

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
No. 16-744C

(Filed: October 7, 2016)

LAND OF LINCOLN MUTUAL
HEALTH INSURANCE COMPANY,)
Plaintiff,)
v.)
UNITED STATES,)
Defendant.)

Daniel P. Albers, Barnes & Thornburg LLP, Chicago, IL, for plaintiff. With him on the brief was Scott E. Pickens, Barnes & Thornburg LLP, Washington, DC.

Terrance A. Mebane, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, D.C., for defendant. With him on the brief were Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division, Ruth A. Harvey, Director, Kirk T. Manhardt, Deputy Director, Charles E. Canter, Trial Attorney, Serena M. Orloff, Trial Attorney, Frances M. McLaughlin, Trial Attorney, and L. Misha Preheim, Trial Attorney, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington D.C.

Steven J. Rosenbaum, Covington & Burling LLP, Washington, DC, for movant Moda Health Plan, Inc. With him on the brief were Caroline M. Brown and Philip J. Peisch, Covington & Burling LLP, Washington, DC.

Stephen Swedlow, Quinn Emanuel Urquhart & Sullivan, LLP, Chicago, IL, for movant Health Republic Insurance Company. With him on the brief were J.D. Horton and Adam B. Wolfson, Quinn Emanuel Urquhart & Sullivan, LLP, Los Angeles, CA.

ORDER

LETTOW, Judge.

Pending before the court is a motion for leave to file a brief as *amici curiae*, in support of plaintiff, filed by Moda Health Plan, Inc. and Health Republic Insurance Company on October 5, 2016. The plaintiff has filed a response in support of the motion, but the government opposes the motion.

The movants are plaintiffs in somewhat similar cases pending in this court. *See Health Republic Ins. Co. v. United States*, No. 16-259; *Moda Health Plan, Inc. v. United States*, No. 16-649. They are not appearing as “friends of the court” in an abstract sense, but rather are seeking to advance in this case the positions they are apparently taking in their own cases. In this case, Land of Lincoln seeks damages under Section 1342 of the Affordable Care Act, 42 U.S.C. § 18062, which pertains to a three-year premium stabilization program relating to “risk corridors” under which qualifying health plans pay money to or receive money from the Department of Health and Human Services based on the ratio of their premiums to claim costs. The court notes that seven other cases pending in this court seek monetary relief under the same provision. In addition to *Health Republic Ins. Co.* and *Moda Health Plan, Inc.*, *see First Priority Life Ins. Co., Inc. v. United States*, No. 16-587; *Blue Cross and Blue Shield of North Carolina v. United States*, No. 16-651; *Maine Community Health Options v. United States*, No. 16-967; *New Mexico Health Connections v. United States*, No. 16-1199; *BCBSM, Inc. v. United States*, No. 16-1253.

That circumstance would not ordinarily be disqualifying. Movants might have a perspective that would be helpful to the court or otherwise provide information and argument that would illuminate the issues in this case. *See Wolfchild v. United States*, 62 Fed. Cl. 521, 536 (2004), *rev'd on other grounds*, 559 F.3d 1228 (Fed. Cir. 2009); *Fluor Corp. v. United States*, 35 Fed. Cl. 284, 285 (1996). In this instance, however, movants have submitted with their motion an overlength 50-page brief, contravening Rule 5.4(b) of the Rules of the Court of Federal Claims, and the brief notably addresses at some length an implied contract theory that has not been posed by plaintiff. The motion with appended brief also is marginally acceptable in its timing. Land of Lincoln’s motion for judgment on the administrative record was filed on September 23, 2016, as was the government’s motion to dismiss. The parties’ responses are due in five calendar days, *i.e.*, on October 12, 2016.

Giving consideration to the totality of the circumstances bearing on the pending motion, leave to file a brief as *amici curiae* is DENIED.

It is so ORDERED.

s/ Charles F. Lettow

Charles F. Lettow

Judge