

In the United States Court of Federal Claims

No. 17-957C

(Filed: July 26, 2018)

DOUG OMMEN, in his capacity as)
Liquidator of CoOpportunity Health, Inc., and)
DAN WATKINS, in his capacity as Special)
Deputy Liquidator of CoOpportunity Health,)
Inc.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES,)
)
Defendant.)
)

ORDER LIFTING STAY

On July 24, 2018, the parties filed a joint status report setting out their views regarding how this case should proceed in light of the decisions by the United States Court of Appeals for the Federal Circuit in *Moda Health Plan, Inc. v. United States*, 892 F.3d 1311 (Fed. Cir. 2018), and *Land of Lincoln Mut. Health Ins. Co. v. United States*, 892 F.3d 1184 (2018). Like *Moda* and *Land of Lincoln*, this case involves contractual and other claims for payments attributable to risk corridors. The basis for plaintiffs’ (“liquidators”) claims are not, however, wholly congruent with those addressed by the court of appeals in *Moda*. In this case, unlike in *Moda* and *Land of Lincoln*, the liquidators also claim that the government improperly set off risk corridor payments in violation of state and federal law and they challenge regulations for calculating risk adjustment charges on the basis that those regulations are in part arbitrary and capricious.

The differences between this case and *Moda* and *Land of Lincoln* have prompted the liquidators to propose that the stay previously entered in this case should be lifted. The government states that it has no opposition to lift the stay and it asks the court to set terms for the case to proceed. The parties do not agree on the nature and scope of further proceedings, however. In part, that disagreement arises because the litigation over risk corridor payments is not yet finished, given the prospect of a petition to the Federal Circuit for reconsideration en banc, and the likelihood of petitions for certiorari to the United States Supreme Court.

In the circumstances, the court adopts the parties' suggestions in the joint status report that the stay be lifted and that a schedule be established for amendment of the complaint and for the government's response.

Accordingly, the stay entered on September 5, 2017 is LIFTED. The following schedule shall apply to the reopened proceedings:

Event	Deadline
Plaintiffs' submission of an amended complaint	August 27, 2018
Defendant's response to an amended complaint, or to the original complaint if no amended complaint is filed	Sixty days after an amended complaint is filed or October 26, 2018, whichever is later.

It is so **ORDERED**.

s/ Charles F. Lettow
Charles F. Lettow
Senior Judge