

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

<b>QCC INSURANCE COMPANY, KEYSTONE</b>	)	
<b>HEALTH PLAN EAST, INC.,</b>	)	
<b>AMERIHEALTH INSURANCE COMPANY</b>	)	
<b>OF NEW JERSEY, &amp; AMERIHEALTH</b>	)	<b>No. 17-1312C</b>
<b>HMO, INC.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>Judge Mary Ellen Coster Williams</b>
<b>v.</b>	)	
	)	
<b>THE UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

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**UNITED STATES' UNOPPOSED MOTION  
TO STAY PROCEEDINGS UNTIL JANUARY 31, 2018**

The United States respectfully moves the Court to stay this action until January 31, 2018.

The United States requests that the Court order the parties to submit a joint status report by January 24, 2018 advising the Court whether the parties contend that the stay should be lifted or continued.

After consultation with opposing counsel, Plaintiffs do not oppose this request.

**I. BACKGROUND**

On September 22, 2017, Plaintiffs filed this action seeking approximately \$120 million in money damages under the risk corridors program, 42 U.S.C. § 18062, created by the Patient Protection and Affordable Care Act. Dkt. 1.

**A. Other Risk Corridors Cases**

This case is one of approximately 40 cases filed in the last 18 months in this Court seeking relief under the risk corridors program. Four cases have reached judgment. The Court decided *Land of Lincoln* in favor of the United States, 129 Fed. Cl. 81 (2016), and *Land of Lincoln* appealed. In *Moda*, the Court entered judgment in favor of the plaintiff, 130 Fed. Cl.

436 (2017), and the United States appealed. On May 30, 2017, the Federal Circuit issued an Order that *Land of Lincoln* and *Moda* will be treated as companion cases and will be argued before and decided by the same panel. Both appeals are fully briefed.

The Court has also entered judgment in *Blue Cross and Blue Shield of North Carolina v. United States*, 131 Fed. Cl. 457 (2017), and *Maine Community Health Options v. United States*, 133 Fed. Cl. 1 (2017). Both cases are now before the Federal Circuit.

## **II. A STAY WILL CONSERVE SUBSTANTIAL RESOURCES**

“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*, 299 U.S. at 254). “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)).

Because the legal issues related to the risk corridors program presented in Plaintiffs’ Complaint in this case are similar to the issues raised before the Federal Circuit in *Land of Lincoln* and *Moda*, and other previously-filed risk corridors cases, a stay here will conserve

judicial resources and the resources of both parties by potentially reducing the amount of briefing of issues already pending before the Federal Circuit and this Court.<sup>1</sup>

### **III. CONCLUSION**

For these reasons, the United States respectfully moves the Court to stay this action until January 31, 2018, and order the parties to submit a joint status report by January 24, 2018 advising the Court whether the parties contend that the stay should be lifted or continued.

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<sup>1</sup> Prior to filing this motion, the United States asked Plaintiffs whether they would agree to stay this action pending the outcome of the *Land of Lincoln* and *Moda* appeals now before the Federal Circuit. Plaintiffs did not agree to a stay pending the Federal Circuit's decisions in *Land of Lincoln* and *Moda*. While the United States asserts that a stay pending the outcome of *Land of Lincoln* and *Moda* before the Federal Circuit will best preserve the resources of both the parties and the Court, it is Plaintiffs' position that the stay requested here equally preserves the resources of the parties and the Court and that a longer and indefinite stay is unwarranted at this time and potentially prejudicial to Plaintiffs' interests. For the convenience of the Court in this case and in order to obtain Plaintiffs' consent to this motion, the United States thus requests that the Court stay this action until January 31, 2018.

Dated: October 20, 2017

Respectfully submitted,

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/s/ Marc S. Sacks  
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ATTORNEYS FOR THE UNITED  
STATES

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 20, 2017, I electronically filed the foregoing UNITED STATES' UNOPPOSED MOTION TO STAY PROCEEDINGS UNTIL JANUARY 31, 2018 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