

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHT CIRCUIT**

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<b>GEORGE KELLY and THOMAS</b>	)	<b>Nos. 20-3702, 20-3709</b>
<b>BOOGHER</b> , individually and on	)	
behalf of all others similarly	)	
situated,	)	
	)	
Plaintiffs-Appellees,	)	<b>RESPONSE TO</b>
	)	<b>APPELLANT TRINITY’S</b>
v.	)	<b>SUGGESTION OF</b>
	)	<b>BANKRUPTCY</b>
	)	
<b>THE ALIERA COMPANIES,</b>	)	
<b>INC. and TRINITY HEALTH-</b>	)	
<b>SHARE, INC.</b>	)	
	)	
Appellants-Defendants.	)	

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Appellees George Kelly and Thomas Boogher submit individually and on behalf of all others similarly situated, by counsel, respond to Appellant Trinity Healthshare Inc.’s (Trinity) suggestion of bankruptcy:

At this preliminary stage of the bankruptcy proceeding, Appellees do not object to the abatement of Appeal No. 3709 as to Trinity only, under 11 U.S.C. § 362. But Appellees reserve the right to move to lift the stay before the Bankruptcy Court, the abatement in this proceeding, or both, should additional evidence show 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 the appeals as to The Alieria Companies, Inc. (Alieria). The automatic stay provision in 11 U.S.C. § 362 generally only applies to the debtor, in this case, Trinity. *Croyden Assocs. v. Alleco, Inc.*, 969 F.2d 675, 677 (8th Cir. 1992) (“[A] stay is not available to nonbankrupt codefendants, even if they are in a similar legal or factual nexus with the debtor.”); *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1330 (10th Cir. 1984) (“[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.”).

Proceeding with respect to Alieria while abating Trinity’s appeal is proper and will not result in any prejudice or hardship. *See, e.g., Croyden*, 969 F.2d at 677; *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).

Should Trinity, Alieria, or both, respond by arguing that Alieria’s appeal should also be stayed while Trinity’s bankruptcy proceeds, Appellees request the opportunity to provide a reply to the arguments submitted in their responses.

DATED: July 26, 2021

Respectfully submitted,

/s/ Jay Angoff

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