

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.

Decided: June 14, 2018

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 BCBSD 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-

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.

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.

AFFIRMED

COSTS

The parties shall bear their own costs.

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.

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

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.