

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

AFFINITY HEALTH PLAN, INC.,)	
)	
Plaintiff,)	No. 18-110 C
)	
v.)	
)	Judge Kaplan
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
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UNITED STATES' UNOPPOSED MOTION TO STAY PROCEEDINGS

The United States respectfully moves the Court to stay this action until the Federal Circuit issues a decision in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, or *Moda Health Plan, Inc. v. United States*, No. 17-1994, which concern legal issues nearly identical to those presented in this case. The parties will file a joint status report within 15 days of a decision in *Land of Lincoln* or *Moda*, advising the Court whether the parties contend that the stay should be lifted or continued. Plaintiff, Affinity Health Plan, Inc., does not oppose this motion.

On January 23, 2018, plaintiff filed suit seeking approximately \$22 million in money damages under the risk corridors program, 42 U.S.C. § 18062, created by the Patient Protection and Affordable Care Act. Dkt. 1. The United States' response to the complaint is currently due March 26, 2018.

Because this case raises the same legal issues as those brought in 48 other risk corridors cases filed with the Court, and in order to avoid a needless waste of this Court's and the parties' resources, this Court should stay these proceedings.

A. Current Status of Risk Corridors Cases

This case is one of 49 cases filed in the last 21 months in this Court seeking relief under the risk corridors program. *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.); *Moda Health Plan, Inc. v. United States*, No. 16-649C (Wheeler, J.); *Blue Cross and Blue Shield of North Carolina* (Griggsby, J.); *Land of Lincoln Mut. Health Ins. Co. v. United States*, No. 16-744C (Lettow, J.); *Maine Cmty. Health Options v. United States*, No. 16-967C (Bruggink, J.) (“*Maine F*”); *New Mexico Health Connections v. United States*, No. 16-1199C (Smith, J.); *BCBSM, Inc. v. United States*, No. 16-1253C (Coster Williams, J.); *Blue Cross of Idaho Health Serv., 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.) (“*Montana F*”); *Alliant Health Plans, Inc. v. United States*, No. 16-1491C (Braden, J.); *Blue Cross and Blue Shield of South Carolina v. United States*, No. 16-1501C (Griggsby, J.); *Neighborhood Health Plan, Inc. v. United States*, No. 16-1659C (Smith, J.); *Health Net, Inc. v. United States*, No. 16-1722C (Wolski, J.); *HPHC Ins. Co., Inc. v. United States*, No. 17-87C (Griggsby, J.) (“*HPHC F*”); *Medica Health Plans v. United States*, No. 17-94C (Horn, J.); *Blue Cross and Blue Shield of Kansas City v. United States*, No. 17-95C (Braden, J.); *Molina Healthcare v. United States*, No. 17-97C (Wheeler, J.); *Blue Cross and Blue Shield of Alabama v. United States*, No. 17-347C (Campbell-Smith, J.); *BlueCross BlueShield of Tennessee, Inc. v. United States*, No. 17-348C (Horn, J.); *Sanford Health Plan v. United States*, No. 17-357C (Bruggink, J.) (“*Sanford F*”); *Raymond Farmer v. United States*, No. 17-363C (Campbell-Smith, J.); *Health Alliance Med. Plans, Inc. v. United States*, No. 17-653C (Campbell-Smith, J.) (“*Health Alliance F*”); *EmblemHealth, Inc. v. United States*, No. 17-703C (Wheeler, J.); *Common*

Ground Healthcare Coop. v. United States, No. 17-877C (Sweeney, J.); *Nancy G. Atkins v. United States*, No. 17-906C (Kaplan, J.); *Doug Ommen v. United States*, No. 17-957C (Lettow, J.); *Wisconsin Physicians Service Ins. Corp. v. United States*, No. 17-1070C (Braden, J.); *HealthNow New York, Inc. v. United States*, No. 17-1090C (Hodges, J.); *Premiera Blue Cross v. United States*, No. 17-1155C (Griggsby, J.); *Tom Glause v. United States*, No. 17-1157C (Braden, J.); *Maria T. Vullo v. United States*, No. 17-1185C (Wolski, J.); *HealthyCT, Inc. v. United States*, No. 17-1233C (Firestone, J.); *Montana Health CO-OP v. United States*, No. 17-1298C (Wolski, J.) (“*Montana II*”); *QCC Ins. Co. v. United States*, No. 17-1312C (Coster Williams, J.); *Harvard Pilgrim Health Care, Inc. v. United States*, No. 17-1350C (Griggsby, J.) (“*HPHC II*”); *Maine Cmty. Health Options v. United States*, No. 17-1387C (Bruggink, J.) (“*Maine II*”); *Sanford Health Plan v. United States*, No. 17-1432C (Bruggink, J.) (“*Sanford II*”); *Humana, Inc. v. United States*, No. 17-1664C (Firestone, J.); *Local Initiative Health Authority for Los Angeles County v. United States*, No. 17-1542C (Wheeler, J.); *Health Alliance Med. Plans, Inc. v. United States*, No. 17-1759C (Campbell-Smith, J.) (“*Health Alliance II*”); *Scott and White Health Plan v. United States*, No. 17-1850C (Coster Williams, J.); *MDWise Marketplace, Inc. v. United States*, No. 17-1958 C (Coster Williams, J.); *Sendero Health Plans, Inc. v. United States*, No. 17-2048C (Griggsby, J.); *Community Health Choice, Inc. v. United States*, No. 18-5C (Sweeney, J.); *Oregon’s Health CO-OP v. United States*, No. 18-94C (Kaplan, J.); and *First Priority Life Ins. Co. v. United States*, No. 18-96C (Wolski, J.) (*Highmark II*).

These cases collectively implicate more than \$12.3 billion.

Four cases have been decided and are on appeal to the Federal Circuit, and this Court has addressed the risk corridors issue in another case that is not final. The Court decided *Land of Lincoln* in favor of the United States, 129 Fed. Cl. 81 (2016), and *Land of Lincoln* appealed. In

Moda, this Court entered judgment in favor of the plaintiff, 130 Fed. Cl. 436 (2017), and the United States appealed. The Federal Circuit determined that *Land of Lincoln* and *Moda* will be treated as companion cases and oral argument was held on January 10, 2018.

The Court has entered judgment in the government's favor in two other cases: *Blue Cross and Blue Shield of North Carolina*, 131 Fed. Cl. 457 (2017), *appeal pending*, No. 17-2154 (Fed. Cir.); and *Maine I*, 133 Fed. Cl. 1 (2017), *appeal pending*, No. 17-2395 (Fed. Cir.). The *Blue Cross and Blue Shield of North Carolina* and *Maine I* appeals are fully briefed and awaiting argument. Finally, in *Molina*, this Court entered partial summary judgment in the plaintiffs' favor, 133 Fed. Cl. 14 (2017); further proceedings in *Molina* are stayed pending the *Land of Lincoln* and *Moda* appeals. Due to their substantive overlap, almost all of the remaining risk corridors cases are stayed, either for a set time or until after a decision from the Federal Circuit in *Land of Lincoln* and *Moda*.

B. Reasons for Granting the Stay

“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. North American 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 Federal Circuit ruling in *Land of Lincoln* and *Moda* would “settle” or “simplify” the issues presented. *See Landis*, 299 U.S. at 256.

The issues presented in the Complaint substantially overlap and, in many respects, are identical to those issues currently on appeal in *Land of Lincoln* and *Moda*. Any merits briefing in this case would be duplicative of the briefs already considered by the Federal Circuit. Thus, the Federal Circuit would be considering the same issues at the same time as this Court, and any decision by the Federal Circuit would almost certainly require additional rounds of briefing in this Court. The requested stay, however, may obviate the need for this waste of the Court’s and the parties’ resources.

For these reasons, the United States respectfully moves the Court to stay this case until the Federal Circuit issues a decision in *Land of Lincoln* or *Moda*.

Dated: February 14, 2018

Respectfully submitted,

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