

Nos. 2017-1224, -1994, -2154, -2395

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

LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY, an Illinois
Non-Profit Mutual Insurance Corporation,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States
Court of Federal Claims, Case No. 1:16-cv-00744-CFL.
The Honorable **Charles F. Lettow**, Judge Presiding.

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* KATE
BUNDORF, SCOTT HARRINGTON, MARK PAULY, MICHAEL
CHERNEW, THOMAS MCGUIRE, LEEMORE DAFNY, AND KOSALI
SIMON IN SUPPORT OF PLAINTIFF-APPELLANT'S PETITION FOR
REHEARING EN BANC**

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UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Land of Lincoln Mutual Health Insurance Company v. United States of America

Case No. 17-1224

CERTIFICATE OF INTEREST

Counsel for the:

(petitioner) (appellant) (respondent) (appellee) (amicus) (name of party)

Kate Bundorf, Scott Harrington, Mark Pauly, Michael Chernew, Thomas McGuire, Leemore Dafny, Kosali Simon certifies the following (use "None" if applicable; use extra sheets if necessary):

1. Full Name of Party Represented by me	2. Name of Real Party in interest (Please only include any real party in interest NOT identified in Question 3) represented by me is:	3. Parent corporations and publicly held companies that own 10% or more of stock in the party
Kate Bundorf	N/A	None
Scott Harrington	N/A	None
Mark Pauly	N/A	None
Michael Chernew	N/A	None
Thomas McGuire	N/A	None
Leemore S. Dafny	N/A	None
Kosali Simon	N/A	None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (**and who have not or will not enter an appearance in this case**) are:

None

FORM 9. Certificate of Interest

Form 9
Rev. 10/17

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. *See* Fed. Cir. R. 47.4(a)(5) and 47.5(b). (The parties should attach continuation pages as necessary).

See Attachment A.

8/13/2018

Date

/s Stephen A. Swedlow

Signature of counsel

Stephen A. Swedlow

Printed name of counsel

Please Note: All questions must be answered

cc: _____

Reset Fields

Attachment A

Federal Circuit

Blue Cross and Blue Shield of North Carolina v. United States, No. 17-2154

Maine Cmty. Health Options v. United States, No. 17-2395

Moda Health Plan, Inc. v. United States, No. 17-1994

Court of Federal Claims

Alliant Health Plans, Inc. v. United States, No. 16-1491C (Braden, J.)

BCBSM, Inc. v. United States, No. 16-1253C (Coster Williams, J.)

Blue Cross and Blue Shield of Alabama v. United States, No. 17-347C
(Campbell-Smith, J.)

Blue Cross and Blue Shield of Kanas City v. United States, No. 17-95C
(Braden, J.)

Blue Cross Blue Shield of Tennessee v. United States, No. 17-348C (Horn,
J.)

Blue Cross of Idaho Health Service, Inc. v. United States, No. 16-1384C
(Lettow, J.)

Common Ground Healthcare Cooperative v. United States, No. 17-877C
(Sweeney, J.)

EmblemHealth, Inc. v. United States, No. 17-703C (Wheeler, J.)

Farmer v. United States, No. 17-363C (Campbell-Smith, J.)

First Priority Life Ins. Co. v. United States, No. 16-587C (Wolski, J.)

Health Alliance Medical Plans, Inc. v. United States, No. 17-653C
(Campbell-Smith, J.)

Health Net, Inc. v. United States, No. 16-1722C (Wolski, J.)

Health Republic Ins. Co. v. United States, No. 16-259C (Sweeney, J.)

HPHC Ins. Co., Inc. v. United States, No. 17-87C (Griggsby, J.)

Medica Health Plans v. United States, No. 17-94C (Horn, J.)

Minuteman Health Inc. v. United States, No. 16-1418C (Griggsby, J.)

Molina Healthcare v. United States, No. 17-97C (Wheeler, J.)

Montana Health CO-OP v. United States, No. 16-1427C (Wolski, J.)

Neighborhood Health Plan, Inc. v. United States, No. 16-1659C (Smith, J.)

New Mexico Health Connections v. United States, No. 16-1199C (Bruggink, J.)

Ommen v. United States, No. 17-712C (Lettow, J.)

Sanford Health Plan v. United States, No. 17-357C (Bruggink, J.)

UNOPPOSED MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Federal Rule of Appellate Procedure 29 and 35(g), *amici curiae*, respectfully move this Court for leave to file the brief submitted herewith. *Amici curiae* have conferred with counsel for all parties, none of whom opposes this motion.

Amici are distinguished economists and professors of health policy, economics, and management.¹ They occupy prominent positions at preeminent universities and institutions, and are widely recognized as academic experts in health policy and, in particular, the study of regulated health insurance markets. They have no personal stake in the outcome of this case, but have an interest in assisting this Court in understanding the problems that finding for the Government in this case will create for the Government's future ability to incentivize private actors to achieve policy objectives. In order to preserve a sound system for governments to use financial incentives to influence the actions of private parties – particularly as it involves economic decisions, the Court should carefully consider the adverse consequences of allowing the Government to fail to honor promises on which private parties relied.

¹ *Amici curiae* are M. Kate Bundorf, Scott Harrington, Michael Chernew, Leemore Dafny, Thomas McGuire, Mark Pauly, and Kosali Simon.

Accordingly, the *amici curiae* respectfully request that the Court grant leave to file their Brief in Support of Appellant, submitted herewith.

Dated: August 13, 2018

Respectfully submitted,

/s/ Stephen A. Swedlow

Stephen A. Swedlow

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CERTIFICATE OF COMPLIANCE

This motion complies with the word count limitation of Fed. Cir. R. 27(d)(2)(A), and contains 222 words, exclusive of the portions exempted by Fed. R. App. P. 32(f) and Fed. Cir. R. 27(d).

The motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in 14-point Times New Roman type.

/s/ Stephen A. Swedlow
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CERTIFICATE OF SERVICE

I, Rose E. Olejniczak, being duly sworn according to law and being over the age of 18, upon my oath deposes and states that:

Counsel Press was retained by Stephen A. Swedlow, Quinn Emanuel Urquhart & Sullivan, LLP, Counsel for *Amicus Curiae* Kate Bundorf, Scott Harrington, Mark Pauly, Michael Chernew, Thomas McGuire, Leemore Dafny, and Kosali Simon, to print this document. I am an employee of Counsel Press.

On August 13, 2018, Mr. Swedlow authorized me to electronically file the foregoing Motion for Leave to File Brief of *Amicus Curiae* Kate Bundorf, Scott Harrington, Mark Pauly, Michael Chernew, Thomas McGuire, Leemore Dafny, and Kosali Simon In Support of Plaintiff-Appellant's Petition for Rehearing En Banc with the Clerk of the Federal Circuit using the CM/ECF System, which will serve e-mail notice of such filing on the following:

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August 13, 2018