

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WISCONSIN PHYSICIANS SERVICE	:	
INSURANCE CORPORATION, et al.,	:	Case No. 17-1070C
	:	
Plaintiffs,	:	Judge Braden
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

**JOINT STATUS REPORT AND
REQUEST TO CONTINUE STAY OF PROCEEDINGS**

On August 23, 2017, the Court stayed this case pending the Federal Circuit's decisions in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, and *Moda Health Plan, Inc. v. United States*, No. 17-1994. Docket No. 7. As numerous judges of this Court have recognized, the issues involved in *Land of Lincoln* and *Moda* are nearly identical or substantially similar to those involved in the 50 or so other cases before this Court, such as this one, in which health insurance companies claim that they are entitled to additional payments under the risk corridors program created by section 1342 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18062.

The Court required the parties to submit a status report within 15 days following the *Land of Lincoln* and *Moda* decisions. Docket No. 7. On June 14, 2018, the Federal Circuit decided *Land of Lincoln* and *Moda*. No. 17-1224, Docket No. 166-1; No. 17-1994, Docket No. 87-1.

The Federal Circuit reversed the judgment in the insurer's favor in *Moda* and affirmed the judgment in favor of the United States in *Land of Lincoln*. The Federal Circuit rejected the insurers' claims for additional payments under the risk corridors program based upon statutory,

contract and takings theories. *Moda*, No. 17-1994, Docket No. 87-1 at 35; *Land of Lincoln*, No. 17-1224, Docket No. 166-1 at 3. It is defendant's position that the Federal Circuit's rulings govern this case and warrant judgment for the United States. It is plaintiff's position that the Federal Circuit's decisions were erroneous, and plaintiff considers it likely that the insurers in *Moda* and *Land of Lincoln* will seek further review by the Federal Circuit *en banc* and/or from the United States Supreme Court. Accordingly, consistent with the purpose of the stay that is currently in place, plaintiff has proposed the continuation of the stay now in effect through the time provided in the appellate court's rules for the filing of a petition for rehearing and/or rehearing *en banc*, Fed. Cir. R. 35, 40, and through the Federal Circuit's merits decision(s) after further review, if any. Plaintiff proposes that the parties should submit a further joint status report upon completion of proceedings in *Moda* and *Land of Lincoln* at the Federal Circuit, at which time the question whether to maintain the stay can be considered further. The United States agrees.

Accordingly, in order to conserve the resources of the parties and this Court, the parties respectfully request that the Court continue the stay in this case until the Federal Circuit has issued its mandates in *Moda* and *Land of Lincoln* and through the time for the disposition of and decision on any panel or *en banc* rehearing by the Federal Circuit. The parties propose that they will file a status report with this Court within 30 days after final judgment by the Federal Circuit in *Moda* and *Land of Lincoln*.

Respectfully submitted,

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