

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
MONTANA HEALTH CO-OP)	
)	
Plaintiff,)	
)	Case No. 19-568C
v.)	
)	Judge Elaine D. Kaplan
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

JOINT STATUS REPORT AND MOTION TO CONTINUE STAY

Pursuant to this Court’s May 17, 2019 Order (ECF No. 9), the parties submit this joint status report regarding the status of *Sanford Health Plan v. United States*, No. 19-1290 (Fed. Cir.) (*Sanford*) (consolidated with *Montana Health CO-OP v. United States*, No. 19-1302 (Fed. Cir.)). On January 9, 2020, oral argument was held in those consolidated appeals and the companion cases, *Community Health Choice, Inc. v. United States*, No. 19-1633, and *Maine Cmty. Health Options v. United States*, No. 19-2102. On May 19, 2020, pursuant to a Federal Circuit order, the parties filed supplemental briefs in the consolidated appeals, addressing the impact of the Supreme Court’s decision in *Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020). On Friday, August 14, the Federal Circuit issued decisions in the consolidated appeals.

Although the Federal Circuit has issued rulings in the consolidated CSR appeals, it has not yet issued mandates in those appeals. Because any party to those appeals may file a petition for rehearing and/or rehearing *en banc*, Fed. Cir. R. 35, 40, or a petition for a writ of *certiorari*, there may be further proceedings in those appeals that will impact all 23 of the CSR cases

pending in this Court that raise CSR claims, including this one.

In order to conserve judicial and party resources, the parties respectfully request that the Court stay this case for 39 days, to and including Friday, October 23, 2020, at which point the parties will submit a joint status report proposing further proceedings. A 39-day stay will provide the Court and the parties with clarity about the posture of the consolidated CSR appeals and their impact on this case. *See UnionBanCal Corp. 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. United States*, 300 F.2d 265, 268 (9th Cir. 1962)). Indeed, absent a stay in this case and in the other pending cases raising CSR claims, the Court will be forced to devote substantial resources to coordinating damages proceedings in nearly two dozen pending cases, when the underlying issues controlling those proceedings still may be subject to further review. The Court has already extended existing stays in other CSR cases until October 23. *See, e.g., Harvard Pilgrim Health Care Inc., et al. v. United States* No. 18-1820 (Fed. Cl.) at ECF No. 22 (Aug. 24, 2020); *Harvard Pilgrim Health Care Inc., et al. v. United States* No. 20-578 (Fed. Cl.) at ECF No. 12 (Aug. 24, 2020); *Sanford Health Plan v. United States* No. 20-746 (Fed. Cl.) at ECF No. 9 (Aug. 25, 2020); *Guidewell Mutual Holding Corp., et al. v. United States* No. 18-1791 (Fed. Cl.) at ECF No. 24 (Aug. 28, 2020).

CONCLUSION

For these reasons, we respectfully request that the Court stay this case for 39 days, to and including October 23, 2020, at which point the parties will submit a joint status report proposing further proceedings in this case.

s/ Stephen McBrady
Stephen McBrady
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 624-2500
Facsimile: (202) 628-5116
SMcBrady@crowell.com

OF COUNSEL:

Daniel Wolff
Charles Baek

CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004

John Morrison, Esq.
MORRISON, SHERWOOD, WILSON, &
DEOLA PLLP
401 North Last Chance Gulch
P.O. Box 557
Helena, Montana 59624
Tel: (406) 442-3261

Counsel for Plaintiff

September 14, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

ROBERT E. KIRSCHMAN, JR.
Director

s/ Claudia Burke
CLAUDIA BURKE
Assistant Director

s/ Eric E. Laufgraben
ERIC E. LAUFGRABEN
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 353-7995
Facsimile: (202) 353-0461
Email: eric.e.laufgraben@usdoj.gov

OF COUNSEL:

CHRISTOPHER J. CARNEY
Senior Litigation Counsel

ALBERT S. IAROSCI
Trial Attorney
Civil Division
U.S. Department of Justice

Counsel for Defendant