UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARLENE CARIDE, as Commissioner of the New Jersey Department of Banking and Insurance, and THE NEW JERSEY DEPARTMENT OF BANKING AND INSURANCE, Plaintiffs, vs. JESSICA K. ALTMAN, as Rehabilitator of Senior Health Insurance Company of Pennsylvania and her successors in office, in their capacity as Rehabilitator of Senior Health Insurance Company of Pennsylvania, PATRICK H. CANTILO, as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania, MICHAEL HUMPHREYS, as Successor Rehabilitator of Senior Health Insurance Company of Pennsylvania, and SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA, Defendants.	No. 3:22-cv-01329-FLW-LHG [formerly Superior Court of New Jersey, Law Division, Civil Part, Mercer County, Docket No. MER-L-000448-22]

AMENDED NOTICE OF REMOVAL

Defendants Michael Humphreys, Acting Insurance Commissioner of the Commonwealth of Pennsylvania,[1] in his capacity as Rehabilitator of Senior Health Insurance Company of Pennsylvania ("Rehabilitator"); Patrick Cantilo, in his capacity as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania ("SDR"); and Senior Health Insurance Company of Pennsylvania ("SHIP," and, together with the Rehabilitator and SDR, "Defendants") remove this action pursuant to 28 U.S.C. §§ 1331, 1332, 1367, 1441, and 1446 from the Superior

[1] As Acting Insurance Commissioner of Pennsylvania, Michael Humphreys is the successor to named defendant Jessica K. Altman, the former Insurance Commissioner of Pennsylvania.

Court of New Jersey, Law Division, Civil Part, in and for Mercer County, New Jersey ("Superior Court"), to the United States District Court for the District of New Jersey.

INTRODUCTION

1. On or about March 9, 2022, Plaintiffs Marlene Caride ("Commissioner Caride") and the New Jersey Department of Banking and Insurance ("DOBI," and, together with Commissioner Caride, "Plaintiffs") filed a Verified Complaint ("Complaint") in the Superior Court, captioned *Marlene Caride, as Commissioner of the New Jersey Department of Banking and Insurance, and the New Jersey Department of Banking and Insurance v. Jessica K. Altman, as Rehabilitator of Senior Health Insurance Company of Pennsylvania and her successors in office, in their capacity as Rehabilitator of Senior Health Insurance Company of Pennsylvania; Patrick H. Cantilo, as Special Deputy Rehabilitator of Senior Health Insurance Company of Pennsylvania; Michael Humphreys, as Successor Rehabilitator of Senior Health Insurance Company of Pennsylvania; and Senior Health Insurance Company of Pennsylvania*, Docket No. MER-L-000448-22.

2. Pursuant to 28 U.S.C. § 1446(d) and Local Rule 5.2(2), copies of all process, pleadings, and orders served to date upon the Defendants and all documents previously filed in state court in this action, including Plaintiffs' Complaint and proposed Order to Show Cause described below, were attached to the original Notice of Removal as Exhibit 1.

3. Upon information and belief, copies of the Complaint were sent via email and mail on or around March 9, 2022, but formal service of the Complaint has not yet been effected

4. Also on or around March 9, 2022, Plaintiffs filed a proposed Order to Show Cause. No hearing on the proposed Order to Show Cause was held or scheduled prior to the filing of this Notice of Removal and no order has issued.

5. Plaintiffs captioned their Complaint for the Superior Court of New Jersey, Chancery Division, General Equity Part, but it was accepted, docketed, and tracked by the Superior Court in the Law Division, Civil Part. *See* Assignment, attached to the original Notice of Removal as Exhibit 2.

REQUIREMENTS FOR REMOVAL

6. A notice of removal shall be filed within 30 days after service of the initial pleading. 28 U.S.C. § 1446(b).

7. 28 U.S.C. § 1441(a) authorizes removal of any civil action brought in a state court of which the district courts of the United States have original jurisdiction.

8. Original jurisdiction exists pursuant to 28 U.S.C. § 1332 where there is a civil action in which: (a) the action is between citizens of different states; and (b) the amount in controversy exceeds $75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a).

9. As set forth below, removal is proper here.

Removal is Timely

10. Upon information and belief, formal service had not yet been effected at the time of removal. The original Notice of Removal was therefore timely filed within thirty days after the service of the Complaint and Summons on Defendants pursuant to 28 U.S.C. § 1446(b).

11. Even if service was effected, it could be effected no earlier than the date of filing of March 9, 2022, and Defendants filed their original Notice of Removal on March 11, 2022.

12. This Amended Notice of Removal is timely because it is filed within thirty days of March 9, 2022, as well.

DIVERSITY JURISDICTION

Complete Diversity Exists Between Plaintiffs and Defendants

13. Upon information and belief, Plaintiffs are citizens of New Jersey for purposes of diversity jurisdiction. Plaintiffs allege that Commissioner Caride is acting "in her capacity as Commissioner of the State of New Jersey" and "maintains her office address at 20 West State Street, Trenton[,] New Jersey 08625." Compl. at 1, ¶ 6. Plaintiffs further allege that "DOBI is a department within New Jersey State government" and "maintains an office address at 20 West State Street, Trenton, New Jersey 08625." Compl. ¶ 7.

14. Defendants, by contrast, are not citizens of New Jersey for purposes of diversity jurisdiction.

15. Plaintiffs allege that the named defendant Jessica K. Altman, predecessor to Acting Insurance Commissioner Humphreys, is the former Commissioner of Insurance for the Commonwealth of Pennsylvania and maintains her office address in Harrisburg, Pennsylvania. Compl. ¶ 8.

16. Plaintiffs allege that Defendant Michael Humphreys is the Acting Commissioner of Insurance for the Commonwealth of Pennsylvania and is the successor in office to Former Commissioner Altman. Compl. ¶ 9. Acting Insurance Commissioner Humphreys is a resident of Pennsylvania.

17. Plaintiffs allege that Defendant Patrick H. Cantilo is the Special Deputy Rehabilitator of SHIP appointed by the Rehabilitator and maintains his office address in Austin, Texas. Compl. ¶ 10. SDR Cantilo is also a resident of the State of Texas.

18. Finally, Plaintiffs allege that Defendant SHIP is a Pennsylvania-domiciled life and health insurance company, which maintains its principal place of business in Carmel, Indiana. Compl. ¶ 11.

19. Accordingly, there is complete diversity of citizenship between the parties to this action.

<u>The Amount in Controversy Requirement Is Met</u>

20. Pursuant to 28 U.S.C. § 1446(c)(2)(A)(ii), Defendants assert that the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

21. Plaintiffs seek injunctive relief. In such cases, the amount in controversy is "measured by the value of the object of the litigation." *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 347 (1977); *accord Auto–Owners Ins. Co. v. Stevens & Ricci Inc.*, 835 F.3d 388, 398 (3d Cir. 2016); *see also Angus v. Shiley Inc.*, 989 F.2d 142, 146 (3d Cir. 1993) ("[T]he amount in controversy is not measured by the low end of an open-ended claim, but rather by a reasonable reading of the value of the rights being litigated.").

22. The object of the litigation is the rehabilitation of SHIP pursuant to its court-approved rehabilitation plan, including specifically the premiums paid by and benefits owed to New Jersey policyholders. These amounts in controversy far exceed $75,000.

23. SHIP is a life and health insurance company domiciled in Pennsylvania, and its entire insurance business consists of long-term care insurance ("LTCI") policies. Compl. ¶ 17. Since 2003, the focus of SHIP's business has been running off its LTCI business until there are no policies remaining; it is not writing any new business. *See* Compl. ¶ 18.

24. On January 29, 2020, as a result of its long financial decline, the Commonwealth Court of Pennsylvania ("Commonwealth Court") ordered that SHIP be placed into rehabilitation under the Pennsylvania Insurance Department Act, 40 P.S. §§ 221.1-221.63. *See* Compl. ¶¶ 22-24. No order of insolvency has been entered, but SHIP's deficit at the time of the rehabilitation order exceeded $1 billion. *See* Compl. ¶ 21.

25. At the direction of the Commonwealth Court, the Rehabilitator prepared a rehabilitation plan for SHIP. The Commonwealth Court approved the Second Amended Plan on August 24, 2021 ("Approved Plan"). *See* Compl. ¶ 26.

26. The Rehabilitator, acting under the direction of the Pennsylvania courts, is now implementing that Approved Plan, including through an election package process that may result in modifications to policyholders' premiums or benefits. *See* Compl. ¶¶ 47, 54–55. Plaintiffs' Complaint challenges the Rehabilitator's authority and ability to implement this Approved Plan. *See* Compl. ¶¶ 52, 56.

27. The value of the Rehabilitator's ability to implement the Approved Plan is considerable—including for New Jersey policyholders. For example, Plaintiffs allege that, through the Approved Plan, SHIP seeks to "eliminate a $1.2 billion funding gap . . . by increasing premium revenue and modifying the existing terms of SHIP's 39,000 policies in force, including approximately 592 of said policies in New Jersey." Compl. ¶ 4. And, according to exhibits filed by Plaintiffs, each policyholder could pay thousands of dollars in premiums each year and have coverage exceeding $100,000. *See* Ex. 1, Part 3 to this Notice of Removal at 91 (Troublefield Cert. Ex. 11 at 3).

28. Thus, the cost of complying with the prospective equitable relief sought by the Complaint—that is, refraining from implementing any rehabilitation plan and making any changes to the premiums or benefits of New Jersey SHIP policyholders—easily eclipses $75,000.

29. Further, the Complaint seeks the New Jersey court's intervention in the ongoing rehabilitation proceedings in the Pennsylvania courts, requesting that the court enjoin Defendants from implementing the Approved Plan in the state of New Jersey, or otherwise from affecting New

Jersey policyholders without prior approval by Plaintiffs or the New Jersey court. *See* Compl. ¶¶ 78-80, WHEREFORE p. 19 ¶¶ A, B.

30. The Complaint also seeks a declaratory finding that orders in the Pennsylvania court—including its Supreme Court—are void, unenforceable, and not entitled to full faith and credit. *See* Compl. ¶¶ 59-77, WHEREFORE ¶¶ A-E. Plaintiffs appears to seek to force SHIP into liquidation, thus placing the entire $1 billion deficit, as well as SHIP's assets ($1.4 billion) and all policies and policyholders at issue. Thus, the direct value of the relief Plaintiffs seek also exceeds $75,000.

31. Accordingly, the amount in controversy exceeds $75,000 as required by 28 U.S.C. § 1332(a), and this action is therefore removable to this Court pursuant to 28 U.S.C. § 1441(b).

32. As a result and pursuant to 28 U.S.C. §§ 1332 and 1441, this Court has original jurisdiction over this action by reason of diversity of citizenship and an amount in controversy which exceeds the sum or value of $75,000, exclusive of interest and costs.

33. This action may be removed to this Court by the Defendants pursuant to 28 U.S.C. § 1441(a), which allows for the removal of any civil action brought in a state court of which the District Courts of the United States have original jurisdiction to the district court of the United States for the district and division embracing the place where such action is pending.

FEDERAL QUESTION JURISDICTION

34. In addition to diversity jurisdiction pursuant to 28 U.S.C. § 1332(a), Defendants remove this matter pursuant to 28 U.S.C. § 1331, which permits removal of any matter in which a federal question is presented.

35. Defendants incorporate their statements in Paragraphs 1-33 as though fully set forth herein.

36. In establishing their alleged right to relief, Plaintiffs' Complaint invokes a federal statute, the McCarran-Ferguson Act, 15 U.S.C. § 6701 *et seq.*

37. Reserving the right to challenge Plaintiffs' claims on the merits, Plaintiffs' reliance on the McCarran-Ferguson Act as the basis for their right to relief forms a federal question under 28 U.S.C. § 1331.

38. Specifically, within their First Count for Declaratory Relief, Plaintiffs allege, *inter alia*, that the McCarran-Ferguson Act provides Plaintiffs with an "exclusive authority and right to govern the business of insurance in New Jersey." *See* Compl. ¶ 65.

39. It should be noted that this reliance by Plaintiffs on the McCarran-Ferguson Act and 15 U.S.C. § 6701 is not for the purpose of rejecting or discouraging this Court's exercise of jurisdiction over the case, but is instead an affirmative allegation by Plaintiffs that Defendants' actions violate the cited federal laws. Indeed, in a brief filed by Plaintiffs with their Complaint, Plaintiffs state as follows: "As a matter of federal law, the authority to control and regulate the business of insurance in a given state reside[s] with insurance regulators of the state" and that state powers are "in addition to" that federal law, identified as the McCarran-Ferguson Act. *See* Brief with Complaint at p.20.

40. Plaintiffs thus view Defendants' efforts to implement the Approved Plan as an invasion of Plaintiffs' regulatory rights under the federal McCarran-Ferguson Act. *See* Compl. ¶ 65; Brief with Complaint at p.20.

41. Plaintiffs' action, therefore, arises at least in part under the laws of the United States by raising a substantial federal question that must be necessarily resolved—*i.e.*, whether the McCarran-Ferguson Act provides Plaintiffs with an affirmative right of regulation and, if so, whether the McCarran-Ferguson Act creates the right for Plaintiffs to bring an action to stop the

implementation of the Approved Plan as an invasion of that right. *See, e.g.*, *Goldman v. Citigroup Global Markets Inc.*, 834 F.3d 242, 249 (3d Cir. 2016) (federal question jurisdiction arises when a plaintiff's claims depend upon a substantial question of federal law).

42. Thus, this Court has jurisdiction under 28 U.S.C. § 1331.

43. The rest of Plaintiffs' claims are so related to Plaintiff's federal law claim that they form part of the same case or controversy. Accordingly, this Court has jurisdiction over such other claims under 28 U.S.C. § 1367.

REMOVAL REQUIREMENTS ARE SATISFIED

44. Defendants provided notice of the original Notice of Removal by filing a "Notice of Filing of Notice of Removal" together with a copy of this Notice of Removal in the Superior Court and by serving copies of the same on Plaintiffs pursuant to 28 U.S.C. §1446(d).

45. Defendants will provide notice of this Amended Notice of Removal to Plaintiffs and to the Superior Court as well.

WHEREFORE, Defendants respectfully submit and give this Amended Notice of Removal and submit that the above-captioned matter has been properly removed to this Court.

Dated: March 31, 2022

COZEN O'CONNOR

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2022 the foregoing AMENDED NOTICE OF REMOVAL was filed with the Clerk of Court using the CM/ECF system and thus was served on all parties by ECF email to counsel listed below:

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