

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

RAYMOND G. FARMER, in his capacity as	:	
Liquidator of Consumers’ Choice Health Insurance	:	Judge Campbell-Smith
Company, and Michael J. FitzGibbons, in his	:	
capacity as Special Deputy Liquidator of	:	Case No. 17-363C
Consumers’ Choice Health Insurance Company,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

STIPULATION FOR ENTRY OF JUDGMENT

To resolve the claims of Plaintiffs, Raymond G. Farmer and Michael J. FitzGibbons, in their capacities as liquidators of Consumers’ Choice Health Insurance Company (collectively, “Consumers’ Choice”), and to permit the entry of final judgment on those claims, it is stipulated between the Parties:

BACKGROUND

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119 *et seq.* (the “ACA”), specifically, section 1342 (42 U.S.C. § 18062), created the risk corridors program.
2. Under section 1322 of the ACA (42 U.S.C. § 18042), relating to the Consumer Operated and Oriented Plan program, the United States and Consumers’ Choice entered into a loan agreement (“Loan Agreement”), comprised of a start-up loan and a solvency loan. Pursuant to the Loan Agreement, Consumers’ Choice received a start-up loan of \$18,709,800, of which \$314,002.18 has not been repaid.

3. On March 17, 2017, plaintiffs filed the Complaint in this Court seeking damages under section 1342 of the ACA. ECF No. 1. The Complaint asserts five counts, each asserting a separate theory for risk corridors damages.

4. On June 7, 2017, the Court entered an order that stayed this case, ECF No. 9, which has since been continued until the Court orders otherwise. ECF No. 15.

5. On April 27, 2020, the United States Supreme Court held that section 1342 “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). The Parties agree that *Maine Community Health Options* entitles Consumers’ Choice to payment under section 1342.

6. The United States asserts its right of offset to collect (or net) debts arising under other ACA programs. The Liquidators previously disputed the legality of the United States’ use of offset. *See Farmer v. United States*, Case No. 18-1484C (Fed. Cl.). Upon consideration, Consumers’ Choice agrees that the \$314,002.18 balance of the start-up loan currently owed to the United States shall be offset against payments made under section 1342 to Consumers’ Choice.

DAMAGES

7. The Parties stipulate that Consumers’ Choice is entitled to payment from the United States under section 1342 of the ACA in the amount of \$91,466,847.85 for benefit years 2014 and 2015.

8. The Parties further stipulate that the United States is entitled to payment from Consumers’ Choice under the Loan Agreement in the amount of \$314,002.18 for repayment of the start-up loan.

9. The Parties also stipulate that the United States is not recovering the solvency loan through offset against Consumers' Choice's judgment in this case.

10. Accordingly, the Parties jointly request that the Court enter judgment in favor of Consumers' Choice in the amount of \$91,466,847.85 on Count I of the Complaint, and judgment in favor of the United States in the amount of \$314,002.18. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to Consumers' Choice upon submission of the judgments to the Judgment Fund. The net amount payable by the United States to Consumers' Choice pursuant to this judgment is \$91,152,845.67.¹

11. The Parties further request that the Court dismiss Counts II-V of the Complaint with prejudice.

12. Upon entry of judgment in the Stipulated Amount, Consumers' Choice (HIOS Number 65122) releases the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that it 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 or related to the ACA.²

¹ Nothing in this Stipulation affects the United States' right to offset or levy payments as required by 31 U.S.C. § 3716 or 26 U.S.C. § 6331, respectively.

² Concurrently with the filing of this Stipulation, Plaintiffs intend to file a stipulation of dismissal with prejudice in Court of Federal Claims Case No. 18-1484C and a consent motion to voluntarily dismiss the appeal with prejudice in Federal Circuit Case No. 20-1359.

Respectfully submitted,

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