

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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| TOM GLAUSE, WYOMING STATE |) | |
| INSURANCE COMMISSIONER, |) | |
| |) | |
| Plaintiff, |) | No. 17-1157C |
| |) | |
| v. |) | |
| |) | Senior Judge Edward J. Damich |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |
| |) | |

STIPULATION FOR ENTRY OF JUDGMENT

To resolve the claims of Plaintiff, Jeff Rude,¹ Wyoming State Insurance Commissioner, on behalf of WINhealth Partners’s (“WINhealth”) liquidation estate, and the defenses of the United States, and to permit the entry of final judgment on those claims and defenses, it is stipulated between the Parties:

STATUTORY BACKGROUND

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”) created several interrelated programs under which the Parties’ respective claims and defenses arise.

2. Specifically, section 1341 (42 U.S.C. § 18061) created the reinsurance program and section 1342 (42 U.S.C. § 18062) created the risk corridors program. Under these programs, WINhealth either owes payment to or is owed payment from the United States.

¹ Jeff Rude succeeded Tom Glause as the Interim Wyoming Insurance Commissioner on July 19, 2019 and was subsequently appointed as the Wyoming Insurance Commissioner on September 19, 2019. Under Rule 25(d) of the Rules of the United States Court of Federal Claims, Jeff Rude should be automatically substituted as the plaintiff.

THE PARTIES' CLAIMS AND DEFENSES

3. On August 25, 2017, Tom Glause, the former Wyoming State Insurance Commissioner, filed the Complaint on behalf of WINhealth's liquidation estate in this Court seeking damages under section 1342 of the ACA for benefit years 2014, 2015, and 2016.

4. On October 13, 2017, the Court entered an order that stayed this case. ECF No. 6.

5. On April 27, 2020, the 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 WINhealth to payment under section 1342.

6. The United States asserts its right of offset to collect (or net) debts arising under other ACA programs. Jeff Rude, on behalf of WINhealth's liquidation estate, agrees that amounts WINhealth owes to the United States under other ACA programs shall be offset against payments made under section 1342 to WINhealth.

STIPULATIONS AS TO DAMAGES

7. The Parties stipulate that WINhealth is entitled to payment from the United States under the risk corridors program (section 1342 of the ACA) in the amount of \$17,854,774.09.

8. The Parties further stipulate that the United States is entitled to payment from WINhealth under the reinsurance program in the amount of \$238,716.56; and that the United States is entitled to payment of interest on this claim in the amount of \$60,141.67.

9. Accordingly, the Parties jointly request that the Court enter judgment in favor of WINhealth in the amount of \$17,854,774.09, and judgment in favor of the United States in the

amount of \$298,858.23. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to WINhealth upon submission of the judgments to the Judgment Fund. The net amount payable by the United States to WINhealth is \$17,555,915.86.

10. Upon entry of judgment, the Parties further jointly request that the Court dismiss Count II of the Complaint with prejudice.

11. Upon entry of judgment, Jeff Rude, on behalf of WINhealth's (HIOS Number 53189) liquidation estate, and any and all of WINhealth's affiliated entities, release 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 Jeff Rude, on behalf of WINhealth's (HIOS Number 53189) liquidation estate, 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 programs in paragraph 2.

12. Upon entry of judgment, the United States releases WINhealth from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that the United States could have asserted against WINhealth arising out of or related to the ACA programs in paragraph 2.

Dated: August 12, 2020

Respectfully submitted,

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Deputy Assistant Attorney General²

RUTH A. HARVEY
Director
Commercial Litigation Branch

² Acting Assistant Attorney General Ethan P. Davis is recused from this matter.

KIRK T. MANHARDT
Deputy Director

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