

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

REBECCA SMITH; ELLEN LARSON;  
JUSTINE LUND; and JAIME and  
JARED BEARD, individually and on  
behalf of all others similarly situated,

Plaintiffs-Appellees,

v.

THE ALIERA COMPANIES, INC.;  
formerly known as ALIERA  
HEALTHCARE, INC., a Delaware  
corporation;  
TRINITY HEALTHSHARE, INC., a  
Delaware corporation;  
ONESHARE HEALTH, LLC, formerly  
known as UNITY HEALTHSHARE,  
LLC and as KINGDOM  
HEALTHSHARE MINISTRIES, LLC, a  
Virginia limited liability corporation,

Defendants-Appellants.

Case No. 21-1185  
Case No. 21-1186  
Case No. 21-1187

RESPONSE OF APPELLEES REBECCA SMITH, ELLEN LARSON,  
JUSTINE LUND, AND JAIME AND JARED BEARD TO TRINITY  
HEALTHSHARE INC.'S SUGGESTION OF BANKRUPTCY

Appellees REBECCA SMITH; ELLEN LARSON; JUSTINE LUND; and  
JAIME and JARED BEARD, individually and on behalf of all others similarly

situated, by and through their undersigned counsel submit the following response to Appellant Trinity Healthshare Inc.’s suggestion of bankruptcy:

At this preliminary stage of the bankruptcy proceeding, Appellees do not object to the abatement of Appeal No. 21-1187 pursuant to 11 U.S.C. § 362; however, Appellees reserve the right to move to lift the stay before the Bankruptcy Court and/or the abatement in this proceeding, should additional evidence demonstrate that Trinity’s bankruptcy filing is not in good faith or for other reasons permitted under the Bankruptcy Code or other law.

Appellees object to the abatement of Appeal No. 21-1185, as to Alieria Companies, Inc. et al. and No. 21-1186, as to OneShare. The automatic stay provision in 11 U.S.C. § 362 generally only applies to the debtor, in this case, Trinity. “There is nothing in the statute which purports to extend the stay to causes of action against solvent co-defendants of the debtor.” *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1330 (10th Cir. 1984). As the Tenth Circuit previously explained, “[i]t would make no sense to extend the automatic stay protections to solvent co-defendants. They don't need it, and at the same time it would work a hardship on plaintiffs, by giving an unwarranted immunity from suit to solvent co-defendants. Extending the stay to protect solvent co-defendants would not advance either of the purposes underlying the automatic stay.” *Id.*

As a practical matter, there is no prejudice or hardship to the remaining Appellants by proceeding with the consolidated appeal as to Alieria and OneShare, while abating the appeal as to Trinity. These three separate appeals were consolidated by the Court without motion by any of the parties. The Court may properly abate the appeal as to Trinity while proceeding with the consolidated appeal related to Alieria and OneShare. *See e.g., Mason v. Okla. Tpk. Auth.*, 115 F.3d 1442, 1450 (10th Cir. 1997)(staying further proceedings against the debtor, but allowing the appeal to proceed as to the solvent co-defendant); *Croyden Assocs. v. Alleco, Inc.*, 969 F.2d 675, 677 (8th Cir. 1992) (“[T]he stay is not available to nonbankrupt codefendants, even if they are in a similar legal or factual nexus with the debtor”).

Should Appellants OneShare or Alieria respond by arguing that all three appeals be stayed while Trinity’s bankruptcy proceeds, Appellees request the opportunity to provide a reply to the arguments submitted in their responses.

RESPECTFULLY SUBMITTED: July 27, 2021.

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## CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2021, I electronically filed the foregoing using the court's CM/ECF system, which will send notification of such filing to the following:

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