

Exhibit C

ORIGINAL

#9998-3208432

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FILED

FEB 24 2016
U.S. COURT OF
FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE
COMPANY,

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

No. 16-259 C

vs.

CLASS ACTION COMPLAINT

THE UNITED STATES OF AMERICA,

Defendant.

Plaintiff Health Republic Insurance Company (“Health Republic” or “Plaintiff”), on behalf of itself and all those similarly situated, as defined below, brings this class action for the Defendant’s (i) violation of Section 1342 of the Patient Protection and Affordable Care Act (“Section 1342”), (ii) violation of 45 CFR § 153.510(b) (“Section 153.510”); and (iii) violation of other applicable law, damages, and other relief, states and alleges as follows:

NATURE OF THE ACTION

1. In late March 2010, the federal government of the United States of America (“Defendant,” or the “Government”) changed the face of healthcare in the nation by enacting The Patient Protection and Affordable Care Act (Pub. L. 111-148) (the “Affordable Care Act” or the “Act” or “ACA”) and The Health Care and Education Reconciliation Act (Pub. L. 111-152). Together, these acts are often colloquially known as “Obamacare” and represent the most significant healthcare statutes in recent U.S. history.

2. Before these laws went into effect, health insurers were (among other things) permitted to deny coverage to individuals and families, exclude pre-existing conditions from insurance coverage, and vary insureds’ premiums based on their individual health status. After the two acts went into effect, such practices were prohibited, beginning with plans offered in the

currently owes. Despite its after-the-fact politicization, the risk corridor program is far and away the smallest of the Three Rs. Yet, it is simultaneously the most important of those programs in these early crucial years, because it was contemplated by the Affordable Care Act as a necessary component to allow QHPs to function and survive while the new health insurance market stabilized and insurers obtained more risk and cost data. The law is clear: the Government must abide by its statutory obligations. Plaintiff respectfully seeks to compel it do so.

JURISDICTION

14. This Court has jurisdiction over the subject matter of this action pursuant to the Tucker Act, 28 U.S.C. § 1491. The statutory basis for invoking jurisdiction is: Section 1342, which is a money-mandating statute that requires payment from the federal government to QHPs that satisfy certain criteria; and Section 153.510(b), which is similarly money-mandating and requires payment from the federal government to QHPs that satisfy certain criteria.

15. This controversy is ripe because CMS and HHS have stated that they will not pay Plaintiff and the Class the full amounts they are owed for 2014 and 2015 within the annual cycle required by Section 1342 and Section 153.510.

PARTIES

16. Plaintiff Health Republic Insurance Company is a nonprofit corporation organized under the laws of the State of Oregon, with its principal place of business at 4000 Kruse Way Pl. #2-300, Lake Oswego, Oregon 97035. Health Republic began providing health insurance to insureds on the state-based health exchange in Oregon in January of 2014. Throughout 2014 and 2015, Health Republic continued to provide health insurance to its insureds until October 2015, when it learned the Government would pay only 12.6% of its 2014 risk corridor receivable. At that time, Health Republic had determined it was owed \$7,068,851 under the risk corridor

program for 2014. It has since estimated that it is owed approximately \$15,000,000 under the risk corridor program for 2015. The precise 2015 risk corridor receivable will be determined after the submission of final data to CMS later in 2016.

17. Pursuant to CMS rules, 2014 unpaid risk corridor amounts must be paid before 2015 risk corridor payments can be made. As a result, risk corridor payments made by insurers with an obligation to pay the Government under the criteria of the risk corridor program for 2015 will be used to pay 2014 risk corridor obligations *prior* to making 2015 risk corridor payments.

18. Based upon the persisting losses experienced by insurers in the individual market nationally, risk corridor payments due to the Government are estimated to be very low, creating yet again a deficit for the 2015 risk corridor program.

19. Due to the Government's failure to pay Health Republic its 2014 risk corridor payment, and the estimates for the payment of the 2015 risk corridor amounts owed, Health Republic found itself at great risk of falling below statutory reserve requirements and was compelled to announce it would close its doors. Health Republic exited the 2016 market and is currently in the wind down phase for its 2015 insurance plans. The defendant is the Government, acting through the Centers for Medicare & Medicaid Services and United States Department of Health & Human Services.

FACTUAL ALLEGATIONS

A. **In 2010, the Government Established a "Risk Corridor" Program Designed to Entice Insurers to Participate in the New Affordable Care Act Insurance Exchanges**

20. With its passage in March 2010, the Affordable Care Act established three insurance premium stabilization programs. The Three Rs (as they are colloquially known) include: a permanent risk adjustment program, which collects funds from insurers in the individual and small group markets that have enrolled lower-risk enrollees and transfers the

49. For these reasons, on information and belief, Plaintiff and the Class are currently owed even more risk corridor payments than the official 2014 calculations and will prove the exact amount in this case. Furthermore, the 2015 risk corridor payments to the Government will be insufficient to satisfy the Government’s full obligations to Plaintiff and the Class for each of 2014 and 2015, and it will be insufficient to satisfy the obligations from both years combined. Compounding this, CMS and HHS have indicated—as they must, due to the Spending Bill Provisions—they will not pay any amounts above what comes in from QHPs this year. Plaintiff and the Class are thus in a worse position than when the 2014 shortfall was first announced, and have already been told that the Government will not resolve the situation despite its statutory obligations.

* * * * *

50. The Government’s failure to satisfy its monetary obligations and make its required risk corridor payments will have wide-reaching effects on millions of Americans in the form of restricted health plans and higher insurance premiums. Given QHPs relied upon the risk corridor program in designing and pricing both their 2014 and 2015 plans, as was the intent of the program, Plaintiff, on behalf of itself and the Class, seeks the immediate payment in full of risk corridor receivables for 2014 and immediate payment of risk corridor receivables for 2015, once they are determined, to enable QHPs to survive and continue to offer Americans high-quality, affordable health insurance as contemplated by the Affordable Care Act.

CLASS ACTION ALLEGATIONS

51. Plaintiff brings this action as a class action under Rule 23(a) and (b) of the Federal Rules of Civil Procedure, on behalf of itself and others similarly situated. The proposed “Class” is defined as:

60. As part of its obligations under Section 1342 of the ACA and/or its obligations under 45 CFR § 153.510(b), the Government is required to, subject to certain explicit statutory and/or regulatory conditions, pay any QHP certain amounts exceeding the target costs they incurred in 2014 and 2015.

61. Plaintiff and the Class are QHPs under the ACA and, based on their adherence to the ACA and their submission of their allowable costs and target costs to CMS, satisfy the requirements for payment from the United States under Section 1342 of the ACA and 45 CFR § 153.510(b).

62. The United States has failed, without justification, to perform as it is obligated under Section 1342 of the Affordable Care Act and 45 CFR § 153.510(b), and has affirmatively stated that it will not satisfy those obligations in the time frame required by the statutes for 2014 and 2015.

63. The United States' failure to provide timely payments to Plaintiff and the Class is a violation of the Section 1342 of the Affordable Care Act and 45 CFR § 153.510(b), and Plaintiff and the Class has been damaged thereby.

PRAYER FOR RELIEF

Wherefore, Plaintiffs requests the following relief:

A. That the Court certify this lawsuit as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be designated as class representative, and that Plaintiff's counsel be appointed as Class counsel for the Class;

B. That the Court award Plaintiff and the Class monetary relief in the amounts to which Plaintiff and the Class are entitled under Section 1342 of the Affordable Care Act and 45 CFR § 153.510(b).

C. That the Court award Plaintiff and the Class consequential damages, special damages, or other damages that result as a consequence of the Defendant's non-performance;

D. That the Court award appropriate injunctive relief, including but not limited to an injunction requiring Defendant to pay all amounts for 2014 and 2015 owed to Plaintiff and the Class under Section 1342 of the Affordable Care Act and 45 CFR § 153.510(b).

E. That the Court award pre-judgment and post-judgment interest at the maximum rate permitted under the law;

F. That the Court award appropriate declaratory relief, including but not limited to a declaration and judgment that Defendant's conduct alleged in the complaint violates the laws alleged in the complaint;

G. That the Court award such court costs, litigation expenses, and attorneys' fees as are available under applicable law; and

H. That the Court award such other and further relief as the Court deems proper and just.

DATED: February 24, 2016

Respectfully submitted,

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