

**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 A. SU, in her official capacity as Acting
Secretary of Labor,

U.S. EMPLOYEE BENEFITS SECURITY
ADMINISTRATION,

LISA M. 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

DANIEL I. WERFEL, in his official capacity as
Commissioner of Internal Revenue,

Defendants.

Case 6:22-cv-00095

UNOPPOSED MOTION TO STAY THIS CASE

Plaintiffs PHI Health, LLC and EMPact Midwest, LLC (“Plaintiffs”) respectfully request a stay of this action until the later of the following:

- The resolution of appellate proceedings (including in the Supreme Court, if certiorari is sought) in *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 23-40217 (5th Cir.) (“*TMA II Appeal*”); or
- Expiration of the time to appeal and, if appeal is sought, the resolution of appellate proceedings (including in the Supreme Court) in *Texas Medical Association v. United States Dep’t of Health & Hum. Servs.*, 22-cv-450 (lead case) (“*TMA III*”) and *LifeNet, Inc. et al. v. U.S. Dep’t of Health and Hum. Servs. et al.*, 22-cv-453 (consol. case) (“*LifeNet III*”). See Memorandum Opinion and Order, *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 22-cv-450, ECF 62 (Aug. 24, 2023).

Plaintiffs respectfully submit that a stay is warranted in light of ongoing litigation in other forums. Many of the issues raised in this matter are also the subject of the following ongoing proceedings:

- Several of the issues raised by Plaintiffs were the subject of cross-motions for summary judgment that were filed in *TMA III* and *LifeNet III*, and which were decided on August 24, 2023. See Memorandum Opinion and Order, *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 22-cv-450, ECF 62 (Aug. 24, 2023). The deadline for the Departments to appeal this decision is October 23, 2023.
- One issue raised by Plaintiffs was decided by Judge Kernodle, of the Eastern District of Texas in *TMA II / LifeNet II*. See Memorandum Opinion and Order, *Texas Medical Association et al. v. United States Dep’t of Health and Hum. Servs. et al.*, 22-cv-372, ECF 99 (Feb. 6, 2023). The Departments have appealed that decision and briefing is on-going

in the Fifth Circuit. *See Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.*, 23-40217 (5th Cir.). Defendants' reply brief in the *TMA II* appeal is due October 16, 2023. *See id.* ECF 93.

As these cases are on-going and bear on many of the issues raised by this case, Plaintiffs respectfully submit that a stay is warranted. Defendants do not oppose this request.

In the event the Court grants the stay, Plaintiffs respectfully request that the Court adhere to the deadlines set in its prior order, *see* ECF 42:

- Any Amended Complaint would be due 30 days after the stay expires under the provisions above;
- Defendants have 60 days from the entry of any Amended Complaint to answer or otherwise respond to this pleading.

Dated: September 22, 2023

Respectfully submitted,

/s/ Chrisandrea L. Turner

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify on this 22nd day of September, 2023, a true and correct copy of the Unopposed Motion to Stay This Case was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Chrisandrea L. Turner
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PROPOSED ORDER

Before the Court is Plaintiffs' Unopposed Motion to Stay. Being well-advised that the stay is unopposed and having fully considered the motion, the Court is of the opinion that the motion should be GRANTED. It is therefore ORDERED that:

- This matter is stayed until the later of:
 - The resolution of appellate proceedings (including in the Supreme Court, if certiorari is sought) in *Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.*, 23-40217 (5th Cir.) ("*TMA II Appeal*"); or
 - Expiration of the time to appeal and, if appeal is sought, the resolution of appellate proceedings (including in the Supreme Court) in *Texas Medical Association v. United States Dep't of Health & Hum. Servs.*, 22-cv-450 (lead case) ("*TMA IIP*") and *LifeNet, Inc. et al. v. U.S. Dep't of Health and Hum. Servs. et al.*, 22-cv-453 (consol. case) ("*LifeNet IIP*"). See Memorandum Opinion and Order,

Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.,
22-cv-450, ECF 62 (Aug. 24, 2023).

- Upon expiration of the stay, the following deadlines shall apply:
 - Plaintiffs shall file any Amended Complaint within 30 days following the expiration of the stay;
 - Defendants shall file any answer or other response to Amended Complaint 60 days following the filing of Plaintiffs' Amended Complaint.

IT IS SO ORDERED.

The Honorable Edward B. Atkins
United States Magistrate Judge