

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH NET, INC.,)	
)	
Plaintiff,)	No. 16-1722C
)	
v.)	
)	Judge Victor J. Wolski
THE UNITED STATES OF AMERICA)	
)	
Defendants.)	
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UNITED STATES’ MOTION TO STAY

The United States of America (“United States”) respectfully moves this Court to stay this action pending this Court’s disposition of *Montana Health CO-OP v. United States*, No. 16-1427C, in which Montana seeks summary judgment on a claim *identical* to the one brought by Health Net.¹ As we explain below, requiring the parties here to litigate the identical legal issue that this Court will soon resolve in *Montana*, with the same issue already on appeal to the Federal Circuit in *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224 (Fed. Cir.), would needlessly consume the resources of this Court and the parties. Thus, the United States respectfully requests that this Court stay this action until this Court has issued an opinion on the fully-briefed and argued motions to dismiss and for summary judgment in *Montana*. In the alternative, the United States requests that this Court enlarge the deadline for the United States to respond to Health

¹ Health Net, unlike other risk corridors plaintiffs, is not an issuer who offered Qualified Health Plans (“QHPs”) on the health care exchanges. Rather, it appears that Health Net is the parent company of five subsidiary issuers of QHPs: (1) Health Net Life Insurance Company (Arizona); (2) Health Net of Arizona, Inc.; (3) Health Net of California, Inc.; (4) Health Net Life Insurance Company (California); and (5) Health Net Health Plan of Oregon, Inc.

Net's Complaint by 60 days, until May 1, 2017. Health Net has indicated that it will oppose this motion.

This suit is 15th of 19 cases filed in the Court of Federal Claims 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 ("ACA"), 42 U.S.C. § 18062. The cases involve several technically-detailed provisions of the ACA and raise significant jurisdictional issues as well as complex issues of appropriations law. The undersigned counsel represents the United States in each of these cases, which implicate a total of \$8.3 billion in federal funding for the 2014 and 2015 benefit years, with a likely additional amount yet to be determined for the 2016 benefit year. The activity in these cases has consumed substantial resources of the United States since their filing.

I. Health Net's Claim is Identical to Montana's

Health Net, represented by the same counsel as Montana, filed its complaint on December 30, 2016. Pursuant to this Court's docket, the United States' response to the Complaint is currently due by March 2, 2017. Health Net makes only one claim for relief – a claim based upon section 1342. That identical claim is also made by Montana, and indeed by every risk corridors plaintiff in the Court of Federal Claims. A review of Health Net's Complaint reveals no facts or legal arguments that are not already before this Court in *Montana* (and, indeed, now the Federal Circuit).

While Montana also alleged an implied-in-fact contract (Count II), Montana's statutory Count I is identical to Health Net's claim. Compare, for example, *Montana*,

Dkt. 1 (attached as Exhibit 1), ¶ 39 with *Health Net*, Dkt. 1 (attached as Exhibit 2), ¶ 33 (differing only in that Health Net adds “had” as the third word of the paragraph):

39. Health insurers relied on the statutorily mandated risk corridors program and the other premium stabilization programs in agreeing to participate on the exchanges and in setting their premiums for each year of the risk corridors program. It was not until October 2015, long after health insurers had set premiums and agreed to participate for the last year of the risk corridors program, that the Government first indicated that it would pay only 12.6 percent of its obligations under the risk corridors program for the 2014 benefit year.

33. Health insurers had relied on the statutorily mandated risk corridors program and the other premium stabilization programs in agreeing to participate on the exchanges and in setting their premiums for each year of the risk corridors program. It was not until October 2015, long after health insurers had set premiums and agreed to participate for the last year of the risk corridors program, that the Government first indicated that it would pay only 12.6 percent of its obligations under the risk corridors program for the 2014 benefit year.

And compare *Montana*, Dkt. 1, ¶ 84 with *Health Net*, Dkt. 1, ¶ 69 (differing only in (a) Health Net’s addition of “2016” in third line, and (b) the dollar amounts specific to each plaintiff):

84. Plaintiff relied upon the risk corridors program when it entered and participated in the ACA exchanges, and when it designed and priced its 2014 and 2015 plans. At the end of benefit year 2014, Plaintiff was owed money based on its participation in both the individual and small group market. HHS paid only a small fraction of the total that was due. The remainder in the amount of \$5,956,412.85 is owed and presently due. By the same token, the \$36,250,130.00 losses sustained in the risk corridors program for benefit year 2015, which have been properly calculated pursuant to the formula written into the ACA, and properly documented, and properly submitted to CMS in accordance with the law, are owed to Plaintiff under the express terms of Section 1342 of the ACA. By this lawsuit, Plaintiff seeks the immediate payment in full of risk corridors receivables for 2014 and immediate payment of risk corridors receivables for 2015, so that it can continue to offer affordable health insurance as contemplated by the ACA.

69. Plaintiff relied upon the risk corridors program when it entered and participated in the ACA exchanges, and when it designed and priced its 2014, 2015 and 2016 plans. At the end of benefit year 2014, Plaintiff was owed money based on its participation in both the individual and small group market. HHS paid only a small fraction of the total that was due. The remainder in the amount of \$85,879,189 is owed and presently due. By the same token, the \$322,665,918.55 losses sustained in the risk corridors program for benefit year 2015, which have been properly calculated pursuant to the formula written into the ACA, and properly documented, and properly submitted to CMS in accordance with the law, are owed to Plaintiff under the express terms of Section 1342 of the ACA. By this lawsuit, Plaintiff seeks the immediate payment in full of risk corridors receivables for 2014 and immediate payment of risk corridors receivables for 2015, so that it can continue to offer affordable health insurance as contemplated by the ACA.

Moreover, Health Net's claim for relief is virtually identical, word-for-word to Montana's Count I claim for relief. Compare *Montana*, Dkt. 1, ¶¶ 85-89 with *Health Net*, Dkt. 1, ¶¶ 70-74. Finally, the plaintiffs' prayers for relief are also identical, word-for-word, with the exception of the dollar amounts specific to each plaintiff.

II. A Stay Is Proper and Will Conserve Substantial Resources

Because Montana's motion for summary judgment on a claim identical to that raised by Health Net has been briefed and argued (by the same counsel that represents Health Net) and is pending a ruling by this Court, this Court should enter a time-limited stay of this action pending this Court's decision in *Montana*.² As the Supreme Court has made clear, "the power to stay proceedings 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

² Health Net's counsel also represents the plaintiff in *Maine Community Health Options v. United States*, No. 16-967C (J. Bruggink), where Maine raises the exact same claim as Montana and Health Net. As in *Montana*, Maine's motion for summary judgment has been briefed and argued and is ripe for decision.

for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (refusing to establish rule that would prohibit “a stay to compel an unwilling litigant to wait upon the outcome of a controversy to which he is a stranger”). “Moreover, when and how to stay proceedings is within the sound discretion of the trial court.” *Freeman v. United States*, 83 Fed. Cl. 530, 532 (2008) (citation and internal punctuation omitted).

This Court’s ruling in *Montana* will effectively resolve Health Net’s claim. Should this Court dismiss Montana’s statutory Count I, there would be no factual or legal basis on which Health Net could avoid dismissal here. Should this Court grant Montana summary judgment on its statutory count, the same legal analysis would apply to Health Net’s claim.³ Detailed briefing by the parties now on the same issues already fully briefed in *Montana* would serve no purpose. Even if the Federal Circuit, in resolving whether section 1342 entitles insurers to additional payments under the risk corridors program, would benefit from several decisions by different judges of the Court of Federal Claims, there is no value from multiple decisions by the same judge resolving identical legal issues (with no distinguishing facts) in an identical fashion.

Furthermore, a time-limited stay here will conserve judicial resources, as well as the resources of both parties. Other risk corridors plaintiffs have either moved for, or agreed to, a stay. Health Net cannot identify a single unique legal or factual issue that requires resolution now.

³ A stay may also allow the issues in this case to be clarified and refined by a decision from the Federal Circuit in *Land of Lincoln*. In addition to the *Land of Lincoln* parties’ briefs, seven *amici curiae* briefs have been filed with the Federal Circuit, including briefs by a number of the plaintiffs currently before the Court of Federal Claims.

III. Conclusion

Therefore, we ask this Court to issue a time-limited stay of all proceedings until 14 days following this Court's ruling in *Montana*. We request that this Court direct that the parties file a joint status report on or before that date addressing whether the stay should continue or providing a proposed schedule for further proceedings. In the alternative, should this Court deny a stay, we request that this Court enlarge the deadline for the United States to respond to Health Net's Complaint by 60 days, until May 1, 2017.

Dated: March 1, 2017

Respectfully submitted,

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ATTORNEYS FOR THE UNITED
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 1, 2017, I electronically filed the foregoing UNITED STATES' MOTION TO STAY 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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