

IN THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

MICHAEL CONWAY, in his)
capacity as Liquidator of Colorado)
Health Insurance Cooperative, Inc.,)
Plaintiff-Appellee,)
v.) 20-1292
UNITED STATES,)
Defendant-Appellant.)

**UNOPPOSED MOTION FOR A SEVEN-DAY EXTENSION OF THE
DEADLINE TO FILE ANY PETITION FOR REHEARING**

Pursuant to Federal Circuit Rule 26(b), the government respectfully requests a seven-day extension, to and including August 9, 2021, of the deadline to file any petition for rehearing in this case. The government is filing this motion less than seven days prior to the date to be extended and, consistent with the requirements of Rule 26(b)(1), extraordinary circumstances justify the requested week-long extension.

1. The deadline to file a petition for rehearing is currently August 2, 2021. This is the government's second request for an extension of the deadline to file a petition for rehearing. The Court previously granted the government a 30-day extension of the deadline to file a petition for rehearing.

2. As stated in our previous motion for an extension, the issues addressed by the panel decision are significant. The requested second extension is also necessary to allow sufficient time for government counsel to obtain input from the client agency and affected components of the Department of Justice, to determine whether to file a petition for rehearing, and, if so, to prepare and file any such petition.

3. As demonstrated in the attached declaration under penalty of perjury under 28 U.S.C. § 1746, extraordinary circumstances justify the requested seven-day extension. The undersigned counsel, trial counsel in this case, filed his notice of appearance as lead counsel in this case on July 29, 2021, substituting for previous lead government counsel. Prior counsel has been addressing a series of time-sensitive, emergency matters, primarily involving representation of the Centers for Disease Control and Prevention. Because the undersigned counsel has just taken over as lead counsel, he needs the requested additional time to finally determine whether to file a petition for rehearing, and, if so, to complete preparation of any such petition.

4. Plaintiff's counsel has authorized us to state that plaintiff takes no position on this extension request.

Dated: July 29, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

RUTH A. HARVEY
Director
Commercial Litigation Branch

KIRK T. MANHARDT
Deputy Director

/s/ Marc S. Sacks
MARC S. SACKS
TERRANCE A. MEBANE
United States Department of Justice
Civil Division
Commercial Litigation Branch
Tel. (202) 307-1104
Fax (202) 514-9163
marcus.s.sacks@usdoj.gov

Attorneys for the United States of America

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DECLARATION OF MARC S. SACKS

I, Marc S. Sacks, under penalty of perjury pursuant to 28 U.S.C. § 1746, declare:

1. I am an Assistant Director with the United States Department of Justice, Civil Division, Commercial Litigation Branch.
2. On May 17, 2021, the Court issued an opinion affirming the judgment of the trial court. On June 9, 2021, this Court granted the government's motion to extend the time to file a petition for rehearing by 30 days, until August 2, 2021.
3. Despite the extension, I have not had sufficient time to prepare the government's response. I filed my notice of appearance as lead counsel in this case on July 29, 2021, substituting for previous lead government counsel. Prior counsel has been addressing a series of time-sensitive,

emergency matters, primarily involving representation of the Centers for Disease Control and Prevention.

4. Because I have just taken over as lead counsel, I need the requested additional time to finally determine whether to file a petition for rehearing, and, if so, to complete preparation of any such petition.
5. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Executed on July 29, 2021

/s/ Marc S. Sacks

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the type-volume limit of Fed. R. App. P. 27(d)(2)(A) because it contains 323 words, according to the count of Microsoft Word. The motion complies with Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced typeface.

/s/ Marc S. Sacks
Marc S. Sacks
Counsel for the United States