

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PLASTIC & RECONSTRUCTIVE SURGERY	:	
GROUP, ET AL.,	:	
	:	
Petitioners,	:	
	:	
v.	:	CASE NO. 3:25-cv-211-SVN
	:	
AETNA, INC., ET AL.,	:	
	:	
Respondents.	:	

ORDER DENYING PETITIONER’S MOTION FOR DISCOVERY (DKT. NO. 107)

On February 11, 2025, Petitioners Plastic and Reconstructive Surgery Group, Shareef Jandali Plastic Surgery, LLC, Richard Agag, M.D., and The DIEP Group CT PLLC commenced this action under the No Surprises Act (“NSA”) and Federal Arbitration Act (“FAA”) to vacate arbitration awards issued by Respondent Arbitrator ProPeer Resources, LLC. (Dkt. #1.) In addition to ProPeer, Petitioners name Aetna, Inc., Anthem Health Plans, Inc., Blue Cross Blue Shield Association, Cigna Health and Life Insurance Company, Connecticare, Inc., United Healthcare Insurance Company, and ABC Corporations 1-10 as Respondents to the action. *See id.* Now pending before the Court is Petitioner’s Motion for Discovery. (Dkt. #107.) For the reasons that follow, the Motion for Discovery is DENIED.

I. BACKGROUND¹

The NSA was enacted in 2022, and it protects patients from liabilities stemming from “surprise” medical bills from out-of-network providers and/or services. Dkt. #54 ¶ 26; *see also* 42 U.S.C. § 300gg-111. Under the NSA, “a patient’s share of liability to an [out-of-network] provider

¹ The Court draws the following facts from the Amended Petition to Vacate. (Dkt. #54.)

is limited to an amount comparable to what the patient would have owed to an in-network provider for the same services.” (Dkt. #54 ¶ 27.) An insurer determines this “comparable” amount and then reimburses the out-of-network provider for their services. *Id.* ¶ 27.

To resolve disputes between insurers and providers over reimbursement rates, the NSA created an Independent Dispute Resolution (“IDR”) process. (Dkt. #54 ¶ 30.) The process works as follows: first, an insurer issues an initial payment which is “meant to reflect the median in-network rate for the applicable service.” *Id.* ¶ 31. If a provider is not satisfied with the number issued by the insurer, it can negotiate with the insurer during a designated 30-day negotiation period. *Id.* If these negotiations fail, the provider and/or insurer have four days to initiate the IDR process. *Id.* If IDR is initiated, a Certified IDR Entity (“CIDRE”) is selected “by either the parties or the Department of Health and Human Services.” *Id.* The CIDRE determines (1) whether the dispute is eligible for the IDR process and, if so, (2) what amount the insurer owes the provider. *Id.*

Turning to the facts here, Petitioners are various medical providers that provided out-of-network medical services to members of Respondent Health Insurance Companies. (Dkt #54 ¶ 43.) Petitioners allege that they submitted claims for reimbursement of these medical services, and the reimbursement claims were either denied or underpaid by Respondent Health Insurance Companies. *Id.* ¶ 44. Because they were dissatisfied with the reimbursement amounts, Petitioners initiated the NSA’s IDR process. *Id.* ¶ 44. Respondent ProPeer is the selected CIDRE. *Id.* ¶ 8. At arbitration, ProPeer selected the insurers as the prevailing parties, *id.* ¶ 44, and found \$0.00 to be the appropriate out-of-network rate for the provided services. *Id.* ¶¶ 11, 44-45.

On February 11, 2025, Petitioners commenced this action to vacate the arbitration awards, dkt. #1, and on April 8, 2025, Petitioners filed an Amended Petition to Vacate the arbitration

awards issued by ProPeer. (Dkt. #54.) The basis of Petitioners’ argument in favor of vacatur is that ProPeer inappropriately made IDR eligibility determinations under the guise of \$0.00 awards, and in doing so “exceeded its arbitration powers” under the No Surprises Act, 42 U.S.C. § 300gg-111(a)(3)(E)(i) and Federal Arbitration Act, 9 U.S.C. § 10(a)(4). *Id.* ¶¶ 16-17. On July 31, 2025, the parties conferred via telephone and confirmed that discovery in this matter was unnecessary and that the Amended Petition to Vacate was ripe for decision.² (Dkt. #108-1 ¶ 2.) The following week, Petitioners filed the instant Motion for Discovery, seeking “narrow discovery” against Respondent ProPeer to determine the reasons behind its arbitration decisions. (Dkt. # 107 at 1-2.) Respondents timely opposed the Motion. (Dkt. #108.)

II. LEGAL STANDARD

The FAA allows a party to seek judicial review of an arbitration award in specific circumstances, including “where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” 9 U.S.C. § 10(a)(4). The Second Circuit has “consistently accorded the narrowest of readings to the Arbitration Act’s authorization to vacate awards ‘where the arbitrators exceeded their powers.’” *Andros Compania Maritima, S.A. v. Marc Rich & Co., A.G.*, 579 F.2d 691, 703 (2d Cir. 1978) (quoting 9 U.S.C. § 10(a)(4)). A district court’s inquiry “focuses on whether the arbitrators had the power, based on the parties’ submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue.” *DiRussa v. Dean Witter Reynolds, Inc.*, 121 F.3d 818, 824 (2d Cir. 1997).

² In the same filing, the parties also noted that the Motion to Sever, dkt #78, filed by Respondent Health Insurance Companies was ripe for decision. (Dkt. #108-1 ¶ 2.) However, the Motion to Sever is not referred to the undersigned and therefore has no bearing on this Motion for Discovery ruling.

Generally, in an action brought in federal court to confirm or vacate an arbitration award under the FAA, the discovery procedures established by the Federal Rules of Civil Procedure are applicable. *Sierra v. Bally Total Fitness Corp.*, No. CV 2006-1688 (ENV) (MDG), 2006 U.S. Dist. LEXIS 96003, at *5 (E.D.N.Y. Dec. 5, 2006). Under the Federal Rules of Civil Procedure, parties are entitled to obtain discovery relating to any non-privileged matter relevant to the litigation. Fed. R. Civ. P. 26(b)(1). While courts interpret discovery provisions liberally, certain limitations do exist—particularly in the context of actions to confirm or vacate an arbitral award. The Second Circuit has explained that post-award discovery into potential arbitrator misconduct is “limited to situations where *clear evidence of impropriety* has been presented.” *Andros Compania Maritima, S.A.*, 579 F.2d at 702 (emphasis added). The “clear evidence of impropriety” standard “serves to protect against harassment or undue burdening of the arbitrator, as well as to prevent inordinate delay in the completion of the arbitral process.” *Sierra*, 2006 U.S. Dist. LEXIS 96003, at *6. Ultimately, a “district court has discretion to deny discovery in a proceeding to confirm [or vacate] an arbitral award.” *Lyeth v. Chrysler Corp.*, 929 F.2d 891, 898 (2d Cir. 1991).

III. DISCUSSION

Petitioners argue in their Motion for Discovery that they are entitled to limited discovery to inquire into the reasoning behind ProPeer’s determinations of the IDR disputes. (Dkt. #107 at 2.) More specifically, Petitioners seek discovery to “determine whether ProPeer’s IDR awards were based on the appropriate analysis under the NSA or were decisions predicated upon an attempt to correct an earlier mistaken coverage determination.” *Id.* Respondents oppose the Motion on the grounds that discovery directed at an arbitrator is only available when there is “clear evidence of impropriety,” and that no such showing has been made here. (Dkt. #108 at 3.) The

Court agrees with Respondents' contention that Petitioners have failed to direct this Court to "*clear evidence*" of impropriety as required to initiate discovery against an arbitrator.

During the IDR disputes at issue here, ProPeer was presented with two separate reimbursement proposals. *See, e.g.*, dkt. #54-2 at 2. One of those proposals was \$0.00 as provided by the Respondent Health Insurance Companies and the other was a value other than \$0.00 submitted by the Petitioner Medical Providers. *Id.* ProPeer then selected one of the two proposals before it. *Id.* This procedure is consistent with the relevant statutory provisions under the NSA. Pursuant to the NSA, each party submits its proposed reimbursement offer to the CIDRE, 42 U.S.C. § 300gg-111(c)(5)(B)(i)(I), and the CIDRE then "select[s] one of the offers submitted" before it. *Id.* § 300gg-111(c)(5)(A)(i); *see also Guardian Flight, L.L.C., v. Health Care Serv. Corp.*, 140 F.4th 271, 273 (5th Cir. 2025) ("The CIDRE sets that [reimbursement] amount via 'baseball-style' dispute resolution where the provider and insurer each submit an offer, and the CIDRE selects one party's offer as the award."). If one of the parties submits a \$0.00 proposal, as Respondent Health Insurance Companies did here, *see, e.g.*, dkt. #54-2 at 2, the Court is unable to discern how ProPeer's selection of the \$0.00 proposal—which was one of the only two options—evinces arbitral misconduct that would constitute "*clear evidence*" of impropriety.

Recently, the Honorable Seth D. Eichenholtz of the Eastern District of New York recommended denying petitioners' request for discovery in a similar proceeding. *See Avraham Plastic Surgery LLC v. Aetna, Inc.*, No. 25-cv-784 (OEM) (SDE), 2025 U.S. Dist. LEXIS 267839 (E.D.N.Y. Dec. 30, 2025). In discussing the propriety of zero-dollar awards, the court noted that "if it is permissible for a party to *submit* a zero-dollar offer as part of the IDR process, the CIDRE is actually *required* to select the zero-dollar offer if, in its judgment as arbitrator, it believes that offer to be the more appropriate of the two offers." *Id.* at *20; *see also* 42 U.S.C. § 300gg-

111(c)(5)(B)-(D) (indicating that a CIDRE may not independently determine the reimbursement amount).

Petitioners do not make a representation that the NSA restricts the value of final offers that either party may submit, nor is the Court aware of any such restriction. Without additional evidence from Petitioners that ProPeer inappropriately made this selection, discovery into the decisions may not be conducted. *See Molecular Dynamics Ltd. v. Spectrum Dynamics Med. Ltd.*, No. 22 Civ. 5167 (KPF), 2022 U.S. Dist. LEXIS 255996, at *3 (S.D.N.Y. Nov. 28, 2022) (denying motion to conduct limited discovery into arbitrator’s decision-making process where petitioners failed to demonstrate clear evidence of impropriety).³

IV. CONCLUSION

Because Petitioners have not made a showing of “clear evidence of impropriety” on the part of ProPeer, the Motion for Discovery, dkt. #107, is DENIED. This is not a Recommended Ruling. This is a discovery ruling or order which is reviewable pursuant to the “clearly erroneous” statutory standard of review. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); and D. Conn. L. R. 72.2. As such, it is an order of the Court unless reversed or modified by a district judge upon motion timely made.

SO ORDERED on this 31st day of December, 2025 at Hartford, Connecticut.

_____/s/_____
Robert A. Richardson
United States Magistrate Judge

³ In support of their argument, Petitioners also direct this Court to *Frere v. Orthofix, Inc.*, to support the proposition that discovery is warranted where “it is tied to the issues” raised in the Petition to Vacate. Dkt. #107 at 2; *Frere v. Orthofix, Inc.*, No. 99 Civ. 4049 (RMB), 2000 U.S. Dist. LEXIS 17467, at *21 (S.D.N.Y. Dec. 4, 2000) (denying in large part a motion to compel discovery in an action to vacate an arbitral award because “very little of the discovery sought” was justified). In *Frere*, the Southern District of New York narrowly allowed the petitioners to conduct discovery. *Id.* at *23-25. However, the information ultimately considered discoverable concerned the substance of material provided to the arbitrator and did *not* inquire into the arbitrator’s decision-making process. *Id.*