

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS AND BLUE SHIELD)	
OF VERMONT,)	
)	No. 18-241C
Plaintiff,)	
)	
v.)	Judge Victor J. Wolski
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

JOINT STATUS REPORT AND REQUEST FOR A STAY OF PROCEEDINGS

On March 1, 2018, the United States of America submitted an unopposed motion to stay proceedings until the Federal Circuit decides *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224, or *Moda Health Plan, Inc. v. United States*, No. 17-1994. Dkt. 6. Blue Cross and Blue Shield of Vermont did not oppose the motion. *Id.* The United States requested that the Court order the parties to file a joint status report within 14 days of a decision in *Land of Lincoln* or *Moda* advising the Court whether the parties contend that the stay should be lifted or continued. *Id.* As numerous judges of this Court have recognized, the risk corridors issues involved in *Land of Lincoln* and *Moda* are nearly identical or substantially similar to those involved in the 50 or so other risk corridors cases pending before this Court seeking recovery of additional payments under the risk corridors program created by section 1342 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18062.

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. While the Court has not previously ruled on the United States' unopposed motion to stay proceedings, the parties now submit this JSR consistent with

the procedure suggested by the United States in its unopposed motion to stay proceedings.

Dkt. 6.

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. It is plaintiff's position that the majority's ruling in *Moda* and *Land of Lincoln* as to the interpretation and effect of the appropriations riders was erroneous and should be reversed. However, plaintiff has requested that the United States consent to a stay of proceedings 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.

In order to conserve the resources of the parties and this Court, the parties respectfully jointly request that the Court stay this case until the Federal Circuit has issued its final mandates in *Moda* and *Land of Lincoln* and through the time for the final 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 15 days after the judgments in *Moda* and *Land of Lincoln* have become final and non-appealable.

Dated: June 27, 2018

/s/ Lawrence S. Sher

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