

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LUMBERMEN’S, INC. and
LUMBERMEN’S, INC. FLEXIBLE
BENEFITS PLAN,

Plaintiffs,

v.

Case No. 2:12-cv-15606
Honorable Patrick J. Duggan

BLUE CROSS AND BLUE SHIELD
OF MICHIGAN,

Defendant.

**OPINION AND ORDER GRANTING
DEFENDANT’S MOTION FOR STAY PENDING APPEAL**

On December 21, 2012, Plaintiffs filed this lawsuit– one of more than twenty nearly identical civil actions now pending in this District– against Defendant Blue Cross Blue Shield of Michigan (“BCBSM”) alleging violations of state and federal law arising out of BCBSM’s administration of Plaintiffs’ self-funded employee health benefit plans. A bench trial has been completed in one of the related actions before the Honorable Victoria A. Roberts, with Judge Roberts ruling in favor of the plaintiffs and awarding the plaintiffs more than five million dollars, plus costs, interest, and attorney fees. *See* Judgment, *Hi-Lex Controls, Inc. et al. v. Blue Cross and Blue Shield of Michigan*, No. 11-12557 (E.D. Mich. May 23, 2013), ECF No. 245. BCBSM is appealing Judge Roberts’

decision. *See* Notice of Appeal, Hi-Lex Controls, Inc., No. 11-12557 (E.D. Mich. June 6, 2013), ECF No. 250. In a motion filed June 7, 2013, BCBSM seeks to stay the instant action pending the outcome of that appeal.

BCBSM argues in its motion for stay pending appeal that the current action involves issues and claims against it which are substantially similar to those decided in *Hi-Lex*. Thus BCBSM contends that a stay “could allow the parties to avoid what will be costly and lengthy proceedings as long as the *Hi-Lex* appeal remains pending.” (Def.’s Br. in Support of Mot. at 4, ECF No. 33.) In a response filed June 24, 2013, Plaintiffs raise two objections: (1) “A stay of proceedings pending the outcome of the appeal in *Hi-Lex* is both inappropriate and premature[;]” and (2) “A stay would significantly prejudice Plaintiffs[.]” (Pls.’ Resp. at 7-9, ECF No. 35.) In addition, Plaintiffs request that this Court “allow the parties to complete discovery on the facts unique to this case; and . . . allow Plaintiffs to file an early motion for summary judgment based on collateral estoppel.” (*Id.* at 10.)

Plaintiffs’ objections to Defendant’s request for a stay are unpersuasive. First, Plaintiffs’ contention that “stay is particularly inappropriate under the circumstances of this case, as Justice Roberts’s findings of fact and conclusions of law in *Hi-Lex* are binding on BCBSM under principles of collateral estoppel” (Pls.’

Resp. at 8.), is in fact the fundamental reason for staying this matter. As conceded by all parties, the instant action involves legal issues that are substantially similar to, if not identical to, those recently decided in *Hi-Lex*. (Pls.’ Resp. at 2; Def.’s Br. in Support of Mot. at 1.) Therefore, because any decision rendered by the Sixth Circuit Court of Appeals in BCBSM’s appeal will surely influence, if not govern, the outcome of Plaintiffs’ claims here, it would be unwise to proceed with the instant action prior to the Sixth Circuit’s review of Judge Roberts’ decision in *Hi-Lex*. Other judges in this District recently stayed the proceedings in a number of nearly identical lawsuits against BCBSM on the same grounds. *See, e.g., Terryberry Co., et al. v. Blue Cross Blue Shield of Michigan*, No. 12-cv-15612 (E.D. Mich. June 5, 2013) (Friedman, J.); *Labelle Mgmt., Inc., et al. v. Blue Cross Blue Shield of Michigan*, No. 13-cv-12500 (E.D. Mich. June 14, 2013) (Ludington, J.); *SAF-Holland, Inc., et al. v. Blue Cross Blue Shield of Michigan*, No. 13-cv-11832 (E.D. Mich. June 21, 2013) (Cohn, J.); *Petoskey Plastics, Inc. v. Blue Cross Blue Shield of Michigan*, No. 12-cv-15642 (E.D. Mich. June 27, 2013) (Edmunds, J.).

Second, Plaintiffs concede in their response that any prejudice they may face as a result of a stay would be remedied through judgment interest. (Pls.’ Resp. Br. at 9.) Plaintiffs’ displeasure with the current “anemic” judgment interest rate does

not amount to significant prejudice to Plaintiffs warranting a denial of BCBSM's motion.

Based on the above considerations, the Court finds a stay of these proceedings appropriate pending the Sixth Circuit Court of Appeal's review of Judge Robert's decision in *Hi-Lex Controls Inc. v. Blue Cross & Blue Shield of Michigan*.

Accordingly,

IT IS ORDERED that Defendant's Motion for Stay is **GRANTED** until such time as the appeals process in *Hi-Lex*, including any appeal and proceeding on writ of certiorari to the United States Supreme Court, is exhausted.

Date: July 24, 2013

S/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:
Counsel of Record