

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

LOCAL INITIATIVE HEALTH AUTHORITY	:	
FOR LOS ANGELES COUNTY, d/b/a	:	Case No. 17-1542C
L.A. CARE HEALTH PLAN,	:	
	:	Judge Wheeler
Plaintiff,	:	
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

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**UNITED STATES’ MOTION TO STAY PROCEEDINGS, OR IN THE ALTERNATIVE,  
FOR AN EXTENSION OF TIME TO RESPOND TO THE MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND THE AMENDED COMPLAINT**

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After it consented to, and this Court granted, an enlargement of time, until March 15, 2018, for the United States to respond to the original complaint, on February 8, 2018, plaintiff, Local Initiative Health Authority for Los Angeles County (LIHA), filed a motion for partial summary judgment upon two counts involving the risk corridors provision of the Patient Protection and Affordable Care Act (ACA).<sup>1</sup> We respectfully request that the Court stay these proceedings because as the Court has recognized previously, the issues LIHA raises “are substantially similar to the issues in the *Land of Lincoln* and *Moda Health Plan* cases” in which the Court of Appeals for the Federal Circuit heard argument on January 10, 2018. *EmblemHealth, Inc. v. United States*, No. 17-703C, Stay Order of July 26, 2017 (Wheeler, J.) (Docket No. 7).

In the alternative, we request that the Court enlarge the time within which to respond to the motion for partial summary judgment by 61 days, up to and including May 8, 2018. This is

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<sup>1</sup> LIHA’s February 8, 2018 amended complaint includes four risk corridors counts and adds three counts involving the cost sharing reduction (CSR) payments provision of the ACA.

our first request for enlargement for this purpose. Absent the grant of this motion, our response would be due on March 8, 2018.<sup>2</sup>

Neither the stay nor the alternative request for an enlargement of time will prejudice the parties or result in undue delay. The United States inquired on several occasions, beginning on February 19, 2018, with opposing counsel regarding whether LIHA opposed either request. Opposing counsel stated that he would confer with his client and provide a response by the end of last week. As of today, opposing counsel indicated that he was still inquiring as to LIHA's position.

## **BACKGROUND**

### **A. This Case**

On October 16, 2017, LIHA filed suit seeking approximately \$25 million in money damages under the risk corridors program, 42 U.S.C. § 18062, created by the Patient Protection and Affordable Care Act (ACA). Docket No. 1. On December 7, 2018, this Court granted the United States an unopposed enlargement of time, until March 15, 2018, to respond to the complaint. Our motion was based upon, “the [then] upcoming oral argument in the *Land of Lincoln* and *Moda* appeals,” *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224 (Fed. Cir.); *Moda Health Plan, Inc. v. United States*, No. 17-1994 (Fed. Cir.), and upon recognition that, absent the enlargement, this Court would be considering concurrently the same issues as those before the Federal Circuit and that any decision by the Federal Circuit would almost certainly require additional briefing in this Court. Docket No. 6 at 4. On December 8, 2017, this Court granted that motion. Docket No. 7. On February 8, 2018, LIHA filed a motion for partial summary judgment on two of its five risk corridors counts.

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<sup>2</sup> We also request that the time for our response to the amended complaint be enlarged from March 15, 2018 as previously ordered, Docket No. 7, to May 8, 2018.

Docket No. 15. That same day, LIHA filed an amended complaint, Docket No. 14, adding counts for CSR payments under 42 U.S.C. § 18071.

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

This case is one of 50 cases filed in the last 21 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. In *Molina Healthcare v. United States*, this Court entered partial summary judgment in the plaintiffs' favor, 133 Fed. Cl. 14 (2017); further proceedings in *Molina* 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>3</sup>

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<sup>3</sup> There are four cases, in addition to this case, pending before the Court seeking recovery of

## 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.

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CSR payments under the ACA. *See Common Ground v. United States*, No. 17-877 (Sweeney, J.); *Maine Community Health Options v. United States*, No. 17-2057 (Sweeney, J.) (“*Maine III*”); *Sanford Health Plan v. United States*, No. 18-136 (Firestone, J.) (“*Sanford III*”); *Montana Health Plan v. United States*, No. 18-143 (Kaplan, J.) (“*Montana III*”). *Common Ground* and *Maine III* are stayed; action has not yet proceeded in the other cases.

**II. This Court Should Stay Proceedings Pending The Federal Circuit’s Decisions In *Land of Lincoln* and *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.

If this Court requires the United States to respond to LIHA’s motion for summary judgment on March 8, 2018, 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 LIHA raises 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 LIHA.

**III. Alternatively, The Court Should Extend the United States’ Time To Respond To The Motion For Partial Summary Judgment And the Amended Complaint**

In the alternative, the United States respectfully requests an extension of time to respond to the motion for partial summary judgment and to the amended complaint. As explained above, and as this Court and many other members of this Court have recognized, the issues in LIHA’s motion are substantially similar to the issues that have been taken under submission by the Federal Circuit in *Land of Lincoln* and *Moda*. *E.g.*, *First Priority Life Ins. Co., Inc. v. United States*, No. 16-587 (Wolski, J.) (Docket No. 44) (“legal issues nearly identical”); *EmblemHealth*, Stay Order of July 26, 2017 (Wheeler, J.) (Docket No. 7). 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.

In addition, we seek an enlargement of the time for the Government's response to the amended complaint. This Court enlarged the time for responding to the original complaint to March 15, 2018. The amended complaint includes the CSR claims, which are entirely new theories of recovery that have never 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 61 days, up to and including May 8, 2018, which would make the response to the amended complaint due concurrent with the date for response to the motion for partial summary judgment.

#### **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 LIHA's motion for partial summary judgment by 61 days, until May 8, 2018, and extend the deadline for our response to LIHA's amended complaint to the same date, May 8, 2018.

Dated: February 26, 2017

Respectfully submitted,

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