

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LOCAL INITIATIVE HEALTH AUTHORITY )  
 FOR LOS ANGELES COUNTY, d/b/a L.A. )  
 CARE HEALTH PLAN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )  
 \_\_\_\_\_)

No. 17-1542C  
 Judge Wheeler

**PLAINTIFF’S OPPOSITION TO UNITED STATES’ MOTION TO STAY PROCEEDINGS, AND PARTIAL OPPOSITION TO UNITED STATES’ ALTERNATIVE MOTION FOR EXTENSION OF TIME TO RESPOND**

Plaintiff L.A. Care Health Plan (“L.A. Care”) respectfully opposes the United States’ motion to stay Plaintiff’s action seeking money damages for the Government’s failure to make the millions of dollars in risk corridors and advance Cost-Sharing Reduction (“CSR”) payments that are owed to L.A. Care. While Plaintiff consents to a 32-day extension of time for Defendant to respond to L.A. Care’s Amended Complaint (ECF No. 14) and Motion for Partial Summary Judgment (ECF No. 15), up to and including Monday, April 9, 2018, for the reasons stated below L.A. Care respectfully opposes Defendant’s proposed extension to May 8, 2018.

**I. DEFENDANT DOES NOT SATISFY ITS BURDEN FOR A STAY UNDER GOVERNING CASE LAW**

This Court has broad discretion to stay a case, but that discretion “is not ... without bounds.” *Cherokee Nation of Okla. v. United States*, 124 F.3d 1413, 1416 (Fed. Cir. 1997). A stay should be granted only if the proponent of the stay – here, Defendant – satisfies its burden of establishing that the stay is necessary. *See St. Bernard Par. Gov’t v. United States*, 99 Fed. Cl. 765, 771 (2011). If the requested stay lacks a definite end date – Defendant’s request here is

indefinite, because it is unknown when the Federal Circuit will resolve *Lincoln* and *Moda*<sup>1</sup>– then the movant must show a “pressing need” for the stay. *Cherokee Nation* at 1416. It must further show that the “balance [of] interests favoring a stay” outweighs the other party’s opposing interests, being mindful that “[o]verarching this balancing is the court’s paramount obligation to exercise jurisdiction timely in cases properly before it.” *Id.*

## **II. THE AMENDED COMPLAINT RAISES ISSUES BEYOND RISK CORRIDORS**

First, L.A. Care’s Amended Complaint raises issues beyond the risk corridors payments that this Court has already acknowledged are owed to eligible QHPs under the ACA and implied-in-fact contracts. *See Molina*, 133 Fed. Cl. 14 (2017) (Wheeler, J.); *Moda*, 130 Fed. Cl. 436 (2017) (Wheeler, J.). L.A. Care also seeks relief for millions of dollars in monthly advance CSR payments that the Government recently decided to stop paying to L.A. Care and other QHPs in violation of Defendant’s obligations under money-mandating statute and contract. While there may be overlap with the risk corridors issues that this Court already has resolved in the insurers’ favor in *Moda* and *Molina*, some of the issues are different. For example, unlike in the risk corridors cases, with respect to CSRs there are no issues or arguments regarding “budget neutrality” or whether Congress attempted to limit the underlying CSR statutory payment obligation or CSR funding through appropriations riders or otherwise. Accordingly, L.A. Care’s interests in pursuing its CSR claims would be prejudiced if this Court were to stay this case pending the Federal Circuit’s decision on *Lincoln* and *Moda*, a pair of consolidated risk corridors appeals.

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<sup>1</sup> The Federal Circuit has designated as related cases to *Lincoln* and *Moda* the risk corridors appeals in *Blue Cross and Blue Shield of North Carolina* (Griggsby, J.) and *Maine Health Options* (Bruggink, J.). While *BCBSNC* and *Maine* are fully briefed, they have not yet been set for oral argument before the Federal Circuit. These designations may further delay the already unknown publication date of any *Lincoln/Moda* decision.

**III. THIS COURT'S PRECEDENT IS TO DENY DEFENDANT'S MOTIONS TO STAY THAT – LIKE HERE – ARE OPPOSED**

Given its burden under the case law, Defendant's choice in citing *EmblemHealth* – in which the motion to stay was *unopposed* (see *EmblemHealth*, No. 17-703C, ECF No. 6 (July 25, 2017)) – is curious. It is more applicable to consider this Court's *denials* of Defendant's motions to stay in risk corridors cases that – as here – were opposed by the plaintiff-insurers.

For example, in this Court's Procedural Order regarding briefing on the plaintiff's motion for partial summary judgment in *Molina*, the Court wrote:

Given *Molina*'s opposition, the Court declines to issue a stay of proceedings in this case. *Molina*, like all plaintiffs, is entitled to move forward with a claim properly filed in this Court. The existence and status of other risk corridor cases should not impede *Molina*'s ability to pursue relief.

*Molina*, No. 17-97C, ECF No. 10 (Mar. 24, 2017) (Wheeler, J.). The Court subsequently awarded summary judgment and money damages for *Molina* on the same money-mandating statutory and implied-in-fact contract claims for which L.A. Care moves for summary judgment, while *Lincoln* and *Moda* were pending before the Federal Circuit. See *Molina*, 133 Fed. Cl. 14 (2017) (Wheeler, J.).<sup>2</sup> There is no material difference in the circumstances here.

Additionally, in *Moda*, this Court denied Defendant's motion to stay, which the plaintiff had opposed. In its Opinion and Order Denying Defendant's Motion to Stay, this Court wrote that "lower courts must be free to consider similar facts and reach independent conclusions—otherwise, there would be no need for an appellate court to harmonize the law within a circuit." *Moda*, No. 16-649C, ECF No. 12 (Nov. 28, 2016) (Wheeler, J.). At that time, Defendant argued that *Moda* should be stayed pending the outcome of the *Lincoln* appeal. Had this Court stayed

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<sup>2</sup> Subsequent to obtaining summary judgment, the plaintiff in *Molina* joined with Defendant in requesting a stay "to preserve the status quo and both parties' rights with respect to Plaintiffs' remaining claim in Count IV [regarding a breach of an implied covenant of good faith and fair dealing] and potential claims for benefit year 2016." *Molina*, No. 17-97C, ECF No. 26 (Aug. 25, 2017).

*Moda*, then *Moda* currently would not be a companion case to *Lincoln* before the Federal Circuit. L.A. Care should receive the same treatment regarding its risk corridors claims and arguments.

**IV. THE PARTIES' ARGUMENTS HAVE EVOLVED SINCE LINCOLN AND MODA**

Regarding *EmblemHealth*, Defendant highlights this Court's observation in its Order granting the unopposed stay there that "the issues presented in [EmblemHealth's] complaint are substantially similar to the issues in" *Lincoln* and *Moda*. *EmblemHealth*, No. 17-703C, ECF No. 7 (July 26, 2017) (Wheeler, J.); see Def.'s Mot. to Stay Proceedings, ECF No. 16, at 1 (quoting same).

This Court, however, has also observed that, since *Moda*, the various risk corridors plaintiffs and Defendant "have introduced new cases and more finely-tuned arguments to support their respective positions." *Molina*, 133 Fed. Cl. 14, 28 (2017) (Wheeler, J.); see also *id.* at 35 ("[I]n the present case, the Government has developed new arguments for the proposition that Section 1342 did not obligate the Government to make full risk corridor payments."). Those new arguments and positions may not have been argued to the Federal Circuit in *Lincoln* and *Moda*, and the Federal Circuit may not address them in its decision. The Federal Circuit may also benefit from this Court's further consideration of the parties' refined arguments.

Defendant's contention that L.A. Care's case presents "the very same legal issues, in the very same factual circumstances, as" *Lincoln* and *Moda*, is incorrect. Def.'s Mot. to Stay Proceedings, ECF No. 16, at 5.<sup>3</sup> While the subject matter is the same, the arguments have evolved.

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<sup>3</sup> It is also incorrect for Defendant to assert that "[n]o Court of Federal Claims risk corridors case is currently being briefed on the issues pending in ... *Lincoln* and *Moda*." Def.'s Mot. to Stay Proceedings, ECF No. 16, at 3. This case is currently being briefed on risk corridors issues that are similar to *Moda*, but which present additional arguments and refined positions by the parties.

V. **BECAUSE DELAY HARMS PLAINTIFF, IT OPPOSES ANY STAY, BUT CONSENTS TO A FAIR EXTENSION FOR DEFENDANT'S RESPONSE**

Finally, any delay compounds the injury to L.A. Care because pre-judgment interest is not available here. Although L.A. Care believes that it will ultimately obtain summary judgment from the Court for its risk corridors and CSR claims, the longer it takes to obtain those judgments, the greater the harm caused by lack of access to the funds that the Government has repeatedly admitted it owes to L.A. Care.

L.A. Care thus opposes both an indefinite stay of this case, as well as a protracted extension of the deadline for Defendant to respond to the Amended Complaint and Motion for Partial Summary Judgment. Truly, Defendant should not be seeking any delay in responding to the Motion for Partial Summary Judgment – which only addresses risk corridors – and the risk corridors portions of the Amended Complaint. If, as Defendant asserts, all risk corridors cases are identical, then Defendant requires no additional time to address L.A. Care's risk corridors claims – Defendant has already briefed and argued its position on risk corridors many times to both this Court and the Federal Circuit.

Recognizing, however, that for efficiency purposes the responses to the Motion and the Amended Complaint should be combined, and that potentially novel issues are raised with the CSR claims in the Amended Complaint, L.A. Care is willing to consent to an additional month, to Monday, April 9, 2018, for the United States to respond to both the Amended Complaint and the Motion. Defendant can thus focus its efforts, during the additional 32 days, on the “extensive consultation with the Department of Health and Human Services and within the Department of Justice” regarding the CSR issue on which U.S. Attorney General Sessions has already issued a legal opinion (*see* Am. Compl. ¶¶ 262 to 266 & Ex. 67) and thus is already familiar to the highest levels of the Department of Justice. Def.'s Mot. to Stay Proceedings, ECF No. 16, at 6.

**VI. CONCLUSION**

A stay is not necessary here, Defendant cannot show any “pressing need” for a stay, and the balance of interests weigh in L.A. Care’s favor of proceeding with its risk corridors and CSR claims in this case. For these reasons, L.A. Care respectfully requests that the Court deny Defendant’s request to stay this case, and permit Defendant until Monday, April 9, 2018 – but not beyond that date – to respond to both L.A. Care’s Amended Complaint (ECF No. 14) and Motion for Partial Summary Judgment (ECF No. 15).

Dated: March 1, 2018

*Of Counsel:*

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Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2018, a copy of the foregoing Plaintiff's Opposition to United States' Motion to Stay Proceedings, and Partial Opposition to United States' Alternative Motion for Extension of Time to Respond, was filed electronically with the Court's Electronic Case Filing (ECF) system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

s/ Lawrence S. Sher

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Lawrence S. Sher

*Counsel for Plaintiff*