

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MARIA T. VULLO, in her capacity as)	
Liquidator of Health Republic Insurance)	
of New York, Corp.,)	
)	No. 17-1185C
Plaintiff,)	
)	
v.)	Judge Victor J. Wolski
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
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JOINT MOTION TO STAY PROCEEDINGS

Plaintiff, Maria T. Vullo, in her capacity as Liquidator of Health Republic Insurance of New York, Corp., and Defendant, the United States, together respectfully move the Court to stay this action for the shorter of (a) 100 days or (b) until the Federal Circuit issues a decision in *Land of Lincoln Mutual Health Insurance Company v. United States*, No. 17-1224, and/or *Moda Health Plan, Inc. v. United States*, No. 17-1994. The parties will file a joint status report within 14 days of a decision in *Land of Lincoln* or *Moda*, or by January 12, 2018 (100 days from the date of this motion), advising the Court whether the parties contend that the stay should be lifted or continued. Additionally, the parties request that, should the Court grant the stay, the Court’s Order permit either party to request a status conference to address the stay at any time.

I. BACKGROUND

On September 1, 2017, Plaintiff filed this action seeking more than \$575 million in money damages under various programs created by the Patient Protection and Affordable Care Act (“ACA”), including the risk corridors program (42 U.S.C. § 18062), the reinsurance program (42 U.S.C. § 18061), and the Advanced Premium Tax Credit and Cost-Sharing Reduction programs (42 U.S.C. § 18071; 26 U.S.C. § 36B). Dkt. 1.

A. Other Risk Corridors Cases

This case is one of nearly 40 cases filed in the last 18 months in this Court seeking relief, whether in whole or in part, under the risk corridors program.

Four cases have reached judgment. The Court decided *Land of Lincoln* in favor of the United States, 129 Fed. Cl. 81 (2016), and *Land of Lincoln* appealed. In *Moda*, the Court entered judgment in favor of the plaintiff, 130 Fed. Cl. 436 (2017), and the United States appealed. On May 30, 2017, the Federal Circuit issued an Order that *Land of Lincoln* and *Moda* will be treated as companion cases and will be argued before and decided by the same panel. Both appeals are fully briefed.

The Court has also entered judgment in *Blue Cross and Blue Shield of North Carolina v. United States*, 131 Fed. Cl. 457 (2017), and *Maine Community Health Options v. United States*, 133 Fed. Cl. 1 (2017). Both cases are now before the Federal Circuit.

In light of the pending Federal Circuit appeals in *Land of Lincoln* and *Moda*, the Court has entered stays in many of the other risk corridors cases pending a decision by the Federal Circuit in *Land of Lincoln* and *Moda*.

The case at bar asserts six causes of action, only two of which concern the risk corridors program. Nonetheless, because those two risk corridors claims raise issues similar to those addressed in *Land of Lincoln* and *Moda*, the parties agree that the requested stay is appropriate here.

II. A STAY WILL CONSERVE SUBSTANTIAL RESOURCES

“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*, 299 U.S. at 254). “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)).

Because the legal issues related to the risk corridors program presented in certain claims asserted by the Plaintiff in this case are similar to the issues raised before the Federal Circuit in *Land of Lincoln* and *Moda*, and other previously-filed risk corridors cases, a stay here will conserve judicial resources and the resources of both parties by potentially reducing the amount of briefing of issues already pending before the Federal Circuit and this Court.

The parties agree that nothing in this joint motion should be construed by the Court as a waiver or concession of any substantive issue of law or fact, all arguments as to which are expressly reserved by both parties.

III. CONCLUSION

For these reasons, the parties respectfully move the Court to stay this action for the shorter of (a) 100 days or (b) until the Federal Circuit issues a decision in *Land of Lincoln* and/or *Moda*. Additionally, the parties request that, should the Court grant the stay, the Court’s Order permit either party to request a status conference to address the stay at any time.

Dated: October 4, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 4, 2017, I electronically filed the foregoing JOINT MOTION TO STAY PROCEEDINGS with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Marc S. Sacks

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