

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

BLUE CROSS AND BLUE SHIELD	)	
OF NEBRASKA,	)	
	)	
and	)	
	)	
HAWAI'I MEDICAL SERVICE ASSOCIATION	)	
	)	
Plaintiffs,	)	
on behalf of themselves and all	)	
others similarly situated	)	
	)	Case No. 18-491 C
v.	)	Judge Braden
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

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**UNITED STATES' UNOPPOSED MOTION TO STAY PROCEEDINGS**

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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 some of which overlap with those presented in this case. The parties propose filing a joint status report within 30 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. Plaintiffs, Blue Cross and Blue Shield of Nebraska (BCBS-NE) and Hawai'i Medical Service Association (HMSA), do not oppose this motion.

The Court should stay these proceedings as it has done in the four related cases over which it presides. *See Alliant Health Plans v. United States*, No.16-1491; *Blue Cross and Blue Shield of Kansas City*, No. 17-95C; *Wisconsin Physicians Service Insurance Corp. v. United States*, No. 17-1070C; *Glause v. United States*, No. 17-1157C (Braden, C.J. *passim*)). As recognized by other

judges of this Court, “the analysis set forth in the Federal Circuit’s decisions in *Land of Lincoln* and/or *Moda Health Plan* may provide guidance that would benefit [the Court’s] resolution of the Affordable Care Act cases on its docket.” *See, e.g., Maine Community Health Options v. United States* (“*Maine III*”), No. 17-2057C, (Sweeney, J) (Docket 9). Temporary stays pending resolution of the risk corridors claims in *Land of Lincoln* and *Moda* include cases presenting claims arising out of other Affordable Care Act programs or activities, such as this case. *See, e.g., Ommen v. United States*, No. 17-957 (Lettow, J.) (Docket 12) (“although the setoff and risk adjustment issues that the [plaintiffs] wish to pursue now can be stated independently from the underlying risk corridor claim, those issues are nonetheless related to the risk corridor claim and would benefit by [the Federal Circuit’s] resolution of that claim”); *Local Initiative Health Authority for Los Angeles County v. United States*, No. 17-1542C (Wheeler, J.) (Docket 14) (staying case including claim seeking recovery of cost sharing reduction payments under the ACA because of “the substantial overlap and relatedness of issues between [case] and the cases currently on appeal”).

## **BACKGROUND**

### **A. This Case**

On April 3, 2018, BCBS-NE and HMSA filed suit seeking approximately \$97 million in money damages under the risk corridors program, 42 U.S.C. § 18062, created by the Patient Protection and Affordable Care Act (ACA). Docket No. 1. Plaintiffs also seek approximately \$4 million in damages under the ACA’s risk adjustment program, 42 U.S.C. § 18063. According to Plaintiffs, the risk adjustment claims are based on several independent theories, including that the risk adjustment statute is money-mandating and that the Department of Health and Human Services (HHS) improperly exercised its setoff rights and should have collected the funds at issue

from other insurers and paid them over to Plaintiffs. The United States' response to the complaint is currently due July 2, 2018.

**B. Current Status of Risk Corridors Cases**

This case is one of over 50 cases filed in the last two years in this Court seeking relief under the risk corridors program. These cases collectively implicate more than \$12.3 billion. Four of the cases are on appeal to the Federal Circuit. This 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 has treated *Land of Lincoln* and *Moda* as companion cases and oral argument was held on January 10, 2018.

This 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 Community Health Options v. United States* ("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 have been stayed pending the decisions in *Land of Lincoln* and *Moda*. 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 with the issues before the Federal Circuit in *Land of Lincoln* and *Moda*, the risk corridors cases currently pending before this Court have been stayed or held in abeyance pending those appeals. No Court of Federal Claims risk corridors case is currently proceeding in briefing on the issues pending in *Land of Lincoln* and *Moda*, including

cases that also present risk adjustment and/or setoff-based claims. *See, e.g., Ommen*, No. 17-957; *Vullo v. United States*, No. 17-1185; *HealthyCT, Inc. v. United States*, No. 17-1233.

## ARGUMENT

### I. Standard For Issuing A Stay Of Proceedings

“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)). 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 Federal Circuit would “settle” or “simplify” the issues presented. *See Landis*, 299 U.S. at 256.

**II. This Court Should Stay Proceedings Pending The Federal Circuit's Decisions In *Land of Lincoln* and *Moda***

Because some of the issues presented in this case mirror issues raised before the Federal Circuit in *Land of Lincoln* and *Moda*, the further development of those companion cases on appeal will be instructive, and potentially dispositive of issues here. A stay therefore will conserve judicial resources and the resources of both parties by reducing the amount of briefing of issues before this Court.

**CONCLUSION**

For these reasons, we respectfully request that the Court stay proceedings in this case pending the Federal Circuit's decisions in *Land of Lincoln* or *Moda* and direct the parties to file a status report within 30 days of the disposition of those appeals.

Dated: June 11, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On this day, the United States' Unopposed Motion for a Stay of Proceedings was served on counsel pursuant to the Court's electronic filings procedures.

June 11, 2018

/s/ Frances M. McLaughlin