

1 ALAN D. LEETH (SBN 199226)
aleeth@burr.com
2 **BURR & FORMAN LLP**
420 North 20th Street, Suite 3400
3 Birmingham, AL 35203
4 Telephone: (205) 458-5499

5 *Attorney for Defendant*
6 *The Alieria Companies Inc.*

7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

10 CORLYN DUNCAN and BRUCE DUNCAN,
individually and on behalf of all others similarly
11 situated,

12 Plaintiffs,

13 v.

14 THE ALIERA COMPANIES INC., f/k/a Alieria
Healthcare, Inc., and TRINITY
15 HEALTHSHARE, INC., ONESHARE
HEALTH, LLC, f/k/a UNITY HEALTH
16 SHARE, LLC and as KINGDOM
HEALTHSHARE MINISTRIES, LLC,

17 Defendants.
18
19
20

CASE NO. 2:20-CV-867-TLN-KJN

**MOTION FOR LEAVE TO FILE
NOTICE OF SUPPLEMENTAL
AUTHORITY IN SUPPORT OF MOTION
TO STAY**

Hon. Troy L. Nunley

21 Defendant The Alieria Companies Inc. (“Alieria”) moves for leave to file this notice of
22 supplemental authority in support of its Motion to Stay (ECF No. 80) to bring to the Court’s
23 attention orders entered by the United States Court of Appeals for the Tenth Circuit Court and the
24 United States District Court for the Eastern District of Kentucky staying substantially similar cases
25 due to the bankruptcy filing of Trinity Healthshare, Inc. n/k/a as Sharity Ministries (“Trinity”).
26
27
28

1 The Tenth Circuit’s order is attached as **Exhibit A**, and the Eastern District of Kentucky’s order
2 is attached as **Exhibit B**.

3 In the Tenth Circuit case, *Smith v. The Alieria Companies, Inc.*, Case No. 21-1185, the
4 plaintiffs sued Alieria, Unity, and Trinity, alleging that Unity and Trinity do not quality as health
5 care sharing ministries and therefore that they (along with the administrator of their programs,
6 Alieria) provide illegal insurance. (*See* Case No. 1:20-cv-02130-RBJ, ECF No. 39.) The district
7 court in *Smith* denied motions to compel arbitration, and Alieria, Unity, and Trinity separately
8 appealed from that denial to the Tenth Circuit. Trinity then filed for bankruptcy. The Tenth Circuit
9 asked the parties to state their positions on whether all three appeals (not just Trinity’s appeal)
10 should be stayed due to Trinity’s bankruptcy filing. The plaintiffs opposed a stay of Alieria and
11 Unity’s appeals, but Alieria and Unity argued that the Tenth Circuit should stay all three appeals to
12 promote the interests of judicial efficiency and to avoid prejudicing the defendants. The Tenth
13 Circuit agreed with Alieria and Unity and stayed the appeals “in the interest of judicial efficiency.”
14 (*See* Ex. A.)

15 In the Eastern District of Kentucky case, *Albina v. The Alieria Companies, Inc.*, Case No.
16 5:20-cv-496-JMH, the plaintiffs also sued Alieria, Unity, and Trinity, similarly alleging that Unity
17 and Trinity do not quality as health care sharing ministries and therefore that they (along Alieria)
18 provide illegal insurance. (*See id.*, ECF No. 1.) Alieria, Unity, and Trinity moved to compel
19 arbitration. (*See id.*, ECF Nos. 32, 33, 35.) After the parties had fully briefed the motions, Trinity
20 filed for bankruptcy. The district court ordered the parties to brief the issue of whether the case
21 should be stayed in its entirety due to Trinity’s bankruptcy. (*See* Ex. B.) The court, over the
22 plaintiffs’ opposition, held that “judicial economy and efficiency weigh in favor of staying this
23 matter in its entirety” and stayed the case pending the termination of the automatic stay imposed
24 by Trinity’s bankruptcy. (*Id.* at 4, 6.)

25 In addition to the Tenth Circuit and the Eastern District of Kentucky, the United States
26 District Court for the District of Montana stayed a similar case in light of Trinity’s bankruptcy.
27 *See Moeller v. The Alieria Cos.*, Case No. 6:20-cv-00022-SEH, ECF No. 219 (D. Mont. July 16,

1 2021) (holding that “[a]ll proceedings in this case are suspended and stayed pending dissolution,
2 modification, or lifting of the 11 U.S.C. § 362 automatic stay” in Trinity’s bankruptcy).

3 Alera respectfully requests leave to file this notice of supplemental authority in support of
4 its pending motion to stay proceedings in this case (ECF No. 80), and for the reasons explained by
5 the Tenth Circuit, the Eastern District of Kentucky, and the District Court of Montana, as well as
6 for the reasons explained in Alera’s motion to stay, the Court should stay this case pending
7 discharge and dismissal of Trinity’s bankruptcy.

8 DATED: August 11, 2021

Respectfully submitted,

9 /s/ Alan D. Leeth

10 ALAN D. LEETH (SBN 199226)

aleeth@burr.com

11 **BURR & FORMAN LLP**

420 North 20th Street, Suite 3400

12 Birmingham, Alabama 35203

13 Telephone: (205) 458-5499

14 *Attorney for Defendant*

The Alera Companies Inc.

15 ***Consented to by Defendant OneShare Health, LLC f/k/a Unity***
16 ***Healthshare, LLC:***

17 /s/ Shane G. Smith (as authorized on August 11, 2021)

SHANE G. SMITH (SBN 272630)

18 ssmith@mccormickbarstow.com

19 **MCCORMICK BARSTOW LLC**

7637 North Fresno Street

20 Fresno, CA 93720

Telephone: (559) 433-1300

21 **KYLE G.A. WALLACE** (*pro hac vice*)

22 kwallace@shiverhamilton.com

23 **SHIVER HAMILTON LLC**

3490 Piedmont Road, Suite 640

24 Atlanta, GA 30305

Telephone: (404) 593-0020

25 Facsimile: (888) 501-9536

26 *Attorneys for Defendant*

27 *OneShare Health, LLC*

CERTIFICATE OF SERVICE

A copy of the foregoing **NOTICE OF SUPPLEMENTAL AUTHORITY** has been filed this 11 day of August, 2021 through the Court’s CM/ECF system, which will send notification of such filing to all parties of record. All parties may access the foregoing via the Court’s CM/ECF system.

Dated: August 11, 2021

/s/ Alan D. Leeth
ALAN D. LEETH (SBN 199226)
aleeth@burr.com
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 458-5499

*Attorney for Defendant
The Alieria Companies*

ATTESTATION

I hereby attest that I have obtained concurrence of the above noted signatories as indicated by a “conformed” signature (/s/) within this e-filed document.

Dated: August 11, 2021

/s/ Alan D. Leeth
ALAN D. LEETH (SBN 199226)
aleeth@burr.com
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 458-5499

*Attorney for Defendant
The Alieria Companies*

EXHIBIT A

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 2, 2021

Christopher M. Wolpert
Clerk of Court

REBECCA SMITH, et al.,

Plaintiffs - Appellees,

v.

THE ALIERA COMPANIES, INC., a
Delaware corporation, f/k/a Aliera
Healthcare Inc.,

Defendant - Appellant,

and

TRINITY HEALTHSHARE INC., a
Delaware corporation, et al.,

Defendants.

No. 21-1185
(D.C. No. 1:20-CV-02130-RBJ)
(D. Colo.)

REBECCA SMITH, et al.,

Plaintiffs - Appellees,

v.

ONESHARE HEALTH LLC, f/k/a Unity
Healthshare, LLC and as Kingdom
Healthshare Ministries, LLC, a Virginia
limited liability corporation,

Defendant - Appellant,

and

THE ALIERA COMPANIES, INC., a
Delaware corporation, f/k/a Aliera

No. 21-1186
(D.C. No. 1:20-CV-02130-RBJ)
(D. Colo.)

Healthcare Inc., et al.,

Defendants.

REBECCA SMITH, et al.,

Plaintiffs - Appellees,

v.

TRINITY HEALTHSHARE INC., a
Delaware corporation,

Defendant - Appellant,

and

ONESHARE HEALTH LLC, f/k/a Unity
Healthshare, LLC and as Kingdom
Healthshare Ministries, LLC, a Virginia
limited liability corporation, et al.,

Defendants.

No. 21-1187
(D.C. No. 1:20-CV-02130-RBJ)
(D. Colo.)

ORDER

Before **MATHESON** and **BACHARACH**, Circuit Judges.

These matters are before the court on: (1) Appellant Trinity Healthshare Inc.'s *Suggestion of Bankruptcy* filed in Appeal No. 21-1187, which the court has construed as a motion to abate these consolidated appeals; (2) Appellant The Alera Companies, Inc's response in support of the abatement of these consolidated appeals; (3) Appellant Oneshare Health LLC's response in support of the abatement of these consolidated appeals; and (4) Appellees' response, indicating that they do not object to the abatement

of Appeal No. 21-1187 but do oppose the abatement of Appeal Nos. 21-1185 and 21-1186.

Upon consideration, the court grants the motion to abate as construed. Pending further order of the court, Appeal No. 21-1187 is abated pursuant to 11 U.S.C. § 362, and Appeal Nos. 21-1185 and 21-1186 are abated in the interest of judicial efficiency. All pending deadlines are vacated.

Within 30 days from the date of this order, Appellant Trinity Healthshare Inc. shall file a written report advising this court as to the status of the bankruptcy proceedings and whether the abatement should continue. Any status report shall address, *inter alia*, whether a motion seeking relief from the automatic stay has been filed in the bankruptcy court and the status of any such motion. In addition, within 5 days of an order lifting the automatic stay, or of any other event affecting the abatement of these appeals, Appellant Trinity Healthshare Inc. shall file an appropriate motion or status report with this court.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



By: Candice Manyak
Counsel to the Clerk

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

HANNA ALBINA and AUSTIN)
WILLARD, individually and on)
behalf of others similarly)
situated,)

Plaintiffs,)

v.)

THE ALIERA COMPANIES, INC.,)
et al.,)

Defendants.)

Civil Case No.
5:20-cv-496-JMH

**MEMORANDUM OPINION
AND ORDER**

This matter comes before the Court on the Parties' briefs regarding whether this action should be stayed in its entirety due to Defendant Trinity Healthshare, Inc.'s bankruptcy proceedings. [DE 59; DE 60]. Previously, the Court directed the Parties to file a joint status report indicating whether they believe it would be efficient or preferable to continue forward with Defendants The Alieria Companies, Inc. ("Alieria") and Oneshare Health, LLC d/b/a Unity Healthshare, LLC ("Unity"), who are not subject to the bankruptcy stay, or whether this entire action should be held in abeyance during the pendency of the bankruptcy proceedings. [DE 54]. After discussing the matter as directed, Alieria and Unity agreed that a stay is appropriate, but Plaintiffs believed this case should proceed against Alieria and Unity. See [DE 57]. The Court then directed the Parties to file simultaneous briefs

explaining their respective positions for why this case should or should not be stayed in its entirety due to the intertwined nature of both the claims and the briefing on the pending dispositive motions. [DE 58]. Since this matter has been briefed, [DE 59; DE 60], the Court turns to the Parties' arguments.

I. DISCUSSION

While the Court agrees with Plaintiffs that "the automatic stay provision in 11 U.S.C. § 362 only applies to the debtor (here, Trinity)" and, therefore, cannot be invoked by Alieria and Unity, that does not mean the Court may not otherwise stay this matter while Trinity's bankruptcy proceedings are ongoing. [DE 59, at 2 (quoting *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir. 1983)). Indeed, "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). When determining whether to grant a stay, courts typically consider the following factors: "(1) the need for a stay; (2) the stage of litigation; (3) whether the non-moving party will be unduly prejudiced or tactically disadvantaged; (4) whether a stay will simplify the issues; and (5) whether burden of litigation will be reduced for both the parties and the court." *Abington Emerson Capital, LLC v. Adkins*, No. 2:17-CV-143, 2018 WL 2454601, at *2 (S.D. Ohio June 1, 2018)

(citations omitted). The party seeking the stay “bears the burden of showing both a need for delay and that ‘neither the other party nor the public will suffer harm from entry of the order.’” *Id.* (quoting *Ohio Env'tl. Council v. U.S. Dist. Court, S. Dist. of Ohio, E. Div.*, 565 F.2d 393, 396 (6th Cir. 1977)).

In the present case, Alieria asks the Court to stay this matter pending the dismissal of Trinity’s bankruptcy proceedings because (1) Alieria is inextricably intertwined with Plaintiffs’ claims against Trinity; (2) Alieria’s role as administrator of Trinity’s sharing program and indemnification provisions in the agreements between Alieria and Trinity are at issue in the bankruptcy proceedings; (3) Alieria and Trinity would be prejudiced if Trinity is not able to participate in the defense of Plaintiffs’ claims; and (4) judicial economy and efficiency weigh in favor of granting a stay. [DE 60]. Unity consents to Alieria’s request for a stay and agrees that judicial economy and efficiency weigh in favor of a stay, but Unity does not formally join Alieria’s brief because it includes arguments and information regarding Alieria and Trinity’s relationship that Unity is not familiar with. *See id.* at 1 n.1.

Plaintiff alleges that Alieria administered health insurance plans for Unity and Trinity, both of which purport to be healthcare sharing ministries (“HCSM”), that were unauthorized and illegal under Kentucky law. *See* [DE 1]. Alieria contends, “If Trinity and Unity operate valid HCSM programs, then they are necessarily not

insurance, and Plaintiffs' substantive counts fail. As to Trinity, this issue is in the purview of the Bankruptcy Court." [DE 60, at 4]. Specifically, Alieria asserts that whether "Trinity's sharing program is insurance . . . is an issue to be determined by the Bankruptcy Court in allocating assets and determining sources of the assets." *Id.* at 6.

Alieria further asserts that Trinity's status as an HCSM is of great import because that determination affects Alieria's indemnification claims. *Id.* at 5-6. Since the Bankruptcy Court must decide the issue of whether Trinity's sharing program is, in fact, insurance, it is indisputable that a stay will simplify the issues before this Court while also reducing the burden of litigation on issues stemming therefrom. By not granting the request for a stay and opting to decide the pending Motions [DE 32; DE 33; DE 35] requesting either dismissal or arbitration, the Bankruptcy Court and this Court could reach different determinations on the same issue. Moreover, if this Court were to send this matter to arbitration while the bankruptcy proceedings are ongoing, Trinity would be unable to participate in arbitration, and the arbitrator could reach an inconsistent decision regarding whether Trinity's sharing program qualifies as insurance. Accordingly, judicial economy and efficiency weigh in favor of staying this matter in its entirety.

While the Court acknowledges that the pending Motions [DE 32; DE 33; DE 35] are fully briefed and require no discovery, the Court disagrees with Plaintiffs' argument that "it is better to decide the issue now rather than to start the case anew following resolution of the bankruptcy." [DE 59, at 3]. Plaintiffs' concerns that the stay will result in a delay that prejudices Plaintiffs are not entirely unfounded, but they are general concerns that arise from any delay, such as witnesses becoming unavailable, memories fading, and the dissipation of assets. *Id.* at 3-4. However, as Alieria correctly asserts, Trinity's bankruptcy proceedings are pursuant to Subchapter V of Chapter 11 of the Bankruptcy Code, which "was designed to expedite the bankruptcy process for small business debtors to allow them to reorganize quickly, inexpensively, and efficiently" [DE 60, at 2 (citing *In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 336 (Bankr. S.D. Fla. 2020); *In re Trepetin*, 617 B.R. 841, 846-47 (Bankr. D. Md. 2020))].

The same day Trinity filed its petition for bankruptcy, it filed its plan of reorganization. [DE 60, at 2]. Thus, there is no indication that the bankruptcy proceedings will take longer than necessary or that Trinity is purposely delaying this matter. Whatever delay results from the stay would be offset by the benefit the Parties and Court would receive by the Bankruptcy Court narrowing some of the issues. Any prejudice to Plaintiffs would be

minimal, and Plaintiffs would not be placed at a tactical disadvantage.

On the other hand, if this matter is not stayed pending the bankruptcy proceedings, and assuming the bankruptcy stay pertaining to Trinity is no impediment to Alieria procuring information from Trinity for Alieria's defense, as Plaintiffs claim, [DE 59, at 5], a decision limited to Alieria and Unity would decide issues that affect Trinity. Since Trinity would be unable to participate following this Court's decision and prior to the conclusion of the bankruptcy proceedings, Trinity would be prejudiced by its inability to appeal this Court's decision or otherwise defend itself either in this Court, the Sixth Circuit Court of Appeals, or during arbitration. If Trinity can participate again, depending on this Court's decision, the Parties may be forced to relitigate certain matters that were decided in Trinity's absence or participate in discovery twice. For the foregoing reasons,

IT IS ORDERED as follows:

(1) This matter is **STAYED** in its entirety pending the termination of the automatic stay imposed by Defendant Trinity Healthshare, Inc.'s bankruptcy proceedings; and

(2) No later than **fourteen (14) days** after termination of the automatic stay in Trinity Healthshare, Inc.'s bankruptcy

proceedings, the Parties shall file a joint status report with the Court explaining the results of the bankruptcy proceedings.

This 10th day of August, 2021.



Signed By:

Joseph M. Hood *JMH*

Senior U.S. District Judge