

No. 17-1224

IN THE

**United States Court of Appeals
FOR THE FEDERAL CIRCUIT**

LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

**On appeal from the United States Court of Federal Claims,
Case No. 16-744C, Judge Charles F. Lettow**

**REPLY IN SUPPORT OF PLAINTIFF-APPELLANT'S
MOTION TO SUBMIT RELATED APPEALS TO THE
SAME PANEL FOR ARGUMENT AND DECISION**

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*Counsel for Plaintiff-Appellant Land of
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CERTIFICATE OF INTEREST

1. The full name of every party represented by me is:

LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

JENNIFER HAMMER, DIRECTOR OF THE ILLINOIS DEPARTMENT OF INSURANCE, AS STATUTORY LIQUIDATOR OF LAND OF LINCOLN MUTUAL HEALTH INSURANCE COMPANY

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party represented by me are:

NONE

4. The names of all law firms and the principals or associates that appeared for the party now represented by me in the trial court or are expected to appear in this Court are:

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**REPLY IN SUPPORT OF PLAINTIFF-APPELLANT'S
MOTION TO SUBMIT RELATED APPEALS TO
THE SAME PANEL FOR ARGUMENT AND DECISION**

On May 12, 2017, plaintiff-appellant Land of Lincoln Mutual Health Ins. Co. ("Land of Lincoln") moved that the above-captioned case, be submitted for disposition to the same panel that will decide the pending case *Moda Health Plan, Inc. v. United States*, No. 17-1994 (Fed. Cir.), and that a joint oral argument be held before the same panel in both cases. *Moda* filed a similar motion in its appeal. The Government has filed responses in opposition to Moda's and Land of Lincoln's motions, and moved to stay the appeal in *Moda* pending resolution of *Land of Lincoln*.

The Government's initial contention, that Land of Lincoln's motion is "moot" (Gov. Response 2), is predicated on the presumption that the Court will grant the Government's motion to stay briefing in *Moda*, a motion that the Government only filed last Friday and which Moda opposes. The Government cannot bootstrap its way around Moda's motion by *ipse dixit*.

As to the merits of Land of Lincoln's motion, this Court has previously, at the behest of the Government itself, granted joint oral argument before the same panel when pending appeals raised similar issues; the appeals were among multiple cases in which the plaintiffs had asserted similar claims; and the CFC decisions at issue had reached disparate conclusions, *see* Land of Lincoln Motion 4-6. The

Government's response does not explain why the reasoning the Government itself advanced in support of joint argument in those cases does not apply fully here.

The Government's expressions of concern (Gov. Response 4) over potential delay in this *Land of Lincoln* appeal ring hollow. The Government successfully *opposed* Land of Lincoln's effort to expedite this appeal, arguing specifically that "the interests of the public are not well served by a rushed treatment of important issues of first impression."¹ It later successfully obtained a **42-day** extension to file its appellate brief.² The Government thus has done nothing to advance the resolution of *Land of Lincoln*. Nor does the Government contend that it would be prejudiced by a short delay in *Land of Lincoln*, and Land of Lincoln itself supports joint argument.

The Government offers no good reason why the *Land of Lincoln* and *Moda* appeals should not be argued at the same time and decided by the same panel.

¹ Opp. to Pl.'s Emergency Mot. for Expedited Proceedings, Dkt. No. 11, *Land of Lincoln Mut. Health Ins. Co. v. United States*, No. 17-1224 (Nov. 21, 2017) at 7.

² Unopposed Mot. for a 42-Day Extension of Time in Which To File the Appellee's Brief, Dkt. No. 91, *Land of Lincoln Mut. Health Ins. Co. v. United States*, No. 17-1224 (Feb. 22, 2017).

Dated: May 16, 2017

Respectfully Submitted,

s/ Daniel P. Albers

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this motion complies with the type-volume limitations of Federal Rules of Appellate Procedure 32(a)(7)(B) because it contains 1107 words according to the count of Microsoft Word, excluding parts of the motion exempted under Federal Rule of Appellate Procedure 32(a)(7)(B)(iii) and Circuit Rule 32(b).

May 16, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2017, a copy of the foregoing, was filed electronically with the Court's Electronic Case Filing ("ECF") system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

s/ Daniel P. Albers
Daniel P. Albers