

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS AND BLUE SHIELD)
OF NEBRASKA,)
)
and)
)
HAWAII MEDICAL SERVICE ASSOCIATION)
)
Plaintiffs,)
on behalf of themselves and all)
others similarly situated)
)
v.)
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)

Case No. 18-491 C
Judge Braden

JOINT STATUS REPORT AND REQUEST TO CONTINUE STAY OF PROCEEDINGS

On June 12, 2018, the Court stayed this case pending the Federal Circuit's final 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. Dkt. 10. The Court directed the parties to file a joint status report within thirty days after the Federal Circuit renders a final decision in *Land of Lincoln* and *Moda*. Dkt. 10. On June 14, 2018, the Federal Circuit decided *Land of Lincoln* and *Moda*. No. 17-1224, Dkt. 166-1; No. 17-1994, Dkt. 87-1. The parties respectfully inform the Court of their desire to continue the stay in this case until the decisions in *Land of Lincoln* and *Moda* are non-appealable.

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. Plaintiffs' Complaint seeks additional risk corridors payments as well as damages under the Patient Protection and Affordable Care Act's (ACA) risk adjustment program, 42 U.S.C. § 18063. Plaintiffs also assert that the Department of Health and Human Services (HHS) improperly exercised its setoff rights and should have collected funds from other insurers and paid them over to Plaintiffs. Ultimate resolution of the risk corridors-related issues in *Land of Lincoln* and *Moda* implicates final disposition of this case.

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 any petition for a writ of certiorari that may be filed before the United States Supreme Court. The parties propose that they be required to file a status report with this Court within 30 days after the judgments in *Moda* and *Land of Lincoln* have become final and non-appealable.

Dated: July 16, 2018

Respectfully submitted,

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