

**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

UNOPPOSED MOTION TO CONTINUE THE STAY

Plaintiffs PHI Health, LLC and EMPact Midwest, LLC (“Plaintiffs”) respectfully request that the stay in this action be continued until 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*”) and *Texas Medical Association et al. v. United States Dep’t of Health & Hum. Servs.*, 23-40605 (5th Cir.) (“*TMA III Appeal*”). Defendants do not oppose this motion.

On June 26, 2023, this Court stayed this matter until the resolution of pending summary judgment motions in *Texas Medical Association et al. 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.*, Case No. 22-cv-453 (consol. case) (“*LifeNet III*”). See ECF 42.

On September 27, 2023, following the District Court’s decision in those cases, 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), this Court granted Plaintiffs’ Unopposed Motion to Stay, stayed this matter for six months, and required the parties to submit joint status reports on the first Tuesday of each month advising the Court on the status of the related litigation, see ECF 47.

That six month period expires on March 27, 2024 and Plaintiffs respectfully submit that a continued stay is warranted in light of the continued progress of litigation in the Fifth Circuit. Many of the issues raised in this matter are the subject of the ongoing proceedings which were the basis of the prior stay orders:

- 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). Both the Government and the TMA/LifeNet Plaintiffs appealed portions of Judge Kernodle's order and briefing is on-going in the 5th Circuit. See *Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.*, 23-40605 (5th Cir.);

- 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 appealed that decision and the case was argued on February 5, 2024. See *Texas Medical Association et al. v. United States Dep't of Health & Hum. Servs.*, 23-40217 (5th Cir.).

As these cases are on-going and bear on many of the issues raised by this case, Plaintiffs respectfully submit that a continuation of the stay in this matter is warranted.

In the event the Court grants the stay, the parties can continue submitting Joint Status Reports regarding the status of the two 5th Circuit appeals on the first Tuesday of each month. Upon the expiration of the stay, Plaintiffs respectfully submit that the Court should set a schedule for any Amended Complaint and Answer at that time or adhere the deadlines in its prior stay 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: March 21, 2024

Respectfully submitted,

/s/Chrisandrea Turner

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PROPOSED ORDER

Before the Court is Plaintiffs' Unopposed Motion to Continue the Stay. Being well-advised that the continuation of 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
 - 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.*, 23-40605 (5th Cir.) ("*TMA III Appeal*");.
- 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