

September 8, 2020

The Honorable Kenneth M. Karas  
The Hon. Charles L. Briant Federal Building  
And United States Courthouse  
300 Quarropas Street  
White Plains, NY 10601-4150

Re: *United States ex rel. Cutler v. Cigna Corp. et al.*, No. 17 Civ. 7515 (KMK),  
Request for Pre-Motion Conference for Defendants' Motion to Stay Pending Res-  
olution of their Motion to Transfer

Dear Judge Karas:

We write on behalf of Defendants to request a pre-motion conference. We seek to file a motion to stay this case, including the deadline to respond to the amended complaint, which is currently due on September 15, 2020, pending resolution of our request to transfer venue to the Middle District of Tennessee, as described in our contemporaneously filed letter. Defendants have not previously requested any adjournments or extensions. Relator does not consent to this motion.

The power to stay a proceeding is “incidental to the power inherent in every court to control the disposition of the causes on its own docket with economy of time and effort for itself, for counsel, and for litigants.” *Poppel v. Rockefeller Univ. Hosp.*, No. 19-CV-1403 (ALC), 2019 WL 3334476, at \*2 (S.D.N.Y. July 25, 2019) (citation and quotation marks omitted). In determining whether to grant a motion to stay, courts consider several factors, including: “(1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if delayed; (2) the private interest of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.” *Id.* (citation and quotation marks omitted).

These factors favor a stay. Relator will not be prejudiced by a short stay pending resolution of the motion to transfer. Indeed, a stay will make it unnecessary for Relator to address both the transfer issue and a motion to dismiss at the same time. Further, while a stay may briefly delay the case’s progress, any such delay is a result of Relator’s choice to file this case in a forum with no connection to the action. *See Ellington Credit Fund, Ltd. v. Select Portfolio Servs., Inc.*, No. 08 CIV. 2437 (RJS), 2008 WL 11510668, at \*2 (S.D.N.Y. June 12, 2008) (granting motion to stay discovery, in part, because “the delays to date in this matter are largely attributable to Plaintiffs’ own decision to commence this action” in an improper forum, which “cannot be blamed on Defendants and cannot be deemed to constitute prejudice in this context.”). Conversely, without a

stay, Defendants will be impacted by having to respond to the complaint while the Court is still considering the transfer motion. Defendants also would move to dismiss this action if it was pending in the Middle District of Tennessee, but there is no efficiency to requiring two motion to dismiss filings (and potentially two responses and replies), one under Second Circuit law, the other under Sixth Circuit law.

Finally, a stay is in both the Court's and the public's interests. A stay would preserve limited judicial resources, as it will save this Court the time and effort required to address dispositive motions before the Court decides whether the case should go forward in this district. *See Sutherland v. Ernst & Young LLP*, 856 F. Supp. 2d 638, 644 (S.D.N.Y. 2012) (“[C]onsiderations of judicial economy counsel, as a general matter, against investment of court resources in proceedings that may prove to have been unnecessary.”). These saved efficiencies benefit both parties and the Court, as duplicative and unnecessary briefing only increases the costs of litigation to the parties and the public fisc. *Poppel*, 2019 WL 3334476, at \*3 (“A stay may be proper when it is efficient for a trial court’s docket and the fairest course for the parties.”) (citation and quotation marks omitted).

For these reasons, Defendants respectfully request a pre-motion conference on their anticipated motion to stay this proceeding pending resolution of the transfer issue.

Respectfully submitted,

/s/ Eamon P. Joyce

Eamon P. Joyce  
SIDLEY AUSTIN LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 839-5555  
ejoyce@sidley.com

William A. Sarraille (*pro hac vice* pending)  
Robert D. Keeling (*pro hac vice* pending)  
Sean C. Griffin (*pro hac vice* pending)  
Amy L. DeLine (*pro hac vice* pending)  
SIDLEY AUSTIN LLP  
1501 K Street NW  
Washington, DC 20005  
(202) 736-8000