

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT HUNTINGTON**

**CHRISTOPHER FAIN; SHAWN
ANDERSON a/k/a SHAUNTAE ANDERSON;
and LEANNE JAMES, individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**Case No.: 3:20-cv-00740
Judge Robert C. Chambers**

**WILLIAM CROUCH, in his official capacity as
Cabinet Secretary of the West Virginia
Department of Health and Human Resources;
CYNTHIA BEANE, in her official capacity as
Commissioner for the West Virginia Bureau for
Medical Services; WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN
RESOURCES, BUREAU FOR MEDICAL
SERVICES; and JASON HAUGHT, in his official
capacity as Director of the West Virginia Public
Employees Insurance Agency,**

Defendants.

**DEFENDANT JASON HAUGHT'S MOTION FOR
RELIEF AS A RESULT OF SUGGESTION OF DEATH**

Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant Haught”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, pursuant to the Federal Rules of Civil Procedure, hereby submits his Motion for Relief as a Result of Suggestion of Death. In support of this Motion, the Defendant states the following:

1. On January 21, 2022, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. *See* ECF 187–188.

2. On February 10, 2022, a Joint Motion to Stay Deadlines was filed, and an Order Granting Joint Motion to Stay Deadlines was entered on February 11, 2022, staying the fact discovery deadline until the Court rules on the Motion to Leave to File the Second Amended Complaint. *See* ECF 197–198.

3. On February 25, 2022, Plaintiff Leanne James was killed in a car accident. Therefore, Defendant filed a suggestion of death with this Court on March 16, 2022. *See* ECF 214.

4. On March 9, 2022, the Court inquired as to the status of the pending Motion to Leave to File the Second Amended Complaint (ECF 187) and the Order staying the fact discovery deadline until the Court rules on the Motion to Leave to File the Second Amended Complaint (ECF 198) due to the passing of Plaintiff James. As a result, the Defendant files this Motion.

5. As a result of Plaintiff's passing, the claim related to Plaintiff's Motion for Leave to File Second Amended Complaint have been rendered moot and no controversy regarding these claims now exist. Therefore, the Plaintiffs' Motion for Leave to File Second Amended Complaint should be denied as moot. *Allen v. Wright*, 468 U.S. 737, 705, 104 S. Ct. 3315, 82 L.Ed.2d 556 (1984) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471–476, 102 S. Ct. 752, 757–761, 70 L.Ed.2d 700 (1982)); *Calderon v. Moore*, 518 U.S. 149, 150, 115 S. Ct. 2066, 2067, 135 L.E.2d 453 (1996).

6. Additionally, pursuant to Rule 25 of the Federal Rules of Civil Procedure Plaintiff has 90 days to file a motion for substitution. If no motion for substitution occurs within the 90-day period, then all claims against Defendant Haught should be dismissed. *Patrick v. Sharon Steel Corp.*, 549 F. Supp. 1259, 1268 (N.D.W. Va. 1982).

7. Upon the denial of Plaintiffs' Motion for Leave to File Second Amended Complaint as moot, the Order staying the fact discovery deadline until the Court rules on the Motion to Leave

to File the Second Amended Complaint (ECF 198) becomes inapplicable. However, the Defendant has no current Plaintiff with a claim against him unless the Court grants any Motion for Substitution that may be filed. Therefore, the Defendant requests that any proceedings or claims against Defendant Haught be stayed until the Court grants any Motion for Substitution. ““A district court has broad power to issue stays to control its docket[.]” *Settle v. Stepp*, No. 2:18-CV-01177, 2020 WL 8184395, at *1 (S.D.W. Va. Oct. 14, 2020) (*quoting Raplee v. United States*, 842 F.3d 328, 335 (4th Cir. 2016)). As stated herein, if motion for substitution occurs within the 90-day period, then all claims against Defendant Haught should be dismissed.

WHEREFORE, based upon the foregoing, this Court should grant the relief requested in Defendant Jason Haught’s Motion for Relief as a Result of Plaintiff, Leanne James’, Passing and any such other relief that the Court may deem appropriate.

Respectfully submitted,

s/Eric D. Salyers

Perry W. Oxley (WVSB # 7211)

David E. Rich (WVSB #9141)

Eric D. Salyers (WVSB #13042)

Christopher K. Weed (WVSB #13868)

OXLEY RICH SAMMONS, PLLC

P.O. Box 1704

517 9th Street, Suite 1000

Huntington, West Virginia 25718

Phone: (304) 522-1138

Fax: (304) 522-9528

poxley@oxleylawwv.com

drich@oxleylawwv.com

esalyers@oxleylawwv.com

cweed@oxleylawwv.com

Counsel for Defendant Jason Haught

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing “*Motion for Relief as a Result of Suggestion of Death*” on this 17th day of **March, 2022**, with the Clerk of the Court using the CM/ECF system, which will send notification of filing, and a copy of the same, to the following CM/ECF participants:

Walt Auvil, WVSB No. 190
THE EMPLOYMENT LAW CENTER,
PLLC
1208 Market Street
Parkersburg, WV 26101
Phone: 304-485-3058
Facsimile: 304-485-6344
auvil@theemploymentlawcenter.com
Counsel for Plaintiffs

Avatara Smith-Carrington, Visiting Attorney
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
3500 Oak Lawn Avenue, Suite 500
Dallas, TX 75219
Phone: 214-219-8585
Facsimile: 214-219-4455
asmithcarrington@lambdalegal.org
Counsel for Plaintiffs

Anna P. Prakash, Visiting Attorney
Nicole J. Schladt, Visiting Attorney
NICHOLS KASTER, PLLP
IDS Center, 80 South 8th Street
Suite 4600
Minneapolis, MN 55402
Phone: 612-256-3200
Facsimile: 612-338-4878
aprakash@nka.com
nschladt@nka.com
Counsel for Plaintiffs

Tara L. Borelli, Visiting Attorney
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
730 Peachtree Street NE, Suite 640
Atlanta, GA 30308
Phone: 470-225-5341
Facsimile: 404-897-1884
tborelli@lambdalegal.org
Counsel for Plaintiffs

Sasha Buchert, Visiting Attorney
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
1776 K Street, N.W., 8th Floor
Washington, DC 20006-2304
Phone: 202-804-6245
Facsimile: 202-429-9574
sbuchert@lambdalegal.org
Counsel for Plaintiffs

Nora Huppert, Visiting Attorney
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Boulevard, Suite 280
Los Angeles, CA 90010
Phone: 213-382-7600
Facsimile: 213-351-6050
nhuppert@lambdalegal.org
Counsel for Plaintiffs

Lou Ann S. Cyrus, Esquire
Roberta F. Green, Esquire
Caleb B. David, Esquire
Kimberly M. Bandy, Esquire
Shuman McCuskey Slicer PLLC
Post Office Box 3953
Charleston, West Virginia 25339
(304) 345-1400
Fax: (304) 343-1826
lcyrus@shumanlaw.com
rgreen@shumanlaw.com
cdavid@shumanlaw.com
kbandy@shumanlaw.com

*Counsel for Defendants William Crouch,
Cynthia Beane and West Virginia Department
of Health and Human Resources*

s/Eric D. Salyers
Perry W. Oxley (WVSB #7211)
David E. Rich (WV Bar #9141)
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Defendants.

**ORDER GRANTING DEFENDANT JASON HAUGHT'S MOTION
FOR RELIEF AS A RESULT OF SUGGESTION OF DEATH**

This matter comes before the Court on a Motion by Defendant Jason Haught, in his official capacity as Director of the West Virginia Public Employees Insurance Agency (“Defendant”), by and through counsel, Perry W. Oxley, David E. Rich, Eric D. Salyers, Christopher K. Weed, and the law firm of Oxley Rich Sammons, PLLC, to deny Plaintiff’s Motion for Leave to File Second Amended Complaint as moot due to the previously filed Suggestion of Death (ECF 214). *See* ECF 215. Because the claim is now moot, the Court hereby **GRANTS** the Motion. The *Allen v. Wright*, 468 U.S. 737, 705, 104 S. Ct. 3315, 82 L.Ed.2d 556 (1984) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471–476, 102 S. Ct.

752, 757–761, 70 L.Ed.2d 700 (1982)); *Calderon v. Moore*, 518 U.S. 149, 150, 115 S. Ct. 2066, 2067, 135 L.E.2d 453 (1996).

Pursuant to Rule 25 of the Federal Rules of Civil Procedure, the Plaintiffs have 90 days from today to file a motion for substitution. If a motion for substitution does not occur within the 90-day period, then all claims against Defendant Haught will be dismissed. Discovery and all proceedings against Defendant Haught are hereby stayed until the Court grants any Motion for Substitution.

ENTERED: _____

Honorable Robert C. Chambers
U.S. District Court Judge