

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION AT LONDON**

PHI HEALTH, LLC, and EMPACT MIDWEST LLC,

Plaintiffs,

v.

U.S. DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

XAVIER BECERRA, in his official capacity as
Secretary of Health and Human Services,

OFFICE OF PERSONNEL MANAGEMENT,

KIRAN AHUJA, in her official capacity as Director of
the U.S. Office of Personnel Management,

U.S. DEPARTMENT OF LABOR,

JULIE SU, in her official capacity as Acting Secretary
of Labor,

U.S. EMPLOYEE BENEFITS SECURITY
ADMINISTRATION,

LISA GOMEZ, in her official capacity as the Assistant
Secretary for the Employee Benefits Security
Administration,

U.S. DEPARTMENT OF THE TREASURY,

JANET YELLEN, in her official capacity as Secretary
of the Treasury,

INTERNAL REVENUE SERVICE, and

DANNY WERFEL, in his official capacity as
Commissioner of Internal Revenue,

Defendants.

Case 6:22-cv-00095

UNOPPOSED MOTION TO CONTINUE THE STAY

Plaintiffs PHI Health, LLC and EMPact Midwest, LLC (“Plaintiffs”) respectfully request that the stay in this action be continued until the resolution of appellate proceedings (including in the Supreme Court, if certiorari is sought) in *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 23-40605 (5th Cir.) (“*TMA III Appeal*”). Defendants do not oppose this motion.

On June 26, 2023, this Court stayed this matter until the resolution of pending summary judgment motions in *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 22-cv-450 (lead case) (“*TMA III*”) and *LifeNet, Inc. et al. v. U.S. Dep’t of Health and Hum. Servs. et al.*, Case No. 22-cv-453 (consol. case) (“*LifeNet III*”). See ECF 42.

On September 27, 2023, following the District Court’s decision in those cases, see Memorandum Opinion and Order, *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 22-cv-450, ECF 62 (Aug. 24, 2023), this Court granted Plaintiffs’ Unopposed Motion to Stay, stayed this matter for six months, and required the parties to submit joint status reports on the first Tuesday of each month advising the Court on the status of the related litigation, see ECF 47.

On March 22, 2024, the Court continued the stay and status report requirement for six months. See ECF 56.

That six-month period expires on September 23, 2024 and Plaintiffs respectfully submit that a continued stay is warranted in light of the continued progress of litigation in the Fifth Circuit. Many of the issues raised in this matter are the subject of the ongoing proceedings which were the basis of the prior stay orders:

- Several of the issues raised by Plaintiffs were the subject of cross-motions for summary judgment that were filed in *TMA III* and *LifeNet III*, and which were decided on August 24, 2023. See Memorandum Opinion and Order, *Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.*, 22-cv-450, ECF 62 (Aug. 24, 2023). Both the Government and the TMA/LifeNet Plaintiffs appealed portions of Judge Kernodle's order to the 5th Circuit. See *Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.*, 23-40605 (5th Cir.). The appeal is fully briefed, oral argument was held on September 3, 2024, and the parties await the Fifth Circuit's opinion.

As this case is on-going and bears on many of the issues raised by this case, Plaintiffs respectfully submit that a continuation of the stay in this matter is warranted.

In the event the Court grants the stay, the parties can continue submitting Joint Status Reports regarding the status of the status of the 5th Circuit appeal on the first Tuesday of each month. Upon the expiration of the stay, Plaintiffs respectfully submit that the Court should set a schedule for any Amended Complaint and Answer at that time or adhere the deadlines in its prior stay order, *see* ECF 42:

- Any Amended Complaint would be due 30 days after the stay expires under the provisions above;
- Defendants have 60 days from the entry of any Amended Complaint to answer or otherwise respond to this pleading.

Dated: September 11, 2024

Respectfully submitted,

/s/ Chrisandrea Turner

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