

In the United States Court of Federal Claims

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NANCY G. ATKINS, in her capacity as)		
Liquidator of Kentucky Health Cooperative,)		
Inc.)		
)		
Plaintiff,)	No. 17-906C	
)	(Filed: December 1, 2017)	
)		
v.)		
)		
THE UNITED STATES OF AMERICA,)		
)		
Defendant.)		
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ORDER

Under the current schedule, the parties’ cross-motions for summary judgment will be fully briefed on December 5, 2017. In the meantime, on November 17, 2017, the Federal Circuit set Land of Lincoln Mutual Health Ins. Co. v. United States, No. 2017-1224, and Moda Health Plan, Inc. v. United States, No. 2017-1994 for oral argument on January 10, 2017.

The government previously filed a motion seeking a stay of this case pending the Federal Circuit’s decision in Land of Lincoln. ECF No. 8. Plaintiff opposed the motion and the Court denied it on September 11, 2017. ECF No. 11. The Court now has the benefit of the parties’ briefs in this case as well as the many briefs filed in the court of appeals in Land of Lincoln and Moda Health Plan. It has also had the opportunity to carefully review the decisions of Judge Lettow in Land of Lincoln and Judge Wheeler in Moda Health Plan. As a result, it is now clear to this Court that the important legal issues presented in this case will almost certainly be resolved by the court of appeals in Land of Lincoln and Moda Health Plan. It is also clear that the court of appeals has before it a variety of perspectives on how those issues should be decided. And this Court has concluded based on its study of the briefs and opinions that whether it agreed with Judge Lettow or with Judge Wheeler it is unlikely that its decision would add much to either’s thorough analyses of the issues presented.

Further, in light of the upcoming holidays as well as the Court’s schedule, the Court would not be able to hold oral argument in this case before early January. In the meantime, as noted, the court of appeals will be holding oral argument on January 10 in Land of Lincoln and Moda Health Plan. Thus, absent a stay of the proceedings here, the Court would be engaged in a review of the legal issues presented in this case simultaneously with the court of appeals’ review of the identical issues. Therefore, even if the Court had a different perspective to contribute to the court of appeals’ decisionmaking, it would likely come too late for the court of appeals’ consideration.

As the Court observed in its previous order denying the government’s motion for a stay, its power to stay a case “springs from [its] inherent authority . . . to control the disposition of its cases,” and “[w]hen and how to stay proceedings is within [its] sound discretion.” Cherokee Nation of Okla. v. United States, 124 F.3d 1413, 1416 (Fed. Cir. 1997). The Court has concluded based on the foregoing that moving ahead in this case would not represent a sound use of judicial resources. Accordingly, this case is **STAYED** pending the Federal Circuit’s decision in Land of Lincoln and Moda Health Plan. The parties shall file a joint status report within 30 days after the issuance of the mandate in those cases, proposing further proceedings in this case.

IT IS SO ORDERED.

s/ Elaine D. Kaplan

ELAINE D. KAPLAN
Judge