

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH ALLIANCE MEDICAL PLANS, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 18-334C
)	Judge Campbell-Smith
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

JOINT STATUS REPORT

Pursuant to the Court’s April 25, 2018 Order, *see* ECF No. 7, plaintiff, Health Alliance Medical Plans, Inc. and defendant, the United States, respectfully submit the following joint status report regarding further proceedings in this case in light of the June 14, 2018 decisions of the United States Court of Appeals for the Federal Circuit (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 (attached).

PLAINTIFF’S POSITION

In light of the June 14, 2018 decisions of the Federal Circuit in *Moda* and *Land of Lincoln*, Plaintiff believes that it would be appropriate for the Court to lift the stay in this matter. Plaintiff intends to file a motion for summary judgment on or before July 13, 2018.

GOVERNMENT’S POSITION

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 held that the statutory and contract claims raised by

Lincoln also failed, and additionally 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—that seek to recover cost-sharing reduction (CSR) payments pursuant to section 1402 of the ACA. While we agree with plaintiff that it would be appropriate for the Court to lift the stay in this matter at this time, notwithstanding the fact that risk-corridor plaintiffs may seek further review of the *Moda* and *Land of Lincoln* decisions, the Government needs additional time to assess the effect of these decisions on the CSR litigation. 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.

As it is our understanding that plaintiff intends to file a motion for summary judgment by July 13, the Government proposes that its response to plaintiff's complaint and motion for summary judgment be due by September 14, 2018. Granting the United States approximately 60 days from the time that plaintiff plans to file a motion for summary judgment, will afford us the time needed to engage in these internal deliberations, and to then subsequently prepare a response to plaintiff's complaint and the motion for summary judgment that it intends to file. Additionally, an enlargement would provide the Government 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.

Respectfully submitted,

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