

n.57; the relevant provision is now located at 42 C.F.R. § 438.2 (definition of “Actuary”) and 42 C.F.R. § 438.4(b)(6).

On August 21, 2018, the Court granted in part and denied in part Plaintiffs’ motion for entry of final judgment and for reconsideration of the Court’s dismissal of their claims for refunds and other rulings. Order 17, ECF No. 100. The Court found that “Plaintiffs are entitled to equitable disgorgement of their HIPF payments” for 2014 through 2016. *Id.* at 14.

In a Joint Status Report and subsequent Joint Notice, the parties provided the Court with their agreement as to reasonable approximations of the amount each Plaintiff State paid to account for its managed care organizations’ Health Insurance Providers Fee payments for Medicaid and CHIP premiums for 2014–2016 for the purposes of the Court’s award of equitable disgorgement in this matter. ECF Nos. 144, 146. Specifically, the parties agreed to the following amounts:

State	2014	2015	2016	Total
TX	\$82,189,553.00	\$105,738,576.00	\$108,050,362.00	\$295,978,491.00
KS	\$13,657,121.00	\$22,495,820.00	\$20,403,057.00	\$56,555,998.00
LA	\$12,290,652.02	\$17,014,999.26	\$34,495,921.88	\$63,801,573.16
IN	\$4,421,245.00	\$4,537,910.00	\$7,751,354.00	\$16,710,509.00
WI	\$6,992,133.83	\$7,572,784.14	\$8,653,911.11	\$23,218,829.08
NE	\$5,392,992.00	\$9,412,689.00	\$8,329,962.00	\$23,135,643.00

On July 19, 2019, the Court denied Plaintiffs’ motion for an award of prejudgment and postjudgment interest. Order 5, ECF No. 152.

NOW THEREFORE, in accordance with the parties’ agreement and the Court’s prior orders, it is accordingly **ORDERED, ADJUDGED, and DECREED** that Plaintiffs’ Motion for Summary Judgment is **GRANTED in part and DENIED in part**; Defendants’ Motion for Summary Judgment is **GRANTED in part and**

DENIED in part; Plaintiffs' Motion for Entry of Final Judgment and for Reconsideration of the Court's Dismissal of Their Claims for Refunds and Other Rulings is **GRANTED in part and DENIED in part**. The Court further **DECLARES and SETS ASIDE** 42 C.F.R. § 438.2 (definition of "Actuary") and 42 C.F.R. § 438.4(b)(6) as "**contrary to constitutional right, power, privilege, or immunity,**" under **5 U.S.C. § 706(2)(B)**. The Court further **ORDERS** Defendants to pay each Plaintiff the following amounts, and to submit the payments for processing within 30 days of this final judgment unless execution of the judgment is stayed pending appeal:

Texas: \$295,978,491.00

Kansas: \$56,555,998.00

Louisiana: \$63,801,573.16

Indiana: \$16,710,509.00

Wisconsin: \$23,218,829.08

Nebraska: \$23,135,643.00.

All such other relief requested by Plaintiffs that is not specifically granted herein is denied. Nothing herein shall be construed to affect the Parties' reservation of their rights to appeal all orders and rulings in this case, including liability, the availability of disgorgement (but not the amount of any equitable disgorgement as set forth above) or any other remedy, the availability and calculation of any pre-judgment or post-judgment interest, and any other issue. *See* Joint Status Report 3, ECF No. 144.

SO ORDERED on this ____ day of _____, 2019.

HONORABLE REED O'CONNOR
UNITED STATES DISTRICT JUDGE

Approved as to form and substance:

For State Plaintiffs:

DEREK SCHMIDT
Attorney General of Kansas
JEFF LANDRY
Attorney General of Louisiana
CURTIS HILL
Attorney General of Indiana
JOSH KAUL
Attorney General of Wisconsin
DOUG PETERSON
Attorney General of Nebraska

KEN PAXTON
Attorney General of Texas
JEFFREY C. MATEER
First Assistant Attorney General
RYAN L. BANGERT
Deputy Attorney General for Legal
Counsel

/s/ David J. Hacker
DAVID J. HACKER
Special Counsel for Civil Litigation
Texas Bar No. 24103323
david.hacker@oag.texas.gov
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548, Mail Code 001
Austin, Texas 78711-2548
Tel: 512-936-1414
COUNSEL FOR PLAINTIFFS

For Defendants:

JOSEPH H. HUNT
Assistant Attorney General
ERIN NEALY COX
United States Attorney
JENNIFER D. RICKETTS
Director, Federal Programs Branch
MICHELLE R. BENNETT
CO Bar No. 37050
Assistant Branch Director

/s/ Julie Straus Harris
JULIE STRAUS HARRIS
DC Bar No. 1021928
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW, Room 11514
Washington, DC 20530
Tel: (202) 353-7633
Fax: (202) 616-8470

E-mail: Julie.StrausHarris@usdoj.gov

COUNSEL FOR DEFENDANTS