

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE
COMPANY,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 16-cv-259C

Judge Davis

**STIPULATED MOTION FOR APPROVAL OF ATTORNEY’S FEE
REQUEST FOR THE DISPUTE SUBCLASS (COLORADO HEALTH)**

Pursuant to RCFC 23(e) and 54(d)(2), Class Counsel and Colorado Health Insurance Cooperative, Inc. (“Colorado Health”), the sole remaining Dispute Subclass member, have conferred and stipulate as follows. The Government has stated that it does not take a position on this motion.

1. On July 23, 2020, the Court divided the risk corridors class into the Non-Dispute and Dispute Subclasses, the latter of which included, *inter alia*, Colorado Health. Dkt. 82.

2. In response to joint motions between the government and various of the other Dispute Subclass members, the Court further divided the Dispute Subclass multiple times and entered judgment for the other Dispute Subclass members on June 1, 2021 (Dkt. 123); June 24, 2021 (Dkt. 129); and April 25, 2022 (Dkt. 155).

3. Before obtaining these results, Class Counsel moved to dismiss the government’s counterclaim and offset arguments against the Dispute Subclass’s risk corridor damages, which included arguments specific to Colorado Health. *See generally* Dkt. 103, 116, 125, 161, 166. The

Court granted in part and denied in part the motion to dismiss, *see* Dkt. 170, a decision which the Court subsequently clarified in response to Class Counsel's request. Dkt. 179. In most important part, the Court held that the government could not offset Colorado Health's risk corridor damages. Dkt. 170, 179.

4. Following the Court's Orders on the motion to dismiss and subsequent motion for clarification, Class Counsel engaged in substantial back-and-forth on Colorado Health's behalf with government counsel regarding the proper form of an order and judgment, including recent briefing. Dkt. 190. With the Court's guidance on that issue, Class Counsel then worked with the government to file the appropriate papers resolving Colorado Health's claims, which the Court then ordered (Dkt. 199) and on which it issued judgment for Colorado Health on May 16, 2023, in the amount of \$110,601,107.74. Dkt. 200.

5. Consistent with the class notice, Class Counsel seeks 5% of the Dispute Subclass's stipulated judgment, equaling \$5,530,055.38. Colorado Health does not object to the amount of this fee.

6. In stipulating to Class Counsel's fee, the parties wish to avoid burdening the Court with overly repetitive briefing, and therefore refer to the fee application and renewed fee application papers that Class Counsel submitted in connection with its fee request from the Non-Dispute Subclass. Dkt. 84, 93, 192. Colorado Health agrees with the arguments Class Counsel makes in those submissions and that the 5% fee it seeks from the Dispute Subclass is reasonable and justified under the circumstances here.

7. On these bases, Class Counsel and the Dispute Subclass respectfully request that the Court issue the order attached hereto as **Exhibit A**, which directs the Clerk of the Court to enter judgment awarding Class Counsel \$5,530,055.38 in fees from the Dispute Subclass's risk

corridor damages.

Dated: June 1, 2023

Respectfully submitted,

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*Insurance Commissioner of the State of
Colorado, in his capacity as Liquidator of
Colorado Health Insurance Cooperative, Inc.*

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ORDER

On June 1, 2023, Class Counsel filed their Motion for Approval of Attorney's Fee Request for the Dispute Subclass (Dkt. 206). Class Counsel requests that the Court approve an award of five percent in attorney's fees from the Dispute Subclass's judgment that is allocated to the risk corridors claims, or approximately \$5,530,055.38. Dkt. 200 (ordering and adjudging that Colorado Health shall "recover of and from the United States the amount of \$110,601,107.74 for risk corridors benefit years 2014 and 2015"). The Dispute Subclass stipulates to Class Counsel's request. Dkt. 206.

Given the Dispute Subclass's and Class Counsel's stipulation, including the reasons cited therein regarding Class Counsel's requested five percent fee, the Court finds Class Counsel's request reasonable and GRANTS their Motion. Having determined pursuant to Rule 54(b) of the Rules of the United States Court of Federal Claims that there is no just reason for delay, the Court directs the Clerk to enter judgment in the amount of \$5,530,055.38 to be paid to Class Counsel from the Dispute Subclass judgment.

SO ORDERED.

Dated: June __, 2023

KATHRYN C. DAVIS
Judge