

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

NANCY G. ATKINS, in her capacity	:	
as Liquidator of Kentucky Health	:	Case No. 17-906C
Cooperative, Inc.,	:	
	:	Judge Kaplan
Plaintiff,	:	
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

**THE UNITED STATES’ REPLY IN SUPPORT OF
ITS MOTION TO TRANSFER AND CONSOLIDATE**

As demonstrated in the Motion to Transfer and Consolidate, Docket No. 12, this case (“Atkins I”) and *Atkins v. United States*, No. 17-1108C (“Atkins II”) are directly related cases that should be consolidated. Nancy G. Atkins (the “Liquidator”) does not dispute that the parties are the same in both cases. She does not dispute that both cases arise out of Kentucky Health CO-OP, Inc. offering qualified health plans on the individual and small group health insurance exchanges in 2014 and 2015. *See* Atkins I, Complaint ¶¶ 1-4, 23-28; Atkins II, Complaint ¶¶ 1-4, 17-22. She does not dispute that both cases seek money damages under interrelated programs created by the Patient Protection and Affordable Care Act (“ACA”), namely the risk corridors and reinsurance programs (together with risk adjustment, the “3Rs”). *See* Atkins I, Complaint ¶¶ 79-83; Atkins II, Complaint ¶¶ 79-83. And she does not dispute that three other state liquidators have filed complaints in this court asserting claims arising out of multiple 3Rs programs and challenging the United States’ offset rights.

In short, the United States fulfilled its obligation to notify the Court of the existence of a directly related case. *See* Rule 40.2(a)(1). In response, the Liquidator wrongly suggests that the

notification, and the resulting consolidation, may prejudice her by delaying resolution of one or both of her complaints.¹ But the Court has already denied the United States' motion to stay Atkins I. And because the cases arise out of the same facts and present similar claims, the parties will be required to brief the same issues and establish the same arguments in the absence of consolidation. Consolidation of these directly related cases, on the other hand, will conserve judicial resources because two judges of the Court will not be forced to consider and resolve the same facts and similar legal claims between the same parties. Consolidation is proper and can only lead to a more efficient adjudication.

¹ As noted in the Liquidator's Opposition, on September 16, 2017, the Liquidator filed a motion for summary judgment in Atkins II. Docket No. 5. On September 18, 2017, Judge Horn entered an Order striking that motion because it was filed before the United States had an opportunity to answer the complaint. Docket No. 6.

Dated: September 21, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2017, a copy of the foregoing, *The United States' Reply in Support of Its Motion to Transfer and Consolidate*, was filed electronically with the Court's Electronic Case Filing (ECF) system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

/s/ Terrance A. Mebane
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