

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

SANFORD HEALTH PLAN; MONTANA
HEALTH CO-OP,

Plaintiffs-Appellees,

v.

UNITED STATES,

Defendant-Appellant.

Nos. 2019-1290(L) &
2019-1302

COMMUNITY HEALTH CHOICE,

Plaintiff-Appellee,

v.

UNITED STATES,

Defendant-Appellant.

No. 2019-1633

**UNOPPOSED MOTION TO TREAT APPEALS AS COMPANION CASES,
TO BE HEARD BY THE SAME PANEL ON THE SAME DAY**

The government respectfully moves to have the above-captioned cases designated as companion cases, to be heard by the same panel on the same day. This motion is unopposed.

1. In about a dozen Tucker Act cases, insurers allege that they are owed payments under the cost-sharing reduction program established by section 1402 of the Patient Protection and Affordable Care Act (ACA). It is conceded that Congress did not provide funding for these payments. However, the insurers allege that they are entitled by statute to damages because the payments were not made. Some insurers also allege that they have implied-in-fact contracts for these payments.

2. The above-captioned cases are the lead appeals. In *Sanford Health Plan* and *Montana Health Co-op*, the Court of Federal Claims (Kaplan, J.) accepted the insurers' statutory claims but did not reach their implied-in-fact contract claims. Those two cases, which were brought by the same counsel, have been consolidated on appeal. The government's opening brief is due March 25. In *Community Health Choice*, the Court of Federal Claims (Sweeney, C.J.) accepted the insurer's statutory and implied-in-fact contract claims. The appeal in *Community Health Choice* also presents an additional issue with respect to damages, to the extent that the insurer has recouped its cost-sharing expenses through increased premiums and tax credits. The government's opening brief is due May 7.

3. To ensure that a single panel can consider all significant legal issues, we respectfully request that the above-captioned appeals be designated as companion cases, to be heard on the same day by the same panel.

4. Counsel for each of the plaintiffs has authorized us to state that this motion is unopposed.

Respectfully submitted,

MARK B. STERN

s/ Alisa B. Klein

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MARCH 2019

CERTIFICATE OF COMPLIANCE

I certify that this document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 276 words.

s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2019, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Alisa B. Klein

Alisa B. Klein