

MOUND COTTON WOLLAN & GREENGRASS LLP

COUNSELLORS AT LAW
ONE NEW YORK PLAZA
NEW YORK, NY 10004-1901

NEW YORK, NY
FLORHAM PARK, NJ
GARDEN CITY, NY
SAN FRANCISCO BAY, CA
FORT LAUDERDALE, FL

(212) 804-4200
FAX: (212) 344-8066
WWW.MOUNDCOTTON.COM

JAMES D. VEACH
OF COUNSEL
212-804-4233
JVeach@moundcotton.com

June 18, 2018

Via Electronic Filing/Served via ECF

The Hon. Carol R. Edmead
Supreme Court of the State of New York, County of New York
60 Centre Street, Room 532
New York, New York 10007

Re: Maria T. Vullo v. Health Republic Insurance of New York, Corp.
Index No. 450500/2016
Moda Health Plan, Inc. v. U.S., No. 2017-1994 (Fed. Cir. June 14, 2018)

Dear Justice Edmead:

In my April 30, 2018 letter, I asked that the Court schedule a conference at which time the Liquidator could update the Court and Health Republic's former policyholders with respect to:

1. the status of about 186,346 Explanation of Benefits (EOBs) determinations;
2. the status of appeals taken from those EOB determinations;
3. the status of any discussions with the Federal government with respect to *Vullo v. United States of America*; and
4. whether the Liquidator will post the MagnaCare Application that led to this Court's March 29, 2018 order.

In the above-referenced action, *Vullo v. United States of America*, (Fed. Cl. No 17-1185C), the Liquidator seeks to recover \$575 million allegedly owed to Health Republic by the United States government under the Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (ACA). Most of these moneys consist of funds the Liquidator alleges are owed Health Republic under the ACA's Loss Corridor programs.

Justice Edmead
June 18, 2018
Page 2

In her Complaint, the Liquidator alleged that "Congress's attempt to restrict the use of appropriations to fund the Government's payment obligations . . . do not defeat" the Government's obligations to make Loss Corridor payments to Health Republic. Complaint, ¶ 129 at 30; First Cause of Action. In addition, the Liquidator alleges in her Fourth, Fifth, and Sixth causes of action that the Government breached implied in fact contracts to pay Health Republic moneys due under the Loss Corridor program, as well as reinsurance moneys due Health Republic. Complaint, Fourth, Fifth, and Sixth Causes of Action at 33-38.

Similar claims against the Government had been successfully raised by at least one health CO-OP, *Moda Health Plan, Inc. v. United States*, 130 Fed. Cl. 436 (2017); *see also Molina Healthcare of Cal., Inc. v. U.S.*, 133 Fed. Cl. 14 (2017). but the *Moda* decision had been appealed to the United States Court of Appeals for the Federal Circuit.

On June 14, 2018, the Federal Circuit reversed the *Moda* decision. *Moda Health Plan, Inc. v. U.S.*, No. 2017-1994 (Fed. Cir. June 14, 2018), a copy of which is attached. (The Federal Circuit also affirmed the dismissal of another action brought by a liquidated Illinois ACA CO-OP that also sought reimbursement for unpaid loss corridor and other moneys. *Land of Lincoln Mutual Health Insurance Company, v. United States*, No. 2017-1224 (Fed. Cir. June 14, 2018), a copy of which is attached.

In the *Moda* case, the Federal Circuit held, Judge Newman dissenting, that through certain appropriations riders "Congress [had] suspended the government's obligation" to make Risk Corridor payments. Slip op. at 35. The Federal Circuit also held that "the circumstances of [the ACA legislation, including budget amendments and regulatory pronouncements] did not create a contract promising the full amount of Risk Corridor payments." *Id.*

Given this development, as well as the other matters set out above, we ask that this Court schedule a status conference to address next steps with respect to Health Republic's policyholder claims, as well as the three other matters set out in my April 30th letter.

I thank Your Honor for allowing me to write to the Court in connection with Health Republic's liquidation.

Respectfully,


cc: Scott Fischer, Executive Deputy Superintendent, New York Department of Financial Services (via email).

Justice Edmead

June 18, 2018

Page 3

David Axinn, Special Deputy Superintendent, New York Liquidation Bureau (via e-serve, e-mail, and regular mail)

John P. Kelly, General Counsel, New York Liquidation Bureau (via e-mail)

Timothy Butler, Esq. (via e-mail)

David Young, Esq. (via e-mail)

Senator James L. Seward (via e-mail to Legislative Director)

Senator Kemp Hannon (via e-mail to Legislative Director)