

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MODA HEALTH PLAN, INC.,

Plaintiff-Appellee,

v.

UNITED STATES,

Defendant-Appellant.

No. 17-1994

UNOPPOSED MOTION FOR (1) AN 18-DAY EXTENSION OF TIME IN WHICH TO FILE RESPONSE TO PETITION FOR REHEARING EN BANC; AND (2) LEAVE TO FILE A SINGLE, CONSOLIDATED RESPONSE TO THIS PETITION AND THREE SIMILAR PETITIONS

For the following reasons and as set forth in the attached declaration, the government respectfully requests an 18-day extension of time, to and including **Tuesday, September 4, 2018**, in which to file its response to plaintiff's petition for rehearing en banc. In addition, the government requests leave to file a single, consolidated response to the petition filed in this case and in *Land of Lincoln Mutual Health Ins. Co. v. United States*, No. 17-1224; *Maine Community Health Options v. United States*, No. 17-2395; and *Blue Cross and Blue Shield of North Carolina v. United States*, No. 17-2154 (*BCBSNC*). This motion is unopposed.

1. On June 14, 2018, a divided panel of this Court rejected insurers' claims that they are entitled to additional funds under the risk-corridors program established

by section 1342 of the Patient Protection and Affordable Care Act. In this case, this Court set forth its reasons for rejecting the statutory and contract claims. In *Land of Lincoln*, this Court incorporated by cross reference the reasoning of its decision in this case and also rejected a takings claim. In *Maine* and *BCBSNC*, the Court entered judgment for the government for the reasons stated in its decisions in this case and *Land of Lincoln*.

2. The insurers have filed petitions for rehearing en banc in all four cases. On August 3, this Court directed the government to respond to the petitions within fourteen days of the order, that is, by August 17, 2018.

3. We respectfully seek an 18-day extension of time, to and including September 4, 2018, in which to respond to the petition. The extension is necessary to allow adequate time to prepare the response in light of government counsel's other upcoming briefing deadlines. Alisa Klein is lead counsel for the government in this appeal. Ms. Klein also has principal or supervisory responsibility for the following appellate matters with upcoming deadlines: *Hammer v. Department of Health and Human Services*, No. 18-2523 (7th Cir.) (briefs due August 9 and August 30 on expedited schedule); *In re Hoban*, No. 18-2592 (8th Cir.) (brief due August 24); *Krell v. Berryhill*, No. 18-1100 (7th Cir.) (reply brief due August 24, as extended); *Prairie Land Holdings, LLC v. Federal Aviation Administration*, No. 18-2234 (8th Cir.) (brief due August 31, extension request pending). In addition, Ms. Klein has been diverted by a family medical issue.

4. The government also seeks leave file a single, consolidated response to the petition in this case and in *Land of Lincoln, Maine*, and *BCBSNC*. As noted above, this Court's primary reasons for rejecting the insurers' claims are set forth in its decision in this case, which all four petitions include in the required addendum. In effect, all of the insurers are challenging the same decision of this Court.

5. Plaintiff's counsel has authorized us to state that this motion is unopposed.

Respectfully submitted,

MARK B. STERN

s/Alisa B. Klein

ALISA B. KLEIN

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AUGUST 2018

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MODA HEALTH PLAN, INC.,

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v.

UNITED STATES,

Defendant-Appellant.

No. 17-1994

DECLARATION

I, Alisa B. Klein, hereby declare as follows:

1. I am an attorney with the Appellate Staff of the Civil Division of the U.S. Department of Justice. I, along with Mark Stern, have been assigned responsibility for the preparation and filing of the government's response to the petition for rehearing in this case. For the reasons set out below, the government respectfully requests an 18-day extension of time, to and including Tuesday, September 4, 2018, in which to file its response to the petition for rehearing en banc.

2. The extension is necessary to allow adequate time to prepare the response in light of government counsel's other upcoming briefing deadlines. I am lead counsel for the government in this appeal. I also have principal or supervisory responsibility for the following appellate matters with upcoming deadlines: *Hammer v.*

Department of Health and Human Services, No. 18-2523 (7th Cir.) (briefs due August 9 and August 30 on expedited schedule); *In re Hoban*, No. 18-2592 (8th Cir.) (brief due August 24); *Krell v. Berryhill*, No. 18-1100 (7th Cir.) (reply brief due August 24, as extended); *Prairie Land Holdings, LLC v. Federal Aviation Administration*, No. 18-2234 (8th Cir.) (brief due August 31, extension request pending). In addition, I have been diverted by a family medical issue.

3. Plaintiff's counsel has authorized us to state that this motion is unopposed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 6, 2018. See 28 U.S.C. § 1746(2).

s/Alisa B. Klein
ALISA B. KLEIN
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CERTIFICATE OF COMPLIANCE

I certify that this motion 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 475 words.

 /s/ Alisa B. Klein
Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2018, I electronically filed the foregoing motion 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