

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

DOUG OMMEN, in his capacity as)
Liquidator of CoOportunity Health, Inc., and)
DAN WATKINS, in his capacity as Special)
Deputy Liquidator of CoOportunity Health,)
Inc.,)
Plaintiffs,)
v.)
THE UNITED STATES OF AMERICA,)
Defendant.)

Case No.: 1:17-cv-957C
Judge Hertling

STIPULATION FOR ENTRY OF JUDGMENT

To resolve the claims of Plaintiff Doug Ommen, in his capacity as Liquidator of CoOpportunity Health, Inc. (“CoOpportunity”), 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:

BACKGROUND

1. 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”), 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, CoOportunity 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”). And sections 1343 (42 U.S.C. § 18063), 1311 (42 U.S.C. § 18031), and 1321 (42 U.S.C. § 18041) authorize the United States to collect user fees for its operation of the risk adjustment program. CoOportunity owes the United States under the Risk Adjustment and Reinsurance programs, and for APTCs, CSRs, and user fees.

CLAIMS AND DEFENSES

4. On August 24, 2018, CoOportunity filed the Amended Complaint in this Court seeking through Count I statutory damages under section 1342 of the ACA. The Amended Complaint asserts six other counts: two asserting separate theories for risk corridors damages, two challenging the United States Department of Health and Human Services’ use of offset and netting regarding a start-up loan authorized under section 1322 (42 U.S.C. § 18042(b)(1)(A)) and risk adjustment charges, and two challenging the risk adjustment program.

5. On April 11, 2019, the Court entered an order staying these proceedings.

6. 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).

7. The Parties agree that *Maine Community Health Options* entitles CoOportunity to payment under section 1342. The Parties further agree that other amounts owed to the United States under the ACA shall be offset against payments made under section 1342 to CoOportunity.

DAMAGES

8. The Parties stipulate that, in satisfaction of Count I of the Amended Complaint, CoOportunity is entitled to payment from the United States under the risk corridors program in the amount of \$135,188,869.02.

9. The Parties further stipulate that the United States is entitled to payment from CoOportunity under the risk adjustment program in the amount of \$7,259,350.23; that the United States is entitled to payment under the reinsurance program in the amount of \$14,161.91; that the United States is entitled to payment of APTCs in the amount of \$3,117.33; that the United States is entitled to payment of CSRs in the amount of \$695.95; that the United States is entitled to payment of CSR Reconciliation in the amount of \$208,341.31; that the United States is entitled to payment of risk adjustment user fees in the amount of \$9,157.43; and that the United States is entitled to interest on these amounts in the amount of \$2,823,986.12, as of July 15, 2020 (collectively, the “ACA Program Debts”). The Parties agree that no further offsets to this judgment for ACA Program Debts, including but not limited to alleged amounts related to a solvency loan authorized under section 1322 of the ACA (42 U.S.C. § 18042(b)(1)(B)), will be taken by the United States. Nothing in this Stipulation shall otherwise affect the United States’ right to offset or levy payments under 31 U.S.C. §§ 3716, 3728 or 26 U.S.C. §§ 6331, 6402, respectively, or the United States’ right to recovery of the solvency loan through distributions in CoOportunity’s state insolvency proceedings.

10. Accordingly, the Parties jointly request that the Court enter judgment in favor of CoOportunity in the amount of \$135,188,869.02, and judgment in favor of the United States in the amount of \$10,318,810.28. The judgment in favor of the United States shall be paid through deduction from the amount owed under this judgment to CoOportunity upon submission of the

judgments to the Judgment Fund. The net amount payable by the United States to CoOportunity pursuant to this judgment is \$124,870,058.74.

11. The Parties further jointly request that the Court dismiss the remainder of the Amended Complaint, Counts II-VII, with prejudice.¹

12. Upon entry of judgment, CoOportunity (HIOS Nos. 43198, 71268) and any and all of its affiliated entities releases the United States, its agencies, instrumentalities, officers, agents, employees, and servants, from all claims (including attorney fees, costs, and expenses of every kind and however denominated) that CoOportunity 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 section 1342 of the ACA.

Date: October 2, 2020

¹ The Counts of the Amended Complaint are misnumbered, twice asserting a count labeled “Count V.”

JEFFREY BOSSERT CLARK
Acting Deputy Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Douglas J. Schmidt
Douglas J. Schmidt
Derek T. Teeter
Michael T. Raupp
Husch Blackwell LLP
4801 Main Street, Suite 1000
Kansas City, MO 64112
Telephone (816) 983-8000
Facsimile (816) 983-8080
douglas.schmidt@huschblackwell.com
kirsten.bryd@huschblackwell.com
derek.teeter@huschblackwell.com
michael.raupp@huschblackwell.com

Attorneys for Plaintiff

s/ Frances M. McLaughlin
FRANCES M. McLAUGHLIN
United States Department of Justice
Civil Division
Commercial Litigation Branch
Telephone: (202) 307-0487
Frances.McLaughlin@usdoj.gov

Counsel for the United States