

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

LAND OF LINCOLN MUTUAL HEALTH	:	
INSURANCE COMPANY,	:	Judge Lettow
	:	
Plaintiff,	:	Case No. 16-744C
	:	
v.	:	
	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendant.	:	

STIPULATION FOR ENTRY OF JUDGMENT

To resolve the claims of Plaintiff Land of Lincoln Mutual Health Insurance Company (“Land of Lincoln”) and the defenses of the United States, and to permit the entry of final judgment on those claims and defenses, it is stipulated between the Parties:

STATUTORY BACKGROUND

1. The Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care 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. Under these programs, Land of Lincoln either owes payment to or is owed payment from the United States.

3. Section 1412 of the ACA (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 exchange (“FFE”) and the risk adjustment program. Land of Lincoln owes the United States for APTCs, CSRs, and user fees.

THE PARTIES’ CLAIMS AND DEFENSES

4. On June 23, 2016, Land of Lincoln, filed the Complaint in this Court seeking damages under section 1342 of the ACA relating to the risk corridors program. On November 10, 2016, the Court granted the United States’ motion to dismiss, 129 Fed. Cl. 81 (2016), and the Court of Appeals for the Federal Circuit affirmed, 892 F.3d 1184 (2018).

5. On April 27, 2020, the Supreme Court reversed the judgments of this Court and the Federal Circuit, holding that section 1342 “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, 31 (2020). The Parties agree that *Maine Community Health Options* entitles Land of Lincoln to payment under section 1342.

6. The United States asserts its right of offset to collect (or net) debts arising under other ACA programs. Land of Lincoln previously disputed the legality of the United States’ use of offset. Upon consideration, Land of Lincoln agrees that amounts owed to the United States shall be offset against payments made under section 1342 to Land of Lincoln.

STIPULATIONS AS TO DAMAGES

7. The Parties stipulate that Land of Lincoln is entitled to payment from the United States under the risk corridors program in the amount of \$128,321,224.59.

8. The Parties further stipulate that the United States is entitled to payment from Land of Lincoln under the risk adjustment program in the amount of \$24,331,419.21; that the United States is entitled to payment from Land of Lincoln under the reinsurance program in the amount of \$1,246,635.09; that the United States is entitled to payment from Land of Lincoln of APTCs in the amount of \$2,065,189.43; that the United States is entitled to payment from Land of Lincoln of CSR reconciliations in the amount of \$438,538.42; that the United States is entitled to payment from Land of Lincoln of FFE user fees in the amount of \$681,191.35; that the United States is entitled to payment from Land of Lincoln of risk adjustment user fees in the amount of \$104,629.64; and that the United States is entitled to payment of interest on these amounts from Land of Lincoln in the amount of \$8,649,043.16.

9. Accordingly, the Parties jointly request that the Court enter judgment in favor of Land of Lincoln in the amount of \$128,321,224.59, and judgment in favor of the United States in the amount of \$37,516,646.30. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to Land of Lincoln upon submission of the judgments to the Judgment Fund. The net amount payable by the United States to Land of Lincoln pursuant to this judgment is \$90,804,578.29.¹

10. Upon entry of judgment, Land of Lincoln (HIOS ID 79763) releases the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Land of Lincoln has asserted, could have asserted, or may assert in the future against the United States its agencies, instrumentalities, officers, agents, employees, and servants, arising under or related to the ACA.

¹ Nothing in this Stipulation affects the United States' right to offset or levy payments as required by 31 U.S.C. § 3716 or 26 U.S.C. § 6331, respectively.

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Daniel P. Albers
DANIEL P. ALBERS
MARK E. RUST
BARNES & THORNBURG LLP
One N. Wacker Drive, Suite 4400
Chicago, IL 60606
Telephone: (312)357-1313
Email: dalbers@btlaw.com

*Counsel for Plaintiff Land of Lincoln Mutual
Health Insurance Company*

/s/ Terrance A. Mebane
TERRANCE A. MEBANE
FRANCES M. MCLAUGHLIN
United States Department of Justice
Civil Division
Commercial Litigation Branch
Telephone: (202) 307-0493
Terrance.A.Mebane@usdoj.gov

Counsel for the United States of America