

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

<b>MOLINA HEALTHCARE OF</b>	)	
<b>CALIFORNIA, INC., et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>No. 18-333C</b>
	)	
<b>v.</b>	)	
	)	<b>Judge Wheeler</b>
<b>THE UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**UNITED STATES' MOTION TO STAY PROCEEDINGS, OR IN THE ALTERNATIVE,  
FOR AN EXTENSION OF TIME TO RESPOND TO THE COMPLAINT**

Despite the court staying Plaintiffs' previous case, *Molina Healthcare of California, Inc., et al. v. United States* ("*Molina I*"), No. 17-97C, which seeks risk corridors payments for 2014 and 2015, pending the Federal Circuit's ruling in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224 (Fed. Cir.), or *Moda Health Plan, Inc. v. United States*, No. 17-1994 (Fed. Cir.), Plaintiffs have informed the United States that they oppose a stay in this case ("*Molina II*"), which seeks 2016 risk corridors payments. For the same reasons this Court recently entered a stay in *Local Initiative Health Authority for Los Angeles County v. United States*, No. 17-1542C (Wheeler, J.) because of "the substantial overlap and relatedness of issues between [*Molina II*] and the cases currently on appeal," the United States respectfully requests that the Court stay this case pending resolution of the *Land of Lincoln* and *Moda* appeals by the Federal Circuit. *See Local Initiative*, Dkt. 14; *see also EmblemHealth, Inc. v. United States*, No. 17-703C (Wheeler, J.), Dkt. 7 (staying case because "[t]he Court finds that the issues presented in Plaintiffs' complaint are substantially similar to the issues in the *Land of Lincoln* and *Moda Health Plan* cases").

In the alternative, we request that the Court enlarge the time within which to respond to the Complaint by 60 days, up to and including July 3, 2018. This is our first request for enlargement for this purpose. Absent the grant of this motion, our response would be due on May 4, 2018.

Neither the stay nor the alternative request for an enlargement of time will prejudice the parties or result in undue delay. As noted above, Plaintiffs have stated that they will oppose entry of a stay. Plaintiffs have stated that they would agree to a 30-day extension of time for the United States to respond to the Complaint.

## **BACKGROUND**

### **A. This Case**

On March 5, 2018, Plaintiffs filed suit seeking approximately \$76 million in money damages for the 2016 benefit year under the risk corridors program, 42 U.S.C. § 18062, created by the Patient Protection and Affordable Care Act (ACA). Dkt. 1. Plaintiffs also seek approximately \$160 million under the ACA cost sharing reduction (CSR) payments provision. 42 U.S.C. § 18071.

### **B. Current Status of Risk Corridors Cases**

This case is one of more than 50 cases filed in the last 26 months in this Court seeking relief under the risk corridors program. These cases collectively implicate more than \$12.3 billion. Four of the cases are on appeal to the Federal Circuit. This Court decided *Land of Lincoln* in favor of the United States, 129 Fed. Cl. 81 (2016), and *Land of Lincoln* appealed. In *Moda*, this Court entered judgment in favor of the plaintiff, 130 Fed. Cl. 436 (2017), and the United States appealed. The Federal Circuit has treated *Land of Lincoln* and *Moda* as companion cases and oral argument was held on January 10, 2018.

This Court has entered judgment in the government's favor in two other cases: *Blue Cross and Blue Shield of North Carolina v. United States*, 131 Fed. Cl. 457 (2017), *appeal pending*, No. 17-2154 (Fed. Cir.); and *Maine Community Health Options v. United States*, 133 Fed. Cl. 1 (2017), *appeal pending*, No. 17-2395 (Fed. Cir.) ("Maine I"). The *Blue Cross and Blue Shield of North Carolina* and *Maine I* appeals are fully briefed. On March 28, 2018, the Federal Circuit ordered that these appeals would be assigned to the same panel deciding the *Land of Lincoln* and *Moda* appeals and would be designated as companion cases. No. 17-2154, Dkt. 40. On March 30, 2018, the Federal Circuit stayed proceedings in *Blue Cross and Blue Shield of North Carolina* and *Maine I* pending the Federal Circuit's disposition of the *Land of Lincoln* and *Moda* appeals. No. 17-2154, Dkt. 42.

In *Molina I*, this Court entered partial summary judgment in the plaintiffs' favor. 133 Fed. Cl. 14 (2017). As noted above, further proceedings in *Molina I* are stayed pending the *Land of Lincoln* and *Moda* appeals.

Due to their substantive overlap with the issues before the Federal Circuit in *Land of Lincoln* and *Moda*, the risk corridors cases currently pending before this Court have been stayed or held in abeyance pending those appeals. No Court of Federal Claims risk corridors case is currently being briefed on the issues pending in *Land of Lincoln* and *Moda*.<sup>1</sup>

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<sup>1</sup> There are eight cases, in addition to this case, pending before the Court seeking recovery of CSR payments under the ACA. As noted above, this Court has stayed *Local Initiative*. The Court has also stayed *Common Ground Healthcare Coop. v. United States*, No. 17-877C, *Maine Community Health Options v. United States*, No. 17-2057C ("Maine II"), and *Community Health Choice, Inc. v. United States*, No. 18-5C. The Court granted extensions to the United States to respond to the complaints in *Sanford Health Plan v. United States*, No. 18-136C ("Sanford III"), and *Montana Health Plan v. United States*, No. 18-143C ("Montana III"). Action has not yet proceeded in *Health Alliance Medical Plans, Inc. v. United States*, No. 18-334C, and *Blue Cross & Blue Shield of Vermont v. United States*, No. 18-373C.

## ARGUMENT

### **I. Standard For Issuing A Stay Of Proceedings**

“It is well established that every trial court has the power to stay its proceedings, which is ‘incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’” *Freeman v. United States*, 83 Fed. Cl. 530, 532 (2008) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). “Moreover, when and how to stay proceedings is within the sound discretion of the trial court.” *Id.* (citation and internal punctuation omitted).

The Supreme Court has highlighted the conservation of judicial resources as an important reason for a trial court to stay proceedings in any matter pending before it, particularly where the appellate court may resolve issues before the trial court. *Landis*, 299 U.S. at 254-55; *UnionBanCal Corp. & Subsidiaries 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. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). The Supreme Court also recognized that in cases of great significance, like the risk corridors and CSR issues in this case, “the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted, especially where, as here, a decision by the Federal Circuit would “settle” or “simplify” the issues presented. *See Landis*, 299 U.S. at 256.

### **II. This Court Should Stay Proceedings Pending The Federal Circuit’s Decision In *Land of Lincoln* or *Moda***

Because issues presented in this case mirror issues raised before the Federal Circuit in *Land of Lincoln* and *Moda*, the further development of those companion cases on appeal will be

instructive, and potentially dispositive of issues here. A stay therefore will conserve judicial resources and the resources of both parties by reducing the amount of briefing of issues before this Court.

As noted above, since the Federal Circuit's May 30, 2017 Order treating *Land of Lincoln* and *Moda* as companion cases and assigning them to the same panel, the Court has stayed or held in abeyance every pending risk corridors case. This Court recently granted a similar motion to stay in a similar case brought by the same counsel. Local Initiative, like Plaintiffs, sued the United States for risk corridors and CSR payments. No. 17-1542C, Dkt. 14. The United States moved to stay, Dkt. 16, and Local Initiative opposed, Dkt. 17. Despite the fact that, unlike in this case, Local Initiative had filed a motion for summary judgment, this Court stayed the case "until the Federal Circuit issues its combined decision in the *Land of Lincoln* and *Moda Health Plan* appeals." Dkt. 19. This court based its decision on "the substantial overlap and relatedness of issues between this case and the cases currently on appeal." *Id.* The "issues" referenced by this Court are identical for Local Initiative and Molina, such that there is equally substantial overlap between this case and *Land of Lincoln* and *Moda*.

The Court has also entered stays over the opposition of the plaintiff in at least seven other risk corridors cases: *Raymond Farmer v. United States*, No. 17-363C, Dkt. 9 (June 7, 2017); *HPHC Ins. Co. v. United States*, No. 17-87C, Dkt. 19 (July 11, 2017); *Health Republic Ins. Co. v. United States*, No. 16-259C, Dkt. 62 (July 11, 2017); *Health Alliance Med. Plans, Inc. v. United States*, No. 17-653C, Dkt. 14 (July 17, 2017); *Common Ground*, No. 17-877C, Dkt. 9 (August 11, 2017); *Nancy G. Atkins v. United States*, No. 17-906C, Dkt. 22 (December 1, 2017); and *Montana Health CO-OP v. United States*, No. 17-1298 ("Montana II"), Dkt. 13 (January 23, 2018).

If this Court requires the United States to respond to Plaintiffs' Complaint, likely with a motion to dismiss, the Court would be considering the very same legal issues, in the very same factual circumstances, as the matters presently under submission before the Federal Circuit. Because issues Plaintiffs raise in this case are the same issues the parties have raised before the Federal Circuit in the risk corridors appeals, those decisions will provide important guidance on the risk corridors claims and may also inform the Court's consideration of the CSR issues raised by Plaintiffs.

**A. The United States' Stay Request Is Not Indefinite**

The United States does not seek an indefinite stay, but rather a stay directly tied to the Federal Circuit's decision in *Land of Lincoln* or *Moda*. The mere fact that the exact date of the Federal Circuit's decision cannot be currently known does not alter that the event of the decision is certain. Briefing was completed in both cases more than six months ago, and oral argument in both cases was held three months ago. Therefore, a stay tied to the Federal Circuit's decisions in the combined appeals is not indefinite, as multiple judges of this Court have already held. *See Farmer*, Dkt. 9, at 3; *Health Republic*, Dkt. 62, at 2.

**B. A Stay Will Conserve the Resources of the Court and the Parties**

Plaintiffs cannot dispute that the United States' requested stay will conserve the resources of the Court and the parties, or that the further development of the *Land of Lincoln* and *Moda* companion cases will be instructive, and potentially dispositive, of issues here. Should the parties proceed with litigating this case now, briefing on dispositive motions will indisputably address the *exact same issues* that are on appeal before the Federal Circuit. Once the Federal Circuit rules, any briefing here will be rendered useless, or require additional supplemental briefing to apply the Federal Circuit's legal rulings. A stay, however, avoids that wasted effort

and allows the Court to efficiently direct the litigation consistent with precedent established by the Federal Circuit.

**C. Plaintiffs Will Not Be Harmed By Any Purported Delay**

Moreover, even if Plaintiffs were to prevail in this Court and win a money judgment for risk corridors or CSRs, they almost certainly will not recover until the cases already before the Federal Circuit are resolved. The question for this Court in considering the stay request is whether the parties and the Court will waste resources on the full scope of this case now, or will prudently allow controlling law to efficiently shape future proceedings. Choosing the former, however, will *not* speed any potential recovery by Plaintiffs.

**III. Alternatively, The Court Should Extend the United States' Time To Respond To The Complaint**

In the alternative, the United States respectfully requests an extension of time to respond to the Complaint. Briefing in this case at this time will not advance resolution of the dispute given the pendency and status of the Federal Circuit appeals since the parties and the Court will be required to address the disposition of those appeals in order to resolve this case. Moreover, Plaintiffs' Complaint includes the CSR claims, which are entirely new theories of recovery that have not been addressed by this Court. Those claims, too, implicate potentially billions of dollars of taxpayer funds. As such, analysis and argument of the CSR claims will require extensive consultation with the Department of Health and Human Services and within the Department of Justice. In the circumstances, we request an enlargement of 60 days, to July 3, 2018, to respond to the Complaint.

## CONCLUSION

For these reasons, we respectfully request that the Court stay proceedings in this case pending the Federal Circuit's decisions in *Land of Lincoln* and *Moda* and direct the parties to file a status report within 30 days of the disposition of those appeals. Alternatively, we respectfully request that the Court extend the deadline for the government's responses to Plaintiffs' Complaint by 60 days, until July 3, 2018.

Dated: April 11, 2018

Respectfully submitted,

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