

## CLIENT ALERT

### Court of Federal Claims Grants Summary Judgment in Affordable Care Act "Reinsurance" Litigation

October 8, 2019

In *Conway v. United States* (October 3, 2019), the U.S. Court of Federal Claims granted summary judgment in favor of C&M client Colorado HealthOp, in a case of first impression relating to Reinsurance payments owed pursuant to §1341 of the ACA, which HHS had offset against other ACA payments it claimed Colorado HealthOp owed to HHS. The Court decided on the merits that: (i) Section 1341 of the ACA is money-mandating, (ii) Colorado insurance liquidation law applies to prohibit HHS' unilateral offset of Reinsurance payments to Colorado HealthOp; and (iii) HHS' "Netting Rule" does not preempt Colorado law. Importantly, the Court held that HHS's Netting Rule, which explains the method by which HHS would aggregate and offset monies owed by or to different insures under various ACA payment programs, lacks statutory authority and therefore does not preempt state law, and as a result, HHS does not have an offset right in an insurance liquidation proceeding. Analyzing the ACA, the McCarran-Ferguson Act, Colorado insurance liquidation statute, and Colorado Supreme Court case law, the Court agreed with Colorado HealthOp that HHS cannot leap-frog claimants with higher priority under the liquidation priority scheme by effectuating an offset. The Court noted that the federal policy expressed by the McCarran-Ferguson Act and its application to priority schemes that protect policyholders' commercial expectations weigh against displacing Colorado's policyholder-protecting priority scheme with a uniform federal rule of administrative efficiency. The Colorado HealthOp decision is a significant decision regarding the ACA's Reinsurance program, and the most recent in a string of ACA-related decisions involving C&M (previously discussed [here](#) and [here](#)).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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