

NOTE: This order is nonprecedential.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.

**MODA HEALTH PLAN, INC.,
*Plaintiff-Appellee***

v.

**UNITED STATES,
*Defendant-Appellant***

2017-1994

Appeal from the United States Court of Federal Claims in No. 1:16-cv-00649-TCW, Judge Thomas C. Wheeler.

ON MOTION

Before MOORE, *Circuit Judge*.

O R D E R

Land of Lincoln Mutual Health Insurance Company and Moda Health Plan, Inc. each move to have the above-captioned appeals assigned to the same merits panel for oral argument. Highmark Inc. et al. and National Alliance of State Health CO-OPs move to file *amici* briefs in support of the motions to make these companion cases. The United States opposes the motions to make these companion cases and instead moves to stay its appeal in the Moda case (Appeal No. 2017-1994) pending the court's disposition of Land of Lincoln's Appeal No. 2017-1224. The United States also opposes the motions to file *amici* briefs.

Land of Lincoln and Moda provided qualified health insurance plans under the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119 (“ACA”). Section 1342 of the ACA established a temporary program applicable to calendar years 2014, 2015, and 2016, whereby insurers paid money to, or received money from, the Department of Health and Human Services (“HHS”) depending on whether the insurer suffered a loss or made a profit during the life of the program.

Land of Lincoln and Moda suffered losses but did not receive the full amount of payments calculated under the program's methodology. They separately sued in the United States Court of Federal Claims seeking damages

for the difference between what they alleged was owed and what HHS had paid. The Claims Court issued differing opinions on whether the ACA obligated the government to make such payments. The Claims Court ruled in favor of the government in Land of Lincoln's case in November 2016. That appeal is now fully briefed. In March 2017, the Claims Court ruled in favor of Moda, and the government's appeal was docketed on May 9, 2017.

According to the government, this court's decision in the Land of Lincoln appeal will control the resolution of the Moda appeal and a number of other related cases before the Claims Court. A stay of its appeal in the Moda case would thus allow the court to most quickly resolve the issues and not impose the burden of duplicative briefing. The government also points out that Moda filed an *amicus* brief in Appeal No. 2017-1224 and that the parties addressed the Moda decision in their briefs.

Moda and Land of Lincoln argue that allowing the appeals to be heard together by the same merits panel would be more in accordance with how this court has resolved similar circumstances in the past. They contend that while the two appeals involve similar legal issues, there are distinctions between the cases and having both cases before the same merits panel would be helpful to the court in deciding the merits of the issues.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) Moda's and Land of Lincoln's motions are granted. These appeals are considered companion cases and will be assigned to the same merits panel.

(2) The United States' motion for a stay is denied.

(3) The motions for leave to file *amici* briefs in support of Moda and Land of Lincoln's motions are denied.

FOR THE COURT

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

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