

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BLUE CROSS AND BLUE SHIELD OF	:	
SOUTH CAROLINA and BLUECHOICE	:	No. 16-1501C
HEALTHPLAN OF SOUTH CAROLINA,	:	
INC.,	:	Judge Griggsby
	:	
Plaintiff,	:	
	:	
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 until at least March 1, 2017, pending further developments in several earlier-filed cases raising similar claims, including *Blue Cross and Blue Shield of North Carolina*, No. 16-651C. Counsel for Blue Cross and Blue Shield of South Carolina and BlueChoice HealthPlan of South Carolina, Inc. (“BCBSSC”) does not oppose this stay of the proceedings.

I. Background

On November 14, 2016, BCBSSC filed this action seeking approximately \$19 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(b), and for Takings and breach of implied contract. Docket No. 1. The United States’ response to the Complaint is currently due on January 13, 2017.

Thirteen other cases have been filed in this Court seeking relief under identical and related legal theories to those asserted by BCBSSC. *See Health Republic Ins. Co. v. United States*, No. 16-259C (Sweeney, J.); *First Priority Life Ins. Co. v. United States*, No. 16-587C

(Wolski, J.); *Blue Cross and Blue Shield of North Carolina v. United States*, No. 16-651C (Griggsby, J.); *Moda Health Plan, Inc. v. United States*, No. 16-649C (Wheeler, J.); *Land of Lincoln Mutual Health Ins. Co. v. United States*, No. 16-744C (Lettow, J.); *Maine Cmty. Health Options v. United States*, No. 16-967C (Merow, J.); *New Mexico Health Connections v. United States*, No. 16-1199C (Bruggink, J.); *BCBSM, Inc. v. United States*, No. 16-1253C (Coster Williams, J.); *Blue Cross of Idaho Health Service, Inc. v. United States*, No. 16-1384C (Lettow, J.); *Minuteman Health Inc. v. United States*, No. 16-1418C (Griggsby, J.); *Montana Health CO-OP v. United States*, No. 16-1427C (Wolski, J.); *Alliant Health Plans, Inc. v. United States*, No. 16-1491C (Braden, J.); *Neighborhood Health Plan, Inc. v. United States*, No. 16-1659C (Bruggink, J.).

These cases involve several technically-detailed provisions of the ACA and raise significant jurisdictional issues as well as complex issues of appropriations law. The undersigned counsel represents the United States in each of these cases, which implicate a total of \$8.3 billion in the 2014 and 2015 benefit years.

On November 10, 2016, this Court entered the first decision in these cases in *Land of Lincoln*, and on November 15, 2016, Land of Lincoln filed a notice of appeal from that judgment. Dispositive motions have been fully briefed and are pending in *Blue Cross and Blue Shield of North Carolina*, *First Priority*, *Moda*, and *Health Republic*, and a motion to certify a class has also been filed in *Health Republic*. Briefing will be complete in *Montana Health* on February 3, 2017. Oral argument in *First Priority* is scheduled for February 7, 2017, and in *Montana Health* for February 10, 2017. In addition, a consensual stay has already been entered in *New Mexico Health Connections*, *Minuteman Health*, *BCBSM*, and *Alliant Health Plans*.

II. A Stay Is Proper and Will Conserve Substantial Resources

“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)).

Because the legal issues presented in this case mirror the issues raised in the earlier-filed cases, the further development of those cases (whether in this Court or on appeal) will be instructive to both parties. 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 multiple judges of this Court.

Accordingly, the United States seeks a time-limited, carefully-monitored stay pending further developments in the earlier-filed cases, including *Blue Cross and Blue Shield of North Carolina* and the appeal in *Land of Lincoln*. The United States proposes that the parties submit status reports every 45 days (or at another appropriate interval acceptable to the Court) beginning March 1, 2017 in order to closely monitor the continued utility of the stay.

III. Conclusion

For these reasons, the United States, with BCBSSC's consent, respectfully requests that the Court stay this case pending further development of the earlier-filed cases. In the alternative, the United States requests an extension, up to and including March 1, 2017, to respond the Complaint. BCBSSC does not oppose either of the alternative requests.

Dated: December 28, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December 2016, a copy of the foregoing, *The United States' Unopposed Motion to Stay Proceedings*, was filed electronically with the Court's Electronic Case Filing (ECF) system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

/s/ Terrance A. Mebane
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