No. 21-1185, 21-1186, 21-1187

In The

United States Court of Appeals For the Tenth Circuit

Rebecca Smith, et al.,

Plaintiffs-Appellees,

vs.

The Aliera Companies, Inc., f/k/a as Aliera Healthcare, Inc.; Trinity Healthshare, Inc.; Oneshare Health LLC, f/k/a Unity Healthshare, LLC and as Kingdom Healthshare Ministries, LLC,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Colorado
No. 1:20-cv-02130-RBJ

THE ALIERA COMPANIES, INC.'S RESPONSE TO SUGGESTION OF BANKRUPTCY AND MOTION TO ABATE PROCEEDINGS

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THE ALIERA COMPANIES, INC.'S RESPONSE TO SUGGESTION OF BANKRUPTCY AND MOTION TO ABATE PROCEEDINGS

In accordance with the Court's July 12, 2021 Order, Appellant The Aliera Companies, Inc. (Aliera) gives the following response to the *Suggestion of Bankruptcy*, which the Court has construed as a motion to abate proceedings, Appellant Trinity Healthshare Inc. (Trinity) filed in Appeal No. 21-1187:

1. Aliera consents to abatement of these consolidated appeals and contends that the Court should stay all three appeals due to Trinity's bankruptcy filing.

2. As background, Trinity and Appellant OneShare Health, LLC f/k/a Unity Healthshare, LLC (Unity) are nonprofit health care sharing ministries (HCSMs). In this putative class action, the Appellees dispute that Trinity and Unity are HSCMs and argue that they (along with the administrator of their programs, Aliera) provide illegal insurance under Colorado law. Aliera, Trinity, and Unity jointly[1] moved to compel arbitration in the district court based on a binding arbitration clause in

[1] The Defendants filed a consolidated motion and briefing at the directive of the district court.

the member guides the Appellees received. The district court denied the motion to compel arbitration in a single order on grounds generally applicable to all defendants, and Aliera, Trinity, and Unity appealed from the court's order. Aliera's appeal is No. 21-1185, Trinity's appeal is No. 21-1187, and Unity's appeal is No. 21-1186. This Court consolidated the three appeals for preparation of the appendix, briefing, oral argument (if granted), and submission to a panel of judges. After consolidation, Trinity filed a *Suggestion of Bankruptcy*.

3. As an initial matter, this case presents one of those "unusual situations" in which the bankruptcy court's automatic stay under 11 U.S.C. § 362 should apply to the entire consolidated appeal because this Court's review of the district court's order will, in effect, decide Trinity's appeal. *See Okla. Federated Gold & Numismatics, Inc. v. Blodgett*, 24 F.3d 136, 141 (10th Cir. 1994) (noting that a § 362 stay can apply to a nonbankrupt party "when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor"). If this Court proceeds with the Unity and Aliera appeals and issues a judgment, that judgment

would effectively decide Trinity's rights because the issues in these consolidated appeals are functionally identical. (*See, e.g.*, Aliera's Amended Docketing Statement at IV (describing the issues on appeal as "[w]hether the District Court erred in denying Defendants' Combined Motion to Compel Arbitration" and "[w]hether the District Court erred in denying Defendant's Motion to Alter or Amend Order Denying Motion to Compel"); Trinity's Amended Docketing Statement at IV (stating the issue as "[w]hether the District Court erred in denying Defendants' Combined Motion to Compel Arbitration and Defendants' Motion to Alter or Amend Order Denying Motion to Compel Arbitration").) All three appeals arise from a single case and are taken from the same order by the district court, and the arguments that Aliera, Unity, and Trinity anticipate making on appeal overlap and apply to all three of them. (*See* ECF No. 67.) Therefore, any judgment in Unity and Aliera's appeals will also decide Trinity's appeal, which means the Court should abate all three appeals.

4. Even if the automatic stay under § 362 did not apply, however, this Court should nevertheless exercise its inherent power and stay the appeals during Trinity's bankruptcy for a number of reasons. *See Landis*

v. N. Am. Co., 299 U.S. 248, 254 (1936) (holding that "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").

5. First, as mentioned, staying the appeals avoids prejudicing Trinity because any judgment in the Aliera and Unity appeals would effectively bind Trinity. The Court should permit Trinity to participate in the appeals before any judgment issues.

6. Second, the Court would benefit from Trinity's involvement in these consolidated appeals in which no briefing has yet occurred. Unless the Court stays all of the appeals, the Court will hear only from Aliera and Unity. But neither Aliera nor Unity can speak for Trinity—they are separate entities, and they do not control or own Trinity. Trinity's perspective, however, is needed and would aid the Court. For example, the district court ruled that the Appellees did not enter into a binding arbitration agreement with Trinity (or Unity). (*See* ECF No. 67.) Trinity needs to be involved in the appeal when this Court decides whether that ruling is correct because Aliera and Unity are poor substitutes for Trinity when it comes to whether Trinity had an agreement with the Appellees.

Similarly, the Appellees allege that Trinity fails to meet the requirements for a HCSM and therefore issues illegal and unauthorized insurance products. (*See, e.g.*, Am. Compl. at ¶¶ 17–19, ECF No. 39.) If this Court (or the district court) explores that issue, Trinity—not Aliera or Unity—is in the best position to speak on its status as a HCSM. As a result, the appeals should not proceed until Trinity's bankruptcy resolves or the automatic stay is lifted and Trinity is again able to participate.

7. Third, proceeding without Trinity would likely prejudice Aliera. If the Court proceeds with Aliera's appeal while Trinity's appeal is stayed and issues a judgment (whether that judgment compels the case to arbitration or remands it for further litigation), then the Appellees' claims against Aliera will proceed without Trinity. Without Trinity in the case, Aliera would have to seek third-party discovery to gain access to Trinity's corporate records or witnesses—discovery that will run headlong into the automatic bankruptcy stay. Thus, Aliera will find it more difficult to defend against the Appellees' claims that Trinity is not a HCSM but instead provides insurance in violation of Colorado law.

8. Fourth, not staying all of the appeals will likely cause serious case-administration issues and a disjointed case schedule. If and when

Trinity is finally able to participate and this Court decides Trinity's appeal, then Trinity would have to rejoin the underlying arbitration or litigation. In the interim, the arbitration or litigation against Aliera (and Unity) would have continued. Aliera, Unity, and the Appellees would have presumably engaged in at least some discovery—discovery that may need to be repeated once Trinity returns to the case. For example, if Aliera and Unity depose the Appellees before Trinity is able to participate in the case, once Trinity returns, it will be entitled to depose the Appellees again—duplicating the parties' time and resources. In addition, the district court or arbitrator may have to address discovery issues twice, once when the case is proceeding without Trinity and again when Trinity is involved.

9. Fifth, abatement of the appeals will not prejudice the Appellees. For one thing, the stay is likely to be short lived. Trinity filed for bankruptcy under newly-enacted subchapter V of Chapter 11 of the Bankruptcy Code, *see* Case No. 21-11001-JTD (Bankr. D. Del.), and subchapter V provides for an expedited bankruptcy process. *See* 11 U.S.C. § 1118(a) (requiring the bankruptcy court to hold a status conference "to further the expeditious and economical resolution of [the] case" within 60

days after the entry of the order for relief); *id.* § 1189(b) (requiring the debtor to file a plan "not later than 90 days after the order for relief"). Thus, Trinity's bankruptcy should move quickly, and once the bankruptcy resolves or the bankruptcy court lifts the stay, the Court can proceed with these consolidated appeals together. For another thing, the Appellees' case is in its infancy—no party or expert discovery has been done, no class-certification motions have been filed, and there is no trial date.[2] In addition, the Appellees' claims against Trinity are already stayed and within the exclusive jurisdiction of the bankruptcy court. If the Appellees want to move forward with these appeals before the bankruptcy resolves, they can move the bankruptcy court to lift the stay.

For these reasons, Aliera submits that these consolidated appeals should be abated.

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[2] The district court originally set a trial date for February 22, 2022. (*See* ECF No. 53.) It vacated the trial setting after Unity, Trinity, and Aliera filed notices of appeal in this Court. (*See* ECF No. 102 ("Due to the notices of appeal filed by defendants OneShare Health, LLC [Unity], Trinity Healthshare, Inc. (as to which proceedings would have been stayed in any event due to its bankruptcy filing), and Aliera Companies, Inc., the pretrial dates and the trial are vacated and the case is stayed pending the result of the appeal.").)

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This response complies with the type-face requirements of Federal Rule of Appellate Procedure 32(c) and the type-style requirements of Federal Rule of Appellate Procedure 32, as mandated by Federal Rule of Appellate Procedure 27(d)(1)(E). The response has been prepared in 14-point Century Schoolbook, which is a proportionally spaced font that includes serifs.

This response complies with the type-volume limitations in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 1,459 words.

The response complies with the electronic filing requirements of Tenth Circuit Rule 25.3.

s/ E. Travis Ramey
OF COUNSEL

CERTIFICATE OF SERVICE

In accordance with Tenth Circuit Rule 25.3, I hereby certify that on July 27, 2021, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Tenth Circuit using the appellate ECF system.

Participants in the case who are registered ECF users will be served by the appellate ECF system.

s/ E. Travis Ramey
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