

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BLUE CROSS AND BLUE SHIELD OF
NORTH CAROLINA,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

No. 17-2154

**MOTION TO ASSIGN CASE TO PRIOR PANEL AND, IF ARGUMENT IS
HEARD, TO DESIGNATE CASE AS COMPANION TO *MAINE
COMMUNITY HEALTH OPTIONS v. UNITED STATES*, No. 17-2395**

For the following reasons, the government respectfully moves to have this case assigned to the panel that heard oral argument on January 10, 2018 in *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224, and *Moda Health Plan, Inc. v. United States*, No. 17-1994, which present the same issue as this case. If the prior panel determines that oral argument is warranted, or if a random panel is assigned to this case, the government moves to have this case designated as a companion case to *Maine Community Health Options v. United States*, No. 17-2395, which also presents the same issue. This motion is opposed.

1. There are four pending appeals in which insurers allege that they are entitled to additional payments under the risk-corridors program created by the

Patient Protection and Affordable Care Act. On January 10, this Court (Chief Judge Prost, Judge Newman, and Judge Moore) heard oral argument in the lead appeals, *Land of Lincoln Mutual Health Insurance Co. v. United States*, No. 17-1224, and *Moda Health Plan, Inc. v. United States*, No. 17-1994, which were designated as companion cases. There are approximately 47 additional cases pending before the Court of Federal Claims that present the same issue, nearly all of which have been stayed pending this Court's decision in *Land of Lincoln* and/or *Moda*.

2. This case and *Maine Community Health Options v. United States*, No. 17-2395, have been designated as related to *Land of Lincoln* and *Moda*. Yesterday, this Court issued separate calendaring notices that set this case for argument on May 2, and that set *Maine Community Health Options* for argument on May 3.

3. We respectfully move to have this case assigned to the panel that heard argument on January 10 in the lead cases, *Land of Lincoln* and *Moda*. We are filing an analogous motion in *Maine Community Health Options*. Judicial economy is served by having the same panel consider appeals that present the same issue.

4. If the prior panel determines to hear oral argument in this case, we move to have this case designated as a companion case to *Maine Community Health Options*, so that the two cases are heard together rather than on two consecutive days. If this case is assigned to a random panel, we move to have it designated as a companion case to *Maine Community Health Options* for the same reason.

Respectfully submitted,

MARK B. STERN

s/ Alisa B. Klein

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CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 399 words.

/s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on March 23, 2018, I electronically filed the foregoing document with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Alisa B. Klein

Alisa B. Klein