

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS & BLUE SHIELD)	
OF VERMONT,)	
)	No. 18-373 C
Plaintiff,)	(Judge Horn)
)	
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

UNITED STATES' UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME TO RESPOND TO THE COMPLAINT

Pursuant to Rule 6.1 of the Rules of the United States Court of Federal Claims, defendant, the United States, respectfully requests an enlargement of time of 31 days to respond to the complaint. The Government's response is currently due June 29, 2018. If our motion is granted, our response would be due July 30, 2018. In May, we requested a 64-day enlargement of time to respond to the complaint, and the Court granted us a 52-day enlargement. That request predated recent rulings by the United States Court of Appeals for the Federal Circuit, in different cases involving another Affordable Care Act (ACA) program.

Counsel for the Government contacted counsel for the plaintiff regarding this request. Counsel for plaintiff indicated that plaintiff does not oppose this request for additional time, but will not consent to further extensions. In light of the above, plaintiff requests a 31-day extension of its deadline set forth in the Court's May 30 Order, to and including August 30, 2018.

Our request for additional time to file a response to plaintiff's complaint is necessary to allow us to fully review and analyze the June 14, 2018 decisions by the Federal Circuit in *Moda Health Plan, Inc. v. United States*, No. 17-1994 and *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224. In the *Moda* decision, the Federal Circuit ruled in favor of the

Government and held that the Government was not liable for ACA section 1342 risk corridors payments under either the statutory or contract theories advanced by the plaintiff. In *Land of Lincoln*, the Court adopted the holding from *Moda*, and also held that the Government was not liable for any payments under a takings theory.

While the impact of these rulings is clear with respect to risk corridors payments, the Government needs additional time to analyze the impact of these decisions on cases—such as this one—which seek to recover cost-sharing reduction (CSR) payments pursuant to section 1402 of the ACA. Given the breadth, complexity, and potential financial impact of the CSR cases, a determination as to the legal positions and appropriate course of action to be taken in these matters necessarily involves scrutiny within and among the highest levels of the Department of Justice, including the Office of the Assistant Attorney General and the Office of the Solicitor General, as well as the Departments of Health & Human Services and the Treasury.

Granting the United States an additional 31 days to respond to the complaint will afford us the time needed to engage in these internal deliberations, and to then subsequently prepare a response to plaintiff's complaint. Additionally, an enlargement would provide us time to consider whether, in light of the Federal Circuit's ruling, it is appropriate to propose to the Court additional case management procedures that would allow the Court as a whole to most effectively deploy its scarce resources to resolve the CSR matters, including the pending class action before Judge Sweeney and any future cases that may be filed.

For the foregoing reasons, the Government respectfully requests that the Court grant our unopposed motion for a 31-day enlargement of time, until and including July 30, 2018.

Respectfully submitted,

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