

**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 the 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 orders of September 27, 2023, ECF 47, and December 6, 2023, ECF 51, the parties respectfully submit this Joint Status Report.

TMA III and LifeNet III

On August 24, 2023, the United States District Court for the Eastern District of Texas granted in part and denied in part the parties' cross-motions for summary judgment in *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*"). The Departments appealed this ruling on October 20, 2023. See *TMA III* at ECF 64; *LifeNet III* at ECF 26. TMA filed a notice of cross-appeal on October 31, 2023. See *TMA III* at ECF 65. The Air Ambulance plaintiffs filed a notice of partial-cross-appeal on November 3, 2023. See *TMA III* at ECF 66; *LifeNet III* at ECF 27. The Departments' opening brief is due January 12, 2024.

TMA II and LifeNet II

The Eastern District of Texas granted summary judgment in *Texas Medical Association v. U.S. Department of Health and Human Services*, No. 22-cv-372 (E.D. Tex.) (lead case) (*TMA II*), and *LifeNet, Inc. v. U.S. Department of Health and Human Services*, No. 22-cv-373 (E.D. Tex.) ("*LifeNet II*"), on February 6, 2023. *TMA II* at ECF 99. The Departments filed a notice of appeal to the Fifth Circuit on April 6, 2023. *TMA II* at ECF 101. The appeal is now fully briefed. The Fifth Circuit has set argument for February 5, 2024.

In light of the status of this related litigation, the parties respectfully submit that the stay in this matter should remain in place.

Dated: January 5, 2024

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
sshepard@susmangodfrey.com
sshackelford@susmangodfrey.com
csmyser@susmangodfrey.com
mstraus@susmangodfrey.com
Attorneys for Plaintiffs

BRIAN M. BOYNTON
Acting Assistant Attorney General

ERIC B. BECKENHAUER
Assistant Branch Director

/s/ Anna Deffebach
ANNA DEFFEBACH
Trial Attorney
D.C. Bar No. 241346
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Phone: (202) 305-8356
Fax: (202) 616-8470
E-mail: Anna.L.Deffebach@usdoj.gov

Counsel for Defendants