

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

HIGHMARK, INC, *et al.*,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

No. 20-1686 C
Judge Kaplan

JOINT STATUS REPORT

Pursuant to the Court’s July 6, 2023 order (ECF No. 54), the parties respectfully submit this joint status report to request that the Court continue the stay in these proceedings.

This case is currently stayed because the Government is working with a number of cost-sharing reduction (“CSR”) Plaintiffs to determine whether they may efficiently resolve this and other pending CSR matters without further litigation or at least streamline these cases. The parties to a number of these CSR cases, including this one, have stipulated to entry of partial final judgment as to the CSR amounts owed by the Government for 2017. On September 23, 2022, with leave of this Court, the Plaintiffs filed an Amended Complaint to recover CSR payments due to Plaintiffs for 2018-21. On July 6, 2023, the Court ordered the parties to file a joint status report on or before August 1, 2023.

The parties believe that the current continued stay in this case will provide more time for the parties to continue their discussions about resolving the damages amounts owed by the Government in the pending CSR cases, including this one, for benefit years 2018 and beyond without further litigation. On April 28, 2022, the Government provided

its substantive response to the CSR Plaintiffs' proposed settlement methodology for CSR damages owed for benefit years 2018 and beyond. On May 20, 2022, counsel for the Government and for a number of CSR Plaintiffs, including this case, participated in a teleconference with actuaries to discuss the proposed settlement methodology and to share relevant data. On May 23, 2022, CSR Plaintiffs responded to the Government's April 28, 2022 letter. Thereafter, the parties have convened by phone multiple times, and the Government produced certain settlement-related data and other information to the CSR Plaintiffs on July 22, 2022, which the parties hope will continue to advance our settlement discussions. The parties participated in a settlement-related call on September 1, 2022, and the CSR Plaintiffs followed that call with a letter to the Government on September 15, 2022. The Government responded to the CSR Plaintiffs' letter on November 10, 2022. On January 10, 2023, the CSR Plaintiffs responded to the Government's letter. The parties participated in conference calls on Thursday, January 19, 2023, and Friday, February 24, 2023 to discuss the latest settlement proposal. Since February 24, 2023, the parties have continued to work to achieve a potential settlement of the CSR cases, including the claims in this case. On May 12, 2023, Counsel for the CSR Plaintiffs sent the Government a written response to the Government's most recent position on certain offset and mitigation issues that are material to any potential settlement. Counsel for the parties met in person on June 26, 2023 to discuss these remaining offset and mitigation issues and their impact on any potential settlement of the CSR cases. The parties exchanged additional information and met again on July 27, 2023, which continues to meaningfully move forward their settlement discussions. The parties plan to consider the additional information they have exchanged and meet again on August 4, 2023. The parties will consider the additional

information exchanged by August 18th and will update the Court with a joint status report no later than August 25, 2023.

Given the complexity of the interplay between the claims and defenses in the CSR cases, as well as the number of interested stakeholders involved in the ongoing settlement discussions, the parties respectfully believe that it will be productive and efficient to afford the parties limited additional time to pursue this mutual attempt to resolve the damages issues in this case without further litigation. They therefore believe good cause exists to continue the stay in this case for now.

Accordingly, the parties jointly request that the Court continue the stay in this case, and the parties will file a Joint Status Report on or before August 25, 2023 to update the Court on the status of their efforts to fully resolve this matter.

August 1, 2023

Respectfully submitted,

/s/ Lawrence S. Sher
Lawrence S. Sher (D.C. Bar No. 430469)
WINSTON & STRAWN LLP
1901 L Street NW
Washington, DC 20036
Telephone: 202.282-5000
Facsimile: 202.282.5100
Email: Lsher@winston.com

Attorneys for Plaintiffs

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney
General

PATRICIA M. McCARTHY
Director

/s/ Claudia Burke
CLAUDIA BURKE
Deputy Director

/s/ David M. Kerr
DAVID M. KERR
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, DC 20044
Telephone: (202) 307-3390
Email: David.M.Kerr@usdoj.gov

OF COUNSEL:

ALBERT S. IAROSSE
Senior Trial Counsel
Civil Division
U.S. Department of Justice

Attorneys for Defendant