

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

NANCY G. ATKINS, in her capacity	:	
as Liquidator of Kentucky Health	:	Case No. 17-1108C
Cooperative, Inc.,	:	
	:	Judge Horn
Plaintiff,	:	
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

STIPULATION FOR ENTRY OF JUDGMENT

To settle the claims asserted in the complaint of Nancy G. Atkins (the “Liquidator”), in her capacity as liquidator of Kentucky Health Cooperative, Inc. (“KYHC”) and to permit the entry of final judgment on those claims, without constituting an admission of liability on the part of the United States of America (“United States”) (the Liquidator, KYHC, and the United States are collectively referred to herein as “the Parties”), it is stipulated between the Parties:

1. The United States and KYHC entered into a loan agreement (the “Loan Agreement”) dated June 19, 2012, comprised of a Start-Up Loan and a Solvency Loan. Pursuant to the Loan Agreement, KYHC received \$19,568,223 under the Start-Up Loan, and \$124,497,900 under the Solvency Loan.

2. On July 6, 2017, the Liquidator filed a complaint in the Court of Federal Claims seeking damages under section 1342 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119 *et seq.* (the “ACA”), captioned *Atkins v. United States*, Case No. 17-906C (the “Risk Corridors Case”).

3. On August 16, 2017, the Liquidator filed the complaint in this Court seeking damages under Section 1341 of the ACA (the “Section 1341 Case”).

4. The Parties subsequently entered into negotiations to resolve amicably the Liquidator's claims in the Section 1341 Case. The Liquidator offered to settle the Section 1341 Case in exchange for payment by the United States in the amount of \$16,200,000.00, inclusive of interest, with each party to bear its own costs, attorneys' fees, and expenses.

5. On February 28, 2018, the United States accepted the Liquidator's offer.

6. Accordingly, the Parties, having settled the claims at issue in the Section 1341 Case pursuant to the terms set forth in this Stipulation, jointly request that the Court enter judgment in the amount of \$16,200,000.00 (the "Stipulated Amount") in favor of KYHC and the Liquidator.

7. Upon entry of judgment in the Stipulated Amount, the Liquidator releases the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that KYHC has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, including any and all claims arising under Section 1341 of the ACA. Notwithstanding the foregoing, the Liquidator specifically reserves and does not release its claims asserted in the Risk Corridors Case and any appeals therefrom.

8. Upon entry of final judgment in the Stipulated Amount, the United States releases KYHC and the Liquidator from any and all claims related to the Start-Up Loan or arising under the ACA, except as provided in Paragraph 9. Notwithstanding the foregoing, the following claims of the United States are specifically reserved and are not released: (a) any liability arising under Title 26, United States Code (Internal Revenue Code); (b) any criminal liability; and (c) any fraud.

9. Any and all claims of the United States arising under the Solvency Loan shall be allowed as a Class 10 claim in accordance with Kentucky Revised Statute § 304.33-430, in the amount set forth in the Proof of Claim filed by the United States (the "Solvency Loan Claim").

The Solvency Loan Claim shall be subordinated to claims of creditors and members of KYHC, including without limitation claims of entities that may obtain an interest in or assignment of amounts recovered, if any, in the Risk Corridors Case (whether recovered by a settlement, judgment, or otherwise).

10. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in this Agreement.

11. This Agreement shall not bind the Parties, nor shall it be cited or otherwise referred to, in any proceedings, whether judicial or administrative in nature, in which the Parties or counsel for the Parties have or may acquire an interest, except as necessary to effect the terms of this Agreement.

12. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

13. This Agreement is governed by the laws of the United States. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14. This Agreement constitutes the complete agreement between the Parties and supersedes any and all prior oral or written representations, understandings or agreements among or between the Parties. This Agreement may not be amended except by written consent of the Parties.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

16. This Agreement is binding on each Party's successors, transferees, heirs, and assigns.

Respectfully submitted,

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