

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MONTANA HEALTH CO-OP,)	
)	
Plaintiff,)	
)	
v.)	No. 18-143
)	Judge Kaplan
THE UNITED STATES,)	
)	
Defendant.)	
)	

DEFENDANT’S MOTION FOR CLARIFICATION OF THE COURT’S MARCH 23, 2018 ORDER

Pursuant to Rules 7 and 15(d) of the Rules of the United States Court of Federal Claims (RCFC), defendant, the United States, respectfully requests that the Court clarify its March 23, 2018 order granting our March 22, 2018 motion for stay. In our motion we requested a stay of these proceedings pending a decision of the United States Court of Appeals for the Federal Circuit in *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224 and/or *Moda Health Plan, Inc. v. United States*, No. 17-1994. In the alternative, we sought a 60-day enlargement of time, until June 1, 2018, to respond to the complaint. The Court’s March 23 order provided in relevant part:

Before the Court is the government’s unopposed motion, filed March 22, 2018, to stay all proceedings in this case until the Court of Appeals for the Federal Circuit issues a decision in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, or *Moda Health Plan v. United States*, No. 17-1994. Defendant also requests a 60-day enlargement of time to respond to plaintiff’s complaint. Defendant’s motion is GRANTED. Proceedings in this case are STAYED. Defendant shall file its response to plaintiff’s complaint on or before June 1, 2018.

March 23, 2018 Order (ECF No. 7).

We seek to clarify the relief provided by the Court's order. The primary relief that we sought in our motion was for all proceedings in this case to be stayed, to await guidance from the Federal Circuit in the *Land of Lincoln* and/or *Moda* cases, which would inform our response to the complaint here. Alternatively, if the Court were not inclined to stay the proceedings pending the Federal Circuit's decisions, we requested an additional 60 days to respond to plaintiff's complaint. We requested a stay and an enlargement as two distinct, alternative, forms of relief because from our perspective a stay would have the effect of suspending the Government's obligation to respond to the complaint pending a further order from the Court following the Federal Circuit's decisions, thus obviating the need to request an enlargement for that purpose at this time. However, under the Court's current order, though the proceedings are stayed, the Government is still obligated to respond to the complaint by June 1, 2018, regardless of whether or when the Federal Circuit issues its decisions in *Land of Lincoln* and/or *Moda*. We therefore respectfully request clarification as to the Government's obligation to respond to the complaint even though these proceedings have been stayed pending a decision by the Federal Circuit.

Additionally, we note that, in granting both our motion for stay and the alternative request for 60 additional days in the Court's March 23, 2018 order, the Court stated that the motion for stay was unopposed. As noted in our motion, plaintiff's counsel represented that plaintiff was opposed to a stay of proceedings, but was not opposed to our alternative request for an additional 60 days to respond to plaintiff's complaint. Thus, we respectfully clarify that the stay portion of our motion was opposed.

On March 27, 2018, we consulted with counsel for plaintiff, who states that plaintiff consents to the extension but not to a stay.

For these reasons, we respectfully request that the Court clarify the scope of its March 23, 2018 order.

Respectfully submitted,

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