

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

<b>NEIGHBORHOOD HEALTH PLAN INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>No. 16-1659C</b>
	)	
<b>v.</b>	)	
	)	<b>Judge Smith</b>
<b>THE UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr/>	)	

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

On May 4, 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. 12. As numerous judges of this Court have recognized, the issues involved in *Land of Lincoln* and *Moda* are nearly identical or substantially similar to those involved in the 50 or so other cases before this Court, such as this one, in which health insurance companies claim that they are entitled to additional payments under the risk corridors program created by section 1342 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18062. In all, insurers seek to recover approximately \$12.3 billion from the United States.

The Court required the parties to submit a status report no later than 14 days following the *Land of Lincoln* and *Moda* decisions. Dkt. 12. 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. However, plaintiff has 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 request that the Court continue the stay in this case until the Federal Circuit has issued its mandates in *Moda* and *Land of Lincoln* and through the time for the 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 25, 2018

Respectfully submitted,

/s/ William F. Sinnott .

William F. Sinnott  
Massachusetts Bar No: 547423  
David A. Chorney  
Massachusetts Bar No: 694859  
Barrett & Singal, P.C.  
One Beacon Street, Suite 1320  
Boston, MA 02108  
Telephone: (617) 720-5090  
wsinnott@barrettsingal.com

*Attorneys for Neighborhood Health Plan,  
Inc.*

CHAD A. READLER  
Acting Assistant Attorney General

RUTH A. HARVEY  
Director  
Commercial Litigation Branch

KIRK T. MANHARDT  
Deputy Director

/s/ Phillip. M. Seligman .

PHILLIP M. SELIGMAN  
TERRANCE A. MEBANE  
FRANCES M. MCLAUGHLIN  
MARC S. SACKS  
SHANE HUANG  
United States Department of Justice  
Civil Division, Commercial Litigation Branch  
Telephone: (202) 307-1105  
Facsimile: (202) 307-0494  
Phillip.Seligman@usdoj.gov

*Attorneys for the United States of America*