Received 6/9/2022 4:12:04 PM Commonwealth Court of Pennsylvania

Filed 6/9/2022 4:12:00 PM Commonwealth Court of Pennsylvania
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EXHIBIT 1

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
RICHLAND COUNTY	**FIFTH JUDICIAL CIRCUIT**
Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance, Plaintiffs, vs. Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance, Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation, Defendants.	Civil Action No. 2020-CP-40-05802 **ORDER GRANTING PLAINTIFFS' MOTION FOR A TEMPORARY INJUNCTION**

This matter comes before the Court pursuant to a motion for temporary injunction filed on November 12, 2021, by the Plaintiffs, Raymond G. Farmer, as Director of the South Carolina Department of Insurance, and the South Carolina Department of Insurance. The motion seeks to enjoin the Defendants, Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania, Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance, Company of Pennsylvania, and Senior Health Insurance Company of Pennsylvania in Rehabilitation, from taking any action in furtherance of their expressed plans to, without first obtaining required regulatory approval from the State, raise premium rates, reduce benefits, or both under certain binding contracts of insurance issued in the State of South Carolina or held by residents of this State, including, but not limited to, notifying policyholders of proposed rate or benefit changes or requesting that they select rates or benefits different from those authorized by

the appropriate state regulator and called for under the terms of the contract, charging additional premium, or withholding, delaying or encumbering benefits in whole or in part. Notice duly having been provided to all parties, a hearing was held before the undersigned at 10:30 a.m. on December 15, 2021, in the Court of Common Pleas for Richland County. Geoffrey R. Bonham, Associate General Counsel for the South Carolina Department of Insurance, appeared for the Plaintiffs. Tracy L. Eggleston, Esq. and Michael J. Broadbent, Esq., both of Cozen O'Connor P.C., appeared for the Defendants.

FINDINGS OF FACT

After consideration of Plaintiffs' motion and the arguments presented by the parties at the hearing, I find as follows:

1. All parties were properly served notice of the hearing.

2. Plaintiff Raymond G. Farmer is the Director of the South Carolina Department of Insurance (the "Director").

3. Plaintiff South Carolina Department of Insurance (the "Department") is an agency of the State of South Carolina created and charged by the South Carolina General Assembly to regulate the business of insurance in this State. *See generally* S.C. Code Ann. §§ 38-1-10 *et seq*. ("The Insurance Law").

4. Defendant Jessica K. Altman is the Commissioner of Insurance for the Commonwealth of Pennsylvania and has been appointed Rehabilitator of Senior Health Insurance Company of Pennsylvania (the "Rehabilitator") by order of the Commonwealth Court of Pennsylvania ("Commonwealth Court") dated January 29, 2020 (the "Rehabilitation Order"). (Defs. Exh. 1.)

5. Defendant Patrick H. Cantilo was appointed by the Rehabilitator as Special Deputy

Rehabilitator (the "SDR") of Senior Health Insurance Company of Pennsylvania. He generally has the power to act on behalf of the Rehabilitator, subject to the control and direction of the Rehabilitator. (Defs. Exh. 1 at ¶¶ 2, 14; Decl. of Cantilo at ¶¶ 2, 9.)

6. Defendant Senior Health Insurance Company of Pennsylvania ("SHIP") is a life and health insurance company domiciled in the Commonwealth of Pennsylvania that administers a closed block of long-term care insurance policies issued in over forty states. A fraction of its business remains. (Defs. Exh. 3 at p. 2-3.)

7. SHIP was issued a certificate of authority to conduct the business of insurance in South Carolina on April 8, 1988. (Ver. Mot. at ¶ 6.) It is undisputed that, like all long-term care insurers licensed in this State, SHIP has previously submitted proposed rate increases to the South Carolina Department of Insurance for review and approval in accordance with South Carolina law. (Ver. Mot. at ¶¶ 6, 18.)

8. The average SHIP policyholder age is approximately 87 years of age and the average policyholder on claim is approximately 90 years old. At present, there are approximately 300 policies issued in South Carolina by SHIP, and there are other SHIP policyholders residing in South Carolina whose policies were issued in other states. (Defs. Exh. 3 at p. 4; Ver. Mot. at ¶ 7.)

9. SHIP has been insolvent[1] since at least December 31, 2018, having reported a deficit of approximately a half-billion dollars as of that date; and, SHIP's financial condition has continued to deteriorate, with a current deficit of approximately $1.2 billion. (Pls. Exh. A at p. 45 ln. 2-5, p. 46 ln. 9-10, p. 240 ln. 17-25, p. 292 ln. 11-12.; Defs. Exh. 3 at p. 1.)

10. The Pennsylvania Insurance Department (the "PID") has not sought a declaration

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1 *Compare* 40 Pa. Stat. § 221.3 (defining "Insolvency" within context of receivership) *with, e.g.*, 40 Pa. Stat. § 991.1702 (defining "Insolvent insurer" in the context of guaranty association coverage).

of insolvency, which would have triggered guaranty association coverage in the affected states; however, it did file an application to place SHIP into rehabilitation in the Commonwealth Court of Pennsylvania on January 23, 2020. (*See generally* http://www. https://www.shipltc.com/court-documents.)

11. That application was granted by the Rehabilitation Order entered on January 29, 2020. The Rehabilitation Order is not a subject of dispute between the parties. (Defs. Exh. 1.)

12. Plaintiffs are not parties to the Pennsylvania rehabilitation proceedings, nor are SHIP policyholders represented by class representatives or legal counsel in those proceedings. (*See* Defs. Exh. 3.) Policyholders were also not provided formal legal process or service of process. (*See* Defs. Exh. 2.)

13. SHIP was the sole respondent in the Pennsylvania proceedings. (*See* Defs. Exh. 3.)

14. Three states, Massachusetts, Maine and Washington, intervened in those proceedings. (*Id.* at p. 6.)

15. A Second Amended Rehabilitation Plan (the "Plan") was filed on or about May 3, 2021 and approved by a single judge of the Commonwealth Court of Pennsylvania by order filed on August 24, 2021, which was amended by order entered on November 4, 2021. (Defs. Exh. 3.)

16. An appeal by the intervening three states is pending before the Pennsylvania Supreme Court, as is an application for stay. Approximately twenty (20) other state insurance regulators have expressed their support for the stay as *amici curiae*. (Defs. Exh. 6.)

17. Several large insurers -- Anthem, Inc., Health Care Service Corporation, Horizon Healthcare Services, Inc. d/b/a Horizon Blue Cross Blue Shield of New Jersey, and UnitedHealthcare Insurance Company -- appeared as intervenors in the proceedings and were represented by counsel. These companies fully support the Plan and oppose a stay in the

Pennsylvania proceedings. (Defs. Exh. 3 at p. 6; *see generally* http://www.https://www.shipltc.com/court-documents.)

18. Under the Plan, Defendants will impose nationwide rates without filing those rates with state regulators for review and approval in accordance with each state's insurance laws. In some cases, the rate imposed will be more than double the amount of premium currently paid and can reasonably be expected to force policy lapses. Policyholders may be able to avoid some of the increases, but only if they agree to a decrease in benefits currently provided under their policies. (Pls. Exh. B.)

19. The Plan contains a so-called "opt-out" process under which SHIP submits rates to individual states that "opt-out" of the nationwide rate under those states' respective rate approval statutes. However, it also provides that if an "opt-out" state does not approve the rate demanded, that state's policyholders will incur a further downgrade to their benefits. The Rehabilitator "DOES NOT recommend that states opt out because that is generally expected to be disadvantageous to affected policyholders." (Pls. Exh. B at p. 108-118 & Pls. Exh. C, FAQ. 9.)

20. Under the Plan, Defendants gave states until November 15, 2021, to provide written notice, under oath, of their decision to "opt-out." (Pls. Exh. C.) Plaintiffs maintain that they are not subject to nor bound by the Plan.

21. Defendants do not dispute that the changes to rates, benefits or both will reduce the insurer's shortfall and that this in turn would reduce the burden of a declared insolvency on guaranty associations. (Pls. Exh. A at p.78 ln. 19-23, p. 79 ln. 4, p. 83-84 ln. 20-18, p. 289 ln. 9-18 & p. 292 ln. 11-25; Pls. Exh. B at p. 19.).

22. The rate increases and reductions in benefits would also appear to have a permanent adverse effect on policyholders' guaranty association benefits in the likely event that SHIP is

placed into liquidation at a later date: the Defendant Cantilo has admitted in previous testimony that "it is not likely that we will magically restore SHIP to solvency, but it is likely that the plan . . . would substantially reduce the deficit." (Pls. Exh. A at p. 80 ln. 6-12; Pls. Exh. B at p. 14.)

23. Plaintiffs are concerned that, despite SHIP being inevitably headed for liquidation, or perhaps because of it, Defendants are attempting to use the rehabilitation proceedings to (1) coerce vulnerable elderly policyholders into paying exceptionally high rates, accepting substantially less benefits than what they are entitled to under their contracts, or even lapsing on their policies altogether, and (2) avoid state law, specifically restraints on premium increases and changes to policy forms, in an effort to permanently reduce the amount of guaranty association protection benefits each policyholder would receive in a liquidation, resulting in savings to large insurers in the form of substantially smaller guaranty association assessments. They are concerned that this aspect of the Plan violates the law and elevates the interests of large insurers over the rights of policyholders under their insurance contracts and applicable State law.

24. Plaintiffs seek an order temporarily enjoining Defendants from taking any measure that purports to bypass, impede, supersede, diminish or interfere in any manner with the State of South Carolina's laws or regulatory authority over changes to the terms of policies and review and approval of insurance rates in this State, and further temporarily enjoining Defendants from communicating in any form or manner with South Carolina policyholders regarding proposed changes to policy terms or rates without required approval by the State.

CONCLUSIONS OF LAW

I. JURISDICTION

The question of personal jurisdiction over a nonresident defendant is one that must be resolved upon the facts of each particular case. *State v. NV Sumatra Tobacco Trading, Co.*, 379

S.C. 81, 88, 666 S.E.2d 218, 221 (2008) (citing *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 611 S.E.2d 505 (2005)). At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a prima facie showing of jurisdiction either in the complaint or in affidavits. *Moosally v. W.W. Norton & Co., Inc.*, 358 S.C. 320, 328, 594 S.E.2d 878, 882 (Ct. App. 2004). Because South Carolina treats its long-arm statute as coextensive with the due process clause, the sole question is whether the exercise of personal jurisdiction would violate due process. *Cockrell*, 363 S.C. at 491, 611 S.E.2d at 508. Determining whether the requirements of due process are satisfied involves a two-prong analysis: (1) the "power" prong, in which minimum contacts provide courts the "power" to adjudicate the action; and (2) the "fairness" prong, which requires the exercise of jurisdiction to be "reasonable" or "fair." *Moosally*, 358 S.C. at 331, 594 S.E.2d at 884.

Under the power prong, minimum contacts analysis requires a finding that the defendant directed its activities to residents of South Carolina and that the cause of action arises out of or relates to those activities. *Id.* at 331-332, 594 S.E.2d at 884. It is essential that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Id.* This "purposeful availment" element ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts. *Id.*

The individual Defendants authored, presented and are implementing the Plan, under which they avail themselves of the privilege of conducting activities in the State. They have sought not merely to invoke the benefits and protections of South Carolina's laws, but to supplant them, undermining the authority of the General Assembly and Plaintiffs. By directing their activities to

South Carolina residents under the Plan that gives rise to this action, they have established sufficient contacts with the State to invoke the power of this Court.

In order to determine whether the exercise of jurisdiction over a foreign defendant meets the "fairness" prong, a court must consider the following: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction. *Cockrell*, 363 S.C. at 492, 611 S.E.2d at 508; *see also Leggett v. Smith*, 386 S.C. 63, 76, 686 S.E.2d 699, 706 (Ct. App. 2009). Which state's law controls is also a factor to be considered under the fairness prong. *Moosally*, 358 S.C. at 332, 594 S.E.2d at 885.

Under the Plan, the Defendants intend to communicate with South Carolina policyholders regarding their insurance contracts and propose to establish new policy rates and benefits. These actions would appear to affect permanently policyholders' rights under South Carolina law, both immediately and in the event of a liquidation. It is their specific decisions and actions with regard to rates and policy benefits that have prompted the dispute between the parties. Without them, there is no Plan, and it is the unique aspects of that Plan that form the basis for Plaintiffs' lawsuit. It would be no less inconvenient for the Plaintiffs to bring suit in Pennsylvania than for Defendants to defend their actions here; and, the State has an obvious interest in defending its sovereignty and laws, and of course its citizens. Finally, Plaintiffs' action itself is for a declaration of South Carolina law. Under these circumstances, the Court's exercise of jurisdiction over the individual Defendants would also be fair. Accordingly, I find that the requisite prima facie showing of personal jurisdiction over the individual Defendants has been made. *See Moosally*, 358 S.C. at 328, 594 S.E.2d at 882.

The Court clearly has personal jurisdiction of the insurer, which as a condition of its licensure has appointed the Director as its agent for service, *see* S.C. Code Ann. § 38-5-70 (2015), and has conducted the business of insurance in this State for many years.

The Court also has jurisdiction over the subject matter. No state's rehabilitation proceedings grant that state jurisdiction over "the whole field." *Smalls v. Weed*, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). Although the Pennsylvania Commonwealth Court exercises *in rem* jurisdiction in the rehabilitation proceedings, the res over which that jurisdiction is exercised is the corporation itself, the fictitious entity, not all of the corporation's property for all purposes and certainly not the rights of all persons wherever situated. *See Matter of Rehabilitation of Nat'l Heritage Life Ins. Co.*, 656 A.2d 252 (Del. Ch. 1994). It does not appear that the Commonwealth Court may, simply by reason of the *in rem* nature of the Pennsylvania rehabilitation proceedings, abrogate the power and duties of Plaintiffs or adjudicate the rights of South Carolina policyholders and claimants who are neither parties in the Pennsylvania proceedings nor subject to the jurisdiction of the Commonwealth Court. *See Thormann v. Frame*, 176 U.S. 350 (1900) (judgment *in rem* binds only property within the control of the court).

II. GROUNDS FOR A TEMPORARY INJUNCTION

A preliminary injunction should issue where necessary to preserve the *status quo ante*, upon a showing by the moving party that (1) without such relief it will suffer irreparable harm, (2) it has a likelihood of success on the merits, and (3) there is no adequate remedy at law. *Poynter Invs., Inc. v. Cent. Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (citing *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). "'When a prima facie showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.'" *Columbia*

Broadcasting System, Inc. v. Custom Recording Co., 258 S.C. 465, 471-472, 189 S.E.2d 305, 308 (1972) (quoting *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969) (citing *D.W. Alderman & Sons Co. v. Wilson*, 69 S.C. 156, 48 S.E. 85 (1904)).

III. A PRELIMINARY INJUNCTION PURSUANT TO RULE 65, SCRCP IS WARRANTED UNDER THE CIRCUMSTANCES.

A. Plaintiffs have shown a likelihood of success on the merits.

Based on the foregoing, I find Plaintiffs have shown a likelihood of success on the merits. Defendants' Plan appears to be founded on a clearly erroneous reading of the law and appears likely to be overturned on appeal. Regardless, the order approving that Plan is not binding on Plaintiffs or policyholders. Both federal and State law support Plaintiffs' position that insurers licensed by Plaintiffs must obey the laws of this State and that contracts issued in this state are subject to South Carolina law.

The primary state insurance regulatory functions remain as they have been since the enactment of the McCarran-Ferguson [Act], in which "Congress . . . declare[d] that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States." 15 U.S.C. § 1011. "This allows . . . states to perform solvency oversight of the U.S. insurance industry and to regulate insurer behavior in the marketplace." *State Insurance Regulation*, National Association of Insurance Commissioners (NAIC), Center for Insurance Policy and Research (CIPR) (2011), https://www.naic.org/documents/topics_white_paper_hist_ins_reg.pdf.

"State legislatures are the public policymakers that establish . . . broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which insurance regulators operate. They establish laws which grant regulatory authority to regulators

and oversee state insurance departments and approve regulatory budgets." *Id.* "State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions." *Id.* "State regulators protect consumers by ensuring that insurance policy provisions comply with state law, are reasonable and fair, and do not contain major gaps in coverage that might be misunderstood by consumers and leave them unprotected. The nature of the regulatory reviews of rates, rating rules and policy forms varies somewhat among the states depending on their laws and regulations." *Id.*

The South Carolina General Assembly has delegated its regulatory authority under the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, to the Department. Pursuant to S.C. Code Ann. § 38-3-10 (2015), the General Assembly "established a separate and distinct department of this State, known as the Department of Insurance. The department must be managed and operated by a director appointed by the Governor upon the advice and consent of the Senate." Pursuant to S.C. Code Ann. § 38-3-60 (2015), "The director or his designee must follow the general policies and broad objectives enacted by the General Assembly regarding the operation of the insurance industry in this State." S.C. Code Ann. § 38-3-110 (2015) sets forth the Director's responsibilities, which include the duty to:

> (1) supervise and regulate the rates and service of every insurer in this State and fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be observed and followed by every insurer doing business in this State. Nothing contained in this title authorizes or requires a review by the department or the director of any order of the director's designee or the deputy director under the Administrative Procedures Act. This item does not grant any additional authority to the director or his designee with regard to insurance rates other than the ratemaking authority specifically granted to the director or his designee, or the Department of Insurance for certain kinds of insurance in other provisions of this title;
>
> and to:

> (2) see that all laws of this State governing insurers or relating to the business of insurance are faithfully executed and make regulations to carry out this title and all other insurance laws of this State, the enforcement or administration of which is not otherwise specifically provided for.

The legislature has also provided, pursuant to S.C. Code Ann. § 38-61-10 (2015), "All contracts of insurance on property, lives, or interests in this State are considered to be made in the State and all contracts of insurance the applications for which are taken within the State are considered to have been made within this State and are subject to the laws of this State." It has enacted and approved detailed and extensive statutes and regulations governing long-term care insurance policies and rates, including provisions for the approval of rates by the Department. *See* S.C. Code Ann. §§ 38-72-10 *et seq.*; S.C. Code Regs. § 69-44. Under the Long-Term Care Insurance Act, S.C. Code Ann. §§ 38-72-10 *et seg.*, "All premium rate schedules for long-term care insurance must be filed with the [South Carolina Department of Insurance] and are subject to the prior approval of the director or his designee." S.C. Code Ann. § 38-72-75(A) (2019); *see also* Act No. 6 of 2019. An insurer may not charge a premium to an insured under a policy or contract of long-term care insurance before the applicable premium rate is filed and approved, and an insurer may not change the premium charged to an insured under a policy or contract of long-term care insurance until the applicable premium rate change has been filed with and approved by the Director or his designee. *Id.* "The director or his designee may hold a public hearing or solicit public comments as a part of the process to review long-term care insurance rate filings received by the director or his designee." S.C. Code Ann. § 38-72-75(C) (2019). Each decision of the Director or his designee about premium rates is subject to review under the Administrative Procedures Act (APA). S.C. Code Ann. § 38-72-75(D) (2019). S.C. Code Regs. 69-44 also provides for the comprehensive regulation of long-term care insurance policies, including rates, forms and required market practices.

In addition, our Supreme Court has held that because the authority to determine what insurance premium rates are just and reasonable is vested in the Department, not even courts should adjudicate what a reasonable rate might be in a collateral proceeding. *Cf. Temporary Services, Inc. v. American Intern. Group, Inc.*, 388 S.C. 348, 351, 697 S.E.2d 527, 529 (2010); § 2:34. Rates—Judicial review, 1 Couch on Ins. § 2:34 ("Ratemaking is generally not a judicial function. Indeed, many jurisdictions have adopted the filed rate doctrine which expressly prohibits courts from imposing rates different than those approved by the state insurance department.") To the extent Defendants might rely on the Pennsylvania court's order approving the Plan and the rate-setting scheme within, this would appear to violate the filed rate doctrine. This doctrine preserves the stability, uniformity, and finality inherent in rates filed with the regulatory agency and what has been determined to be a reasonable rate by that agency. *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 623 S.E.2d 387 (2005).

Pennsylvania law also appears to militate in favor of Plaintiffs' motion. That state's highest court has made clear that as a creature of statute, an insurance commissioner acting as a rehabilitator "'can only exercise those powers which have been conferred upon it by the Legislature in clear and unmistakable language.'" *Aetna Cas. and Sur. Co. v. Com., Ins. Dept.*, 638 A.2d 194 (Pa. 1994) (quoting *Com., Human Relations Commission v. Transit Cas. Ins. Co.*, 387 A.2d 58, 62 (Pa. 1978)). *See also Koken v. Legion Ins. Co.*, 831 A.2d 1196 (Pa. Commw. 2003), *aff'd sub nom. Koken v. Villanova Ins. Co.*, 878 A.2d 51 (Pa. 2005). Defendants Rehabilitator and SDR have only those powers conferred upon them by 40 Pa. Stat. Ann. § 221.16. This statute prescribes the powers and duties of the rehabilitator, who has "all the powers of the directors, officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator" and "full power to direct and manage, to hire and discharge employees subject to

any contract rights they may have, and to deal with the property and business of the insurer." *Id.* These powers are limited and equivalent to those of new management, and rehabilitators and insurance companies in rehabilitation, including SHIP, must therefore obey the insurance laws of each the states in which they conduct the business of insurance. *See id.* (rehabilitator has "full power to direct and manage" the insurer). The rehabilitation statutes do not appear to contain "clear and unmistakable language" permitting a rehabilitator to unilaterally set new rates and policy terms nationwide. Under Pennsylvania law, a rehabilitator's powers are sufficiently limited as to prevent her from even amending an insurer's bylaws. *See Koken*, 831 A.2d at 1227.

In maintaining that South Carolina is bound by the Plan, Defendants appear to rely on the Full Faith and Credit Clause of the U.S. Constitution. Assuming, *arguendo*, that the Pennsylvania approval order is a "judgment" for purposes of full faith and credit, South Carolina does not appear obligated to obey it in contravention of its own laws. As noted, the jurisdiction of the Pennsylvania court and the extraterritorial reach of the rehabilitation proceedings is limited. *See, e.g., Smalls*, 293 S.C. at 371, 360 S.E.2d at 534; *see also Heritage Life*, 656 A.2d at 259-260. Even the Pennsylvania court seems to indicate that its order is binding only on those who appeared before it. Although that order is in places ambiguous as to its intended reach, the court does plainly state, "Once this Court renders a judgment on the Second Amended Plan, it is Maine, Massachusetts, and Washington [the three intervening regulators] that owe this Court's judgment full faith and credit." (Defs. Exh. 3 at p. 61.)

Moreover, full faith and credit requires only that every state give a foreign judgment the *res judicata* effect which that judgment would be accorded in the state which rendered it. *Durfee v. Duke*, 375 U.S. 106 (1963). Under Pennsylvania law, application of *res judicata* requires that the two relevant proceedings possess several common elements, including identity of the parties.

Robinson Coal Co. v. Goodall, 72 A.3d 685 (Pa. Super. 2013). Plaintiffs were not parties to the Pennsylvania proceedings. The constitutional command of full faith and credit does not compel South Carolina to defer to a Pennsylvania court where the matter was neither fully and fairly litigated nor involved the relevant parties: "Before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree" and "[i]f that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given." *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n.*, 455 U.S. 691, 705 (1982).

To the contrary, enforcing Defendants' apparent attempt to supplant the laws of South Carolina and other states risks adoption of a "policy of hostility to the public Acts" of each of the forty-plus affected states, resulting in a direct injury to their sovereignty in violation of the Full Faith and Credit Clause. *See Franchise Tax Bd. v. Hyatt,* 578 U.S. 171 (2016)*; Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981); *Carroll v. Lanza*, 349 U.S. 408 (1955). "The very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pacific Employers Ins. Co. v. Industrial Accident Comm'n*, 306 U.S. 493, 501 (1939); *see also Alaska Packers Ass'n v. Indus. Accident Comm'n.*, 294 U.S. 532, 547 (1935).

Full faith and credit also need not be granted a judgment obtained in violation of procedural due process. *Purdie v. Smalls*, 293 S.C. 216, 359 S.E.2d 306 (Ct. App. 1987). An insurance policy is a contract between the insured and the insurance company. *Coakley v. Horace Mann Ins. Co.*, 376 S.C. 2, 656 S.E.2d 17 (2007). Statutes governing an insurance contract are part of the contract as a matter of law. *See Williams v. Government Employees Ins. Co. (GEICO)*, 409 S.C. 586, 762

S.E.2d 705 (2014). Here, policyholders appear to have had their contract rights, including the statutory rights that are part of their policies, stripped of them without the benefit of due process. There is no evidence that policyholders, who were not respondents in the Pennsylvania proceedings, received proper service of process or were represented by class representatives or independent legal counsel. Defendants have yet to offer a justification for why policyholders, who Defendants would have bound by the Plan, were not afforded the process apparently due them. *Cf. Underwriters Nat. Assur. Co.*, 455 U.S. at 712 (example of policyholders being represented by legal counsel and class representatives who engaged in "extensive negotiations" with the insurer and the receiver).

Moreover, the Defendants in their own filings appear to concede that the Pennsylvania order is not a final order, but temporary or interlocutory, and thus not entitled to full faith and credit: "Even after approval . . . the Rehabilitator and the Commonwealth Court of Pennsylvania 'are obligated to interact in order to supervise, implement and regulate equitably the process engaged to rehabilitate an insolvent or financially hazardous insurer.' Thus, plan approval and implementation remain in the jurisdiction of the Commonwealth Court of Pennsylvania and within its supervision throughout the proceedings." (Defendants' Memorandum of Law in Support of their Motion to Dismiss at 6.) *See Purdie*, 293 S.C. at 220, 359 S.E.2d at 308 (temporary or interlocutory order not entitled to full faith and credit).

B. <u>Plaintiffs have shown that a preliminary injunction is necessary to prevent irreparable harm and that there is no adequate remedy at law.</u>

A temporary injunction to preserve *the status quo ante* is necessary to prevent irreparable harm. Plaintiffs are specifically charged by the South Carolina General Assembly to uphold the insurance laws of this State. Those laws are designed to protect the policyholders, whose contracts were formed in this State and are subject to its laws and regulations. Notwithstanding the clear

mandate of South Carolina law, the insurer's past compliance with that law, the limited reach of the Pennsylvania proceedings, and the apparent defects in those proceedings, Defendants have made clear their position that SHIP is no longer subject to South Carolina law and have manifested their intention to not obey it and to move forward immediately with implementing changes to South Carolina policies and rates.

The State has a strong interest in protecting policyholders and ensuring that its laws are enforced. If those laws are not enforced, and Defendants are permitted to implement their Plan immediately, Plaintiffs will have not upheld their statutory duty and policyholders will be permanently denied basic rights and suffer permanent and substantial economic harm. In short, Plaintiffs would not have performed the very functions delegated to them by the General Assembly.

Even if Plaintiffs were to fine SHIP or suspend or revoke its license, such after-the-fact measures would not reinstate any permanent or temporary loss of benefits or premium overcharges. The same is true of any lawsuit to recover damages for lost benefits or premium overcharges, which would also be impracticable given the advanced age and typically limited means of the victims. Similarly, a suit by Plaintiffs for damages arising out of violation of this State's laws seems implausible, if not infeasible. An action at law by either Plaintiffs or policyholders would also not undo the substantial confusion and disruption of the marketplace that would have occurred. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) ("adequate" remedy at law is one that is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity). Conversely, Defendants need do no more than refrain from violating South Carolina law. If they wish to file for a rate increase in accordance with the laws of this State, they have done so in the past and may

do so again.

On the basis of the pleadings and papers in this matter and the arguments of the parties, it appears to the Court that Plaintiffs have shown a likelihood of success on the merits, and that they will suffer immediate, irreparable injury, with no adequate means of redress at law, in that, *inter alia*, without a temporary injunction, the *status quo* would be irretrievably altered with respect to the enforcement of the insurance laws, the order and stability of the insurance marketplace and the rights of policyholders Plaintiffs have the statutory duty to protect. Plaintiffs have therefore made the necessary showing that they are entitled to a temporary injunction - irreparable harm, likelihood of success on the merits, and no adequate remedy at law - thereby establishing grounds for relief pursuant to Rule 65, SCRCP.

IT IS THEREFORE ORDERED THAT:

1. Plaintiffs' Motion for Temporary Injunction is hereby GRANTED;

2. Defendants are hereby enjoined from communicating, implementing or enforcing in this State the Plan, otherwise interfering with the rights of SHIP long-term care insurance policyholders or otherwise violating the insurance laws of this State pertaining to long-term care insurance, including, but not limited to, notifying policyholders of proposed rate or benefit changes or requesting that they select rates or benefits different from those authorized by the appropriate state regulator and called for under the terms of the contract, charging additional premium, or withholding, delaying or encumbering benefits in whole or in part, until such time as specified herein;

3. The temporary injunction granted is binding upon the Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or

participation with them who receive actual notice of this Order for Temporary Injunction by personal service or otherwise;

4. This temporary injunction is to remain in effect for no more than thirty (30) days after there has been a final adjudication on the merits of the proceedings pending in Pennsylvania, with leave granted to Plaintiffs to apply for an extension; and

5. Pursuant to Rule 65(c), SCRCP, no bond or other security shall be required of Plaintiffs as an officer and agency of the State as a result of the granting of a temporary injunction in this case.

AND IT IS SO ORDERED.

L. Casey Manning
Chief Administrative Judge
Fifth Judicial Circuit

JAN 20, 2022
~~December~~ __, 2021
Columbia, South Carolina

Received 6/9/2022 4:12:04 PM Commonwealth Court of Pennsylvania

Filed 6/9/2022 4:12:00 PM Commonwealth Court of Pennsylvania
1 SHP 2020

CERTIFICATE OF SERVICE

I, Michael J. Broadbent, hereby certify that on June 9, 2022, I caused to be served the foregoing CORRECTED EXHIBIT 1 to the Rehabilitator's Petition for Issuance of Rule to Show Cause as to Plan Injunction Actions through the Court's PACFile system and on all parties listed on the Master Service List. A copy of the CORRECTED EXHIBIT 1 was sent via U.S. Mail to the Respondents at the addresses listed below and, where noted, by email. In addition, I hereby certify that an electronic copy of the foregoing document will be posted on SHIP's website at https://www.shipltc.com/court-documents.

Commissioner James J. Donelon Louisiana Dep't of Insurance 1702 N 3d Street Baton Rouge, LA 70802 *with a copy to* David Rubin BUTLER SNOW LLP 445 North Boulevard, Suite 300 Baton Rouge, LA 70802 david.rubin@butlersnow.com	Acting Director Michael Wise South Carolina Dep't of Insurance 1201 Main Street, #1000 Columbia, SC 29201 *with a copy to* Geoffrey Bonham South Carolina Dep't of Insurance 1201 Main Street, #1000 Columbia, SC 29201 gbonham@doi.sc.gov

/s/ Michael J. Broadbent