

In the United States Court of Federal Claims

No. 16-259C
(Filed: July 11, 2017)

HEALTH REPUBLIC INSURANCE *
COMPANY, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

The court conducted a telephonic status conference in the above-captioned case on July 11, 2017, to discuss (1) staying proceedings on the parties’ cross-motions for summary judgment pending the resolution of the appeals in one or more of the risk corridors cases currently before the United States Court of Appeals for the Federal Circuit (“Federal Circuit”),¹ and (2) how to proceed with respect defendant’s objections to the inclusion in the class of twenty-six health insurers and one individual who submitted opt-in forms.

With respect to the first topic, plaintiff filed a memorandum on July 5, 2017, indicating its objections to staying proceedings on the parties’ cross-motions for summary judgment. During the status conference, defendant noted that it did not file a motion to stay proceedings, but believed that a stay of proceedings made sense. The court ruled that a stay of proceedings on the parties’ cross-motions for summary judgment was in the interest of judicial economy, for the following reasons:

- There are currently three appeals before the Federal Circuit that present the central issue posed in this case—whether the government is statutorily obligated to pay risk corridors payments in full on an annual basis. It is extremely unlikely that the Federal Circuit will not rule on this issue in one of those appeals.

¹ Land of Lincoln Mut. Health Ins. Co. v. United States, No. 2017-1224; Moda Health Plan, Inc. v. United States, No. 2017-1994; Blue Cross & Blue Shield of N.C. v. United States, No. 2017-2154.

- The three decisions from the United States Court of Federal Claims underlying the appeals will enable the Federal Circuit to review a variety of analyses of the parties' claims, and if plaintiff finds these analyses inadequate, it is free to seek leave to file an amicus curiae brief with the Federal Circuit.
- Plaintiff would be protected by a stay of proceedings if, hypothetically, the court entered judgment against plaintiff and the Federal Circuit subsequently concluded, in one of the pending appeals, that insurers could prevail only on a contractual or takings theory. In such circumstances, the doctrine of res judicata would likely prevent plaintiff from returning to this court and seeking compensation based on the successful contractual or takings theory because it could have, but failed to, raise such a claim when it filed the instant action.
- A stay of proceedings would not be indefinite, because given the status of briefing in the appeals before the Federal Circuit,² one or more decisions in those appeals may issue by early next year.

Accordingly, the court **STAYS** proceedings on the parties' cross-motions for summary judgment pending a decision by the Federal Circuit in Land of Lincoln and/or Moda Health Plan. Within **two weeks** of the Federal Circuit issuing such a decision, the parties shall file a joint status report containing a proposal for further proceedings.

With respect to the second topic, plaintiff indicated that it had confirmed that some of the insurers that submitted an opt-in form did not have claims for 2014 and 2015, that it was gathering information from several other insurers that submitted an opt-in form to determine whether they had claims for 2014 and 2015, and that it determined that an individual who had submitted an opt-in form did not belong in the class. Defendant then indicated that on further review, it discovered that two insurers to which it did not previously object should not be identified as class members. By **no later than Thursday, August 10, 2017**, the parties shall file either (1) a joint status report regarding their efforts to clarify the list of class members or (2) a motion—whether opposed in part or unopposed in its entirety—to remove from the class the insurers and individual who do not meet the class definition.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge

² Briefing in Land of Lincoln concluded on May 22, 2017, briefing in Moda Health Plan, which will be heard by the same merits panel that will hear Land of Lincoln, is due to be completed by September 5, 2017, and briefing in Blue Cross & Blue Shield is currently scheduled to be completed by October 10, 2017.