

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MCLAREN HEALTH PLAN, INC.	:	
	:	Case No. 18-608C
Plaintiff,	:	
	:	Judge Hodges
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

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, which concern legal issues that overlap with those presented in this case. The parties propose that they file 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. Plaintiff McLaren Health Plan, Inc. (“MHP”) does not oppose this motion.

We respectfully request that the Court stay these proceedings because the analysis set forth in the Federal Circuit’s decisions in *Land of Lincoln* or *Moda Health Plan* may provide guidance and, as the Court has recognized previously, would not “risk undue delay.” See *HealthNow New York, Inc. v. United States*, No. 17-1090C, Order Staying Case, filed September 25, 2017 (Hodges, J.) (Docket No. 11).

BACKGROUND

A. This Case

On April 27, 2018, MHP filed suit seeking almost \$6.75 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. The United States’ response to the complaint is currently due June 26, 2018.

B. Current Status of Risk Corridors Cases

This case is one of more than 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. 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 treated *Land of Lincoln* and *Moda* as companion cases, and oral argument was held on 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 v. United States*, 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 the court has stayed the appeals pending the outcome in *Land of Lincoln* and *Moda*. In *Molina Healthcare of California, Inc. v. United States*, 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.

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*.

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 and cost sharing reductions (“CSR”) 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 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* and *Moda* and direct the parties to file a status report within 30 days of the disposition of those appeals.

Dated: June 4, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Terrance A. Mebane
TERRANCE A. MEBANE
FRANCES M. MCLAUGHLIN
L. MISHA PREHEIM
MARC S. SACKS
PHILLIP M. SELIGMAN
United States Department of Justice
Civil Division, Commercial Litigation Branch
Telephone: (202) 307-0493
Terrance.A.Mebane@usdoj.gov

Attorneys for the United States of America