

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTHYCT, INC.,	:	
	:	Case No. 17-1233C
Plaintiff,	:	
	:	Judge Firestone
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

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

On October 13, 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 some of the issues 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. In all, insurers seek to recover approximately \$12.3 billion from the United States.

The Court required the parties to submit a status report within 14 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,

implied-in-fact 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 ruling compels judgment in favor of plaintiff on its express contract claim, asserted in Count III of the complaint. In any event, in order to focus any further proceedings in this case, 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.

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*. The parties propose that they be required to file a status report with this Court within 30 days after the period for rehearing and/or rehearing en banc runs under Fed. Cir. R. 35 and 40.

Respectfully submitted,

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