

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

FIRST PRIORITY LIFE INSURANCE	)	
COMPANY, INC., <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16- 587C
	)	Judge Wolski
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	

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**PLAINTIFFS' RESPONSE TO DEFENDANT'S  
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs First Priority Life Insurance Company, Inc., and other Highmark Plaintiffs (collectively, “Plaintiffs”), respectfully respond to what the United States labeled a “Notice of Supplemental Authority” (the “Notice”), filed on January 31, 2017 (ECF No. 26).

Defendant’s Notice is not a “notice” at all, but rather is a six-page supplemental brief filled with arguments and citations that Defendant filed without leave of Court—long after the Court-approved briefing in this case had closed. Defendant’s Notice unquestionably contains supplemental briefing and argument beyond simply providing “notice” of the two recent and relevant decisions, and ignores that Plaintiffs previously provided this Court, on January 13, 2017, with notice of Judge Sweeney’s decision in the *Health Republic* case. *See* ECF No. 25.<sup>1</sup> Because Defendant already exhausted its page allotment for briefing in support of its pending Motion to Dismiss, and because Defendant did not seek leave to file a supplemental brief, its Notice is in violation of RCFC 5.4(b).

Although Defendant notes its “disagree[ment]” with both decisions, Defendant is forced to concede that Judge Lettow and Judge Sweeney each rejected the identical jurisdictional and ripeness arguments that Defendant asserts in this case on its Rule 12(b)(1) Motion. Both Judge

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<sup>1</sup> Nor did Defendant even bother to attach the supplemental authorities about which it claimed to be notifying the Court. For the Court’s convenience, Plaintiffs have attached the *Land of Lincoln* and *Health Republic* opinions at, respectively, Exhibit A and Exhibit B of this response.

Lettow and Judge Sweeney held that the Court has subject-matter jurisdiction over the health insurance plaintiffs' money-mandating claims and that such claims are ripe, despite Defendant's insistence that the full risk corridors amounts were "not presently due." Plaintiffs will be prepared to address any questions the Court may have regarding the relevance of the *Land of Lincoln* and *Health Republic* rulings to Defendant's pending motions in this case at next week's hearing, on February 7, 2017.<sup>2</sup>

Dated: February 2, 2017

Respectfully Submitted,

s/ Lawrence S. Sher

Lawrence S. Sher (D.C. Bar No. 430469)

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<sup>2</sup> Alternatively, if the Court would prefer Plaintiffs to file before February 7, 2017, a substantive reply in response to Defendant's Notice explaining the similarities and differences between those decisions and Defendant's motions in this case, we will do so.

**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2017, a copy of the foregoing Plaintiffs' Response to Defendant's Notice of Supplemental Authority was filed electronically with the Court's Electronic Case Filing (ECF) system. I understand that notice of this filing will be sent to all parties by operation of the Court's ECF system.

s/ Lawrence S. Sher

Lawrence S. Sher

*Counsel for Plaintiffs*