

# United States Court of Appeals for the Federal Circuit

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**LAND OF LINCOLN MUTUAL HEALTH  
INSURANCE COMPANY, AN ILLINOIS NON-  
PROFIT MUTUAL INSURANCE CORPORATION,**  
*Plaintiff-Appellant*

v.

**UNITED STATES,**  
*Defendant-Appellee*

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2017-1224

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

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Decided: June 14, 2018

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JONATHAN MASSEY, Massey & Gail LLP, Washington,  
DC, argued for plaintiff-appellant. Also represented by  
DANIEL P. ALBERS, Barnes & Thornburg LLP, Chicago, IL;  
SCOTT E. PICKENS, Washington, DC.

ALISA BETH KLEIN, Appellate Staff, Civil Division,  
United States Department of Justice, Washington, DC,  
argued for defendant-appellee. Also represented by CHAD  
A. READLER, AUGUST E. FLENTJE, MARK B. STERN,  
CARLEEN MARY ZUBRZYCKI.

BARAK BASSMAN, Pepper Hamilton LLP, Philadelphia, PA, for amicus curiae National Alliance of State Health CO-Ops. Also represented by MARC D. MACHLIN, Washington, DC.

LAWRENCE SHER, Reed Smith LLP, Washington, DC, for amici curiae Highmark Inc., Highmark BCBSID Inc., Highmark West Virginia Inc., Blue Cross and Blue Shield of North Carolina, Blue Cross of Idaho Health Service, Inc., Blue Cross and Blue Shield of Kansas City. Also represented by KYLE RICHARD BAHR, CONOR MICHAEL SHAFFER, COLIN E. WRABLEY, Pittsburgh, PA.

DANIEL GORDON JARCHO, McKenna Long & Aldridge, LLP, Washington, DC, for amici curiae Avera Health Plans, DAKOTACARE.

STEVEN ROSENBAUM, Covington & Burling LLP, Washington, DC, for amicus curiae Moda Health Plans, Inc. Also represented by CAROLINE BROWN.

LESLIE BERGER KIERNAN, Akin, Gump, Strauss, Hauer & Feld, LLP, Washington, DC, for amicus curiae Americas Health Insurance Plans. Also represented by ROBERT K. HUFFMAN; RUTHANNE MARY DEUTSCH, HYLAND HUNT, Deutsch Hunt PLLC, Washington, DC.

STEPHEN A. SWEDLOW, Quinn Emanuel Urquhart & Sullivan, LLP, Chicago, IL, for amici curiae Health Republic Insurance Company, Alliance of Community Health Plans. Also represented by J. D. HORTON, ADAM WOLFSON, Los Angeles, CA.

ANKUR GOEL, McDermott, Will & Emery LLP, Washington, DC, for amici curiae Blue Cross and Blue Shield of South Carolina, BlueChoice HealthPlan of South Caroli-

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na, Inc. Also represented by M. MILLER BAKER, JOSHUA DAVID ROGACZEWSKI.

THOMAS G. HUNGAR, Office of General Counsel, United States House of Representatives, Washington, DC, for amicus curiae United States House of Representatives. Also represented by KIMBERLY HAMM, TODD B. TATELMAN.

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Before PROST, *Chief Judge*, NEWMAN and MOORE,  
*Circuit Judges*.

Opinion for the court filed by *Chief Judge* PROST.

Dissenting opinion filed by *Circuit Judge* NEWMAN.

PROST, *Chief Judge*.

For the reasons stated in our decision in the companion case, *Moda Health Plan, Inc. v. United States*, No. 17-1994, the statutory and contract claims of appellant Land of Lincoln Mutual Health fail. Additionally, because Land of Lincoln cannot state a contract claim, its takings claim fails to the extent it relies on the existence of a contract.

What remains is Land of Lincoln's takings claim to the extent that claim arises from its statutory entitlement to full payments. We have previously held that "no statutory obligation to pay money, even where unchallenged, can create a property interest within the meaning of the Takings Clause." *Adams v. United States*, 391 F.3d 1212, 1225 (Fed. Cir. 2004) (citing *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1340 (Fed. Cir. 2001) (en banc)). Land of Lincoln offers no basis for departing from that rule, and we see none. Accordingly, Land of Lincoln's takings claim fails.

Because we hold that the trial court correctly granted judgment for the government as a matter of law, we need not address whether the trial court properly reached that conclusion via judgment on the administrative record.

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**AFFIRMED**

COSTS

The parties shall bear their own costs.

**United States Court of Appeals  
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NEWMAN, *Circuit Judge*, dissenting.

For the reasons stated in my dissent in the concur-  
rently heard case, *Moda Health Plan, Inc. v. United  
States*, No. 17-1994, the ruling of the Court of Federal  
Claims should be reversed.

The panel majority concedes that the government has  
a statutory obligation to make risk corridors payments to  
Land of Lincoln Mutual Health Insurance Company.  
That obligation has not been altered by statute or regula-  
tion. The Court of Federal Claims erred in its statutory  
interpretation, and in its conclusion that the government

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need not meet the obligations by which it induced the nation's health insurers to implement the Affordable Care Act. I respectfully dissent from my colleagues' endorsement of this flawed ruling.

**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

**NOTICE OF ENTRY OF  
JUDGMENT ACCOMPANIED BY OPINION**

OPINION FILED AND JUDGMENT ENTERED: 06/14/2018

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

Each side shall bear its own costs.

Regarding exhibits and visual aids: Your attention is directed Fed. R. App. P. 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued.)

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner  
Clerk of Court

cc: Daniel P. Albers  
Kyle Richard Bahr  
M. Miller Baker  
Barak Bassman  
Caroline Brown  
Ruthanne Mary Deutsch  
Ankur Goel  
Kimberly Hamm  
J. D. Horton  
Robert K. Huffman  
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Marc D. Machlin  
Jonathan Massey  
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Joshua David Rogaczewski  
Steven Rosenbaum  
Conor Michael Shaffer  
Lawrence Sher  
Mark B. Stern  
Stephen A. Swedlow  
Todd B. Tatelman  
Adam Wolfson  
Colin E. Wrabley  
Carleen Mary Zubrzycki

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United States Court of Federal Claims, Case No. 1:16-cv-00744-CFL



**UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**717 MADISON PLACE, N.W.  
WASHINGTON, D.C. 20439PETER R. MARKSTEINER  
CLERK OF COURT

202-275-8000

**Information Sheet****Petitions for Rehearing and Petitions for Hearing and Rehearing En Banc****1. When is a petition for rehearing appropriate?**

The Federal Circuit grants few petitions for rehearing each year. These petitions for rehearing are rarely successful because they typically fail to articulate sufficient grounds upon which to grant them. Of note, petitions for rehearing should not be used to reargue issues previously presented that were not accepted by the merits panel during initial consideration of the appeal. This is especially so when the court has entered a judgment of affirmance without opinion under Fed. Cir. R. 36. Such dispositions are entered if the court determines the judgment of the trial court is based on findings that are not clearly erroneous, the evidence supporting the jury verdict is sufficient, the record supports the trial court's ruling, the decision of the administrative agency warrants affirmance under the appropriate standard of review, or the judgment or decision is without an error of law.

**2. When is a petition for hearing/rehearing en banc appropriate?**

En banc consideration is rare. Each three-judge merits panel is charged with deciding individual appeals under existing Federal Circuit law as established in precedential opinions. Because each merits panel may enter precedential opinions, a party seeking en banc consideration must typically show that either the merits panel has (1) failed to follow existing decisions of the U.S. Supreme Court or Federal Circuit precedent or (2) followed Federal Circuit precedent that the petitioning party now seeks to have overruled by the court en banc. Federal Circuit Internal Operating Procedure #13 identifies several reasons when the Federal Circuit may opt to hear a matter en banc.

**3. Is it necessary to file either of these petitions before filing a petition for a writ certiorari in the U.S. Supreme Court?**

No. A petition for a writ of certiorari may be filed once the court has issued a final judgment in a case.

**For additional information and filing requirements, please refer to Fed. Cir. R. 40 (Petitions for Rehearing) and Fed. Cir. R. 35 (Petitions for Hearing or Rehearing En Banc).**

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**Information Sheet****Filing a Petition for a Writ of Certiorari**

There is no automatic right of appeal to the Supreme Court of the United States from judgments of the Federal Circuit. Instead, a party must file a petition for a writ of certiorari which the Supreme Court will grant only when there are compelling reasons. *See* Supreme Court Rule 10.

**Time.** The petition must be filed in the Supreme Court of the United States within 90 days of the entry of judgment in this Court or within 90 days of the denial of a timely petition for rehearing. The judgment is entered on the day the Federal Circuit issues a final decision in your case. The time does not run from the issuance of the mandate. *See* Supreme Court Rule 13.

**Fees.** Either the \$300 docketing fee or a motion for leave to proceed in forma pauperis with an affidavit in support thereof must accompany the petition. *See* Supreme Court Rules 38 and 39.

**Authorized Filer.** The petition must be filed by a member of the bar of the Supreme Court of the United States or by the petitioner as a self-represented individual.

**Format of a Petition.** The Supreme Court Rules are very specific about the content and formatting of petitions. *See* Supreme Court Rules 14, 33, 34. Additional information is available at [https://www.supremecourt.gov/filingandrules/rules\\_guidance.aspx](https://www.supremecourt.gov/filingandrules/rules_guidance.aspx).

**Number of Copies.** Forty copies of a petition must be filed unless the petitioner is proceeding in forma pauperis, in which case an original and ten copies of both the petition for writ of certiorari and the motion for leave to proceed in forma pauperis must be filed. *See* Supreme Court Rule 12.

**Filing.** Petitions are filed in paper at *Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543.*

Effective November 13, 2017, electronic filing is also required for filings submitted by parties represented by counsel. *See* Supreme Court Rule 29.7. **Additional information about electronic filing at the Supreme Court is available at** <https://www.supremecourt.gov/filingandrules/electronicfiling.aspx>.

No documents are filed at the Federal Circuit and the Federal Circuit provides no information to the Supreme Court unless the Supreme Court asks for the information.