

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

RESPONSE TO PLAINTIFF'S MOTION TO ALLOW ORAL ARGUMENT

The government respectfully submits this response to plaintiff's motion to allow oral argument in this case.

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.

2. As plaintiff notes (Mot. 3 ¶ 4), the docket reflects that this appeal has been deemed related to *Land of Lincoln* and *Moda*, indicating that this appeal may be assigned to the same panel that recently heard argument in *Land of Lincoln* and *Moda*.

The docket of the other fully briefed appeal, *Maine Community Health Options v. United States*, No. 17-2395, likewise designates that appeal as related to *Land of Lincoln* and *Moda*.

3. Plaintiff suggests (Mot. 4-5 ¶ 9) that oral argument in this appeal will assist the Court in resolving the issues presented in *Land of Lincoln* and *Moda*. We defer to the Court's judgment as to whether additional oral argument would be helpful. We note, however, that the body of decisions that plaintiff cites (Mot. 2-3 ¶ 3) was addressed in the appellate briefing in *Land of Lincoln* and/or *Moda*. Plaintiff emphasizes (Mot. 5 ¶ 10) that it raised a takings claim, but the same was true in *Land of Lincoln*. And while plaintiff states (Mot. 5 ¶ 11) that it emphasized different points in briefing the statutory and contract claims at issue in *Land of Lincoln* and *Moda*, plaintiff does not identify any relevant differences in the briefing.

Plaintiff mistakenly suggests (Mot. 4-5 ¶ 9) that there were material documents omitted from the record in *Land of Lincoln*. The material facts are not in dispute in the risk-corridors cases, which turn on issues of law. In any event, plaintiff does not claim that there were any material documents omitted from the summary judgment record in *Moda*.

Respectfully submitted,

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s/ Alisa B. Klein

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FEBRUARY 2018

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 351 words.

/s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 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