

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

_____	)	
THRIVENT FINANCIAL FOR	)	
LUTHERANS,	)	
	)	
<i>Plaintiff,</i>	)	
	)	Civil Action No. 16-cv-03289-SRN-DTS
v.	)	
	)	
R. ALEXANDER ACOSTA, Secretary of	)	
Labor, and UNITED STATES	)	
DEPARTMENT OF LABOR,	)	
	)	
<i>Defendants.</i>	)	
_____	)	

**JOINT STATUS REPORT**

Pursuant to the Court’s Memorandum Opinion and Order dated November 3, 2017, the parties submit this joint status report to address whether a continued stay of proceedings is necessary. The parties agree that a continued stay of proceedings is appropriate and anticipate providing a subsequent report to the Court on September 4, 2018.

In its Memorandum Opinion and Order, the Court granted a preliminary injunction prohibiting the “implementation and enforcement of the BIC Exemption’s anti-arbitration condition against Thrivent . . . until the conclusion of this litigation or such time as the Court so orders.” ECF No. 111 at 19. The Court also stayed the case, concluding that “[s]taying this matter will allow the administrative process to fully develop, possibly resolving this dispute, and thereby promoting judicial economy.” *Id.* at 20.

As noted in the May 2018 status report, a panel majority of the U.S. Court of Appeals for the Fifth Circuit held that the Department exceeded its authority in promulgating the definition of an investment advice fiduciary in the Fiduciary Rule and vacated the Rule. *Chamber of Commerce of United States of Am. v. United States Dep't of Labor*, 885 F.3d 360, 363 (5th Cir. 2018). The Department has elected not to petition for panel rehearing or rehearing en banc. Nevertheless, this related litigation has not yet finally resolved. On June 21, 2018, the Court of Appeals issued its judgment, reversing the judgment of the district court and “vacat[ing] the Fiduciary Rule in toto.” Judgment, *Chamber of Commerce of United States of Am. v. United States Dep't of Labor*, No. 17-10238 (5th Cir.). The time has not yet run for the putative intervenors, whose motions were denied on May 2, 2018, to seek further review of that denial. On June 28, 2018, the U.S. District Court for the Northern District of Texas issued an order requiring any party seeking further relief to notify the court by July 12, 2018, and stating that “[i]f no notice is received, the case will be dismissed with prejudice and without further notice.” *Chamber of Commerce of United States of Am. v. United States Dep't of Labor*, No. 16-1476 (N.D. Tex.), ECF No. 164.

Based on the foregoing, the parties agree that the stay of proceedings should continue for the present time and anticipate providing a subsequent report to the Court on September 4, 2018. The parties will inform the Court of any substantive updates in the meantime.

Dated: July 2, 2018

GREENE ESPEL PLLP

*s/ Mark L. Johnson*

Mark L. Johnson, Reg. No. 0345520  
Christopher L. Schmitter, Reg. No. 0395916  
222 S. Ninth Street, Suite 2200  
Minneapolis, MN 55402  
mjohnson@greeneespel.com  
cschmitter@greeneespel.com  
(612) 373-0830

- and -

COZEN O'CONNOR

Andrew B. Kay (*pro hac vice*)  
1200 19th Street, NW  
Washington, DC 20036  
akay@cozen.com  
(202) 912-4800

*Counsel for Thrivent Financial  
for Lutherans*

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

ERICA H. MCDONALD  
Acting United States Attorney

ERIC R. WOMACK  
Assistant Director  
Civil Division, Federal Programs Branch

*/s/ Galen N. Thorp*

EMILY NEWTON (VA Bar # 80745)  
GALEN N. THORP (VA Bar # 75517)  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW, Room 6140  
Washington, D.C. 20530  
Tel: (202) 514-4781  
Fax: (202) 616-8460  
galen.thorp@usdoj.gov  
emily.s.newton@usdoj.gov

*Counsel for Defendants*