

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HARVARD PILGRIM HEALTH CARE, INC.,)
HPHC INSURANCE COMPANY, INC., and)
HARVARD PILGRIM HEALTH CARE OF)
NEW ENGLAND, INC.,)

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

No. 17-1350C

Judge Lydia Kay Griggsby

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

On September 29, 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. 6. 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. 6. 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, plaintiffs have 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 27, 2018

Respectfully submitted,

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