

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE
COMPANY,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 16-00259

Judge Davis

STIPULATION TO ENTER JUDGMENT FOR THE ARCHES SUBCLASS

To resolve the claims of Arches Mutual Insurance Company (“Arches”), the sole member of the Arches Subclass, and the defenses of the United States, the Parties stipulate as follows:

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. The ACA created three interrelated risk mitigation programs. Specifically, section 1341 (42 U.S.C. § 18061) created the reinsurance program; section 1342 (42 U.S.C. § 18062) created the risk corridors program; and section 1343 (42 U.S.C. § 18063) created the risk adjustment program. Section 1322 of the ACA (42 U.S.C. § 18042), relates to the Consumer Operated and Oriented Plan program, under which the United States provided start-up and solvency loans. Section 1412 (42 U.S.C. § 18082) authorizes advance payment of premium tax credits (“APTCs”) to insurers. Section 1402 (42 U.S.C. § 18071) authorizes cost-sharing reductions (“CSRs”). Sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031), and 1321

(42 U.S.C. § 18041) of the ACA authorize the United States to collect user fees for its operation of the federally-facilitated exchanges (“FFE”) and the risk adjustment program.

3. On February 24, 2016, Health Republic Insurance Company (“Health Republic”) filed the Complaint in this matter on behalf of itself and others similarly situated, seeking risk corridors damages under section 1342 of the ACA for benefit years 2014 and 2015. The Complaint alleged a single count for violation of section 1342.

4. On January 3, 2017, the Court certified the following class (the “Class”):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

Docket No. 30. Ultimately, 153 issuers opted into the Class, including Arches.

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). The Parties agree that the Supreme Court’s decision in *Maine Community Health Options* entitles the Class members to receive payment of damages from the United States under ACA section 1342 for risk corridors benefit years 2014 and 2015.

6. On July 23, 2020, this Court divided the Class into three subclasses: (1) the Non-Dispute Subclass; (2) the Dispute Subclass; and (3) the Arches Subclass, of which Arches is the sole member.

7. The Parties stipulate that the Arches Subclass is entitled to payment from the United States under section 1342 of the ACA, the risk corridors program, for the 2014 and 2015 benefit years in the amount of \$56,415,700.72.

8. The Parties further stipulate that the United States is entitled to payment from Arches under the risk adjustment program in the amount of \$654,325.11; that the United States is entitled to payment from Arches for risk adjustment user fees in the amount of \$35,114.70; that the United States is entitled to payment from Arches under the reinsurance program in the amount of \$472,175.00; that the United States is entitled to payment from Arches of APTCs in the amount of \$13,188.30; that the United States is entitled to payment from Arches of CSRs in the amount of \$183.77; that the United States is entitled to payment from Arches for the start-up loan in the amount of \$10,106,003.00; and that the United States is entitled to payment of interest in the amount of \$406,507.63.

9. Prior approval of this stipulation having been granted to the liquidator of Arches' estate by the court in *In Re Arches Mutual Insurance Company*, Case No. 150907803, pending in the Third Judicial District Court, In and For Salt Lake County, State of Utah, the Parties enter into this stipulated judgment in favor of the Arches Subclass in the amount of \$45,417,643.02, which is determined by reducing the \$56,415,700.72 owed to Arches for risk corridors by the total amount of the debts identified above, with the exception of those claims for risk adjustment in the amount of \$654,325.11 and risk adjustment user fees in the amount of \$35,114.70, for a total judgment in favor of Arches in the amount of \$45,417,643.02. The Parties further stipulate that judgment shall be entered in favor of the United States in the amount of \$689,439.81, representing the risk adjustment and risk adjustment user fee claims above. The judgment in favor of the United States shall be paid through deduction from the amount owed under the judgment to the Arches Subclass

upon submission of the judgments to the Judgment Fund. The net amount payable by the United States to the Arches Subclass pursuant to this judgment is \$44,728,203.21.

10. Arches (HIOS No. 27619), and any and all of its affiliated entities, receivers, consultants, agents, and servants, 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 Arches, and any and all of Arches' affiliated entities, receivers, consultants, agents, and servants have 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.

11. The United States releases Arches in liquidation, and any and all of its affiliated entities, receivers, consultants, agents, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that the United States has asserted, could have asserted, or may assert in the future against Arches in liquidation, and any and all of its affiliated entities, receivers, consultants, agents, and servants, arising under sections 1311, 1321, 1341, 1343, 1402 or 1412 of the ACA, or related to the start-up loan issued pursuant to section 1322 of the ACA.

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