

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 August 1, 2023 order (ECF No. 56), 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 August 1, 2023, the Court ordered the parties to file a joint status report on or before August 25, 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, and August 4, 2023. On August 18, and 23, 2023, the CSR Plaintiffs provided the Government with a written response on certain outstanding settlement issues and a revised settlement methodology proposal incorporating the parties'

recent discussions. The parties participated in another settlement negotiation call today, August 25, regarding the CSR Plaintiffs' recent correspondence and the Government will review and consider the Plaintiffs' response and revised settlement methodology proposal and respond to the CSR Plaintiffs by September 7, and then the parties will update the Court with a joint status report no later than September 29, 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 September 29, 2023 to update the Court on the status of their efforts to fully resolve this matter.

August 25, 2023

Respectfully submitted,

/s/ Lawrence S. Sher

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