

In the United States Court of Federal Claims

No. 17-348C
(Filed: May 29, 2020)

_____)
BLUECROSS BLUESHIELD)
OF TENNESSEE, INC.,)
)
<i>Plaintiff,</i>)
)
v.)
)
UNITED STATES,)
)
<i>Defendant.</i>)
_____)

ORDER

On May 29, 2020, the parties filed a Joint Status Report (ECF 29), as directed by the Court’s Order of May 5, 2020 (ECF 25). The plaintiff requests the Court direct the filing of another status report within 14 days; the defendant requests an additional 30 days before the filing of another status report.

This case seeks damages under the risk-corridor provision, Section 1342, of the Patient Protection and Affordable Care Act. The case had been stayed pending the Supreme Court’s decision of the governing legal issues in *Maine Community Health Options v. United States*, No. 18-1023 (April 27, 2020).

The defendant represents that there are more than 64 cases pending before this Court seeking damages under the risk-corridor provision. The underlying legal issue needed to bring this case to a conclusion is resolved. The Court does appreciate that there are a number of related potential issues under consideration by the defendant. Further, these issues involve, in addition to officials of the Department of Justice, the Department of Health and Human Services, whose senior officials are likely to be preoccupied with the current pandemic. The Court believes that allowing the defendant an additional 30 days to resolve the pending issues it is considering is appropriate and, indeed, may in the end produce a speedier ultimate resolution of these cases.

The Court is reluctant to try to compel a shorter response time to the plaintiff in this case for fear that making this case a priority may delay the resolution of the other pending cases or may encourage plaintiffs in other cases to seek expedited treatment as well; were every case to become a priority, no case would be a priority.

The Court will give the defendant the 30 days it requests before requiring the filing of the next Joint Status Report. The Court notes that by the end of June the defendant will have had two months to consider and come to a resolution on the issues raised by the decision in *Maine Community Health Options*. Therefore, no further extensions of time will be accorded the defendant. Either the parties will then be able to begin to resolve this case, or the Court will set a briefing schedule in order to determine expeditiously the precise amount the plaintiff is owed. The plaintiff is entitled to a prompt resolution of its claim once the defendant has determined its position on the subsidiary legal issues that may be presented in these risk-corridor cases. The Court believes, as noted above, that affording the defendant an additional two weeks now may in fact help expedite the ultimate resolution of the case.

Accordingly, the parties shall file a Joint Status Report no later than **June 29, 2020**. That Joint Status Report will propose a schedule by which the parties expect to be able to resolve the case or, in the alternative, a proposed schedule to present and brief any motions that may be necessary to bring the case to its conclusion. The plaintiff shall file an amended complaint on or before that date if it needs to update the full amount it is seeking for payment due under the risk-corridor program. In the event the plaintiff files an amended complaint, the time for the defendant to file its answer to the amended complaint under Rule 15 of the Rules of the Court of Federal Claims shall not begin to run until June 29, 2020.

It is so **ORDERED**.

s/ Richard A. Hertling
Richard A. Hertling
Judge