

NOTE: This disposition is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**BLUE CROSS AND BLUE SHIELD OF NORTH  
CAROLINA,**  
*Plaintiff-Appellant*

v.

**UNITED STATES,**  
*Defendant-Appellee*

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2017-2154

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Appeal from the United States Court of Federal  
Claims in No. 1:16-cv-00651-LKG, Judge Lydia Kay  
Griggsby.

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Decided: July 9, 2018

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LAWRENCE SHER, Reed Smith LLP, Washington, DC,  
for plaintiff-appellant. Also represented by KYLE RICHARD  
BAHR, JAMES CHRISTOPHER MARTIN, CONOR MICHAEL  
SHAFFER, COLIN E. WRABLEY, Pittsburgh, PA.

ALISA BETH KLEIN, Appellate Staff, Civil Division,  
United States Department of Justice, Washington, DC,  
for defendant-appellee. Also represented by MARK B.  
STERN, CHAD A. READLER.

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Before PROST, *Chief Judge*, NEWMAN and MOORE,  
*Circuit Judges*.

PROST, *Chief Judge*.

For the reasons stated in our decisions in *Moda Health Plan, Inc. v. United States*, 17-1994, and *Land of Lincoln Mutual Health Insurance Co. v. United States*, 17-1224, and consistent with the statement of appellant Blue Cross and Blue Shield of North Carolina, we affirm.

Appellant's motion for entry of judgment and previous motions to allow argument are denied as moot.

**AFFIRMED**

# UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

## NOTICE OF ENTRY OF JUDGMENT ACCOMPANIED BY OPINION

OPINION FILED AND JUDGMENT ENTERED: 07/09/2018

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

Costs are taxed against the appellant in favor of the appellee under Rule 39. The party entitled to costs is provided a bill of costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs are payable to the party awarded costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Where costs are awarded against the government, payment should be made to the person(s) designated under the governing statutes, the court's orders, and the parties' written settlement agreements. In cases between private parties, payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment of costs should not be sent to the court. Costs should be paid promptly.

If the court also imposed monetary sanctions, they are payable to the opposing party unless the court's opinion provides otherwise. Sanctions should be paid in the same way as costs.

Regarding exhibits and visual aids: Your attention is directed Fed. R. App. P. 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued.)

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

cc: Kyle Richard Bahr  
Alisa Beth Klein  
James Christopher Martin  
Conor Michael Shaffer  
Lawrence Sher  
Mark B. Stern  
Colin E. Wrabley

17-2154 - Blue Cross and Blue Shield v. US  
United States Court of Federal Claims, Case No. 1:16-cv-00651-LKG

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**717 MADISON PLACE, N.W.  
WASHINGTON, D.C. 20439PETER R. MARKSTEINER  
CLERK OF COURT

202-275-8000

**Information Sheet****Petitions for Rehearing and Petitions for Hearing and Rehearing En Banc****1. When is a petition for rehearing appropriate?**

The Federal Circuit grants few petitions for rehearing each year. These petitions for rehearing are rarely successful because they typically fail to articulate sufficient grounds upon which to grant them. Of note, petitions for rehearing should not be used to reargue issues previously presented that were not accepted by the merits panel during initial consideration of the appeal. This is especially so when the court has entered a judgment of affirmance without opinion under Fed. Cir. R. 36. Such dispositions are entered if the court determines the judgment of the trial court is based on findings that are not clearly erroneous, the evidence supporting the jury verdict is sufficient, the record supports the trial court's ruling, the decision of the administrative agency warrants affirmance under the appropriate standard of review, or the judgment or decision is without an error of law.

**2. When is a petition for hearing/rehearing en banc appropriate?**

En banc consideration is rare. Each three-judge merits panel is charged with deciding individual appeals under existing Federal Circuit law as established in precedential opinions. Because each merits panel may enter precedential opinions, a party seeking en banc consideration must typically show that either the merits panel has (1) failed to follow existing decisions of the U.S. Supreme Court or Federal Circuit precedent or (2) followed Federal Circuit precedent that the petitioning party now seeks to have overruled by the court en banc. Federal Circuit Internal Operating Procedure #13 identifies several reasons when the Federal Circuit may opt to hear a matter en banc.

**3. Is it necessary to file either of these petitions before filing a petition for a writ certiorari in the U.S. Supreme Court?**

No. A petition for a writ of certiorari may be filed once the court has issued a final judgment in a case.

**For additional information and filing requirements, please refer to Fed. Cir. R. 40 (Petitions for Rehearing) and Fed. Cir. R. 35 (Petitions for Hearing or Rehearing En Banc).**

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**Information Sheet****Filing a Petition for a Writ of Certiorari**

There is no automatic right of appeal to the Supreme Court of the United States from judgments of the Federal Circuit. Instead, a party must file a petition for a writ of certiorari which the Supreme Court will grant only when there are compelling reasons. *See* Supreme Court Rule 10.

**Time.** The petition must be filed in the Supreme Court of the United States within 90 days of the entry of judgment in this Court or within 90 days of the denial of a timely petition for rehearing. The judgment is entered on the day the Federal Circuit issues a final decision in your case. The time does not run from the issuance of the mandate. *See* Supreme Court Rule 13.

**Fees.** Either the \$300 docketing fee or a motion for leave to proceed in forma pauperis with an affidavit in support thereof must accompany the petition. *See* Supreme Court Rules 38 and 39.

**Authorized Filer.** The petition must be filed by a member of the bar of the Supreme Court of the United States or by the petitioner as a self-represented individual.

**Format of a Petition.** The Supreme Court Rules are very specific about the content and formatting of petitions. *See* Supreme Court Rules 14, 33, 34. Additional information is available at [https://www.supremecourt.gov/filingandrules/rules\\_guidance.aspx](https://www.supremecourt.gov/filingandrules/rules_guidance.aspx).

**Number of Copies.** Forty copies of a petition must be filed unless the petitioner is proceeding in forma pauperis, in which case an original and ten copies of both the petition for writ of certiorari and the motion for leave to proceed in forma pauperis must be filed. *See* Supreme Court Rule 12.

**Filing.** Petitions are filed in paper at *Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543.*

Effective November 13, 2017, electronic filing is also required for filings submitted by parties represented by counsel. *See* Supreme Court Rule 29.7. **Additional information about electronic filing at the Supreme Court is available at** <https://www.supremecourt.gov/filingandrules/electronicfiling.aspx>.

No documents are filed at the Federal Circuit and the Federal Circuit provides no information to the Supreme Court unless the Supreme Court asks for the information.