

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

**LINDA A. LACEWELL, in her capacity as
Liquidator of Health Republic Insurance
of New York, Corp.,**)

Plaintiff,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

No. 17-1185C

Judge Zachary N. Somers

STIPULATION FOR ENTRY OF FINAL JUDGMENT

To resolve the claims of Plaintiff Linda A. Laceywell, in her capacity as Liquidator of Health Republic Insurance of New York, Corp. (the “Liquidator” or “Health Republic”), and the not-yet-asserted defenses and counterclaims of the United States arising under the programs created and loans authorized by 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”), as set forth in paragraphs 2-3 herein, and to permit the entry of final judgment on those claims and not-yet-asserted defenses and counterclaims, it is stipulated between the Parties:

1. The ACA was enacted to reform health insurance markets nationwide and expand access to affordable health insurance coverage.

2. The ACA created three premium stabilization programs. Specifically, Section 1341 of the ACA (42 U.S.C. § 18061) created a reinsurance program; Section 1342 of the ACA (42 U.S.C. § 18062) created a risk corridors program; and Section 1343 of the ACA (42 U.S.C. § 18063) created a risk adjustment program. Sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C.

§ 18031), and 1321 (42 U.S.C. § 18041) authorized the United States to collect user fees for its operation of the ACA's risk adjustment program.

3. The ACA additionally created certain financial assistance programs, under which payments were made by the United States to insurers to subsidize payments that would otherwise be owed by qualifying enrollees. Sections 1401 and 1412 of the ACA (26 U.S.C § 36B; 42 U.S.C. § 18082) authorized advance payment of premium tax credits ("APTCs") to insurers. Section 1402 of the ACA (42 U.S.C. § 18071) authorized cost-sharing reduction ("CSR") payments to insurers. As also authorized by the ACA, the United States provided Health Republic a start-up loan, pursuant to 42 U.S.C. § 18042 (*see* Compl. ¶¶ 80-93).

4. As also authorized by the ACA, the United States provided Health Republic a solvency loan ("Solvency Loan"), pursuant to 42 U.S.C. § 18042 (*see* Compl. ¶¶ 80-93).

5. Under these premium stabilization and financial assistance programs, Health Republic either owes payments to or is owed payments from the United States.

THE PARTIES' CLAIMS AND DEFENSES

6. Health Republic filed a Complaint in this Court seeking risk corridors damages under Section 1342 of the ACA for benefit years 2014 and 2015. The Complaint asserts two causes of actions (First and Fourth) that each assert a separate theory for damages arising under Section 1342 of the ACA.

7. Health Republic's Complaint also sought reinsurance damages under Section 1341 of the ACA for benefit years 2014 and 2015. The Complaint asserts two causes of actions (Second and Fifth) that each assert a separate theory for damages arising under Section 1341 of the ACA.

8. Health Republic's Complaint also sought APTC and CSR damages under Sections 1401 and 1402 of the ACA. The Complaint asserts two causes of actions (Third and Sixth) that each assert a separate theory for damages arising under Sections 1401 and 1402 of the ACA.

9. 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).

10. The Parties agree that the Supreme Court's decision in *Maine Community Health Options* entitles Health Republic to receive payment under Section 1342 of the ACA for benefit years 2014 and 2015.

11. The United States takes the position that it has paid all payments owed to Health Republic under the ACA's reinsurance program and APTC program by offsetting those sums against charges owed by Health Republic under other ACA programs. The United States also takes the position that it has a right to offset to collect (net) all remaining debts owed by Health Republic under other ACA programs, including the interest that has accrued on those debts pursuant to 31 U.S.C. § 3717 and 45 C.F.R. § 30.18, against the payments owed to Health Republic under the ACA's risk corridors program.

12. Health Republic disputes the legality of the United States' position regarding offset and disputes any related not-yet-asserted defenses or claims against Health Republic.

Health Republic also disputes the United States' position that any interest is owed on debts owed by Health Republic under the ACA.

AGREED STIPULATIONS

13. The Parties stipulate that Health Republic (Health Ins. Oversight Sys. ("HIOS") No. 71644) is entitled to payment from the United States in the amount of \$438,368,502.32 under the risk corridors program for benefit years 2014 and 2015.

14. The Parties stipulate that the United States is entitled to payment from Health Republic in the amount of \$217,529,918.99, encompassing amounts owed under the risk adjustment program, risk adjustment user fees, the start-up loan, the CSR program, and for associated accrued interest.

15. The Parties stipulate and agree that the payment described in Paragraph 14 will be payment in full for any and all outstanding debts that the United States claims Health Republic owes to the United States under the ACA programs set forth in Paragraph 14, and for interest on those claimed debts.

16. The Parties further stipulate and agree that the claim of the United States against Health Republic arising under the Solvency Loan described in Paragraph 4 above, calculated in the amount of \$246,976,417.52 as of December 31, 2020, shall be allowed in the Health Republic liquidation proceeding, *In the Matter of the Liquidation of Health Republic Insurance of New York, Corp.*, pending in the Supreme Court of the State of New York, Index Number 450500/2016, as a Class Eight claim under § 7434(a)(1) of the New York Insurance Law (*see* Compl. ¶¶ 116-21).

17. Accordingly, the Parties jointly request that the Court enter judgment in favor of Health Republic in the amount of \$438,368,502.32 on the First Cause of Action of the

Complaint, and judgment in favor of the United States in the amount of \$217,529,918.99. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to Health Republic upon submission to the Judgment Fund. The net amount payable by the United States to Health Republic pursuant to this judgment is \$220,838,583.33 (“Judgment Payment”).

18. The Parties further request that the Court dismiss the Second, Third, Fourth, Fifth and Sixth Causes of Action of the Complaint with prejudice.

RELEASES

19. Upon entry of the judgment and payment by the United States to the Liquidator of the Judgment Payment, Health Republic, any and all of its affiliated entities, the Liquidator, their predecessors and successors, and each of their officers, agents, employees, and representatives, in their capacities as such, release the United States, and all of its agencies, instrumentalities, officers, agents, employees, servants and representatives, in their capacities as such, from all claims (including claims for attorney fees, costs, and expenses of every kind and however denominated) that Health Republic, any and all of its affiliated entities, the Liquidator, their predecessors and successors, and each of their officers, agents, employees, and representatives, in their capacities as such, have asserted, could have asserted, or may assert in the future against the United States, or any of its agencies, instrumentalities, officers, agents, employees, servants and representatives, in their capacities as such, arising under or related to the ACA programs described in Paragraphs 2 and 3.

20. Upon entry of the judgment and payment by the United States to the Liquidator of the Judgment Payment, the United States, or any of its agencies, instrumentalities, officers, agents, employees, servants and representatives, in their capacities as such, release Health

Republic, any and all of its affiliated entities, the Liquidator, their predecessors and successors, and each of their officers, agents, employees, and representatives, in their capacities as such, from all claims (including claims for attorney fees, costs, and expenses of every kind and however denominated) that the United States, or any of its agencies, instrumentalities, officers, agents, employees, servants and representatives, in their capacities as such, have asserted, could have asserted, or may assert in the future against Health Republic, any and all of its affiliated entities, the Liquidator, their predecessors and successors, and each of their officers, agents, employees, and representatives, in their capacities as such, arising under or related to the ACA programs described in Paragraphs 2 and 3.

Dated: January __, 2021

Respectfully submitted,

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