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February 16, 2018

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Hon. Peter R. Marksteiner
Clerk, U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington D.C. 20439

Re: No. 2017-1224, *Land of Lincoln Mut. Health Ins. Co. v. United States*
Argued January 10, 2018

Dear Clerk Marksteiner:

Pursuant to Fed. R. App. Proc. 28(j), Plaintiff-Appellant Land of Lincoln submits the following supplemental authority that became available after the briefing and argument in this appeal:

The HHS FY 2019 Budget in Brief (Feb. 2018) (attached as an exhibit hereto) includes more than \$11.5 billion of funding, allocated to FY 2018, to fully fund the risk corridor program.

At argument on January 10, DOJ agreed that a mere failure to appropriate funds – or congressional silence – would not abrogate a QHP's entitlement to risk corridor payments. But DOJ argued that prior appropriations riders were not simply a failure to appropriate funds but a clear repeal, or amendment, of the legal obligation to make risk corridor payments, so that the Government had no obligation to make "payments out" beyond "payments in."

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DOJ's position is not consistent with the HHS FY 2019 budget, which calls for an appropriation of funds to cover more than \$11.5 billion in "payments out" beyond whatever "payments in" are received. In particular:

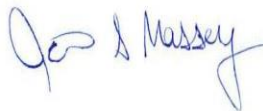
- The line item for "Other Health Insurance Programs" on p. 51 contains a note stating: "/5/ ... FY 2018 assumes outlays of \$11,513 million (post-sequester) for the Risk Corridors Program." The Program Management line contains a note stating: "/7/ Includes legislative proposal to fully fund the Risk Corridors Program, including exempting the program from sequestration."

- One of the 2019 Legislative Proposals (p. 54) is: "Fully Fund the Risk Corridors Program. This proposal provides a mandatory appropriation to fully fund the Risk Corridors Program, including exempting the program from sequestration."

- On p. 93, the "Program Management Legislative Proposals" contains a line item for Risk Corridors that is \$98MM for FY 2017 (reflecting "payments in" from insurers), \$11,513MM for 2018, and \$0 for 2019. A note states "3/ Reflects collections of \$98 million in FY 2017 and \$25 million in FY 2018. Additionally, FY 2018 includes \$11,488 million from the FY 2019 Budget proposal to provide a mandatory appropriation to fully fund the Risk Corridors Program."

Please distribute this letter to members of the Panel.

Respectfully submitted,



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cc: All Counsel via ECF

CERTIFICATE OF COMPLIANCE

This letter complies with the length limits permitted by Fed. R. App. P. 32(j). The body of this letter contains 344 words according to the word count function of Microsoft Word (Office Standard version 2016). The letter's type size and type face comply with Fed. R. App. P. 32.

/s/ Jonathan Massey

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the U.S. Court of Appeals for the Federal Circuit by using the appellate CM/ECF system on February 16, 2018. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Jonathan Massey