

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>PETITIONER MICHAEL CONWAY, in his official capacity as the Commissioner of Insurance of the State of Colorado,</p> <p>v.</p> <p>RESPONDENT COLORADO HEALTH CO-OP, a Colorado Domestic Insurance Company.</p>	<p style="text-align: center;">^ COURT USE ONLY ^</p>
<p>PHILIP J. WEISER, Attorney General HEATHER FLANNERY, First Assistant Attorney General, 37795* PHILLIP M. KHALIFE, Assistant Attorney General, 46333* Attorneys for the Division of Insurance Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8th Floor Denver, CO 80203 Telephone: 720-508-6387 (Flannery) 720-508-6388 (Khalife) E-Mail: heather.flannery@coag.gov phillip.khalife@coag.gov *Counsel of Record</p>	<p>Case No. 2015CV33680</p>
<p style="text-align: center;">PETITIONER'S NOTICE TO COURT AND INTERESTED PARTIES REGARDING DISBURSEMENT OF NET PROCEEDS RECEIVED FROM FEDERAL JUDGMENT FUND</p>	

Petitioner Michael Conway, Commissioner of Insurance for the State of Colorado (“Commissioner”), pursuant to section 10-3-533, C.R.S., and this

Court's Liquidation Order, hereby provides notice to the Court and interested parties of its intent to perform under the purchase agreement between Liquidator and Juris Capital, LLC, regarding net proceeds of the CO-OP's risk corridor receivable, and states as follows:

1. On January 4, 2016, this Court appointed the Commissioner, at the time Marguerite Salazar, to serve as Liquidator of the CO-OP pursuant to section 10-3-517(1), C.R.S.

2. On September 4, 2018, the Court approved the substitution of Insurance Commissioner Michael Conway as the Liquidator of the CO-OP.

3. The Liquidator was granted the authority to employ Joseph B. Holloway of INS Consultants, Inc., acting as Receivership Supervisor, to assist in the Liquidation with all the powers of the Liquidator.

4. The CO-OP is a member insurer of the Life and Health Insurance Protection Association ("Association").

5. The Association provides protection against failure of member insurers to perform their contractual obligations due to insolvency. § 10-20-102(1), C.R.S.

6. In addition to other enumerated powers, the Court's Order granted the Liquidator the authority to assemble and take possession of all the assets of the CO-OP, including any funds or securities held by the Division of Insurance pursuant to section 10-3-201, C.R.S., and to administer them under

the general supervision of this Court.

7. Section 10-3-520(1)(m), C.R.S., grants the Liquidator the authority to enter such contracts as are necessary to carry out the Liquidation Order.

8. Pursuant to section 10-3-520, C.R.S., and the Liquidation Order the Liquidator is granted authority to “institute, prosecute and defend, compromise, adjust, intervene in or become a party to such suits, actions, proceedings in law, or in equity, in state or federal courts or before any administrative agency as may in the Commissioner’s opinion be necessary for the proper protection, maintenance, preservation or liquidation of the assets of the CO-OP.”

9. Additionally, the Liquidator is granted all the powers and authority specified in section 10-3-520, C.R.S., including, the authority to collect all debts and moneys due to the CO-OP, and “may do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as the liquidator deems best.” C.R.S. § 10-3- 520(1)(h)(II).

10. On November 18, 2019, Commissioner Conway, in his role as Liquidator, filed with this Court Petitioner’s Notice to Interested Parties of Liquidator’s Intent to Sell the Co-Op’s Net Risk Corridor Receivable and Motion for Court Approval for Fourth Disbursement of Health Op Assets Pursuant to C.R.S. Section 10-3-533 (“Motion and Notice”). The Motion and Notice alerted the Court and the interested parties of the Liquidator’s intent to sell a portion of the net

proceeds of the CO-OP's risk corridor receivable to Juris Capital, LLC ("Juris"). The Motion and Notice also requested that this Court approve an early disbursement of \$20,000,000.00 to the Association, consisting of the net purchase price received as a part of the purchase agreement with Juris.

11. This Court subsequently Granted the Motion and Notice on November 22, 2019. *See Order: Pet'r Notice to Interested Parties of Liquidator's Intent to Sell the Co-Op's Net Risk Corridor Receivable and Mot. for Ct. Approval for Fourth Disbursement of Health Op Assets Pursuant to C.R.S. Section 10-3-533 (w/attach), Nov. 22, 2019.* This Court ordered that objections to the motion were to be filed within fourteen (14) days of the date of the Order. No objections were filed.

12. On December 11, 2019, the Court approved the Liquidator's disbursement of \$20,000,000.00 of CO-OP assets from the purchase agreement with Juris. *See Order Granting Pet'r Mot. for Ct. Approval for Fourth Disbursement CO-OP Assets Pursuant to § 10-3-533, C.R.S., Dec. 11, 2019.*

13. As part of the purchase agreement approved by this Court in the fourth disbursement, the net proceeds recovered by the CO-OP in *Health Republic Insurance Company v. U.S.*, a class action lawsuit in the U.S. Court of Federal Claims, Case 1:16-cv-00259, were to be paid as follows:

- a. First \$61,000,000.00 of proceeds recovered shall be paid to Juris;
then
- b. The next \$26,460,000.00 of proceeds shall be equally divided

between the CO-OP and Juris; then

c. The remainder of all proceeds recovered shall be paid to the CO-OP.

14. On May 15, 2023, the United States Court of Federal Claims entered Judgment in *Health Republic* in favor of the CO-OP in the amount of \$110,601,107.74 for risk corridors benefit years 2014 and 2015. See Rule 54(b) Judgement, *Health Republic v. USA*, No. 1:16-cv-00259 (U.S. Ct. Fed. Claims May 15, 2023), ECF No. 200, attached hereto as **Exhibit 1**.¹

15. As a result of the Judgment in *Health Republic*, on August 18, 2023, the Federal Claims Court ordered \$105,071,052.36 to be disbursed to the Liquidator. This amount reflected the judgment in favor of the CO-OP less \$5,530,055.38 for the approved award of 5% in attorney's fees. See Order, *Health Republic v. USA*, No. 1:16-cv-00259 (U.S. Ct. Fed. Claims Aug. 18, 2023), ECF No. 209, attached hereto as **Exhibit 3**.

16. As part of the purchase agreement with Juris the Liquidator is to pay Juris within three (3) business days of receipt of the proceeds.

17. The Liquidator is set to distribute \$74,230,000.00 to Juris pursuant to

¹ The Judgment also included final judgment in favor of the United States in the amount of \$44,184,958.11. The Court of Federal Claims further ordered that it was not directing a net payment deducting the amount of United States' judgment from the judgment in favor of the CO-OP. See Order, *Health Republic v. USA*, No. 1:16-cv-00259 (U.S. Ct. Fed. Claims May 15, 2023), ECF No. 199, attached hereto as **Exhibit 2**.

the purchase agreement. This amount reflects the first \$61,000,000.00 of the proceeds recovered and \$13,230,000.00 of the next \$26,460,000.00 of the proceeds recovered.

18. WHEREFORE, Petitioner hereby provides notice to the Court and interested parties of its intent to perform under the purchase agreement between Liquidator and Juris Capital, LLC, regarding net proceeds of the CO-OP's risk corridor receivable.

NOTICE

The Commissioner as Liquidator of the CO-OP hereby provides notice to the Court and to all interested parties of its intent to perform under the purchase agreement between the Liquidator and Juris Capital, LLC, regarding net proceeds of the CO-OP's risk corridor receivable resulting from *Health Republic v. USA* litigation. Pursuant to the purchase agreement, and this Court's November 22, 2019 and December 11, 2019 Orders, Juris Capital, LLC is to be distributed \$74,230,000.00 from the CO-OP.

DATED this 21st day of August, 2023.

PHILLIP J. WEISER
Attorney General

/s/ Heather Flannery

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CERTIFICATE OF SERVICE

This is to certify that I have duly filed the within **PETITIONER'S NOTICE TO COURT AND INTERESTED PARTIES REGARDING DISBURSEMENT OF NET PROCEEDS RECEIVED FROM FEDERAL JUDGMENT FUND** via the Colorado Court E-Filing System, this 21st day of August, 2023.

/s/ Ileana Martinez
Office of the Colorado Attorney General

This is to certify that I have duly served the within **PETITIONER'S NOTICE TO COURT AND INTERESTED PARTIES REGARDING DISBURSEMENT OF NET PROCEEDS RECEIVED FROM FEDERAL JUDGMENT FUND** upon all parties via electronic mail, this 21st day of August, 2023 to the following recipients:

Cindy Oliver
Lewis Roca Rothgerber Christie LLP
coliver@lewisroca.com
Counsel for the Life and Health Insurance Protection Association in Colorado

Terrance Anthony Mebane,
U.S. Department of Justice – Civil Division (G)
terrance.a.mebane@usdoj.gov
Counsel for USA in Health Republic Insurance Company v. USA

/s/ Ileana Martinez
Office of the Colorado Attorney General

This is to certify that I have duly served the within **PETITIONER'S NOTICE TO COURT AND INTERESTED PARTIES REGARDING DISBURSEMENT OF NET PROCEEDS RECEIVED FROM FEDERAL JUDGMENT FUND** upon all parties via First-Class US Mail, this 21st day of August, 2023 to the following recipients:

Life and Health Insurance Protection
Association in Colorado
Attn: Lori Gadelmann,
201 Robert S. Kerr Ave., Suite 600
Oklahoma City, OK. 73102

/s/ James Cornwell
Office of the Colorado Attorney General

In the United States Court of Federal Claims

**No. 16-259 C
Filed: May 15, 2023**

**HEALTH REPUBLIC
INSURANCE COMPANY,
Petitioner**

**RULE 54(b)
JUDGMENT**

v.

**THE UNITED STATES
Defendant**

Pursuant to the court's Order, filed May 15, 2023, directing the entry of judgment pursuant to Rule 54(b), there being no just reason for delay, and the court's Opinion and Order, filed August 19, 2022,

IT IS ORDERED AND ADJUDGED this date, pursuant to Rule 58, that plaintiff, Colorado Health Insurance Cooperative, Inc., recover of and from the United States the amount of \$110,601,107.74 for risk corridors benefit years 2014 and 2015.

IT IS FURTHER ORDERED AND ADJUDGED, this date, that defendant recover of and from plaintiff, Colorado Health Insurance Cooperative, Inc., the amount of \$44,184,958.11 on its counterclaim for risk adjustment charges, reinsurance contributions, CSR reconciliation charges, and risk adjustment user fees.¹

Lisa L. Reyes
Clerk of Court

By: s/ Debra L. Samler

Deputy Clerk

NOTE: As to appeal to the United States Court of Appeals for the Federal Circuit, 60 days from this date, see RCFC 58.1, re number of copies and listing of all plaintiffs. Filing fee is \$505.00.

¹“Consistent with the Court’s order and opinion dated August 19, 2022, the Court is not directing a net payment deducting the amount of Defendant’s judgment from the judgment in favor of Colorado HealthOp. *See Health Republic Ins. Co. v. United States*, 161 Fed. Cl. 510 (2022).”

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

_____)	
HEALTH REPUBLIC INSURANCE)	
COMPANY,)	
)	
Plaintiff,)	
)	
v.)	No. 16-259
)	
THE UNITED STATES,)	Filed: May 15, 2023
)	
Defendant.)	
_____)	

ORDER

On May 9, 2023, the Dispute Subclass, consisting of Colorado Health Insurance Cooperative, Inc. (“Colorado HealthOp”), and the United States filed a stipulation to entry of judgment. *See* Stip. to Enter J. for the Dispute Subclass and for the United States, ECF No. 198. The parties stipulate that Colorado HealthOp is entitled to payment in the amount of \$110,601,107.74 from the United States under Section 1342 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), 124 Stat. 119, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152 (2010), 124 Stat. 1029 (collectively, the “ACA”), for the 2014 and 2015 benefit years. *Id.* ¶ 8. The parties further stipulate that the United States is entitled to payment from Colorado HealthOp in the amount of \$44,184,958.11, which includes payments associated with the risk adjustment program, risk adjustment user fees, and cost-sharing reductions. *Id.* ¶ 9. The parties request that the Court enter judgment in favor of Colorado HealthOp and the United States in accordance with their stipulations. *See id.* ¶¶ 8–9.

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 final judgment in favor of Colorado HealthOp in the amount of \$110,601,107.74 and final judgment in

favor of the United States in the amount of \$44,184,958.11. Consistent with the Court's order and opinion dated August 19, 2022, the Court is not directing a net payment deducting the amount of Defendant's judgment from the judgment in favor of Colorado HealthOp. *See Health Republic Ins. Co. v. United States*, 161 Fed. Cl. 510 (2022).

SO ORDERED.

Dated: May 15, 2023

/s/ Kathryn C. Davis

KATHRYN C. DAVIS

Judge

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

)	
HEALTH REPUBLIC INSURANCE)	
COMPANY,)	
)	
Plaintiff,)	
)	
v.)	No. 16-259
)	
THE UNITED STATES,)	Filed: August 18, 2023
)	
Defendant.)	
)	

ORDER

On August 15, 2023, Plaintiff filed a Motion for Leave to Distribute Funds to the Dispute Subclass, consisting of Colorado Health Insurance Cooperative, Inc. (“Colorado HealthOp”). *See* ECF No. 208. Plaintiff advises that on August 9, 2023, the claims administrator retained by Class Counsel received full payment owed to Colorado HealthOp in the amount of \$110,601,107.74. *Id.* at 1. Plaintiff notes Class Counsel’s stipulated motion requesting 5% of the judgment as attorneys’ fees is pending. *Id.* Plaintiff and Class Counsel seek leave of Court to distribute 95% of the funds in the amount of \$105,071,052.36 to Colorado HealthOp and hold the remaining 5% in escrow pending resolution of the attorneys’ fees motion. *Id.* at 1–2. The Government takes no position on this request. *Id.* at 2.

Having found good cause exists, the Court **GRANTS** Plaintiff’s motion. The claims administrator may proceed with distributing 95% of the funds to Colorado HealthOp and holding the remaining 5% in escrow pending resolution of the fee petition.

SO ORDERED.

Dated: August 18, 2023

/s/ Kathryn C. Davis
KATHRYN C. DAVIS
 Judge