

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

GUARDIAN FLIGHT, LLC, et al.

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Plaintiffs,

v.

CIVIL ACTION NO. 4:22-cv-03805
Hon. Alfred H. Bennett

AETNA HEALTH, INC. et al,

Defendants.

UNOPPOSED MOTION FOR STAY PENDING APPEAL

Plaintiffs Guardian Flight, LLC (“Guardian”), CALSTAR Air Medical Services, LLC (“CALSTAR”), REACH Air Medical Services, LLC (“REACH,” collectively “Plaintiffs”) file this Unopposed Motion for Stay Pending Appeal (“Unopposed Motion”) and would respectfully show the Court as follows:

INTRODUCTION

This Court recently granted Plaintiffs’ request that it issue a final judgment for its claims against Insurer Defendants Aetna and Kaiser so that Plaintiffs could immediately appeal this Court’s ruling that Plaintiffs had failed to state a claim against them. *See* Doc. 90. An immediate appeal allows the Fifth Circuit to consider the Court’s rulings as to the Insurer Defendants at the same time it consider Defendant MET’s appeal on the issue of immunity. *See* Docs. 76, 77. Plaintiffs’ notice of appeal has now been filed. *See* Doc. 91. Plaintiffs now move the Court to stay all proceedings in this case pending the results of the two Fifth Circuit appeals. A stay promotes judicial and party efficiency because it will eliminate unnecessary costs and resources while dispositive issues are litigated. For these reasons, the Unopposed Motion should be granted.

LEGAL STANDARD

“A stay pending appeal ‘simply suspends judicial alteration of the status quo.’” *Veasey v. Perry*, 769 F.3d 890, 892 (5th Cir. 2014) (quoting *Niken v. Holder*, 556 U.S. 418, 429 (2009)). A court considers four factors in whether a stay should issue: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* But where immunity issues are at stake, the Fifth Circuit has stated that “until resolution of the threshold question of the application of an immunity defense, discovery should not be allowed.” *Nieto v. San Perlita Indep. Sch. Dist.*, 894 F.2d 174, 177 (5th Cir. 1990).

ARGUMENT

A stay of this proceeding is appropriate. The first factor is neutral given the fact the rulings being appealed concern issues of first impression on which neither the Fifth Circuit nor any other federal circuit has ruled. The second factor weights in favor of a stay given the fact MET has appealed on immunity grounds and discovery is inappropriate until the appeal is resolved (leaving nothing else to be done until then). *See Russell v. Harris County, Texas*, 2021 WL 2637576, at *3 (S.D. Tex. 2021) (internal citations and quotations omitted) (Rosenthal, J) (granting a stay from third-party discovery where immunity issues are at stake). The third factor weighs in favor of a stay given the fact all remaining parties in this proceeding agree to it. And the final factor likewise supports a stay as the public interest benefits from the court being able to focus on other matters and cases while the parties prosecute their respective appeals.

Because the relevant factors collectively weigh in favor of granting a stay, and because party and judicial resources will be conserved by such a stay, the Unopposed Motion should be granted.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Unopposed Motion be granted.

Dated: May 6, 2024

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Attorneys for Plaintiffs

CERTIFICATE OF CONFERENCE

I certify that on May 6, 2024, Plaintiffs conferred with the remaining Defendant in this action, Medical Evaluators of Texas ASO (“MET”), and it is unopposed to the relief requested.

/s/ Adam T. Schramek

Adam T. Schramek

CERTIFICATE OF SERVICE

I certify that on May 6, 2024, a true and correct copy of the foregoing was served via the Court's ECF system on all counsel of record.

/s/ Adam T. Schramek
Adam T. Schramek