

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-

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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.

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.

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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.