

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE
COOPERATIVE,

Plaintiff,
on behalf of itself and all
others similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:17-cv-00877-MMS
(Judge Sweeney)

JOINT STATUS REPORT

Defendant United States and Plaintiff Common Ground Healthcare Cooperative, on behalf of itself and the Risk Corridors and CSR Classes, (together, the “Parties”), hereby submit this joint status report in accordance with the Court’s August 11, 2017 Order, which required the Parties to submit a status report no later than 14 days following the *Land of Lincoln* and *Moda* decisions. Dkt. 9; *see also Land of Lincoln Mut. Health Ins. Co. v. United States*, No. 17-1224, Dkt. 166-1 (Fed. Cir. June 14, 2018); *Moda Health Plan, Inc. v. United States*, No. 17-1994, Dkt. 87-1 (Fed. Cir. June 14, 2018).

I. Risk Corridors Claims

With respect to the risk corridors claims for the 2016 benefit year, the Parties jointly request that this case continue to be stayed on the merits pending further appellate proceedings in *Land of Lincoln* and/or *Moda*. When the Court originally stayed this case, it did so with the explanation that the Federal Circuit’s decisions in *Land of Lincoln* and/or *Moda* might weigh on the merits of the risk corridors claim. Dkt. 9.

On June 14, 2018, 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, Dkt. 87-1 at 35; *Land of Lincoln*, No. 17-1224, Dkt. 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. However, Plaintiff has requested that the United States consent to 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 resolution of any petition for a writ of certiorari. Defendant agrees to continuing the stay, which will conserve the Court's and the Parties' resources until they have finality on the appeals in those two cases. The Parties thus respectfully, and jointly, request that the Court continue the stay in this case until there are final and non-appealable judgments in *Moda* and *Land of Lincoln*. To this end, the Parties propose that they file a status report with this Court within 15 days after the judgments in *Moda* and *Land of Lincoln* have become final and non-appealable.

II. Cost-Sharing Reduction Claims

With respect to the cost sharing reduction claims, the Parties respectfully request that the Court lift the stay. The Court originally instituted the stay to wait for whatever direction the Federal Circuit might provide in the *Moda* and *Land of Lincoln* appeals. Dkt. 9. The Federal Circuit has now decided the *Moda* and *Land of Lincoln* appeals (the applicability of which the Parties will address in upcoming briefing). Thus, the precondition the Court set for allowing this case to proceed has now occurred.

Further, the Parties jointly propose the following briefing schedule for the CSR Class's claims:

- Plaintiff will file its motion for summary judgment by July 23, 2018;

- Defendant will file its response to the motion for summary judgment, as well as its response to the complaint, by September 14, 2018;
- Deadlines for further reply or response briefs will be governed by the Rules of the United States Court of Federal Claims, as adjusted by any future order of this Court.

Dated: June 28, 2018

Respectfully submitted,

/s/ Stephen Swedlow
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