Ain’t No Friend of Mine

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The U.S. Court of Federal Claims recently refused to accept an amicus curiae brief that exceeded the allowable page limit and asserted a legal theory not put forward by the Plaintiff in *Land of Lincoln Insurance Company v. United States*. The brief was offered by two health care companies that are plaintiffs in a similar case (one of eight cases) pending in the Court under the Affordable Care Act. All of the eight cases involve challenges to the 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.

In rejecting the health care companies’ amicus brief, the Court explained that although the companies had not sought leave to file their brief to serve as true “friends of the court,” their real objective was to advance the positions they were taking in their own cases. But this fact alone, the Court stated, would not bar them from filing an amicus brief:

> *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.*

What ultimately proved fatal to the health care companies’ submission was the fact the brief did not comply with the Court’s rules, and it offered a legal theory not put forward by the Plaintiff:

> *[M]ovants 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 had not been posed by plaintiff*

Read Judge Lettow’s full decision here.