

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

SCOTT AND WHITE HEALTH PLAN)	
and INSURANCE COMPANY OF SCOTT)	
AND WHITE,)	
)	
Plaintiffs,)	No. 17-1850C
)	
v.)	
)	Judge Coster-Williams
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
<hr/>)	

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. The cases will be argued on January 10, 2018. 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. Plaintiffs, Scott and White Health Plan and Insurance Company of Scott and White, do not oppose this motion.

On November 29, 2017, plaintiffs filed suit seeking approximately \$122 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 January 29, 2018.

Because this case raises the same legal issues as those brought in 44 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 proceedings.

A. Current Status of Risk Corridors Cases

As the Court is likely aware, this case is one of 45 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.); *Nancy G. Atkins v. United States*, No. 17-1108C (Horn, 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 IP*”); *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 IP*”); *Maine Cmty. Health Options v. United States*, No. 17-1387C (Bruggink, J.) (“*Maine IP*”); *Sanford Health Plan v. United States*, No. 17-1432C (Bruggink, J.) (“*Sanford IP*”); *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 IP*”); and *MDwise Marketplace, Inc. v. United States*, No. 17-1958C (Coster Williams, J.). These cases collectively implicate more than \$12.3 billion.

Four cases have been decided and are on appeal to the Federal Circuit. 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. The Federal Circuit has determined that *Land of Lincoln* and *Moda* will be treated as companion cases and has calendared oral argument for 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.).¹ *Blue Cross and Blue Shield of North Carolina* is fully briefed, and briefing in *Maine I* is scheduled to be completed this month.

Highmark and *Montana I* are fully briefed and argued. The remaining cases are either stayed or a motion to stay is pending or will be filed soon.

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,

¹ In *Molina*, the 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.

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*, as well as in *Molina*. In light of the upcoming oral argument in the *Land of Lincoln* and *Moda* appeals, any merits briefing in this case would be duplicative of the briefs already considered by this Court. Moreover, briefing would not be completed until after the Federal Circuit hears argument in those appeals. 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: December 21, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Phillip M. Seligman
PHILLIP M. SELIGMAN

MARC S. SACKS
CHARLES E. CANTER
FRANCES M. MCLAUGHLIN
TERRANCE A. MEBANE
L. MISHA PREHEIM
Commercial Litigation Branch
Civil Division
United States Department of Justice
P.O. Box 875
Ben Franklin Station
Washington D.C. 20044
Tel. (202) 307-1105
Fax (202) 307-0494
Phillip.seligman@usdoj.gov

ATTORNEYS FOR THE UNITED
STATES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 21, 2017, I electronically filed the foregoing UNITED STATES' UNOPPOSED 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/ Phillip M. Seligman
PHILLIP M. SELIGMAN
Commercial Litigation Branch
Civil Division
United States Department of Justice