

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

OREGON’S HEALTH CO-OP, an)	
Oregon nonprofit corporation,)	
)	
Plaintiff,)	No. 18-94C
)	
v.)	
)	Judge Elaine D. Kaplan
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	

JOINT STATUS REPORT AND REQUEST TO CONTINUE STAY OF PROCEEDINGS

On February 2, 2018, 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. 7. 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 15 days following the *Land of Lincoln* and *Moda* decisions. Dkt. 7. 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,

CHAD A. READLER
Acting Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Shane Huang
PHILLIP M. SELIGMAN
MARC S. SACKS
FRANCES M. MCLAUGHLIN
TERRANCE A. MEBANE
SHANE HUANG
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044

Tel. (202) 616-0341
Fax (202) 514-9163
shane.huang@usdoj.gov

Attorneys for the United States

/s/ Caroline M. Brown

Caroline M. Brown
(cbrown@cov.com)
Counsel of Record

Philip J. Peisch
(ppeisch@cov.com)
Of Counsel

Rebecca E. Smith
(resmith@cov.com)
Of Counsel

Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, D.C., 20001
(202) 662-6000
(202) 778-5225

Attorneys for Plaintiff
Oregon's Health CO-OP