

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

THE CATHOLIC BENEFITS	)	
ASSOCIATION LCA, <i>et. al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Case No. 14-CV-00240-R
	)	
SYLVIA M. BURWELL, <i>et. al.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS’ UNCONTESTED MOTION FOR CLARIFICATION  
OF SCOPE OF PRELIMINARY INJUNCTION**

Plaintiffs respectfully request that the Court clarify the scope of the preliminary injunction entered on June 4, 2014. In support of this request, plaintiffs state:

1. Defendants’ counsel have reviewed this motion and stated that defendants do not oppose the relief requested here.

2. On March 12, 2014, we filed our Motion for Preliminary Injunction and accompanying brief. In addition to requesting that defendants be enjoined from enforcing the CASC Mandate<sup>1</sup> against plaintiffs and members of plaintiff The Catholic Benefits Association LCA (“Association”), we also requested that defendants be enjoined from “[i]nterfering with plaintiffs’ relationships with their insurers or third party administrators and with plaintiffs’ attempts to arrange or contract for morally compliant

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<sup>1</sup> The “CASC Mandate” refers to regulations promulgated by defendants under 42 U.S.C. § 300gg-13(a)(4), which require that group health plans and health insurance issuers provide coverage without cost sharing for contraceptives, abortion-inducing drugs and devices, sterilization, and related counseling. We refer to these services as “CASC services.”

health or stop-loss coverage or related services for their employees and members.” Mot. for Prelim. Inj. ¶ 8(c), ECF No. 4.

3. On June 4, 2014, the Court issued a preliminary injunction in favor of Group II and Group III plaintiffs and members of the Association that became members on or before that date (collectively, “Members”). The Court, however, did not rule on, or even discuss, plaintiffs’ request that the Court also enjoin the government from enforcing the CASC Mandate against the Members’ insurers and third-party administrators.

4. Several insurers of Members have stated that, notwithstanding an injunction for the Members, those insurers must provide CASC services to the Members’ employees and dependents. These insurers have stated that the scope of the injunction is too narrow to relieve them from their obligation or perceived obligation to provide CASC coverage.

5. On August 1, 2014, defendants appealed the June 4 preliminary injunction to the United States Court of Appeals for the Tenth Circuit.

6. The defendants thereafter filed a motion with the Tenth Circuit requesting that it hold the appeal in abeyance pending resolution of other similar cases before that court. We responded, in part, by cross-motion asking the Tenth Circuit to issue an injunction pending appeal that would enjoin defendants from enforcing the CASC mandate against the Members’ insurers or third-party administrators.

7. In granting defendants’ motion for abeyance and denying our cross-motion, the Tenth Circuit noted that with regard to motions for injunction pending appeal, “[a] party must ordinarily move first in the district court for . . . an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.” Order at 3,

*Catholic Benefits Ass'n LCA v. Burwell*, Nos. 14-6163, 14-6171 (10th Cir. Oct. 9, 2014) (quoting Fed. R. App. P. 8(a)(1)(C)) (internal quotation marks omitted), *attached as Ex. 1*. The Tenth Circuit also noted that this Court “retains jurisdiction during an interlocutory appeal over ‘certain ministerial functions in aid of the appeal, such as . . . issuing stays or injunctions pending appeal.’” *Id.* (quoting *Stewart v. Donges*, 915 F.2d 572, 575 n.3 (10th Cir. 1990)).

8. Defendants’ counsel told us that, in defendants’ view, the June 4 preliminary injunction already prohibits defendants from interfering with plaintiffs’ relationships with their insurers and third-party administrators.

9. In a companion case to this, *Catholic Benefits Ass'n LCA v. Burwell*, No. 5:14-cv-00685-R (“*CBA II*”), this Court granted an unopposed motion that enjoined government enforcement of the CASC mandate not only against *Association members* joining the Association after July 1, but also against those members’ *insurers and third-party administrators*. See Order Granting Pls.’ Unopposed Mot. Regarding Procedural Issues & Modification of TRO ¶ 4(c), *Catholic Benefits Ass'n LCA v. Burwell*, No. 5:14-cv-00685-R (W.D. Okla. Sept. 24, 2014), *attached as Ex. 2*.

WHEREFORE, plaintiffs respectfully ask this Court to issue an order clarifying the scope of the preliminary injunction. Specifically, plaintiffs request that the Court articulate that, in addition to other relief provided in the June 4 preliminary injunction, defendants are enjoined from enforcing the CASC Mandate against insurers or third-party administrators of the Members, from requiring insurers or third-party administrators of such Members to provide CASC services to the Members’ employees or health plan

beneficiaries, and from interfering with the Members' attempts to arrange or contract for morally compliant health or stop-loss coverage or related services for their employees.

Respectfully submitted,

*s/ L. Martin Nussbaum*

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**CERTIFICATE OF SERVICE**

On December 3, 2014, I electronically transmitted this document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all ECF registrants.

*L. Martin Nussbaum*

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