

NOTE: This order is nonprecedential.

**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***

2017-1224

Appeal from the United States Court of Federal Claims in No. 1:16-cv-00744-CFL, Judge Charles F. Lettow.

ON MOTION

Before MOORE, *Circuit Judge*.

O R D E R

Land of Lincoln Mutual Health Insurance Company appeals from the final judgment of the United States Court of Federal Claims determining that the government was not obligated to pay Land of Lincoln the full amount of losses calculated under section 1342 of the Patient

Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119. The United States House of Representatives moves for leave to file a brief *amicus curiae* in support of affirmance of the Claims Court's judgment. Land of Lincoln opposes the motion.

The House requests leave to file an *amicus* brief to apprise this court of its views "on the controlling constitutionally-based appropriations law principles regarding the funding of government benefits programs, the legislative intent underlying the authorization for the risk corridors program and the relevant appropriations acts, and the important separation of powers concerns implicated by Appellant's attempt to obtain unappropriated payments through the Judgment Fund." The House contends that it has a strong interest in vindicating the Claims Court's judgment in this case because it implicates the House's power over the control of public funds.

Land of Lincoln argues that the court should not grant the House leave to file an *amicus* brief because the federal government's interests in this case are already ably represented by the Department of Justice ("DOJ"), which is charged with supervising and conducting litigation on behalf of the United States. Land of Lincoln further argues that the House should not be allowed to either present duplicative briefing or raise new arguments not raised in DOJ's brief. For these reasons, Land of Lincoln argues, the Claims Court correctly rejected the House's requests to file *amicus* briefs in a related case concerning the risk-corridor program.

Whether to permit a nonparty to submit a brief, as *amicus curiae*, is a matter of judicial discretion. *See N. Sec. Co. v. United States*, 191 U.S. 555, 556 (1903); *United States v. Michigan*, 940 F.2d 143, 165 (6th Cir. 1991). Here, having considered all the circumstances, the court will accept the House's proposed brief. Land of Lincoln's

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objections to the brief are of record and will be available to the merits panel assigned to the case.

Accordingly,

IT IS ORDERED THAT:

The motion is granted. The *amicus* brief is accepted for filing. A copy of the motion, response, and reply shall be transmitted to the merits panel assigned to the case.

FOR THE COURT

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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