

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FIRST PRIORITY LIFE INSURANCE	)	
COMPANY, INC., HIGHMARK INC. F/K/A	)	
HIGHMARK HEALTH SERVICES, HM	)	
HEALTH INSURANCE COMPANY D/B/A	)	
HIGHMARK HEALTH INSURANCE	)	
COMPANY, HIGHMARK BCBSD INC.,	)	No. 16-587C
HIGHMARK WEST VIRGINIA INC., AND	)	
HIGHMARK SELECT RESOURCES INC.,	)	
	)	Judge Wolski
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
<hr/>		

**JOINT STATUS REPORT AND REQUEST TO CONTINUE STAY OF PROCEEDINGS**

On December 21, 2017, the Court stayed this case pending the Federal Circuit’s decisions in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, and *Moda Health Plan, Inc. v. United States*, No. 17-1994. Dkt. 44. As numerous judges of this Court have recognized, the risk corridors issues involved in *Land of Lincoln* and *Moda* are nearly identical or substantially similar to those involved in the 50 or so other risk corridors cases pending before this Court seeking recovery of additional payments under the risk corridors program created by section 1342 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18062.

The Court required the parties to submit a status report no later than 14 days following the *Land of Lincoln* and *Moda* decisions. Dkt. 44. On June 14, 2018, the Federal Circuit decided *Land of Lincoln* and *Moda*. No. 17-1224, Dkt. 166-1; No. 17-1994, Dkt. 87-1.

The Federal Circuit reversed the judgment in the insurer's favor in *Moda* and affirmed the judgment in favor of the United States in *Land of Lincoln*. The Federal Circuit rejected the insurers' claims for additional payments under the risk corridors program based upon statutory, contract and takings theories. *Moda*, No. 17-1994, Dkt. 87-1 at 35; *Land of Lincoln*, No. 17-1224, Dkt. 166-1 at 3. It is defendant's position that the Federal Circuit's rulings govern this case and warrant judgment for the United States. It is plaintiffs' position that the majority's ruling in *Moda* and *Land of Lincoln* as to the interpretation and effect of the appropriations riders was erroneous and should be reversed. However, plaintiffs have requested that the United States consent to the continuation of the stay now in effect through the time provided in the appellate court's rules for the filing of a petition for rehearing and/or rehearing en banc, Fed Cir. R. 35, 40, and through the resolution of any petition for a writ of certiorari.

In order to conserve the resources of the parties and this Court, the parties respectfully jointly request that the Court continue the stay in this case until the Federal Circuit has issued its final mandates in *Moda* and *Land of Lincoln* and through the time for the final disposition of any petition for a writ of certiorari that may be filed before the United States Supreme Court. The parties propose that they be required to file a status report with this Court within 15 days after the judgments in *Moda* and *Land of Lincoln* have become final and non-appealable.

Dated: June 27, 2018

/s/ Lawrence S. Sher  
Lawrence S. Sher (D.C. Bar No. 430469)  
**REED SMITH LLP**  
1301 K Street NW  
Suite 1000-East Tower  
Washington, DC 20005  
Telephone: 202.414.9200  
Facsimile: 202.414.9299  
Email: lsher@reedsmith.com

*Of Counsel:*

Conor M. Shaffer (PA Bar No. 314474)  
**REED SMITH LLP**  
Reed Smith Centre  
225 Fifth Avenue, Suite 1200  
Pittsburgh, PA 15222  
Telephone: 412.288.3131  
Facsimile: 412.288.3063  
Email: cshaffer@reedsmith.com

*Counsel for the Molina Plaintiffs*

Respectfully submitted,

CHAD A. READLER  
Acting Assistant Attorney General

RUTH A. HARVEY  
Director  
Commercial Litigation Branch

KIRK T. MANHARDT  
Deputy Director

/s/ Marc S. Sacks  
MARC S. SACKS  
FRANCES M. MCLAUGHLIN  
TERRANCE A. MEBANE  
PHILLIP M. SELIGMAN  
SHANE HUANG  
United States Department of Justice  
Civil Division, Commercial Litigation Branch  
Telephone: (202) 307-1104  
Facsimile: (202) 307-0494  
marcus.s.sacks@usdoj.gov

*Attorneys for the United States of America*