IN THE UNITED STATES COURT OF FEDERAL CLAIMS

GUIDEWELL MUTUAL HOLDING CORPORATION, et al,	)	
Plaintiffs,	)	
v.	)	No. 18-1791C
	)	Judge Griggsby
THE UNITED STATES,	)	
Defendant.	)	

JOINT STATUS REPORT

Pursuant to the Court's May 1, 2019 Order, *see* ECF No. 19, plaintiffs, Guidewell Mutual Holding Corporation, *et al*., and defendant, the United States, respectfully submit the following joint status report stating their respective views on whether this matter should be stayed pending a decision of the United States Court of Appeals for the Federal Circuit (Federal Circuit) in *Sanford Health Plan v. United States*, 139 Fed. Cl. 701 (2018), *appeal docketed*, No. 19-1290 (2018) (*Sanford Health Plan*); *Montana Health Co-Op v. United States*, 139 Fed. Cl. 213 (2018), *appeal docketed*, No. 19-1302 (2018) (*Montana Health Co-Op*); and *Community Health Choice, Inc. v. United States*, 141 Fed. Cl. 744 (2019), *appeal docketed*, No. 19-1633 (2019) (*Community Health Choice*).[1]

[1] The Federal Circuit has ordered that *Community Health Choice* shall be considered a companion case to *Montana Health Co-Op* and *Sanford Health Plan* and, as a result, all three appeals are assigned to the same merits panel. *See Community Health Choice*, No. 19-1633, ECF No. 6. Further, the parties have submitted several briefs in these appeals. On March 22, 2019, the Government filed its opening brief in the *Montana Health Co-Op* and *Sanford Health Plan* consolidated appeals. No. 19-1290, ECF No. 21. On April 30, 2019, the Government filed its opening brief in *Community Health Choice*. No. 19-1633, ECF No. 16. Then, on May 1, 2019, the appellees filed their responsive brief in *Montana Health Co-Op* and *Sanford Health Plan*. No. 19-1290, ECF No. 24. In addition, the Federal Circuit granted the Government's

PLAINTIFFS' POSITION

This matter should not be stayed. As detailed in its complaint, Plaintiffs are seeking damages against the United States in excess of $215 million as a result of the United States failing to honor its legal obligations under Section 1402 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18071 for 2017, which requires insurers to provide reductions in costs for certain health insurance sold and requires the Government to reimburse the insurer for those reductions. Plaintiffs are also owed over $8 million in unreconciled cost-sharing reduction (CSR) reimbursements for the 2016 benefit year, and an additional $78,567.63 in reconciled CSR reimbursements for 2015. Compl. ¶¶ 30, 35, 44. The fact that other cases raising similar claims are pending is not good cause to stay this case. *See Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) ("[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.").

While this Court unquestionably has discretion to manage its docket, *see Clinton v. Jones*, 520 U.S. 681, 706 (1997), that discretion is bounded by due regard for Plaintiffs' interests in obtaining justice for its cause. *See id*. at 707 (finding that district court abused its discretion in granting stay); *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997) (citing *Hendler v. United States*, 952 F.2d 1364, 1380 (Fed. Cir. 1991)) (stating that discretion to stay "is not . . . without bounds"); *Nat'l Food & Beverage Co. v. United States*, 96 Fed. Cl. 258, 263 (2010) (noting that discretion to stay "is not unbounded."). Moreover:

request for leave to file a single reply brief in the three appeals, which will be due 21 days after appellee files its responsive brief in *Community Health Choice*. *See Sanford Health Plan,* No. 19-1290, ECF No. 23.

> the suppliant for a stay must make out a *clear case of hardship or inequity* in being required to go forward, if there is even a *fair possibility* that the stay for which he prays will work damage to someone else. Only in *rare circumstances* will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.

Landis, 299 U.S. at 255 (emphases added).

The Federal Circuit applies a three-part formula to stay requests pending the resolution of related cases:

> (i) "a trial court must first identify a pressing need for the stay;"
>
> (ii) "[t]he court must then balance interests favoring a stay against interests frustrated by the action;" and
>
> (iii) "[o]verarching this balancing is the court's paramount obligation to exercise jurisdiction timely in cases properly before it."

Cherokee Nation, 124 F.3d at 1416; *see Commonwealth Edison Co. v. United States*, 46 Fed. Cl. 29, 34 (2000), *aff'd*, 271 F.3d 1327 (Fed. Cir. 2001) (citing same formula); *Freeman v. United States*, 83 Fed. Cl. 530, 533 (2008) (same). Since staying this action "pending the Federal Circuit's resolution of *Sanford* and *Montana*" constitutes an "indefinite stay," this Court should not enter a stay because (1) there is no "pressing need" for a stay, (2) the balance of interests weighs against a stay, and (3) this Court's paramount obligation to timely exercise jurisdiction weighs in favor of declining to enter a stay.

As an initial matter, staying this action "pending the Federal Circuit's resolution of *Sanford* and *Montana*" constitutes an "indefinite stay." *See Consolidation Coal Co. v. United States*, 102 Fed. Cl. 489, 493 (2011) (request to delay litigation until another case was decided is a request for an indefinite stay). The Oxford English Dictionary defines "indefinite" as "undefined, unlimited; the opposite of definite." Definition of *Indefinite*, *Oxford English Dictionary* (2nd ed. 1989). In *Landis* itself, the Supreme Court rejected a stay of one case pending a decision on appeal in another because movants had failed to demonstrate a "pressing

need." *Id.* at 255 (saying a trial court abuses its discretion if it enters "a stay of indefinite duration in the absence of a pressing need"). The Federal Circuit, applying the *Landis* standard, similarly treated a motion to stay proceedings during the pendency of related cases as "indefinite" and applied the *Landis* pressing need requirement to deny the stay. *Cherokee Nation*, 124 F.3d at 1416; *see also Red River Coal Co. v. United States*, No. 01-441 C (GWM), 2012 WL 285051, at *1 n.1 (Fed. Cl. Jan. 31, 2012) ("Although plaintiff requests a stay that would end upon the occurrence of certain specific events, case law indicates that the stay plaintiff requests—one pending the outcome of another case with which the plaintiff is not currently involved—is an indefinite stay." (citing *Cherokee Nation*, 124 F.3d at 1414)).

The judges of this court continue to apply this standard and deny motions to stay cases pending appeals to the Federal Circuit, absent a showing of "compelling need." *See Brown v. United States*, 131 Fed. Cl. 540, 543 (2017). Indeed, other plaintiffs in CSR litigation have fully briefed dispositive motions and proceeded to decisions during the pendency of the appeals in *Sanford* and *Montana*. *See Maine Cmty. Health Options v United States*, No. 17-2057C (Sweeney, J.); *Local Initiative Health Authority for Los Angeles County v. United States* (17-1542C) (Wheeler, J.). Because the proposed stay is an indefinite one, for the reasons set forth below, this Court should not enter a stay under the Federal Circuit's three-part formula.

First, a trial court abuses its discretion if it issues a stay of indefinite duration "in the absence of a pressing need." *Landis*, 299 U.S. at 255; *see Clinchfield Coal Co. v. United States*, 102 Fed. Cl. 592, 596 (2011) ("Stays of indefinite duration require a showing of a pressing need."). To justify a stay, the government must "make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *Landis*, 299 U.S. at 255.

The government's reference to judicial economy alone does not amount to the requisite "pressing need." Indeed, the Federal Circuit's rejection of this very argument in denying the Government's motion to stay the appeal in *Moda Health Plan* pending its decision in *Land of Lincoln*—both of which involved plaintiffs' claims under the risk corridors program—should guide the Court's decision on the current motion. Order, *Moda Health Plan v. United States*, No. 2017-1994 (May 30, 2017), ECF No. 13. *See Cherokee Nation*, 124 F.3d at 1416 (where the only reason for granting the stay was that it would avoid duplicative litigation and conserve judicial resources, finding that "this concern falls short of the 'pressing need' required when a trial court seeks to suspend its proceedings indefinitely"); *Prati v. United States*, 82 Fed. Cl. 373, 378 (2008) (in denying reconsideration, noting that, unlike a stay pending an interlocutory or administrative appeal, "concerns about resources and judicial economy are not as relevant" to requests for indefinite stays pending Federal Circuit resolution of a companion case decided by this Court); *Ortega Trujillo v. Conover & Co. Commc'ns*, 221 F.3d 1262, 1265 (11th Cir. 2000) ("The case law illustrates that . . . the interests of judicial economy alone are insufficient to justify such an indefinite stay." (citing *Landis*, 299 U.S. at 256-57)); *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1111-12 (9th Cir. 2005) (holding that a *Landis* stay was inappropriate where grounds other than judicial economy were offered and found to lack merit). *Cf. Johnson v. Rogers*, 917 F.2d 1283, 1285 (10th Cir. 1990) (holding that a crowded docket, without more, is insufficient to justify lengthy delay). Here, the law does not support entry of a stay.

Second, the balance of interests favors denying a stay. The resolution of distinct plaintiffs' claims in similar cases will collectively better inform the court of appeals about the important issues raised in this and the other cases. *See United States v. Mendoza*, 464 U.S. 154, 160 (1984) (stressing the importance of allowing "difficult question[s]" to percolate among the

multiple courts of appeals before granting certiorari); *Prati*, 82 Fed. Cl. at 378 (noting that "additional [cases of the type at issue] could benefit the Federal Circuit . . . ."); *Columbus Fruit & Vegetable Co-op. Ass'n, Inc. v. United States*, 8 Cl. Ct. 525, 529 (1985) (citing *Mendoza*, 464 U.S. 154 (1984) (applying percolation principle in context of fee dispute affected by Government effort to litigate multiple cases in different forums)).

A plaintiff does not lose its right to be heard in a timely manner merely because another plaintiff filed a similar suit. It is for that reason that this Court has repeatedly permitted cases to move forward despite the pendency of related litigation. *See, e.g.*, *Cherokee Nation*, 124 F.3d at 1418 (trial court abused its discretion in staying proceedings pending resolution of related quiet title action in another court); *Nez Perce Tribe v. United States*, 101 Fed. Cl. 139, 140 n.1 (2011) (2006 case in this Court proceeded while district court action brought by same party was pending); *Nat'l Food*, 96 Fed. Cl. at 269 (denying motion to stay takings claim pending resolution of related condemnation lawsuit involving portion of same property); *Clinchfield*, 102 Fed. Cl. at 598 (denying motion to continue stay pending resolution of related litigation).

Third, this Court's "paramount obligation to exercise jurisdiction timely in cases properly before it" also weighs against entering a stay. *Cherokee Nation*, 124 F.3d at 1416. This Court's own Rule 1 requires that the rules of this Court "should be construed, administered and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding." RCFC 1. This principle springs from the Court's "virtually unflagging obligation . . . to exercise the jurisdiction given [it]" to decide controversies. *Cherokee Nation*, 124 F.3d at 1418 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 14-15 (1983)). This Court has jurisdiction to hear Plaintiffs' claims and, as the parties' respective dispositive motions illustrate, everyone agrees that they are capable of

resolution as a matter of law. Accordingly, Plaintiffs respectfully request that the Court decline to enter a stay in this case.[2]

GOVERNMENT'S POSITION

There are now multiple cases currently on appeal before the Federal Circuit where plaintiffs raise the same claims that the plaintiffs in this case allege—*i.e.*, that they are entitled to recover CSR payments that Congress declined to fund directly, and that they also possess a private contractual right to CSR payments. The Federal Circuit's decisions in *Montana Health Co-Op*, *Sanford Health Plan*, and *Community Health Choice* will directly resolve the legal issues in this case. Indeed, several other judges in this Court have stayed the CSR matters before them. *See Harvard Pilgrim v. United States*, Case No. 18-1820 (Judge Smith), ECF No. 10 (February 28, 2019 order staying case); *Health Alliance Medical Plans, Inc. v. United States*, Case No. 18-334C (Judge Campbell-Smith), ECF No. 22 (March 28, 2019 order staying case).

Given that the Federal Circuit's decisions will directly resolve the legal issues in this case, it would be appropriate for the Court to exercise its discretion to stay proceedings in this matter pending a decision in those appeals. A stay will conserve both judicial and party resources. *See UnionBanCal Corp. v. United States*, 93 Fed. Cl. 166, 167 (2010) ("The orderly course of justice and judicial economy is served when granting a stay simplifies the 'issues, proof, and questions of law which could be expected to result from a stay.'") (quoting *CMAX, Inc. v. United States*, 300 F.2d 265, 268 (9th Cir. 1962)).

[2] Plaintiffs note that the Court transferred *Sanford Health Plan v. United States* (Fed. Cl. 18-136) to Judge Kaplan after she issued a decision in *Montana Health CO-OP v. United States* (Fed. Cl. 18-143) on October 9, 2018. Plaintiffs would not oppose such a transfer here at the Court's convenience under RCFC 40.1(b) if the Court deems it to be in the interest of expeditiously resolving the case.

Respectfully submitted,

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