

In the United States Court of Federal Claims

No. 17-877C
(Filed: January 8, 2018)

COMMON GROUND HEALTHCARE *
COOPERATIVE, *
*
Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *

ORDER

Plaintiff filed the above-captioned case as a putative class action on June 27, 2017, and subsequently filed an amended complaint on November 22, 2017. Thereafter, on December 14, 2017, plaintiff moved to certify two classes of qualified health plan (“QHP”) issuers pursuant to Rule 23 of the Rules of the United States Court of Federal Claims (“RCFC”):

- (1) a class of QHP issuers who did not receive full timely payments for the 2016 plan year pursuant to the ACA’s risk corridors program (“Risk Corridors Class”),
- and (2) a class of QHP issuers who did not receive full timely payments pursuant to the ACA’s cost-sharing reduction (“CSR”) provisions (“CSR Class”).

Mot. to Certify 1. Plaintiff also moved for the appointment of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) as class counsel for both putative classes pursuant to RCFC 23(g). On December 22, 2017, defendant filed a response to plaintiff’s motion indicating that it does not oppose the appointment of Quinn Emanuel as class counsel for either putative class. Defendant also stated that it “does not dispute that the Risk Corridors Class satisfies the requirements for certification under” RCFC 23, and therefore “does not oppose a partial granting of the class certification motion with respect to the Risk Corridors Class.” Resp. 1. Plaintiff’s motions are granted in part, namely:

- 1. Pursuant to RCFC 23, a putative class representative must demonstrate: (i) numerosity—that the proposed class is so large that joinder is impracticable; (ii) commonality—that there are common questions of law or fact that predominate over questions affecting individual prospective class members and that the government has treated the prospective class members similarly; (iii) typicality—that his or her claims are typical of the proposed class; (iv)

adequacy—that he or she will fairly represent the proposed class; and (v) superiority—that a class action is the fairest and most efficient method of resolving the suit. RCFC 23(a)-(b); Toscano v. United States, 98 Fed. Cl. 152, 155 (2011); Barnes v. United States, 68 Fed. Cl. 492, 494 (2005). Based on its review of plaintiff’s motion for class certification and supporting exhibits, and in light of defendant’s representation that it does not dispute the basis for plaintiff’s motion to the extent plaintiff seeks to certify a Risk Corridors Class, the court concludes that plaintiff has satisfied the requirements of RCFC 23 with respect to the proposed Risk Corridors Class. It therefore **GRANTS** plaintiff’s motion to certify **IN PART** and certifies the following Risk Corridors Class:

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

2. The Risk Corridors Class claim is for amounts allegedly owed to the class by the United States pursuant to section 1342 of the Patient Protection and Affordable Care Act and 45 C.F.R. § 153.510(b).

3. Defendant, in agreeing to certification of the class as defined above, has not waived the right to move for decertification or to move for the class to be divided into subclasses if, as this case develops, the circumstances warrant such a motion. Further, defendant has not waived (1) the right to dispute any material fact or to contest any theory of liability under section 1342 of the Patient Protection and Affordable Care Act and 45 C.F.R. § 153.510 or (2) the right to contest whether any particular person or entity falls within the class or is otherwise entitled to relief.

4. Plaintiff is designated as the class representative.

5. Pursuant to RCFC 23(g)(1), in appointing class counsel, a court

(A) must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class; [and]

(B) may consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class[.]

Based on its review of plaintiff's motion for the appointment of class counsel and supporting exhibits, and in light of defendant's representation that it does not oppose the appointment of Quinn Emanuel as class counsel, the court finds that the requirements of RCFC 23(g)(1)(A)-(B) are fully satisfied. It therefore **GRANTS** plaintiff's motion to appoint class counsel **IN PART** and appoints Quinn Emanuel as class counsel for the Risk Corridors Class.¹

6. Defendant, by **no later than Friday, February 2, 2018**, shall provide to plaintiff a list of potential class members, which shall include all entities that offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2016 benefit year, and whose allowable costs in the 2016 benefit year, as calculated by the Centers for Medicare and Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). The list shall include the name of the individual or entity that is a potential class member; the current or last known electronic-mail address of the individual or entity (providing name and email of person responsible for risk corridors receivables, if known); and the current or last known mailing address of the individual or entity.

7. If, after February 2, 2018, plaintiff discovers the identity of additional potential class members to whom plaintiff believes that notice should be provided, plaintiff shall promptly inform defendant. Defendant shall have an opportunity to object to any additional potential class members **within seven calendar days** from the date that plaintiff identifies the newly discovered potential class members by forwarding its objections to plaintiff via electronic mail. If the parties are unable to resolve any of defendant's objections to the newly discovered potential class members, they shall file a joint motion setting out in separate sections their respective positions for resolution by the court.

8. Class counsel shall submit to the court a proposed notice plan and opt-in schedule that complies with the requirements of RCFC 23(c)(2)(B) by **no later than Monday, February 12, 2018**.

IT IS SO ORDERED.

s/ Margaret M. Sweeney
MARGARET M. SWEENEY
Judge

¹ Notwithstanding the appointment of Quinn Emanuel as class counsel, all filings made on behalf of the class shall continue to be signed by the attorney of record for the class representative. See RCFC 83.1(c)(1)-(2) ("A party may have only one attorney of record in a case at any one time All filings must be signed in the attorney of record's name.").