

**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 Treasury,

INTERNAL REVENUE SERVICE, and

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

Defendants.

Case 6:22-cv-00095

JOINT STATUS REPORT

JOINT STATUS REPORT

Pursuant to the Court’s order of June 26, 2023, ECF 42, the parties respectfully submit this Joint Status Report.

Cross motions for summary judgment remain pending in the consolidated cases of *Texas Medical Association v. U.S. Department of Health and Human Services*, No. 22-cv-450 (E.D. Tex.) (lead case) (“*TMA III*”) and *LifeNet, Inc. v. U.S. Department of Health and Human Services*, No. 22-cv-453 (E.D. Tex.) (“*LifeNet III*”). Briefing concluded in those cases on April 14, 2023. *TMA III* at ECF 56. The Eastern District of Texas heard argument on April 19, 2023. *TMA III* at ECF at 57-60.

Cross motions for summary judgment also remain pending in *Association of Air Medical Services v. U.S. Department of Health and Human Services.*, No. 21-cv-3031-RJL (D.D.C.) (lead case) (“*AAMS*”). After those motions were briefed, the U.S. District Court for the District of Columbia heard argument on March 21, 2022. *AAMS* at ECF 57. At the court’s request, the parties filed supplemental post-hearing briefing on April 4, 2022. *AAMS* at ECF 58-60. On September 30, 2022, the Association of Air Medical Services and the defendants stipulated to dismissal of Count I of the Association of Air Medical Services’ complaint, which had challenged aspects of *Requirements Related to Surprise Billing; Part II*, 86 Fed. Reg. 55,980 (Oct. 7, 2021) (“Interim Final Rule Part II”). *AAMS* at ECF 79. The Association of Air Medical Services’ other claims remain pending before the court and subject to the cross motions for summary judgment.

The Eastern District of Texas granted summary judgment in *Texas Medical Association v. U.S. Department of Health and Human Services*, 22-cv-372 (E.D. Tex.) (lead case) (*TMA II*) and *LifeNet, Inc. v. U.S. Department of Health and Human Services*, 22-cv-373 (E.D. Tex.) (“*LifeNet II*”) on February 6, 2023. *TMA II* at ECF 99. Defendants filed a notice of appeal to the Fifth Circuit

on April 6, 2023. *TMA II* at ECF 101. Defendants' opening brief is due on July 12, 2023. *Texas Med. Ass'n v. U.S. Dep't of Health & Hum. Servs.*, No. 23-40217 (5th Cir.) at ECF 31.

Dated: June 27, 2023

Respectfully submitted,

/s/ Chrisandrea L. Turner

Chrisandrea L. Turner
STITES & HARBISON, PLLC
250 W. Main St., Ste. 2300
Lexington, KY 40507
859-226-2261
clturner@stites.com
Counsel for Plaintiffs

Stephen Shackelford, Jr.
Steven Shepard
J. Craig Smyser
Max I. Straus
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (212) 336-8330
Fax: 212-336-8340
ssh Shepard@susmangodfrey.com
sshackelford@susmangodfrey.com
csmyser@susmangodfrey.com
mstraus@susmangodfrey.com
Attorneys for Plaintiffs

/s/ Anna Deffebach

Anna Deffebach
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 616-8298
Fax: (202) 616-8470
anna.l.deffebach@usdoj.gov
D.C. Bar No. 448431

Counsel for Defendants