

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

AETNA HEALTH, INC., et al.,	:	
	:	Case No. 19-1338C
Plaintiffs,	:	
	:	Judge Kaplan
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

THE UNITED STATES’ UNOPPOSED MOTION TO STAY PROCEEDINGS

The United States respectfully moves the Court to stay this action pending a decision by the Supreme Court in the companion cases of *Maine Community Health Options v. United States*, No. 18-1023; *Moda Health Plan, Inc. v. United States*, No. 18-1028; and *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 18-1038. The Supreme Court’s decision is likely to dispose of the Plaintiffs’ complaint in its entirety. Indeed, more than 50 similar cases pending in the Court of Federal Claims are stayed pending the Supreme Court’s decision, including four cases pending before this Court, *Atkins v. United States*, No. 17-906C (Kaplan, J.); *Oregon’s Health CO-OP v. United States*, No. 18-94C (Kaplan, J.); *Affinity Health Plan, Inc. v. United States*, No. 18-110C (Kaplan, J.); *Blue Cross and Blue Shield of Arizona, Inc. v. United States*, No. 18-282C (Kaplan, J.). Plaintiffs do not oppose this request.

BACKGROUND

In February 2016, issuers began filing suit in the Court of Federal Claims, seeking risk corridors payments in excess of their pro rata share. In June 2018, the Court of Appeals for the Federal Circuit held that issuers “failed to state a viable claim of additional payments under the risk corridors program under either a statutory or contract theory.” *Moda*, 892 F.3d 1311, 1331

(Fed. Cir. 2018). *See also Land of Lincoln Mut. Health Ins. Co. v. United States*, 892 F.3d 1184 (Fed. Cir. 2018) (same); *Maine Cmty. Health Options v. United States*, 729 Fed. Appx. 939 (Fed. Cir. 2018) (same); *Blue Cross and Blue Shield of N.C. v. United States*, 131 Fed. Appx. 939 (Fed. Cir. 2018) (same). Issuers petitioned the Supreme Court for review, and on June 24, 2019, the Supreme Court granted certiorari. The Supreme Court also consolidated the cases for briefing and oral argument on the docket on *Maine Community Health Options*, No. 18-1023. The other 50 cases seeking risk corridors payments have been stayed pending a decision by the Supreme Court, including four cases pending before this Court.

On August 30, 2019, petitioners filed their briefs in the Supreme Court. The government's response is due October 21, 2019 and argument has been set for December 10, 2019.

On August 30, 2019, Plaintiffs filed this action seeking more than \$312 million in money damages under Section 1342 of the Patient Protection and Affordable Care Act ("ACA"), 42 U.S.C. § 18062, and 45 C.F.R. § 153.510, and for breach of implied-in-fact contract and breach of the implied duty of good faith and fair dealing. Docket No. 1. This is the latest case filed seeking risk corridors payments. The government's response to the Complaint is due October 29, 2019.

ARGUMENT

"It is well established that every trial court has the power to stay its proceedings, which is 'incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *Freeman v. United States*, 83 Fed. Cl. 530, 532 (2008) (citing *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). "Moreover, when and how to stay proceedings is within the sound discretion of the trial

court.” *Id.* (citation and internal punctuation omitted). The Supreme Court has highlighted the conservation of judicial resources as an important reason for a trial court to stay proceedings in any matter pending before it, particularly where the appellate court may resolve issues before the trial court. *Landis*, 299 U.S. at 254-55; *UnionBanCal Corp. & Subsidiaries v. United States*, 93 Fed. Cl. 166, 167 (2010) (“The orderly course of justice and judicial economy is served when granting a stay simplifies the ‘issues, proof, and questions of law which could be expected to result from a stay.’”) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962)). Indeed, the Supreme Court also recognized that in cases of great complexity and significance, like the risk corridors issues in this case, “the individual may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted,” especially where, as here, a decision by the Supreme Court would “settle” and “simplify” the issues presented. *Landis*, 299 U.S. at 256.

Because the legal issues presented in this case mirror the issues raised in the pending Supreme Court cases, disposition of those cases by the Supreme Court will likely be dispositive. A stay therefore will conserve judicial resources and the resources of both parties by potentially reducing the amount of briefing of issues already pending before the Supreme Court. Accordingly, the United States seeks a stay pending a decision by the Supreme Court in companion cases of *Land of Lincoln*, *Moda Health Plan*, and *Maine Community Health Options*. Within 30 days of a decision, the United States proposes that the parties submit a status report with the Court outlining next steps.

CONCLUSION

For these reasons, the United States respectfully requests that the Court stay this case pending a decision by the Supreme Court.

Dated: September 18, 2019

Respectfully submitted,

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