

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FIRST PRIORITY LIFE INSURANCE)
COMPANY, INC., *et al.*)
)
Plaintiffs,)
)
v.) No. 16-587C
) Senior Judge Wolski
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)
)
_____)

FIRST PRIORITY LIFE INSURANCE)
COMPANY, INC., *et al.*)
)
Plaintiffs,)
)
v.) No. 18-96C
) Senior Judge Wolski
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)
)
_____)

STIPULATION FOR ENTRY OF JUDGMENT

To finally resolve the claims of Plaintiffs, First Priority Life Insurance Company, Inc., Highmark Inc. f/k/a Highmark Health Services, HM Health Insurance Company d/b/a Highmark Health Insurance Company, Highmark BCBSD Inc., Highmark West Virginia Inc., and Highmark Select Resources Inc. (“Highmark”), against the United States, and to permit the entry of a consolidated final judgment on those claims in Case No. 16-587C and Case No. 18-96C, it is hereby stipulated and agreed between the Parties:

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care Reconciliation Act of 2010, Pub. L. No. 111-152 (2010),

124 Stat. 1029 (collectively, the “ACA”) created several interrelated programs to expand access to affordable health insurance coverage.

2. Section 1342 (42 U.S.C. § 18062) of the ACA created the risk corridors program.

3. In Case No. 16-587C, on May 17, 2016, Highmark filed a Complaint in this Court seeking risk corridors damages under section 1342 of the ACA for benefit year 2014. The Complaint asserts five counts, each asserting a separate theory for damages arising under section 1342 of the ACA.

4. In Case No. 18-96C, on January 19, 2018, Highmark filed a Complaint in this Court seeking risk corridors damages for claims under section 1342 of the ACA for benefit years 2015 and 2016. The Complaint in Case No. 18-96C asserts four risk corridors counts, each asserting a separate theory for damages arising under section 1342 of the ACA.

5. On April 27, 2020, the United States Supreme Court held that section 1342 of the ACA “created an obligation neither contingent on nor limited by the availability of appropriations or other funds,” that the obligation was not affected by subsequently-enacted legislation, and that the “petitioners may seek to collect payment through a damages action in the Court of Federal Claims.” *Maine Community Health Options v. United States*, 140 S. Ct. 1308, 1323, 1331 (2020).

6. The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles Highmark to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014, 2015, and 2016 in the total amount of \$571,474,065.06 (“Stipulated Damages Amount”). The Parties further agree that full payment of this amount resolves entirely the Complaints in Case No. 16-587C and Case No. 18-96C.

7. Accordingly, the Parties jointly request that the Court enter final judgment in favor of Highmark in the total Stipulated Damages Amount of \$571,474,065.06 on Count I of the

Complaint in Case No. 16-587C (damages for risk corridors benefit year 2014) and on Count I of the Complaint in Case No. 18-96C (damages for risk corridors benefit years 2015 and 2016).

8. Upon the Court's entry of final judgment as requested above, the Parties further jointly request that the Court dismiss Counts II, III, IV and V of the Complaint in Case No. 16-587C with prejudice and Counts II, III and IV of the Complaint in Case No. 18-96C with prejudice.

9. Upon entry of final judgment and receipt of full payment by Highmark of the Stipulated Damages Amount above, First Priority Life Insurance Company, Inc. (HIOS no. 55957), Highmark Inc. f/k/a Highmark Health Services (HIOS no. 33709), HM Health Insurance Company d/b/a Highmark Health Insurance Company (HIOS no. 70194), Highmark BCBSD Inc. (HIOS no. 76168), Highmark West Virginia Inc. (HIOS no. 31274), Highmark Select Resources Inc. (HIOS no. 36247), and any and all of each named Plaintiff's affiliated entities, release 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 First Priority Life Insurance Company, Inc. (HIOS no. 55957), Highmark Inc. f/k/a Highmark Health Services (HIOS no. 33709), HM Health Insurance Company d/b/a Highmark Health Insurance Company (HIOS no. 70194), Highmark BCBSD Inc. (HIOS no. 76168), Highmark West Virginia Inc. (HIOS no. 31274), Highmark Select Resources Inc. (HIOS no. 36247), and any and all of each named Plaintiff's affiliated entities, has asserted, could have asserted, or may assert in the future against the United States its agencies, instrumentalities, officers, agents, employees, and servants, arising under Section 1342 of the ACA.

Dated: June 26, 2020

Respectfully submitted,

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