

**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 DEFENDANTS'
SUPPLEMENTAL BRIEFS ADDRESSING *ECAPS***

Aetna and Cigna (“Defendants”) broadly read *ECAPS* as not only foreclosing a private right of action under the NSA, but also foreclosing ERISA and CUTPA claims. *See* Doc. 407 at 5-8; Doc. 409 at 3-6. That is wrong. Defendants stretch *ECAPS* well beyond its narrow holding.

I. *ECAPS* did not address the ERISA enforcement scheme, which includes a private right of action.

Aetna argues that it is “counterintuitive that Congress intended to take [away] a private right of action with one hand and give it right back with the other.” Doc. 407 at 5. Cigna similarly argues that “Plaintiffs should not be permitted to use derivative ERISA claims to obtain the same IDR-payment relief that [*ECAPS*] holds the NSA does not authorize providers to pursue privately.” Doc. 409 at 5.¹ Defendants’ broad reading is plainly wrong. The *ECAPS* court did not address whether IDR awards may be enforced through other existing state or federal laws. Rather, *ECAPS* held only that the NSA does not create an implied private right of action for providers to enforce IDR awards. *ECAPS*, 2026 WL 2751786, at *4. The court explained that Congress incorporated the NSA into existing statutory and regulatory frameworks and concluded that it left enforcement

¹ Cigna also rehashes the same standing arguments this Court already rejected. Doc. 409 at 4. As discussed in Plaintiffs’ supplemental brief, the *ECAPS* court did not address, or even mention, ERISA standing. Doc. 408 at 4.

to those mechanisms. *Id.* at *5-6. The fact *ECAPS* held that the NSA itself does not provide a *new* private right of action says nothing about whether an unpaid IDR award may be enforced under *existing* private rights of action, such as the one ERISA provides to all health plan members.² Nothing in *ECAPS* suggests that the NSA *eliminated* existing private rights.

Moreover, an ERISA health plan's obligation to pay for out-of-network care is a contractual obligation. The NSA required health plans to cover emergency services provided by out-of-network providers. *See* 42 U.S.C. § 300gg-111(a)(1). This means that payment for such services is now a covered plan benefit, subject to the full array of ERISA enforcement options including private rights of action. IDR awards merely determine the value of the medical service provided. If a health plan does not cover a service, it is not eligible for an IDR payment dispute proceeding. *See* Requirements Related to Surprise Billing, Part I, 86 FR 36872, 36901-02 (July 13, 2021). It is because a health plan might breach its obligations to its members that ERISA provides a private right of action. Nothing in *ECAPS* changes this fact.

II. *ECAPS* did not address CUTPA or state-law remedies.

Defendants similarly contend that *ECAPS* forecloses Plaintiffs' CUTPA claim, advancing largely the same arguments they offer in support of dismissing Plaintiffs' ERISA claim. Aetna argues that Plaintiffs cannot "launder[] its IDR claims through common law to evade the NSA's lack of a private right of action" and points to the Supreme Court's decision in *Astra USA, Inc. v. Santa Clara Cnty., Cal.*, 563 U.S. 110, 118 (2011). Doc. 407 at 6. Cigna argues the same, claiming that "Plaintiffs cannot obtain through CUTPA the same private IDR-enforcement remedy that [*ECAPS*] holds Congress omitted from the NSA[.]" Doc. 409 at 6. These arguments are misguided.

² Similarly, *ECAPS* did not reject the decision in *Agag v. Cigna Health & Life Ins. Co.*, No. 3:25-CV-00498 (SRU), 2026 WL 1021213, (D. Conn. Apr. 15, 2026). *ECAPS* is consistent with *Agag*, which also held that the NSA does not grant an implied private right of action and instead granted relief on other grounds.

First, the *ECAPS* court noted that enforcement of IDR awards for fully insured health plans was delegated to the states. *ECAPS*, 2026 WL 2751786, at *5. This necessarily means that those states decide how enforcement proceeds. Many state departments of insurance rely on both administrative enforcement and civil private rights of action. Connecticut is just one example. *See Preferred Display, Inc. v. Great Am. Ins. Co. of New York*, 288 F. Supp. 3d 515, 528 (D. Conn. 2018) (“A plaintiff may allege a CUTPA violation on account of an alleged violation of CUIPA.”); *see also* TEX. INS. CODE § 541.151(1) (providing a private right of action for unfair methods of competition or unfair or deceptive acts or practices in the business of insurance). Congress did not dictate how IDR awards are enforced by states. The NSA amended three statutory frameworks governing health plans and health insurance. The Public Health Services Act amendments govern health insurance issuers, and the PHSA expressly does not preempt state insurance laws. *See* 42 U.S.C. § 300gg-23(a)(1).

Second, CUTPA (through CUIPA) establishes an independent duty that must be met. *See* Doc. 264 at 28, n.9. As the Connecticut Supreme Court has explained, the obligation to settle claims in good faith once liability becomes reasonably clear is independent of surprise billing law requirements. *See NEMS, PLLC v. Harvard Pilgrim Health Care of Connecticut, Inc.*, 350 Conn. 525, 541-42 (2024). The NSA award is merely evidence that liability has become reasonably clear. *Id.* It is this independent duty under state law to settle claims in good faith that forms the basis of Plaintiffs’ CUTPA claim. As the Court previously concluded, such a claim is not preempted by the NSA. Doc. 264 at 28-30; *see also Modern Ortho. of NJ v. Premera Blue Cross*, No. 2:25-cv-1087, 2025 WL 3063648, at *12 (D.N.J. Nov. 3, 2025) (“The IDR...does not displace traditional state-law remedies like unjust enrichment.”).

For these reasons, *ECAPS* does not foreclose Plaintiffs’ ERISA or CUTPA claims.

Dated: October 5, 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 October 5, 2026, a true and correct copy of the foregoing was served electronically on all counsel of record.

/s/ Adam T. Schramek

Adam T. Schramek