

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

LOCAL INITIATIVE HEALTH AUTHORITY	:	
FOR LOS ANGELES COUNTY, d/b/a	:	Case No. 17-1542C
L.A. CARE HEALTH PLAN,	:	
	:	Judge Wheeler
Plaintiff,	:	
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

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**THE UNITED STATES’ REPLY IN SUPPORT OF ITS MOTION TO STAY PROCEEDINGS OR, IN THE ALTERNATIVE, FOR AN ENLARGEMENT OF TIME**

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Although Local Initiative Health Authority for Los Angeles County (“LIHA”) has graciously consented to an extension of 32 days for the United States to respond, these circumstances warrant a stay, or at the very least an extension of 61 days. Indeed, LIHA’s opposition (“Pl. Opp.”) fails to acknowledge that since the Federal Circuit’s May 30, 2017 Order treating *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, and *Moda Health Plan, Inc. v. United States*, No. 17-1994, as companion cases and assigning them to the same panel:

- Judges of the Court of Federal Claims have stayed or held in abeyance every pending risk corridors case.
- The Court entered stays in seven of those cases over the opposition of the plaintiff: *Raymond Farmer v. United States*, No. 17-363C, Dkt. 9 (June 7, 2017); *HPHC Ins. Co. v. United States*, No. 17-87C, Dkt. 19 (July 11, 2017); *Health Republic Ins. Co. v. United States*, No. 16-259C, Dkt. 62 (July 11, 2017); *Health Alliance Med. Plans, Inc. v. United States*, No. 17-653C, Dkt. 14 (July 17, 2017); *Common Ground Healthcare Coop. v.*

*United States*, No. 17-877C, Dkt. 9 (August 11, 2017); *Nancy G. Atkins v. United States*, No. 17-906C, Dkt. 22 (December 1, 2017); and *Montana Health CO-OP v. United States*, No. 17-1298, Dkt. 13 (January 23, 2018).

- The Court has not denied a stay *in even a single case*.

For the same reasons other judges have issued stays pending the Federal Circuit's decisions in *Land of Lincoln* and *Moda* – efficiency and the conservation of judicial and the parties' resources – this Court should enter a stay in this case. LIHA is alone in its quest to brief these issues, rather than wait for the Federal Circuit's decisions. Nothing in LIHA's opposition requires or supports denying a stay.

#### **I. The United States' Stay Request Is Not Indefinite**

As explained in our motion, the United States does not seek an indefinite stay, but rather a stay directly tied to the Federal Circuit's decisions in *Land of Lincoln* and *Moda*. Although LIHA asserts that the United States seeks an indefinite stay, Pl. Opp. at 1-2, the fact that the exact date of the Federal Circuit's decision cannot be currently known does not alter that the event of the decision is certain. Briefing was completed in both cases more than six months ago, and oral argument in both cases was held nearly two months ago. Therefore, a stay tied to the Federal Circuit's decisions in the combined appeals is not indefinite, as multiple judges of this Court have already held. *See Farmer*, Dkt. 9, at 3; *Health Republic*, Dkt. 62, at 2. In contrast, the two denials of stay by this Court in *Moda* and *Molina* were entered before any case had been fully briefed, much less argued, before the Federal Circuit.

#### **II. A Stay Will Conserve the Resources of the Court and the Parties**

LIHA does not (and cannot) dispute that the United States' requested stay will conserve the resources of the Court and the parties, or that the further development of the *Land of Lincoln*

and *Moda* companion cases will be instructive, and potentially dispositive of issues here. Should the parties proceed with litigating this case now, briefing on dispositive motions will indisputably address the *exact same issues* that are on appeal before the Federal Circuit. Once the Federal Circuit rules, any briefing here will be rendered useless, or require additional supplemental briefing to apply the Federal Circuit's legal rulings. A stay, however, avoids that wasted effort and allows the Court to efficiently direct the litigation consistent with precedent established by the Federal Circuit.

While LIHA suggests that there are "new arguments and positions" that may not be before the Federal Circuit and that unspecified arguments have "evolved," it fails to identify a single relevant argument, position, or case that the Federal Circuit is not already considering.

In any event, the United States did not seek a stay in *Health Republic; First Priority Life Ins. Co. v. United States*, No. 16-587C; *Blue Cross and Blue Shield of North Carolina v. United States*, No. 16-651C; or *Land of Lincoln*, recognizing that multiple judges on this Court should be permitted the opportunity to consider and decide plaintiffs' risk corridors' claims. And, indeed, this Court's *Moda* decision will almost certainly, along with *Land of Lincoln*, be the first appeals to be resolved by the Federal Circuit. The United States has, though, consistently sought stays in later-filed cases to avoid the parties having to duplicate arguments that were either on appeal to the Federal Circuit or were fully briefed in this Court. In many of those later-filed cases, plaintiffs agreed to stays, recognizing the futility of expending resources addressing issues that were already before the Federal Circuit.

Finally, as explained above, since the Federal Circuit combined the *Land of Lincoln* and *Moda* appeals, not a single judge of this Court has denied a motion to stay a pending risk corridors case, even when opposed by the plaintiff.

### **III. LIHA Will Not Be Harmed By Any Purported Delay**

LIHA's complaints regarding delay ring hollow. LIHA filed its complaint in October 2017. LIHA did not move for summary judgment until February 8, 2017, nearly four months after filing its original complaint. Moreover, LIHA only moved for summary judgment on two of its seven counts.

Additionally, if the Court denies the requested stay and requires the United States to respond to LIHA's motion for partial summary judgment, the parties would then be briefing issues *at the same time* as the issues are being decided by the Federal Circuit. After the Federal Circuit rules in *Land of Lincoln* and *Moda*, the parties would then have to file supplemental briefs following those decisions, re-briefing these same issues. In contrast, staying the case until the Federal Circuit decides *Land of Lincoln* and *Moda* will avoid that needless waste of resources.

In any event, even if LIHA ultimately prevails and wins a money judgment for risk corridors, it almost certainly will not recover until the cases already before the Federal Circuit are resolved. The question for this Court in considering the stay request is whether the parties and the Court will waste resources on the full scope of this case now, or will prudently allow controlling law to efficiently shape future proceedings. Choosing the former, however, will *not* speed any potential recovery by LIHA.

### **IV. Alternatively, the Court Should Grant a 61-Day Enlargement**

In our motion, the United States, as an alternative to a stay, sought a 61-day enlargement of time to respond to LIHA's motion for partial summary judgment and amended complaint. In its opposition, LIHA consents to an extension of 32 days. Although the government appreciates this concession, an extension of 61 days is more than warranted.

**V. Conclusion**

For these reasons, the United States respectfully requests that the Court stay this case pending further developments in the companion appeals of *Land of Lincoln* and *Moda*. In the alternative, the United States requests an extension of time to May 9, 2018 to respond to LIHA's motion for partial summary judgment and amended complaint.

Dated: March 5, 2018

Respectfully submitted,

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