drafting the complaint.*” (emphasis added) (citing *Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007)).

Plaintiffs’ alleged conduct other than the NSA itself, which as explained above, *supra* Section I., provides the exclusive and limited authority for vacating IDR awards. *See* Doc. 300 at 29. It cites to *Conn. Gen. Life Ins. Co. v. Ogbebor*, No. 3:21-cv-954-JAM, 2022 WL 4077988 (D. Conn. Sep. 6, 2022) for the proposition that overwhelming the IDR process offends public policy. *Id.* at 30. But that case is inapt as it dealt with fabricating insurance claims, not overwhelming a regulatory system. *Id.* at *1. And as explained throughout, judicial review of an IDR award is only permitted in a vacatur proceeding. Aetna cannot circumvent that process, and the NSA’s standard for vacatur, through state-law claims. It does not even attempt to argue that grounds for vacatur exist. At most, Aetna asserts arguments as to why it believes Plaintiffs’ services are not worth the price charged or amount being awarded in IDR. But those are arguments Aetna should have made during the IDR proceedings themselves, not in a roundabout attempt to obtain judicial review of them under state law.

VII. Aetna’s remaining claims should be dismissed.

Aetna’s money had and received claim fails because Aetna has a legal obligation to pay IDR awards. *See Town of Stratford v. Wilson*, 2013 WL 3388652, at *3 (Conn. Super. Ct. Jun. 10, 2013) (dismissing money had and received claim because the “payments were not made by mistake” and the “defendant is equitably entitled to retain the cash-out.”). Moreover, its injunctive relief claim should be dismissed because an “injunction is a remedy, not a separate cause of action.” *Catalano v. BMW of N. Am., LLC*, 167 F. Supp. 3d 540, 545, 562–63 (S.D.N.Y. 2016). Lastly, Aetna’s declaratory relief claim should be dismissed as duplicative. *Id.*

CONCLUSION

This Court should grant Plaintiffs’ Motion and dismiss Aetna’s Amended Counterclaims with prejudice.

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CERTIFICATE OF SERVICE

I certify that on November 3, 2025, a true and correct copy of the foregoing was served electronically on all counsel of record.

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