

Attachments Appendix

**Appendix A : August 2, 2024 Order from 3rd Circuit
Appellate Court denying Appellant's appeal. See ECF #
76 at Ca3 docket 24-1208**

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT, PHILADELPHIA, PA

JOHN F. KODENKANDETH,
PLAINTIFF,
V.

UPMC Health Plan Inc D/B/A UPMC for Life
UPMC HOLDING COMPANY, INC
University of Pittsburgh Physicians
MAXIMUS Federal Services
Secretary, Department of Health & Human Services
DEFENDANTS

) CIVIL DIVISION
) **Ca3 DOCKET # 24-1208**
)
) APPELLANT'S MOTION FOR REHEARING
) DHHS' MOTION TO DISMISS ECF 6
)
) PaWD Docket No. 2:23-CV-2049-CCW
)
)
) M-22-1424 ALJ Appeal 3-10533871186
) M-22-284 ALJ Appeal 3-10196295036

SUR PETITION FOR REHEARING Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN,
SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,
MONTGOMERY-REEVES, and SCIRICA, * Circuit Judges

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

By the Court, s/ Arianna J. Freeman Circuit Judge

Dated: August 2, 2024

JK/cc: John Kodenkandeth, All Counsel of Record *

Judge Scirica's vote is limited to panel rehearing.

**Appendix B May 20, 2024 Order from 3rd Circuit
Appellate Court denying Appellant's appeal at ECF # 74
Ca3 docket 24-1208**

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT, PHILADELPHIA, PA

JOHN F. KODENKANDETH,
PLAINTIFF,
V.

UPMC Health Plan Inc D/B/A UPMC for Life
UPMC HOLDING COMPANY, INC
University of Pittsburgh Physicians
MAXIMUS Federal Services
Secretary, Department of Health & Human Services
DEFENDANTS

) CIVIL DIVISION
) **Ca3 DOCKET # 24-1208**
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) APPELLANT'S MOTION FOR REHEARING
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) PaWD Docket No. 2:23-CV-2049-CCW
)
)
) M-22-1424 ALJ Appeal 3-10533871186
) M-22-284 ALJ Appeal 3-10196295036

DOCUMENT 74-1

***AMENDED CLD-116**

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
C.A. No. 24-1208**

**JOHN F. KODENKANDETH, Appellant
VS.**

**UPMC HEALTH PLAN INC, DBA UPMC for Life, et al.
(W.D. Pa. Civ. No. 2:23-cv-02049)**

Present: KRAUSE, FREEMAN, and SCIRICA, Circuit Judges

Submitted are:

- (1) Motion to Dismiss, filed by Secretary, Department of Health and Human Services (HHS) (Doc. 6);**
- (2) By the Clerk for possible dismissal for lack of jurisdiction;**
- (3) Appellant's motion for a stay of proceedings (Doc. 9);**
- (4) Response to stay motion, filed by HHS Secretary (Doc. 16);**
- (5) Appellant's motion to expedite consideration of stay motion (Doc. 17);**

- (6) Response to stay motion, filed by UPMC appellees (Doc. 20);**
- (7) Appellant's reply to UPMC appellees' response (Doc. 21);**
- (8) Appellant's motion to amend the complaint (Doc. 22);**
- (9) Letter adopting Secretary's motion to dismiss, filed by UPMC appellees (Doc. 23);**
- (Continued)**

JOHN F. KODENKANDETH, Appellant

VS.

UPMC HEALTH PLAN INC, DBA UPMC for Life, et al.

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- (10) Letter adopting Secretary's motion to dismiss, filed by Maximus Federal Services, Inc. (Doc. 24);**
- (11) Letter adopting Secretary's response to stay motion, filed by Maximus Federal Services, Inc. (Doc. 25);**
- (12) Appellant's response to UPMC appellees' letter adopting HHS Secretary's motion to dismiss (Doc. 26);**
- (13) Appellant's response to Maximus Federal Services' letter adopting HHS Secretary's motion to dismiss (Doc. 27);**
- (14) Appellant's response to Maximus Federal Services' letter adopting HHS Secretary's response to stay motion (Doc. 28);**
- (15) Response to Appellant's motion to amend complaint, filed by UPMC appellees (Doc. 29);**
- (16) Appellant's motion to compel disclosure statement from UPMC appellees (Doc. 30);**
- (17) Appellant's motion to compel disclosure statement from Maximus Federal Services (Doc. 31);**
- (18) Appellant's motion to compel disclosure statement from HHS Secretary (Doc. 32);**
- (19) Reply to Appellant's response to UPMC appellees' letter adopting HHS Secretary's motion to dismiss, filed by UPMC appellees (Doc.34);**
- (Continued)**

F. KODENKANDETH, Appellant

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(20) Letter adopting UPMC appellees' reply to Appellant's response, filed by Maximus Federal Services (Doc. 35);

(21) Appellant's motion to strike (Doc. 36);

(22) Response to Appellant's motion to compel, filed by Maximus Federal Services (Doc. 37);

(23) Response to Appellant's motion to compel, filed by UPMC appellees (Doc. 38);

(24) Response to Appellant's motion to strike, filed by Maximus Federal Services (Doc. 40);

(25) Response to Appellant's motion to strike, filed by UPMC appellees (Doc. 41);

(26) Appellant's motion to strike (Doc. 42);

(27) Appellant's jurisdictional response (Doc. 43);

(28) Appellant's motion to strike (Doc. 44);

(29) Response to motion to strike, filed by Maximus Federal Services (Doc. 45);

(30) Appellant's motion to strike (Doc. 46);

(31) Appellant's motion for sanctions (Doc. 47);

(Continued)

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(32) Response to motion for sanctions, filed by UPMC appellees (Doc.48);

(33) Appellant's motion to strike (Doc. 49);

(34) Response to motion for sanctions, filed by HHS Secretary (Doc. 50);

(35) Appellant's motion to strike (Doc. 51);

(36) Response to motion for sanctions, filed by Maximus Federal Services (Doc. 52);

(37) Response to motion to strike, filed by HHS Secretary (Doc. 53);

(38) Response to motion for sanctions, filed by UPMC appellees (Doc. 54);

(39) Response to motion to strike, filed by UPMC appellees (Doc. 55);

(40) Appellant's motion to strike (Doc. 56);

(41) Appellant's motion to strike (Doc. 57);

(42) Appellant's motion to strike (Doc. 58);

(43) Appellant's corrective motion to strike (Doc. 59);

(44) Appellant's motion for sanctions (Doc. 60);

(continued)

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(45) Appellant's motion to strike (Doc. 61);

(46) Appellant's motion for sanctions (Doc. 62);

(47) Response to motion for sanctions, filed by Maximus Federal Services (Doc. 63);

(48) Appellant's motion for sanctions (Doc. 64);

(49) Response to motion for sanctions, filed by HHS Secretary (Doc. 65);
and

(50) Response to motion to strike, filed by HHS Secretary (Doc. 66);

(50) Response to motion to strike, filed by HHS Secretary (Doc. 66);

(continued)

JOHN F. KODENKANDETH, Appellant

VS.

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***(51) Appellant's motion for sanctions (Doc. 67);**

***(52) Appellant's motion for sanctions (Doc. 68);**

***(53) Response to motion for sanctions, filed by HHS Secretary (Doc.69);**

***(54) Response to motion to strike, filed by UPMC appellees (Doc. 70);**

and

*(55) Response to motions to strike and for sanctions, filed by
UPMCappellees (Doc. 71)
in the above-captioned case.

Respectfully,
Clerk

ORDER

Generally, appellate courts may exercise jurisdiction only over final decisions of the district courts. See 28 U.S.C. § 1291. Appellant seeks to appeal the District Court's order denying his motion for remand to state court, as well as its order denying his motions to strike filings made by the defendants.

But those orders are not final decisions within the meaning of § 1291. See *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 74 (1996); *In re Glenn W. Turner Enters. Litig.*, 521 F.2d 775, 781 (3d Cir. 1975). Further, those orders are not appealable under the collateral order doctrine. See N.J. Dep't of Treasury, Div. of Inv. v. Fuld, 604 F.3d 816, 819-23 (3d Cir. 2010).

Accordingly, we grant the

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7 appellees' requests to dismiss the appeal for lack of jurisdiction. The numerous motions that Appellant has filed in this Court are denied as moot.

By the Court,

s/ Arianna J. Freeman

Circuit Judge

Dated: May 20, 2024

PDB/JK/cc: John F. Kodenkandeth

All Counsel of Record

DOCUMENT 74-2

**PATRICIA S. DODSZUWEIT
CLERK
OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov
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Case: 24-1208 Document: 74-2 Page: 1 Date Filed: 05/20/2024
Meyer Unkovic & Scott
535 Smithfield Street
1300 Oliver Building
Pittsburgh, PA 15222
RE: John Kodenkandeth v. UPMC Health Plan Inc, et al
Case Number: 24-1208
District Court Case Number: 2-23-cv-02049

ENTRY OF JUDGMENT

Today, May 20, 2024 the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.
If you wish to seek review of the Court's decision, you may file a petition for rehearing.

The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party. (due on July 5,2024)
Form Limits:

3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).

15 pages if hand or type written.

Attachments:

A copy of the panel's opinion and judgment only.

Certificate of service.

Certificate of compliance if a petition is produced by a computer.

No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be

construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3),

if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated

as a single document and will be subject to the form limits as set forth in Fed. R. App. P.

35(b)(2).

If only panel rehearing is sought, the Court's rules do not provide for the subsequent

filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and

requirements for filing a petition for writ of certiorari.

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For the Court,

s/ Patricia S. Dodszuweit
Clerk
s/ pdb for jk Case Manager
cc: Brandy S. Lonchena

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**Appendix C January 23, 2024 Order ECF 39 of the
Federal District Court of Western Pa, docket
2:23-cv-2049-CCW, denying Plaintiff's motion to remand
ECF # 22**

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| 01/23/2024 | 39 | <p>ORDER DENYING <u>22</u> Motion to Remand by Plaintiff JOHN F. KODENKANDETH. On 11/30/2023, Defendant SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES removed the case from Allegheny County to the United States District Court for the Western District of Pennsylvania. ECF No. 2. On 12/27/2023, pro se Plaintiff Mr. KODENKANDETH moved to remand the case to state court, arguing that the defendants failed to timely seek removal and that they defaulted in state court. See generally ECF No. 22. In response, the SECRETARY asserted that it properly sought removal from state court as a federal officer under 28 U.S.C. § 1442(a)(1). ECF No. 32 at 23. The SECRETARY further contended that no default judgment was entered against him in state court, and he timely sought removal pursuant to 28 U.S.C. § 1446(b). See ECF No. 32. Per 28 U.S.C. § 1442(a)(1), "an officer of the United States or of any agency thereof" may remove a "civil action... that is commenced in a State court and that is against or directed to [that officer]..." A defendant removing under § 1442(a) must show that (1) it is a 'person' within the meaning of the statute; (2) the claims are based on the officer's conduct "acting under" the United States; (3) the claims against the officer are "for, or relating to" an act under color of federal office; and (4) the officer raises a colorable federal defense. In re Commonwealth's Motion to Appoint Couns. Against or Directed to Def. Ass'n of Phila., 790 F.3d 457, 467 (3d Cir. 2015) (finding the Federal Community Defender properly removed the case based on the federal officer removal statute). The federal</p> |
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officer removal statute, § 1442(a), "is to be 'broadly construed' in favor of a federal forum." Id. Here, the Court finds that Defendant SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES properly removed the case to federal court as a federal officer under § 1442(a).

See ECF No. 2. First, the SECRETARY is a person within the meaning of the statute as he is an officer of a U.S. agency. Second, Mr. KODENKANDETH's claims regarding Medicare health insurance coverage decisions are based upon the Secretary's conduct while "acting under" the Department of Health and Human Services.

Third, Mr. KODENKANDETH's claims are "relating to" decisions the Secretary made while he was an officer of the Department of Health and Human Services. Finally,

the SECRETARY will likely raise a colorable federal defense given that the United States has requested an extension of time to file an answer or responsive pleading in order to gather proper documentation and evidence. See ECF No. 6. Therefore, the Court finds that the SECRETARY properly removed the case as a federal officer under § 1442(a). The Court further finds that the SECRETARY timely sought removal. Per 28 U.S.C. § 1446(b), the procedure for seeking removal requires defendants to file their notice of removal within 30 days of receiving the plaintiff's initial pleading. Here, on 11/1/2023, the United States was served with a copy of the Complaint; and within 30 days, on 11/30/2023, the SECRETARY filed the Notice of Removal in federal court. ECF No. 2; Ex. B at 88. Finally, Mr. KODENKANDETH's remaining argument that defendants

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| | | <p>cannot remove because they defaulted in state courtis without merit as no default judgment was ever entered against the defendants. See ECF No. 1, Ex. B.</p> <p>Therefore, the Court finds that Defendant SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES has properly removed the case based on §§ 1442(a) and 1446(b). Accordingly, IT IS HEREBY ORDERED that Mr. KODENKANDETH's Motion to Remand is DENIED.</p> <p>Signed by Judge Christy Criswell Wiegand on 1/23/2024.</p> <p>Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (bjw) (Entered: 01/23/2024)</p> |
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Appendix D January 23, 2024 Order ECF 40 of the Federal District Court of Western Pa, docket 2:23-cv-2049-CCW, denying Plaintiff's motion to remand ECF # 27

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| 01/23/2022 4 | 40 | <p>ORDER DENYING <u>27</u> Motion to Strike Joinder by Plaintiff JOHN F. KODENKANDETH. On 11/30/2023, Defendant SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES removed the case from Allegheny County to the United States District Court for the Western District of Pennsylvania pursuant to the federal officer removal statute, 28 U.S.C. § 1442(a)(1). ECF No. 2. On 12/1/2023, Defendants UPMC HEALTH PLAN, INC., d/b/a UPMC FOR LIFE, UPMC HOLDING COMPANY, INC. and UNIVERSITY OF PITTSBURGH PHYSICIANS SERVICE (the "UPMC Defendants") filed a Joinder in Removal, indicating that they joined the SECRETARY in removing the action. ECF No. 5. On 1/8/2024, Mr. KODENKANDETH filed a Motion to Strike the Joinder of Defendants UPMC, alleging that they improperly joined in the removal. See generally ECF No. 27. Section 1442(a) allows a federal officer defendant to unilaterally remove a case to federal court; in doing so, the entire case is removed and the joinder of other defendants is not required. See 28 U.S.C. § 1442(a)(1); Barber v. Avco Corp., Nos. 15-031446, 15-04096, 2015 WL 7180507, at fn. 3 (E.D. Pa. Nov. 16, 2015) (explaining that under Section 1442, a federal officer defendant "alone can remove without other defendants joining in the petition, and the entire case is removed to the federal court."). Since this Court has held that the SECRETARY properly removed the case pursuant to § 1442(a), see ECF No. 39, the entire case is removed to federal court and the other defendants in this action did not need to join in the removal. Thus, the UPMC</p> |
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| | | <p>Defendants' <u>5</u> Joinder in Removal was not necessary; their filing, however, does not destroy the proper removal of this action. Accordingly, IT IS HEREBY ORDERED that Mr. KODENKANDETH's <u>27</u> Motion to Strike Joinder is DENIED. Signed by Judge Christy Criswell Wiegand on 1/23/2024. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (bjw) (Entered: 01/23/2024)</p> |
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Appendix E January 23, 2024 Order ECF 41 of the Federal District Court of Western Pa, docket 2:23-cv-2049-CCW, denying Plaintiff's motion to remand ECF # 38

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| 01/23/2022 4 | 41 | <p>ORDER DENYING <u>38</u> Motion to Strike <u>6</u> Joint Motion for Extension of Time by Plaintiff JOHN F. KODENKANDETH. On 12/1/2023, Defendant SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES sought an extension of time to file an answer to Mr. KODENKANDETH's complaint. ECF No. 6. On 12/5/2023, the Court granted the SECRETARY's <u>6</u> Joint Motion for an Extension of Time. ECF No. 11. On 1/16/2024, Mr. KODENKANDETH filed his <u>38</u> Motion to Strike, arguing that the Defendants should not be given an extension of time. Because this Court has already granted the Defendants' request for an extension of time, IT IS HEREBY ORDERED that Mr. KODENKANDETH's <u>38</u> Motion to Strike is DENIED as moot. Signed by Judge Christy Criswell Wiegand on 1/23/2024. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (bjw) (Entered: 01/23/2024)</p> |
|-----------------|----|---|

Appendix F Honorable Judge Arnold Klein's order of MARCH 22, 2024 shown as an exhibit ECF 33 of the 3rd Circuit Ca3 24-1208 showing that State Of Pa allegheny County Common Pleas Court was derived from entry of Judgment of NON Pros against defendants DHHS et al due to the improper removal of plaintiff's complaint on December 6, 2023 by defendant DHHS.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

JOHN F. KODENKANDETH

CIVIL DIVISION

Plaintiff,

CASE NO: GD-23-12632

v.


UPMC HEALTH PLAN, INC. D/B/A/ UPMC
FOR LIFE; UPM CORPORATE HOLDINGS
CO.; UNIVERSITY OF PITTSBURGH
PHYSICIANS SERVICE; MAXIMUS
FEDERAL SERVICES; SECRETARY,
DEPARTMENT OF HEALTH & HUMAN
SERVICES,

Defendant

ORDER OF COURT

AND NOW, this 22nd day of March, 2024, it is ORDERED, ADJUDGED and
DECREED that the Court makes no ruling on the Plaintiff's "Motion to Enter Judgment of Non-
Pros against All Defendants" as this matter was removed to Federal Court on December 6, 2023.
The Plaintiff may re-present this motion if this matter is remanded by the Federal Court.

BY THE COURT:


J