

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

COMMON GROUND HEALTHCARE
COOPERATIVE, on behalf of itself and all
others similarly situated,

Plaintiff-Appellee,

v.

UNITED STATES,

Defendant-Appellant.

No. 2020-1286

**APPELLANT'S MOTION TO HOLD APPEAL IN ABEYANCE
PENDING THIS COURT'S DISPOSITION OF RELATED CASES**

This case presents the same issue that this Court will hear on January 9, 2020, in *Sanford Health Plan v. United States*, No. 19-1290; *Montana Health CO-OP v. United States*, No. 19-1302; *Community Health Choice v. United States*, No. 19-1633; and *Maine Community Health Options v. United States*, No. 19-2102. The government, as appellant, respectfully requests that the Court hold this appeal in abeyance pending the Court's disposition of those lead cases.

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. In several cases, judges on the Court of Federal Claims have ruled in favor of insurers.

2. The lead appeals are fully briefed and scheduled for oral argument on January 9, 2020. The disposition of those appeals will control this case. Indeed, the trial judge who authored the decision in this case, Chief Judge Sweeney, also authored the decisions in the *Community Health Choice* and *Maine Community Health Options* cases that this Court will hear on January 9. See *Common Ground Healthcare Cooperative v. United States*, 142 Fed. Cl. 38, 45 n.11 (2019) (explaining that, in issuing the decision in this case, “the court has considered the parties’ arguments in all three cases”).

3. Plaintiff’s counsel informed us that plaintiff opposes this abeyance motion, for reasons not specified.

Respectfully submitted,

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DECEMBER 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 277 words.

/s/ Alisa B. Klein

Alisa B. Klein

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 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