

In the United States Court of Federal Claims

No. 17-97C

(Filed: June 20, 2017)

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 *
 MOLINA HEALTHCARE OF *
 CALIFORNIA, INC., and *
 MOLINA HEALTHCARE OF FLORIDA, *
 INC., *et al.*, *
 *
 Plaintiffs, *
 *
 v. *
 *
 THE UNITED STATES, *
 *
 Defendant. *
 *

ORDER REGARDING ORAL ARGUMENT

The Court will hear oral argument in this case on July 12, 2017 beginning at 2:00 PM EDT at the National Courts Building in Washington, D.C. During the course of the argument, the Court requests the parties to address the following questions:

1. Regarding Count I: Does the Government have a statutory duty to make full annual risk corridor payments despite the lack of appropriated funds specified in Section 1342? If so, did the FY 2015 and FY 2016 Appropriations Riders vitiate that statutory duty? Please specifically address the significance of Highland Falls-Fort Montgomery Central School District v. United States, 48 F.3d 1166 (Fed. Cir. 1995) and Star-Glo Associates, LP v. United States, 414 F.3d 1349 (Fed. Cir. 2005) in answering these questions.
2. Regarding Count III: What is the legal test for establishing the mutuality of intent for an implied-in-fact contract claim? Did the Government express an intent to contract in creating the risk corridor program? If so, how?

3. What is the effect on the Government's motion to dismiss Count II (Breach of Express Contract), Count IV (Breach of Implied Covenant of Good Faith and Fair Dealing) and Count V (Taking without Just Compensation), if the Court finds for Molina on Count I (Violation of Federal Statute and Regulation) and Count III (Breach of Implied-in-Fact Contract)?
4. Does this Court have jurisdiction to grant declaratory relief regarding CY 2016 risk corridor payments?

Counsel are welcome to include any other relevant information in their presentations as they may wish.

IT IS SO ORDERED.

s/ Thomas C. Wheeler
THOMAS C. WHEELER
Judge