

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

GUARDIAN FLIGHT LLC, et al.,

Plaintiffs,

v.

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

Defendants.

§
§
§
§
§
§
§
§
§
§

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

**PLAINTIFFS’ RESPONSE TO AETNA’S MOTION TO DE-DESIGNATE
AND UNSEAL SUMMARY JUDGMENT DOCUMENTS**

Plaintiffs¹ file this Response to Aetna’s Motion to De-Designate and Unseal Summary Judgment Documents (“Motion”) and would respectfully show the Court as follows:

Plaintiffs do not oppose the Motion as to Exhibits A and E in their entirety, or as to the green portions of Exhibits B, C, D, F, and G. The disputes before the Court are narrow: 1) whether non-public information on component costs and budgets for Plaintiffs’ Independent Dispute Resolution (“IDR”) program should remain under seal; and 2) whether information concerning Plaintiffs’ IDR Entity (“IDRE”) selection preferences and IDR win rates should remain under seal. Both of these types of competitively sensitive information, highlighted in yellow in Exhibits C and G (ECF Nos. 403-3, 403-7), have zero relevance to any claim or defense in this case and should remain under seal.

INTRODUCTION

This lawsuit concerns Defendants’ refusal to pay millions of dollars in IDR awards secured by Plaintiffs under the federal IDR program managed by the Centers for Medicare and Medicaid

¹ “Plaintiffs” refers collectively to Guardian Flight, LLC (“Guardian Flight”), REACH Air Medical Services, LLC (“REACH”), CALSTAR Air Medical Services, LLC (“CALSTAR”), Med-Trans Corporation (“Med-Trans”), Air Evac EMS, Inc. (“Air Evac”), and AirMed International LLC (“AirMed”).

Services (“CMS”). In another attempt to distract from its low-pay, slow-pay, no-pay scheme, Aetna seeks to unseal information on the component costs of Plaintiffs’ IDR operations and information on Plaintiffs’ IDRE selection preferences and IDR win rates.

The number of IDR proceedings dwarfed the federal government’s expectations by a factor of 84. *See Texas Med. Ass’n v. United States Dep’t of Health & Hum. Servs.*, 2026 WL 2322331 at *3 (5th Cir. Aug. 11, 2026). These volumes have been driven by insurers like Aetna making low payments based on fictitious calculations, forcing providers to turn to IDR for fair payment. *Id.*; *see also CMS, Final Report: Federal Qualifying Payment Amount Audit of Aetna Health Inc.* at p. 12 (concluding that Aetna was incorrectly determining air ambulance Qualifying Payment Amounts).² Accordingly, both providers and payors have had to heavily invest in their IDR programs. On the payor side, insurers like Defendant Cigna retained vendors MultiPlan³ and Zelis⁴ to assist in its program. Aetna affiliate Meritain retained Clear Health Strategies.⁵ Plaintiffs in this proceeding retained Norton Rose Fulbright (“NRF”), counsel in this proceeding, to assist in designing and implementing its program.

Aetna suggests that the fees NRF charged in connection with Plaintiffs’ IDR program should be unsealed because they are “not proprietary information concerning Plaintiffs’ commercial operations.” That framing is backwards. The question is whether Plaintiffs’ non-public IDR expenses are competitively sensitive such that they should not be publicly revealed. When put in context, the answer is plainly yes and would be the same if Aetna sought to reveal Cigna’s pricing with MultiPlan or Zelis.

² <https://www.cms.gov/files/document/qpa-final-report-aetna-tx.pdf>.

³ <https://www.claritev.com/insights/the-no-surprises-act-idr-process-simplifying-the-complex/>. MultiPlan rebranded to Claritev in 2025.

⁴ <https://www.zelis.com/payers/claims-optimization/out-of-network/no-surprises-act-compliance/>

⁵ <https://www.clearhealthstrategies.com/about-us>

Of course, the amount Cigna paid MultiPlan or Zelis for their IDR services has no more relevance to this proceeding than the amount Plaintiffs paid NRF. However, it is competitively sensitive information of value to insurers like Aetna. Assume Cigna struck a really good deal with MultiPlan. With that knowledge, Aetna or another insurer could leverage the information in their own negotiations with MultiPlan. Aetna's subsidiary Meritain could use the information to negotiate lower pricing with ClearHealth Strategies, threatening to switch to MultiPlan if it did not receive pricing concessions. This is why the law routinely protects third-party pricing information, particularly when it has no relevance to the claims being adjudicated as is the case here. Protection of competitively sensitive operational expenses does not depend on whether or not the vendor at issue is a law firm and protecting that information here is fully consistent with the presumption of public access. Similarly, strategic decisions such as which IDRE to select and the results of those decisions constitute proprietary, confidential information that should remain sealed.

LEGAL STANDARD

In deciding whether to unseal a judicial document, a court must identify all of the factors that legitimately counsel against disclosure of the document and balance them against the weight properly accorded the presumption of access. *See Stafford v. Int'l Bus. Machines Corp.*, 78 F.4th 62, 69–70 (2d Cir. 2023) (cleaned up). Summary judgment documents may be sealed if specific findings are made demonstrating that sealing is essential to preserve higher values and is narrowly tailored to serve that interest. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120–121 (2d Cir. 2006) (internal quotation omitted).

“Information . . . [that] relates directly to confidential information about pricing and profit” could cause competitive harm if disclosed and warrants sealing. *Grayson v. Gen. Elec. Co.*, 2017 WL 923907 at *3 (D. Conn. Mar. 7, 2017). Cost and pricing information of non-parties likewise “justify the sealing of documents.” *Locus Techs. v. Honeywell Int'l Inc.*, 2024 WL 5103334 at *14

(S.D.N.Y. Dec. 13, 2024). Judicial documents warrant redaction when “the nature of the information at issue . . . concerns internal pricing strategies and competitive pricing data.” *In re Digital Music Antitrust Litig.*, 321 F.R.D. 64, 81 n.1 (S.D.N.Y. 2017). “[E]xhibits that ‘include sensitive client information and proprietary business information, including inter alia, the company’s billing rates and project pricing’ . . . should be sealed.” *Brandon M. Brady Farms, Inc. v. EDF Renewables Development Inc.*, 830 F. Supp. 3d 302, 313 (W.D.N.Y. 2026) (internal citation omitted).

ARGUMENT

I. The non-public, internal costs of Plaintiffs’ IDR program and related budgets are the type of information that courts routinely seal.

Exhibit C is a March 23, 2023 internal e-mail in which Plaintiffs’ employees compile budget talking points regarding the cost of the federal IDR process, including the costs attributable to services provided by NRF for a specific volume of IDR work in a given month, and a resulting calculated average cost per IDR proceeding.

Exhibit G is a December 2023 internal e-mail chain analyzing whether Plaintiffs should start initiating IDR proceedings at the trip level (i.e., one filing per air ambulance transport) or continue submitting them at the charge level (i.e., one dispute per charge on a bill) as CMS had previously required them to do. The e-mail includes a chart with a financial projection of the net cost and revenue impact of submitting thousands of pending disputes at the trip level.

A. Disclosure of non-public IDR costs would pose a substantial risk of competitive harm.

Every payor and provider engaging in IDR must have an internal IDR program. The components and costs of such programs, including vendor costs, employee costs and software costs, are not public and are proprietary. Plaintiffs operate air ambulances across the country. They compete against other companies like PHI Air Medical (“PHI”) and Air Methods, each of which

maintains its own IDR program. In 2023, when the e-mails at issue were created, the top three providers in air ambulance payment disputes were Plaintiffs, PHI and Air Methods.⁶ The top insurer against which such disputes were initiated was Aetna.⁷

Courts in this District and in the Second Circuit have consistently sealed billing rates, project pricing, and other unit-cost information where disclosure would expose a party's current cost structure to competitors and counterparties. *See, e.g., Grayson v. Gen. Elec. Co.*, 2017 WL 923907, at *3 (D. Conn. Mar. 7, 2017) (explaining that information that “relates directly to confidential information about pricing and profit” can cause competitive harm sufficient to warrant sealing); *Brandon M. Brady Farms, Inc. v. EDF Renewables Development Inc.*, 830 F. Supp. 3d 302, 312 (W.D.N.Y. 2026) (sealing billing rates and project pricing). Courts in this district have likewise found that a valid risk of competitive harm justifies sealing “product prices, commission rates, detailed financial and operations reports, and internal analyses.” *Vanguard Dealer Servs., LLC v. Bottom Line Driven, LLC*, 2023 WL 4746180, at *2 (D. Conn. Apr. 27, 2023). And “detailed financial information” about a business, including cost information, “will in most cases warrant confidential treatment” because “sales trends, costs, and business strategy would all be information valuable to a competitor.” *Pizzaro v. Sazerac Co., Inc.*, 2026 WL 296593, at *5 (S.D.N.Y. Feb. 3, 2026).

Exhibit G is an e-mail chain among Plaintiffs' senior management that occurred after a federal court struck down a federal regulation that required IDR submissions to be submitted separately for each charge on a bill. Air ambulance transports typically have at least two charges, a base charge and a mileage charge. Accordingly, the original regulation required payment disputes

⁶ <https://www.cms.gov/initiatives/no-surprise-billing/overview/policies-resources/independent-dispute-resolution-reports>. Each quarter, CMS issues public use files with supplemental tables listing the top disputing parties for air ambulance services.

⁷ *Id.*

over each of these charges to be submitted separately in two different IDR proceedings. After the court decision issued, Plaintiffs performed an analysis of whether they would start “batching” both charge codes into one dispute or continue submitting them separately. Within the e-mail discussion in Exhibit G is a detailed chart analyzing the potential economic outcomes of batching disputes, including non-public costs of Plaintiffs’ IDR program. *See* Doc. 403-7. Exhibit C contains similar categories of information being discussed in the context of creating an operating budget. *See* Doc. 403-3.

Notably, Aetna agrees that the financial analysis in the chart in Exhibit G is competitively sensitive and should be sealed (as reflected by the green highlights). Inexplicably, it refuses to agree that the non-public cost component in the chart of NRF fees should likewise be sealed. But confidential financial analyses include both revenue and expenses, and there is no basis to distinguish between the non-public revenue side of the equation and the non-public cost side. *See e.g., Grayson v. Gen. Elec. Co.*, 2017 WL 923907, at *3 (D. Conn. Mar. 7, 2017) (sealing confidential information about pricing and profit); *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 2018 WL 1811471 at *4 (E.D. Mich. Apr. 17, 2018) (granting Blue Cross’ motion to seal information on rates and margins). Indeed, Aetna agrees that the “total cost per initiation” should be sealed (highlighted in green) but then asserts that the sole piece of non-public information needed to do that calculation (NRF fees) should not be sealed.

Disclosing non-public cost information about Plaintiffs’ IDR program poses a substantial risk of competitive harm. It would allow competitors to compare their internal IDR costs with Plaintiffs’ and adjust their programs accordingly. *See, e.g., Mission Wellness Pharmacy LLC v. Caremark LLC*, 641 F. Supp. 3d 673, 678–679 (D. Ariz. 2022) (granting Caremark’s motion to seal rate and discount information that “would give Caremark’s competitors a roadmap for creating

competing fee structures and methodologies that they otherwise could not develop without significant research and investment”). Plaintiffs also risk competitive harm from payors, including Aetna and Cigna. With a verified, non-public data point on Plaintiffs’ actual costs per IDR dispute, payors could recalibrate their strategies for IDR, including offering less during the Open Negotiation Period (ONP), knowing the precise amount of costs that will be saved by Plaintiffs by not proceeding to IDR. *See, e.g., Emergency Physician Servs. of New York v. UnitedHealth Grp., Inc.*, 2023 WL 8306746 at *1 (S.D.N.Y. Dec. 1, 2023) (granting motion to seal “financial information concerning the average to cost to provide emergency care” because “disclosure of such commercially sensitive information . . . could negatively impact [p]laintiffs’ bargaining position in future negotiations.”). The confidential revenue, costs and profit of Plaintiffs’ IDR program should remain under seal.

B. Non-public, third-party vendor costs warrant sealing.

Aetna’s suggestion that non-public cost information should not be sealed because it is not Plaintiffs’ “own” information is misguided. Doc. 404. Both the party paying a cost and the non-party providing the service “retain a legitimate confidentiality interest in that information remaining out of the public domain.” *Locus Techs. v. Honeywell Int’l Inc.*, 2024 WL 5103334, at *14 (S.D.N.Y. Dec. 13, 2024) (explaining that absent sealing, the non-party’s rates would be disclosed, and the party’s negotiated rate structure would be revealed). As this district recognized, the “privacy interests [including financial records] of innocent third parties . . . should weigh heavily in a court’s balancing equation between the presumption of access and a request to seal.” *Vellali v. Yale Univ.*, 2021 WL 4520158 at *1 (D. Conn. Sept. 30, 2021).

Aetna relies on *Mirlis v. Edgewood Elm Hous., Inc.*, 581 F. Supp. 3d 394 (D. Conn. 2022), for the proposition that legal fees cannot be sealed because they are not “sensitive financial matters.” *Mirlis* has no bearing on this matter. *Mirlis* concerned a sexual abuse victim’s efforts to

enforce a multi-million dollar judgment against entities affiliated with its abuser, the judgment debtor. *Id.* at 396-97. The court had entered a TRO restricting the affiliated entities' use of their property. *Id.* at 397. The entities sought affirmative relief from the court to modify the TRO to allow payment of attorney fees incurred by the judgment debtor in the sexual abuse case. *Id.* at 398. At the same time, the defendants moved to seal four affidavits detailing the fees incurred in that case. *Id.* at 405. They argued that sealing was needed because "legal fees and expenses are sensitive financial matters" and because the affidavits likely would result in unfavorable press coverage by "biased" news outlets. *Id.* The court denied the motion, noting that the affidavits were directly relevant to the affirmative relief defendants were seeking – payment of the attorney fees detailed in the affidavits. *Id.* at 406.

Unlike in *Mirlis*, the IDR expenses referenced in Exhibits C and G have nothing to do with this lawsuit or any relief being sought. Moreover, far from attempting to seal a document in its entirety, Plaintiffs seek to protect only discrete, specific portions of competitively sensitive and confidential financial analysis of revenue, costs and profit. Plaintiffs' showing is also particularized: the financial analysis at issue is tied directly to Plaintiffs' IDR program, a type of program that both its competitors and insurers like Aetna operate. Plaintiffs identify the specific ways that disclosure would cause harm, which comport with applicable case law.

II. Plaintiffs' IDRE strategy and operational results also should be sealed.

Exhibit C also contains information about which IDREs are deciding Plaintiffs' payment disputes and the percentage at which Plaintiffs prevail in IDR. Aetna made no arguments at all as to why this information should be unsealed. Aetna does not contend the information is relevant to any claim or defense in this proceeding and does not identify any public interest in its disclosure. That silence is itself a sufficient basis to deny the Motion as to this material. *See U.S. v. Boesky*,

674 F. Supp. 1128, 1130 (S.D.N.Y. 1987) (denying motion to unseal information where moving party did not “me[e]t its burden of establishing a particularized need for the material.”)

Regardless, the information should remain sealed. Providers nominate an IDRE when they initiate a dispute. Insurers can reject the nomination and provide a counter. If the counter-nomination is not accepted, an IDRE is randomly selected by CMS. Accordingly, knowing a provider’s IDRE preference, the amount of time that its nominee is actually used, and the resulting percentage at which it is prevailing in IDR is competitively valuable information. The information is valuable to other providers who may be obtaining less favorable results and thus can use the information to change their processes. The information is also valuable to insurers like Aetna who can change which IDREs they accept, reject and propose. This is precisely the kind of “detailed financial and operations reports, and internal analyses” that warrant sealing because of the valid risk of competitive harm from disclosure. *Vanguard Dealer Servs., LLC v. Bottom Line Driven, LLC*, 2023 WL 4746180, at *2 (D. Conn. Apr. 27, 2023).

III. Protecting a parties’ financial data and operational strategies and results is not the same as protecting mere policy and procedure documents.

Aetna argues that Plaintiffs cannot simultaneously seek disclosure of Aetna’s IDR policies and procedures while seeking to seal information concerning their IDR program, characterizing this as an improper sword-and-shield tactic. The comparison does not withstand minimal scrutiny.

Aetna’s IDR claims-handling policies and procedures are highly relevant to the merits of Plaintiffs’ claim that Aetna is failing to timely pay, or unilaterally refusing to pay, binding IDR awards in violation of the NSA. Doc. 394 at p. 2. Aetna’s policy document that explains precisely when it does and does not pay IDR awards, an issue that is central to Plaintiffs’ claims and the summary judgment pending before this Court. Plaintiffs’ IDR financial and strategy information

in Exhibits C and G, on the other hand, is irrelevant to the claims and defenses in this lawsuit and Aetna does not even try to assert otherwise.

Consistency is measured by the legal standard to be applied to each category of information at issue, not by treating all information alike regardless of its content. Plaintiffs do not seek to “have it both ways.” Doc. 404 at p. 6. Plaintiffs seek to seal non-public financial and strategy information that is competitively sensitive, has no relevance to this proceeding, and that courts in this Circuit regularly rule is appropriate to seal. Plaintiffs likewise seek to unseal a claims-handling policy that is highly relevant to this proceeding and that courts regularly rule should not be sealed. Applying the same legal standard to two very different categories of information necessarily yields two different results. That is not inconsistency.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Aetna’s Motion as to the yellow-highlighted information in Exhibits C and G, order that information to remain under seal, and grant the Motion as unopposed in all other respects.

Dated: September 30, 2026

PULLMAN & COMLEY LLC

/s/ Timothy G. Ronan

Timothy G. Ronan
850 Main Street
P.O. Box 7006
Bridgeport, CT 06601-7006
T: 203.330.2000
F: 203.576.8888

NORTON ROSE FULBRIGHT US LLP

/s/ Adam T. Schramek

Adam T. Schramek (*pro hac vice*)
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 (*pro hac vice*)

Texas Bar No. 24102827
1550 Lamar Street
Suite 2000
Houston, Texas 77010
Telephone: (713) 651-5151
Facsimile: (713) 651 5246
abraham.chang@nortonrosefulbright.com

Dewey J. Gonsoulin III (*pro hac vice*)

New York Bar No. 6168660
Texas Bar No. 24131337
D. Conn No. phv207862
1301 Avenue of the Americas
New York, NY 10019
Telephone: (212) 318-3000
Facsimile: (212) 408-5100
dewey.gonsoulin@nortonrosefulbright.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on September 30, 2026, a true and correct copy of the foregoing was served electronically on all counsel of record.

/s/ Adam T. Schramek

Adam T. Schramek