

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MONTANA HEALTH CO-OP,)	
)	
Plaintiff,)	No. 17-1298C
)	
v.)	
)	Judge Victor J. Wolski
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

**UNITED STATES' REPLY IN SUPPORT OF ITS MOTION TO STAY PROCEEDINGS,
OR IN THE ALTERNATIVE, FOR AN ENLARGEMENT OF TIME**

Montana's contention in its opposition, Dkt. 11, that this Court, in considering a stay here, in *Montana II*, must utilize the identical analysis as it did in denying stay in *Montana I*, ignores the significant differences in procedural posture and intervening circumstances. The United States sought a stay in *Montana I* more than one year ago, at which time only 12 risk corridors cases had been filed in the Court, none of which were before the Federal Circuit (and, thus, none were set for argument before the Federal Circuit). No. 16-1427C, Dkt. 8 at 1. Moreover, the United States' request for a stay in *Montana I* did not seek a stay tied to the resolution of one case, but rather the "disposition of several earlier-filed cases." *Id.*

Now, as demonstrated in the United States' motion, Dkt. 10, 44¹ risk corridors cases have been filed in the Court, of which four are on appeal to the Federal Circuit, including two cases set for argument next month. And the United States' stay request is tied to the resolution of one specific case: *Montana I*, which (a) has identical parties and the same legal issues as this case,

¹ Subsequent to the United States' motion, a 44th case was filed in the Court: *Scott and White Health Plan v. United States*, No. 17-1850C (Coster Williams, J.).

(b) is fully-briefed before this Court, and (c) when decided, will be possibly dispositive of *Montana II*.

Furthermore, in its opposition, Montana concedes that the only difference between *Montana I* and *Montana II* is the risk corridors benefits year(s) in question. Dkt. 11 at 1. Yet, Montana ignores that proceeding in *Montana II* before *Montana I* has been resolved will result in unnecessary, duplicative work that will waste the Court’s and parties resources. Montana makes no effort to justify its request for such waste, asserting only that it “does not bear any burden to justify *not* staying this case.” Dkt. 11 at 3. But, this Court’s “power to stay a case ‘springs from [its] inherent authority . . . to control the disposition of its cases,’ and ‘[w]hen and how to stay proceedings is within [its] sound discretion.’” *Nancy G. Atkins v. United States*, No. 17-906C, Dkt. 22 at 2 (Dec. 1, 2017) (staying case *sua sponte* in the middle of briefing on dispositive motions after previous denial of a stay because “moving ahead . . . would not represent a sound use of judicial resources” after the Federal Circuit scheduled argument in *Land of Lincoln* and *Moda* for January 10, 2018) (quoting *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997)).

Thus, the United States respectfully moves the Court to stay this case until *Montana I* has been finally decided. Alternatively, the United States requests a stay of proceedings through argument in *Land of Lincoln* and *Moda*, with the parties to submit a Joint Status Report by January 31, 2018 (within 21 days after argument in those two cases), proposing a schedule for further proceedings.² Should this Court deny a stay, the United States asks that this Court

² In the United States’ motion, we requested a 60-day stay until January 15, 2018, to give the Court and the parties the opportunity to see if the Federal Circuit schedules argument in *Land of Lincoln* and *Moda*. Subsequent to our motion, the Federal Circuit set argument for January 10, 2018. Our revised alternative stay request mirrors that recently requested by the parties in *Health Net, Inc. v. United States*, No. 16-1722C, Dkt. 18 (Nov. 28, 2017).

enlarge the deadline for the United States to respond to Montana's motion for summary judgment by 90 days, until March 11, 2018.

Dated: December 6, 2017

Respectfully submitted,

CHAD A. READLER
Principal Deputy Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Marc S. Sacks
MARC S. SACKS
FRANCES M. MCLAUGHLIN
PHILLIP M. SELIGMAN
TERRANCE A. MEBANE
L. MISHA PREHEIM
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044
Tel. (202) 307-1104
Fax (202) 514-9163
marcus.s.sacks@usdoj.gov

ATTORNEYS FOR THE UNITED
STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 6, 2017, I electronically filed the foregoing UNITED STATES' REPLY IN SUPPORT OF ITS MOTION TO STAY PROCEEDINGS, OR IN THE ALTERNATIVE, FOR AN ENLARGEMENT OF TIME with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Marc S. Sacks
MARC S. SACKS
Commercial Litigation Branch
Civil Division
United States Department of Justice