

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

DOUGLAS M. OMMEN, IOWA
INSURANCE COMMISSIONER,
Plaintiff,

v.

JESSICA K. ALTMAN, COMMISSIONER
OF INSURANCE FOR THE
COMMONWEALTH OF
PENNSYLVANIA, PATRICK H.
CANTILO, SPECIAL DEPUTY
REHABILITATOR, and SENIOR
HEALTH INSURANCE COMPANY OF
PENNSYLVANIA,

Defendants.

Case No. 05771 EQCE087308

**ORDER REGARDING TEMPORARY
INJUNCTION AND RULING ON
MOTION TO DISMISS**

NOW on this 13th day of January, 2023 the Court held a reported Zoom hearing in regards to pending motions. The Court heard arguments on Defendants' Motion to Dismiss and for Plaintiff's Request for a Temporary Injunction. Plaintiffs were represented by Assistant Attorney General Jordan Esbrook. Defendants were represented by Michael Broadbent and Joseph Gamble. No evidence was presented. Having considered the filed documents, exhibits, and the argument of counsel, the Court enters this Order.

This Court exercised care in evaluating this case because of the financial complexities involved with insurance policies pending in an equally sovereign state. The Defendants' initial position is that there is no subject matter jurisdiction and there is no personal jurisdiction for the Iowa District Court for Polk County. Defendants assert that this case should be given over to the exclusive jurisdiction of the Pennsylvania Commonwealth Court dealing with the rehabilitation and because of the insolvency laws of Iowa which dictate that the matter should be heard in the court that has control over the receivership. Further, Defendants argue that plan implementation does not constitute the contacts required to implicate personal jurisdiction over Defendants.

Under Iowa law as analyzed below, this Court finds that the Iowa District Court has jurisdiction to hear the case and should enter a temporary injunction as requested by the Plaintiff.

I. BACKGROUND AND PRIOR PROCEEDINGS.

Plaintiff is the Director of Insurance for the State of Iowa. Plaintiff requests that this Court enjoin the defendants from violating Iowa code chapter 514A. Defendants Michael Humphreys, Acting Commissioner of Insurance for the Commonwealth of Pennsylvania; Patrick H. Cantilo, Special Deputy Rehabilitator; and Senior Health Insurance Company of Pennsylvania (collectively, the “SHIP Defendants”), filed Motions to Dismiss Plaintiff’s Petition. In general, Defendants claim that Plaintiff’s Petition should be dismissed for lack of subject-matter jurisdiction, lack of personal jurisdiction, and because Plaintiff fails to state a claim for relief. Defendants first assert that this Court lacks the subject-matter jurisdiction over this injunction action. Second, Defendants argue that the Court lacks personal jurisdiction over Defendants with respect to the claims asserted by Plaintiff. Finally, Defendants argue that the Plaintiff’s Petition fails to state a claim because the Full Faith and Credit Clause prohibits collateral challenges to final orders of the Commonwealth Court.

SHIP is a long-term care insurance company that is licensed to do business in Iowa and serves Iowa policyholders. SHIP participated in Iowa’s insurance market but it stopped issuing policies to Iowa’s consumers in 2003. There are approximately 800 Iowans who currently hold a SHIP long-term care insurance policy. Pl. Pet. at p. 3, ¶ 11. The average age of these 800 policyholders is 86. Pl. Pet. Ex. D, August 24, 2021 Order of the Pennsylvania Commonwealth Court, p. 4).

As of August, 2021, SHIP possesses a funding deficit of approximately \$1.2 billion. According to the Defendants, in January 2020, the Commonwealth Court of Pennsylvania (“Commonwealth Court”) granted a petition by the Insurance Commissioner of Pennsylvania to place SHIP in rehabilitation, appointing the Commissioner as Rehabilitator pursuant to the authority granted by Pennsylvania law and directing the Rehabilitator to develop a plan for rehabilitating SHIP.¹ The Commonwealth Court approved the Second Amended Plan of Rehabilitation for SHIP (“Approved Plan”) by an opinion and order dated August 24, 2021 (the “Approval Opinion and Order”) and amended non-substantively on November 4, 2021². Upon approval, the Rehabilitator is required by statute to implement the Plan. The Plan is asserted to be immune to each state’s own insurance laws that specify the conditions that the modifications resulting from the Plan must meet. *See* Def. [s’] Mot. Ex. 2. This matter arises out of Plaintiff’s Complaint seeking declaratory and injunctive relief designed to stop and prohibit Defendants’ implementation of the Approved Rehabilitation Plan for SHIP in Iowa.

Defendant Altman volunteered to develop the plan to return the SHIP to solvency and operational capacity in the markets where it does business. During the Pennsylvania Court proceedings, Deputy Rehabilitator Cantilo stated the Rehabilitation Plan was intended from the start to “transfer the burden of insolvency from guaranty associations and their member insurers to policyholders.” Exhibit B, Transcript of Pa. Proceedings (excerpt) at pp. 78, 79. 83-84. 289, 292 (testimony of Special Deputy Rehabilitator Cantilo). This decision has implications in the

¹ Many of the background facts regarding SHIP are taken from Defendants’ Brief filed September 28, 2022 and Plaintiff’s Petition.

² The Plan approval is on appeal to the Pennsylvania Supreme Court. Two stays were requested in Pennsylvania and denied. A practical reason for granting the temporary injunction is because the Plan is on Appeal and the litigation is not complete.

larger context of the potential injuries policyholders could suffer directly due to the rehabilitation-election rather than liquidation.

On December 2, 2021, Defendants submitted a request for rate increases to the Iowa Insurance Division. This is the proper method under Iowa law to request a premium increase from any entity with and affecting Iowa's policyholders of the entity. According to the Commissioner, whom the legislature has vested the broad delegation of authority to investigate and regulate the insurance market of the State, the increases would have affected 215 Iowa policyholders by increasing their monthly premiums from .2% to 675%³. The Commissioner denied Defendants' request on February 11, 2022.

Factually, Defendants argue that all Iowan SHIP policyholders were provided due process for the modifications to policies produced by their Plan when they served notice of the Pennsylvania Court's proceedings to the Insurance Commissioners of various states whose residents owned SHIP policies. Plaintiff was served notice of the Pennsylvania Court's proceedings. Defendants argue that this notice is sufficient to bind Iowa's SHIP policyholders to the modifications produced by their Plan.

Iowa is not the first State to find its Director or Commissioner of Insurance petitioning its district courts for an injunction⁴. Louisiana's Nineteenth District Court, Parish of East Baton Rouge granted a preliminary injunction prohibiting Defendants from applying their plans to Louisiana's SHIP policyholders. Pet. Ex. F at 3. They stated, "SHIP may . . . offer and effect for such policyholders any policy modification available in the ordinary course of business and that are unrelated to the Approved Plan that is in compliance with all applicable provisions of Louisiana law and regulations." *Id.* South Carolina echoed Louisiana's requirement of

³ Petitioner's Brief, p. 3.

⁴ These State Court opinions are not binding but provide additional background for the nature of this Iowa litigation.

conformance with South Carolina’s laws, “Defendants are hereby enjoined . . . [from] otherwise interfering with the rights of SHIP long-term care insurance policyholders or otherwise interfering with the insurance laws of this State pertaining to long-term care insurance” Pet. Ex. G at 18. But a similar preliminary injunction request has been denied in a matter pending in the North Carolina trial courts captioned *Causey v. Altman*, Wake County Superior Court, 22-CVS-2814. See Brief Opposing Temporary Injunction and in Response to Plaintiff’s Pre-Hearing “Trial Brief” at 26 and Ex. 9. In North Carolina, the state court found that there was not a likelihood for success for the injunction. The Court will now apply Iowa law to the requested relief by the parties.

II. CONCLUSIONS OF LAW.

The legal authority that authorizes rehabilitation and liquidation proceedings of insolvent insurers in Pennsylvania is in the Pennsylvania Insurance Department Act. See 40 P.S. §§ 221.1—221.63 (PID Act). Iowa has its own parallel statute located in Iowa Code section 507C. The purpose of the PID Act is to “effectuate the intent of rehabilitation— ‘i.e., to minimize the harm to all effected parties.’” Def[s] Br. on Mot. p. 5. (*citing Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086, 1094 (Pa. 1992) (emphasis in original)). Both the Iowa and Pennsylvania statutes provide that a Rehabilitator and Deputy Rehabilitator be appointed by the court that places an insurance company in legally-assumed rehabilitation, an alternative to liquidation. Defendant Altman petitioned the Pennsylvania Court to place SHIP in rehabilitation.

Liquidation-elections of long-term care insurers under most states’ insurance insolvency liquidation and rehabilitation statutes trigger minimum-coverage loss-assistance protections for effected policyholders, which are paid by their resident state’s guaranty associations. See *Osborne v. Edison*, 211 N.W.2d 696, 697-98 (Iowa 1973) (a guaranty association pays losses to the State

Association's resident policyholders only if the insurer is licensed to do business in the State). After petitioning for rehabilitation of SHIP in place of liquidation, and volunteering to be the Rehabilitator, the individual Defendants were appointed as Rehabilitator and Deputy Rehabilitator. Defendant Altman was appointed as Rehabilitator and Defendant Cantilo as Deputy Rehabilitator by the Pennsylvania Court on January 29, 2020. Their mission was to develop a rehabilitation plan for SHIP to "minimize harm to the policyholders." Def [s'] Br. on Mot. p. 5 (*citing Foster*, 614 A.2d at 1094). A plan to "transfer the burden of insolvency from guaranty associations and their members to insurers and policyholders[,]"⁵ does not exist where the entire burden has been transferred to policyholders because guaranty associations only pay losses on claims owed by insolvent insurers licensed to do business in the state and SHIP is not licensed in Iowa.

The Iowa Supreme Court in *Osborne*, was tasked with interpreting the language "authorized to transact insurance in this state . . . in section 515B.2(4), The Code, 1971." *Osborne*, 211 N.W.2d at 696. The *Osborne* Court's interpretation of those terms determined whether the State's guaranty association would be obligated under Iowa Code section 515B.2(4) (1971) "to pay such losses[,]" resulting from an unlicensed insurer's business in the State of Iowa becoming insolvent. *Id.* at 696-97. An analysis of Iowa Code chapter 515B (1971) showed that the chapter "was described as 'An Act to avoid financial loss due to the insolvency of an insurer.'" *Id.* at 696. The conclusion reached in *Osborne* explored whether Iowa's guaranty association is statutorily obligated to pay any share of the losses. *See Osborne*, 211 N.W.2d at 696 ("The controlling question is whether an insurance transaction . . . by an unlicensed insurer renders the insurer 'authorized to transact insurance' in Iowa . . ."); *Id.* at 698 ("We believe the legislature did not . . . intend to make unlicensed insurers authorized to transact business [in Iowa under Iowa Code

⁵ Quote taken from Exhibit B, Transcript of Pa. Proceedings (excerpt) at pp. 78, 79, 83-84, 289, 292 (testimony of Special Deputy Rehabilitator Cantilo).

section 515B.2(4) (1971)].”). The guarantee association in Iowa was found not to be responsible for any of an insolvent insurer’s liabilities to Iowa policyholders because it was not licensed to do business in Iowa. *Id.* The problem before this Court is the regulation of insurance policies when there is a financial issue with the insurer requiring rehabilitation in another state. Here we have two different states dealing with the impact of one state court supervising a rehabilitator in regards to possible modification of policies that impact policy holders in another state.

The basis for contemporary state regulation of insurance is sourced in statutory law. The McCarran-Ferguson Antitrust Act of 1948 vested federal authority to regulate insurance in individual States. In relevant part, the law provides:

§ 1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.

(a) State regulation

The business of insurance, and every person engaged therein, shall be subject to the laws of several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance
.....

15 U.S.C.A § 1012. Generally, subsection (a) of the McCarran-Ferguson Act grants a state the authority to regulate “every person engaged” in the “business of insurance” within the jurisdiction of the state. 15 U.S.C.A. § 1012(a). Subsection (b) applies the concept of reverse-preemption. A discussion of reverse-preemption would be needed only if federal law were material in the analysis of individual states’ powers to regulate its own insurance market. The questions before the Court are: (1) does this Court have jurisdiction to entertain Plaintiff’s Petition; (2) does Plaintiff possess the authority to seek an injunction under the facts of this case; and (3) have the facts shown by Plaintiff provided sufficient bases to grant Plaintiff’s Petition.

The McCarran-Ferguson Act provides a simple directive of crucial importance in determining whether this Court has jurisdiction, and delineating the authority possessed by Plaintiff. The answer is to “look to the laws” where the party engages in “the business of insurance.” 15 U.S.C.A. § 1012(a). Here, for the Iowa policies of citizens in Iowa, that means Iowa law. Policy modifications to Iowa’s SHIP policyholders appear to not be engagement “in the business of insurance” of Pennsylvania. However, jurisdiction to hear and decide a case is a threshold matter. *Heartland Exp. v. Gardner*, 675 N.W.2d 259, 266 (Iowa 2003) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210, 227 (1998) (“[J]urisdiction must be established as a threshold matter.”)).

III. DEFENDANTS’ ARGUMENTS.

Defendants artfully propose four general arguments to let the Plan be binding in Iowa without any Iowa regulation. The first issue that must be addressed is a res judicata or claim preclusion argument that this Court may not issue an adjudication of Plaintiff’s Petition because the exclusive jurisdiction to hear objections to the Plan was vested in and heard by the Pennsylvania Court. Defendants’ second and third arguments are that this Court lacks personal and subject-matter jurisdiction to entertain and decide Plaintiff’s Petition. Defendants believe the subject matter jurisdiction argument is the strongest reason to dismiss because in their opinion the Iowa statutes make it clear that this court would not have jurisdiction. They believe that the relevant issues for the impacted Iowans is pending somewhere else that has exclusive jurisdiction. Also, it is Defendants’ position that under the Iowa rehabilitation and solvency laws this is the kind of claim that must proceed in the receivership court. Fourth, and closely related to their first argument regarding claim preclusion due to the Pennsylvania Court’s Order, Defendants argue that the Full Faith and Credit Clause of article IV, section 1 of the United States Constitution

demands that this Court honor the Pennsylvania Court's Order. Honoring the Order, Defendants argue, requires this Court to abstain from issuing a decision on Plaintiff's Petition. Fifth, it is said, even if this Court has authority to entertain Plaintiff's Petition, Defendants argue that Plaintiff has not shown any actual or threatened invasion of his rights, nor that injury or damage will occur if the Court does not grant injunction of Defendants' Plan.

Plaintiff argues that this Court has subject matter jurisdiction over this request for injunctive relief because Iowa district courts are courts of general jurisdiction. Iowa has been granted the authority by Congress, through the McCarran-Ferguson Act, to regulate the insurance business within the state. The Plaintiff believes the court should assess injunctive relief against SHIP for its violation of Iowa code § 514A.14.

IV. JURISDICTION.

A. Standards

Defendants argue that this Court does not possess either personal nor subject-matter jurisdiction to hear Plaintiff's Petition. "Iowa's jurisdictional rule 'authorizes the widest jurisdictional parameters allowed by the Due Process Clause.'" *Book v. Doublestar Dongfeng Tyre Co., Ltd.*, 860 N.W.2d 576, 583 (Iowa 2015) (quoting *Capital Promotions, L.L.C. v. Don King Prods. Inc.*, 756 N.W.2d 756 828, 833 (Iowa 2008)). Iowa courts may exercise personal jurisdiction in conformance with the Fourteenth Amendment's Due Process Clause when the burdens to be imposed on the defendant are commensurate with "traditional notions of fair play and substantial justice" that substantiate the State's interest in "hail[ing] into court" a nonresident party. *See Book*, 860 N.W.2d at 583-84 ("The Due Process Clause of the Fourteenth Amendment sets the outer barriers of a state tribunal's authority to proceed against a defendant.") (internal quotations omitted)) "Personal jurisdictional is only appropriate when the defendant's conduct

and connection with the forum state are such that he should reasonably anticipate being haled into court there.” *Id.* (internal quotations omitted)). “Fairness is the crux of the minimum-contacts analysis.” *Shams v. Hassan*, 829 N.W.2d 848, 854 (Iowa 2013).

A defendant who seeks the benefits of conducting business in a state’s market and enjoys the protection of the state’s regulations of the market, has established minimum contacts. *Hanson v. Denckla*, 357 N.W.2d 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958). To exercise personal jurisdiction the defendant must commit “some act by which the defendant purposefully avails itself of the privilege of conducting activities in the forum State, thus invoking the benefits and protections of its laws.” *Id.* Personal jurisdiction requirements exist to ensure no defendant must litigate a matter in a court outside their resident state “solely as a result of random, fortuitous, or attenuated contracts.” *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183, 85 L.Ed.2d. 528, 542 (1985) (internal quotations omitted).

Personal jurisdiction can be specific or general. *Addison Ins. Co. v. Knight, Hoppe, Kurnik & Knight, L.L.C.*, 734 N.W.2d 473, 477 (Iowa 2007) (citations omitted). Courts have specific jurisdiction “over causes of action arising from or related to a defendant’s actions within the forum state” *Id.* (internal quotations omitted). *Shams* discusses personal jurisdiction under Iowa law:

[J]urisdiction is appropriate, even when the defendant’s contacts with the forum state are limited as long as the controversy is related to or arises out of a defendant’s contacts with the forum. A single contact with the forum state can be sufficient to satisfy due process concerns when the plaintiff’s claim arises out of the contact . . .

If sufficient minimum contacts exist, the court must then determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice. In making this latter decision, we consider [(1)] the burden on the defendant, [(2)] the forum State’s interest in adjudicating the dispute, [(3)] the plaintiff’s interest in obtaining convenient and effective relief. [(4)] the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and [(5)] the shared interests of the several states in furthering fundamental substantive social policies.

Shams v. Hassan, 829 N.W.2d 848, 857 (Iowa 2013). (internal quotations omitted). After addressing Defendants' claim preclusion argument in conjunction with their contention of exclusive jurisdiction in the Pennsylvania Court, the Court should consider whether it has personal jurisdiction over Defendants. The Fifth Judicial Circuit Court of South Carolina offered instructive reasoning in their analysis. This Court similarly concludes it possesses personal and subject-matter jurisdiction to adjudicate Plaintiff's Petition.

B. South Carolina's Decision on Injunction Petition Against Defendants' Plan

The first question in a personal jurisdiction analysis is whether Defendants have established minimum contacts in Iowa for this Court to comport with due process standards in exercising personal jurisdiction. To begin the personal jurisdiction discussion, this Court considered the persuasive authority, in its analysis annunciated by the South Carolina Court entertaining an identical Petition:

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

Farmer v. Altman, Civil Act. No. 2020-CP-40-05802, *Order Granting Plaintiff's Motion for a Temporary Injunction*, at *7-8 (Dist. Ct. of Richland Cty., S.C., Feb. 11, 2022); *see also* Pl. ['s] Ex. F to Pet. pp. *7-8. The South Carolina District Court concluded that, "[They] clearly [have] personal jurisdiction of the insurer, which as a condition of its licensure has appointed the Director [of Insurance for the State of South Carolina] as its agent for service, *see* S.C. Code Ann. § 38-5-70 (2015), and has conducted the business of insurance in the State for many years." *Id.* at *9.

This Court finds three thematic legal conclusions from South Carolina’s adjudication that are equally applicable in Iowa. First, implementing Defendants’ Plan and policy modifications invoke the privilege of Iowa laws under proper procedure. Defendants were denied their modifications and did not seek judicial review of the Plaintiff’s denial. Second, the Plan’s modifications that were denied by Plaintiff, now alleged to be compulsorily enforced in Iowa by the Pennsylvania Court’s authority and Order, would supplant the laws of Iowa and its General Assembly. The Pennsylvania Court’s authority as the judicial branch of an equally sovereign state does not hold supremacy over this Iowa Court’s interest in adjudicating compliance with Iowa law and public policy. Third, Defendants’ intended actions are specific acts impacting Iowa residents who hold SHIP’s policies. Insurance Commissioner is exercising his right to evaluate insurance modifications for elderly and vulnerable Iowans under his assigned duties. Implementation of the Plan is a different matter than approval of the Plan in the original proceedings before the Pennsylvania Court.

C. Personal Jurisdiction Analysis

A question this Court must answer is whether Defendants’ Plan implicates “minimum contacts” with the State of Iowa, or the controversy “arises out of [the] defendant’s contacts with” Iowa. *Shams*, 829 N.W.2d at 857. Iowa Code section 514G.111 provides that the Insurance Commissioner may adopt rules “[R]elating to the long-term care insurance and to the administration of this chapter. . . .” pursuant to Iowa Code chapter 17A. *Chartis Ins.*, 831 N.W.2d at 125, and Iowa Code sections 515A.3(1)(a) and 515A.4(1)(a) provide that Iowa is a “rate-filing” state requiring relevant entities to submit premium modifications to policies to Plaintiff for approval. Thus, Iowa Code section 514G.111 contains language concerning expected compliance with administrative regulation because insurers are expected to first submit to the Iowa Director

of Insurance any plan that includes a premium change for approval. Defendants did not fully exhaust all the remedies which would have lead to consent to the jurisdiction of the District Court of Polk County. *See In re Marriage of Wallick*, 624 N.W.2d 153, 158 (Iowa 1994) (citing *Burger King Corp.*, 471 U.S. at 472 n. 14, 105 S. Ct. 2182 n. 14, 85 L.Ed.2d at 540 n. 14) (finding that asking a court to modify a contract is asking a court to exercise personal jurisdiction and therefore consenting to that court's jurisdiction).

The United States Supreme Court in *Burger King Corp.* discusses minimum contacts in interstate commerce and subsequent contractual obligations as minimum contacts of those engaged in it:

And with respect to interstate contractual obligations, we have emphasized that parties who 'reach beyond one state and create continuing relationships and obligations of with citizens of another state' are subject to the regulation and sanctions in the other State for the consequences of their activities.

471 U.S. at 473, 105 S. Ct. at 2182, 85 L.Ed.2d 528 (citing *Travelers Health Ass'n. v. Virginia*, 339 U.S. 643, 647, 70 S. Ct. 927, 929, 94 L.Ed. 1154 (1950)); *see also McGee v. Int'l Life Ins. Co.*, 335 U.S. 220, 222-23, 78 S. Ct. 199, 200-01, 2 L.Ed.2d 223 (1957). To reiterate, "[T]he defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.* at 471 U.S. 474, 105 S. Ct. 2183, 85 L.Ed.2d 528 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L.Ed.2d 490 (1980)). Additionally, "So long as a commercial actor's efforts are 'purposefully directed' towards residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there." *Id.* 471 U.S. at 476, 105 S. Ct. at 2184, 85 L.Ed.2d 528 (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774-75, 104 S. Ct. 1473, 1478, 79 L.Ed.2d 790 (1984)).

Another of the *Burger King Corp.* Court's holdings defining the existence of minimum contacts resulting from the privileges of conducting business in another state is material to this analysis:

[W]here the defendant deliberately has engaged in significant activities within a State, or has created continuing obligations between himself and residents of the forum, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by the benefits and protections of the forum's laws it is presumptively *not unreasonable* to require him to submit to the burdens of litigation in that forum as well.

Id. 471 U.S. at 475-76, 105 S. Ct. at 2184, 85 L.Ed.2d 528 (internal citations omitted) (emphasis added). Modification of insurance policies that substantially change the terms of consideration exchanged between the parties can serve as minimum contacts. *See Ostrem v. Prideco Secure Loan Fund, LP*, 841 N.W.2d 882, 903 (Iowa 2014) (citing *McGee*, 335 U.S. at 223-24, 78 S. Ct. at 201-02, 2 L.Ed.2d at 226-27 (“holding constitutional the exercise of an out-of-state insurance company that assumed another insurance company's obligations to the insured and continued to comply with the terms of the original agreement.”)). The Court concludes that Defendants' current attempt to amend “continuing obligations” with a rehabilitator working through court approval of policy premium modification as specified in their Plan constitutes minimum contacts for the purposes of a personal jurisdiction analysis. *See Burger King Corp.*, 471 U.S. at 475-76, 105 S. Ct. at 2184, 85 L.Ed.2d 528 (internal citations omitted). The policies were marketed to Iowans. Iowans still hold the policies. The modification will impact the Iowan's policies. The Insurance Commissioner provides oversight as to whether there are reasonable benefits in relation to the premium charged and that the filing does not contain provisions that are unjust, unfair, or inequitable. There are minimum contacts with Iowa.

“Having found the necessary minimum contacts with Iowa, we must now determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice.”

Ostrem, 841 N.W.2d at 903 (internal quotations omitted). In making this decision, Iowa courts consider:

[(1)] the burden on the defendant, [(2)] the forum State's interest in adjudicating the dispute, [(3)] the plaintiff's interest in obtaining convenient and effective relief. [(4)] the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and [(5)] the shared interests of the several states in furthering fundamental substantive social policies.

Shams, 829 N.W.2d at 857 (internal quotations omitted). Each factor points in favor of a conclusion that the Polk County District Court may exercise personal jurisdiction over Defendants.

First, Defendants have already litigated this dispute in South Carolina and Louisiana, and will again in other states where the Plan is to be imposed. The Defendants are concerned with burdens associated with litigating the right to administer their Plan but the plan impacts and effects Iowa citizens. Second, Iowa's interest in litigating this dispute is heavily dispositive on account of enforcing its own laws as to protect its sovereignty, and bolstered by potential injury to Iowans. *See McGee*, 335 U.S. at 223, 78 S. Ct. at 201, 2 L.Ed.2d at 226 (“[Every state] has a manifest interest in providing effective means of redress for its citizens.”).

Third, a harm may occur to Iowans whether they elect to reduce benefits or pay the same premium for their current benefits if this Court does not exercise jurisdiction. Thus, injured parties “likely [have] no mechanism by which to bring [Defendants] . . . before [an Iowa] court.” *See Shams*, 829 N.W.2d at 857. Fourth, two other states do not believe that the Pennsylvania Court possesses exclusive jurisdiction as argued by Defendants. Fifth, a fundamental social policy exists in the balancing of sovereignty under a federalist-system of government. There could be a war of negative reciprocation among equally sovereign states or uncertainty or lack of finality in dispute resolution. Our Constitution's framework seeks to resolve issues that impact multiple states. “[T]he interests of the plaintiff and the forum . . . will justify even the serious burdens placed on

the alien defendant.” *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 114, 107 S. Ct. 1026, 1033, 94 L.Ed.2d 92, 105-06 (1987). Iowa possesses a strong inherent interest in ensuring compliance with its laws for market regulation. Sufficient minimum contacts based on the contracts, the modification proposals that arises out of a defendant’s contacts with the forum and the Plan’s future implications exist to justify the exercise of jurisdiction over these Defendants. Accordingly, this Court concludes it possesses personal jurisdiction to hear and decide Plaintiff’s Petition in this dispute.

D. Subject-Matter Jurisdiction Analysis

Subject matter jurisdiction is the authority of the court to entertain and decide cases of the same general class. *Ney v. Ney*, 891 N.W.2d 446, 454 (Iowa 2017). [S]ubject matter jurisdiction is conferred by the constitution or a statute. *Schott v. Schott*, 744 N.W.2d 85, 87 (Iowa 2008) (citing *Klinge v. Bentien*, 725 N.W.2d 13, 15 (Iowa 2006)). Therefore, this court of general jurisdiction asks whether a statute confers this Court jurisdiction to hear and decide Plaintiff’s Petition. This Court finds that there is Iowa law that requires adjudication between these parties. If an insurer does not comply with Iowa’s laws regarding the Commissioner’s approval of rate increases, it may, “[M]ake an application to a district court of this state or another to enforce compliance [including an application to] . . . [g]rant injunctive relief” Iowa Code § 505.8(13)(e).

Iowa Code chapter 505.19 provides the process parties may follow for a legal rate increase on their policies:

1. All health insurance carriers licensed to do business in the state shall immediately notify policyholders of any application for a rate increase exceeding the average annual health spending growth rate stated in the most recent national health expenditure projection published by the centers for Medicare and Medicaid services of the United States department of health and human services, that is filed with the insurance division. Such notice shall specify the rate increase proposed that is applicable to each policyholder and shall include the ranking and quantification of those factors that are responsible for the amount of the rate increase proposed.

2. The commissioner shall hold a public hearing . . . prior to approval or disapproval of the proposed rate increases for that carrier by the commissioner.

Id. §§ 505.19(1); 505.19(2). Plaintiff’s authority to require premium increase procedures through administrative rules applies to long-term care insurance and Defendants’ intended modifications of policies. *See* Iowa Code § 514G.111(5) (“The Commissioner may adopt rules . . . [That require] certain remedial actions necessitated by the changes in the long-term care market to provide fair and reasonable protections for long-term insurance purchases and beneficiaries.”). The language of Iowa Code section 514G.111, “[M]ay adopt rules . . . requiring” contemplates an authority to create protections against threats presented in the ordinary policy approval process. Defendants submitted their proposed policy decisions once, received a denial of those propositions from Plaintiff, and then argue that they do not need Plaintiff’s approval to implement their Plan. Rather than request a formal administrative review or judicial review, Defendants believe that Plan’s implementation against Iowa SHIP policyholders rests with the authority of the Pennsylvania Court.

Under Iowa law the Commissioner has the statutory authority to determine that an insurer provides reasonable benefits in relation to the premium charged and that the filing does not contain provisions that are unjust, unfair, or inequitable. *See* Iowa Code § 514A.14. If a rate filing is denied, the insurer may request a hearing. *Id.* Final agency action will be subject to judicial review. Iowa Code § 514A.10. Iowa Code section 505.8(13)(e) and 514G.111 are meaningless if this Court does not possess corresponding subject-matter jurisdiction to adjudicate Plaintiff’s requested relief due to noncompliance with the Iowa Director of Insurance’s rulemaking authority for insurance market entry. “[Iowa courts] avoid an interpretation or application of a statute that renders other portions of the statute superfluous or meaningless.” *Beverage v. Alcoa, Inc.*, 975

N.W.2d 670, 685 (Iowa 2022) (quoting *Little v. Davis*, 974 N.W.2d 70, 2022 WL 1434657, at *4 (Iowa May 6, 2022)). The authority to petition for injunction is statutorily vested in the Iowa Director of Insurance. Iowa Code § 505.8(13)(e). A corresponding subject-matter jurisdiction in the district court where the Director may Petition is a logically-necessary inference to prevent the meaningless interpretation of Iowa's statutory vesting of insurance market regulation to Plaintiff. This Court concludes that it possesses subject-matter jurisdiction to hear and adjudicate Plaintiff's Petition.

V. CLAIM PRECLUSION AND FULL FAITH AND CREDIT CLAUSE.

Defendants argue that the Full Faith and Credit Clause (Clause) of the United States Constitution demands that this Court recognize exclusive jurisdiction vested in the Pennsylvania Court over this proceeding and hold that Plaintiff's Petition cannot be adjudicated because this Court lacks jurisdiction. Closely related, Defendants argue that the Pennsylvania Court's Order may not be collaterally challenged by another court under the Clause because of res judicata principles. The Clause reads, "Full Faith and Credit shall be given in each State to the public Acts, records, and judicial Proceedings of every other State." U.S. Const. art. 4, s. 1. Generally, the Clause "[R]equires every State to give a judgment at least the res judicata effect it would be accorded in the State which rendered it." *Phillips v. Cooper*, 253 Iowa 359, 363, 112 N.W.2d 317, 319 (Iowa 1961); *see also Durfee v. Duke*, 375 U.S. 106, 109 84 S. Ct. 242, 244, 11 L.Ed.2d 186, 188 (1963). Material to this analysis, the Clause reflects a historical interpretative preference in Iowa courts for self-conferral of jurisdiction over a foreign state's court proceedings where enforcement of the foreign court's adjudication offends a public policy of the State of Iowa.

A. Res Judicata

The Court now determines whether claim preclusion or issue preclusion impacts the pending Iowa issues as a result of the Pennsylvania Court's Order.

Res Judicata is a generic term that includes claim preclusion and issue preclusion. When used in the sense of claim preclusion, res judicata means that further litigation on the claim is barred. When used in the sense of issue preclusion, res judicata means that further litigation on a specific issue is barred.

Bennett v. MC No. 619, Inc., 586 N.W.2d 512, 516 (Iowa 1998) (citing *Iowa Coal Mining Co. v. Monroe County*, 555 N.W.2d 418, 420 (Iowa 1996)). Here, only claim preclusion would satisfy Defendants' argument that this Court may not entertain Plaintiff's Petition due to res judicata because issue preclusion would clearly only prevent this Court from acting as the receivership court which the Pennsylvania court assumed when it initiated in rem proceedings and ordered Defendants' Plan be implemented.

Because of the *in rem* nature of the proceedings, it is well established that as a general rule, a court's decree approving the rehabilitation plan of an insolvent insurer domiciled in its state has a res judicata effect upon out-of-state policyholders to as to preclude a subsequent attack upon the plan in another state.

Def. [s'] Br. on Mot. p. 23 (quoting 1 COUCH ON INS § 5:31) (emphasis in original)). Thus, what is prevented by res judicata, according to Defendants, is a "subsequent attack upon the plan in another state." *Id.* The general rule does not mention who may bring a subsequent attack or under what circumstances.

The effect of the Plan contained in the Pennsylvania court's Order, is asserted by Plaintiff as invoking his duty to prevent its implementation. A portion of Defendant's Brief to their Motion illustrates their position on res judicata under the facts of this case:

Like policyholders, Plaintiff cannot voluntarily choose to forego formally participating in the Rehabilitation proceedings and then raise the same arguments as the Intervening Regulators in a separate (and improper) forum based on the alleged rights of those policyholders. Plaintiff cannot avoid the preclusive effect of any final judgment in the Commonwealth Court of Pennsylvania, and the constitutional requirement that any such final judgment be given full faith and

credit, simply by electing not to formally participate in the rehabilitation proceedings as parties. This is especially true where Plaintiff tactically avoided the rehabilitation proceedings during the review phase only to appear as purported amici on appeal and as a plaintiff in this collateral challenge.

Def. [s'] Br. on Mot. p. 26. This Court agrees, “A State may not disregard the judgment of a sister state because it disagrees with the reasoning underlying the judgment or deems it to be wrong on its merits.” *Id.* at 25-26 (quoting *V.L. v. E.L.*, 577 U.S. 404, 407 (2016)). However, the Court also looks at whether the Plaintiff possesses a duty and has a subsequent interest in performing the duty, of insurance market regulation for Iowa.

B. Plaintiff has an Interest that Insurers Comply with Iowa’s Insurance Regulations

Though legal standing for Plaintiff’s Petition arises from his legal duty to protect Iowa’s SHIP policyholders, that is not Plaintiff’s only duty as Director of Insurance for the State of Iowa. Plaintiff also possesses an interest in ensuring the laws of Iowa are followed. Especially those laws that are promulgated in the Iowa Administrative Code under his direction. The Iowa Director of Insurance’s broad regulatory authority over workers’ compensation insurance is discussed in *Travelers Indem. Co. v. Comm’rs of Ins. of State*:

The legislature has delegated to the commissioner of insurance the authority to determine whether rates charged by companies . . . are excessive. *See* Iowa Code §§ 515A.1 (2005) (the purpose of chapter 515A is to ‘promote public welfare by regulating insurance rates to the extent that they shall not be excessive’); 515A.3(1)(a) (‘[r]ates shall not be excessive’); 515A.4(3) Commissioner authorized to review rate filings to determine whether they meet the requirements of chapter 515A). We therefore review the commissioner’s factual findings for substantial evidence based on the record viewed as a whole. Iowa Code § 17A.19(10)(f).

767 N.W.2d 646, 751 (Iowa 2009) (internal citations and quotations in original). The protection afforded by, or interest in, ensuring compliance with Iowa’s laws provides standing for a separate

basis for a challenge such as this Petition that alleges Defendants' impact to Iowa's insurance regulations and the Plan's lawful development or legal implementation.

Similar to Iowa Code chapter 515A, which provides the authority of Plaintiff with respect to workers' compensation insurance, is Iowa Code chapter 514G, entitled the "Long-Term Care Insurance Act." The first provision of that chapter affords Plaintiff the same authority as discussed by the court in *Travelers* in the context of long-term care insurance:

The commissioner may adopt rules pursuant to chapter 17A related to long-term care insurance and to the administration and enforcement of this chapter, including but not limited to the following:

1. Promoting adequate premiums and protecting policyholders in the event of substantial rate increases.
2. Establishing minimum standards for proper education, compensation, and testing marketing practices; reporting practices; and penalties related to the sale of long-term care insurance in this state.
4. Providing standards for full and fair disclosure by setting forth the manner and content of disclosures required for the sale of long-term care insurance policies including terms of renewability; initial and subsequent conditions of eligibility . . . limitations, exceptions, and reductions; elimination periods; requirements for replacement; recurrent conditions; and definition of terms.
5. Requiring certain remedial actions necessitated by changes in the long-term care insurance market to provide fair and reasonable protections for long-term care insurance purchasers and beneficiaries.

See generally Iowa Code §§ 514G111(1),(2),(4), and(5). In this context, Plaintiff's authority to petition for an injunction stems from Iowa Code section 514G.111(1).

Importantly, Iowa Code section 514G.111 vests in Plaintiff two duties in this contest. The first is to protect policyholders by promoting adequate premiums. Iowa Code § 514G.111(1). The second duty is to provide the circumstances for market entry, and penalties upon failure to do so properly. *See* Iowa Code §§ 514G.111(2),(4), and (5). Plaintiff also possesses a duty to develop the rules and conditions for market entry in Iowa. *See* Iowa Code § 514G.111(2) ("Establishing

minimum standards”); Iowa Code § 514G.111(4) (“Providing standards”); Iowa Code § 514G.111(5) (“Requiring certain remedial changes.”).

The rulemaking authority Plaintiff possesses is not a product of a loosely-made delegation by the Iowa Legislature, and it does not supersede contractual obligations parties not implicating or caused by any occurrence in Iowa’s insurance market:

While authority of the commissioner in approving the formula modification here involved is not questioned, the effect of this action upon the existing contract between [the defendant] and [the plaintiff] is challenged.

The issue presented goes to the legal effect of the commissioner’s approval upon an existing, valid, executory contract between an insurer and a servicing agent, not upon a policy between an insurer and the insured. Presumably the commissioner, in approving a modification of the reimbursement cost formula, was acting in the best interests of the public. But his quasi-legislative order, to the extent it affected the existing contractual obligation between [the defendant] and [the plaintiff], contravened both the federal and state constitutional provisions forbidding impairment by the state of existing contractual rights and duties. This means that as to [the plaintiff], absent an agreement to the modification, acquiescence, or termination of the existing contract and creation of a new one, the order issued was constitutionally proscribed.

And, if the legislature cannot by statute constitutionally abrogate the terms of an existing contract, neither can the insurance commissioner do so in the performance of a quasi-legislative function which has legislative force and effect.

Davenport Osteopathic Hosp. Ass’n of Davenport, Iowa v. Iowa Hosp. Serv., Inc., of Iowa, 154 N.W.2d 153, 160-61 (Iowa 1967).

Contrary to *Davenport Osteopathic Hospital*, this case directly implicates “an existing, valid, executory contract . . . between an insurer and an insured.” *Id.* The critical difference is that the dispute at bar is between parties, or on behalf of parties, directly subjected to Plaintiff’s regulations; they are an insurer and an insured or actor on behalf of inevitable injury to the insured. There was no “existing contractual relationship” located beyond the legal authority of Plaintiff to regulate. *Id.* In the current dispute, an existing contractual relationship exists within the realm of

Plaintiff's regulatory authority. The formula modification approval decision by the plaintiff in *Davenport Osteopathic Hosp.*, was "not questioned." *Id.* Finally, Plaintiff's acts pursuant to Iowa Code section 514G.111 are in "the performance of a quasi-legislative function which has legislative force and effect." *Id.* Thus, when setting market entry standards under Iowa Code section 514G.111, Plaintiff acted with legislative authority in this case. Defendants opted to not follow the Iowa Legislature's provided remedy for the denial of their request for policy modifications. A possible remedy would have been judicial review of Plaintiff's decision. *See* Iowa Code § 17A.19(10)(f)(Plaintiff is vested with authority to conduct his discretionary function).

Plaintiff's authority is broad in scope and discretion. *See Holland v. State*, 115 N.W.2d 161, 164 (Iowa 1962) (discussing the authority granted under, and citing, Iowa Code § 505.8). Plaintiff may have multiple avenues of standing to bring his Petition. "Statutes which regulate the insurance business are within the police powers of the state. This business is one peculiarly impressed with a public interest and subject to public supervision and control." *Bankers Life and Cas Co. v. Alexander*, 45 N.W.2d 258, 263-64 (Iowa 1950). The regulatory authority transferred from Congress to state legislatures by the McCarran-Ferguson Act, and the subsequent injury caused by impacting certain of those state legislature's police powers, are enforced by and delegated to the Director of Insurance for the State of Iowa. Defendants have not shown authority that allows them to promulgate a Plan that circumvents a state's regulatory authority under its own police powers. The destination of regulatory authority delegated by the McCarran-Ferguson Act are the union's respective state legislatures. Plaintiff's Petition seeking to safeguard Iowa's legislature and insurance regulations from injury with his Petition appears to at least allow him into Iowa's general jurisdiction court to be heard. The Court concludes that Plaintiff has standing

to bring his Petition on account of possible injury to the Iowa General Assembly and the statutory scheme that directs his duties.

C. Plaintiff's Interest in Preventing Injury to Iowa's Policyholders.

The Court has already established that Plaintiff has legal standing to bring his Petition for Injunction before this Court on the grounds that Defendants' conduct potentially injures the Iowa Legislature's police powers and delegation of "quasi-legislative" powers to Plaintiff. *See Davenport Osteopathic Hosp.*, 154 N.W.2d at 160-61; *Bankers Life and Cas. Co.*, 45 N.W.2d at 263-64. Now, the Court considers whether principles of res judicata preclude Plaintiff's claim as triggered by Defendants' Plan's inevitable injury to Iowans. The Fifth District Court of South Carolina's discussion is translatable to this analysis under Iowa law:

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.

Pet. Ex. F at 8. This Court agrees with South Carolina that the "specific decisions and actions with regard to rates" is the origin of the dispute, not SHIP's rehabilitation proceedings over which the Pennsylvania Court had exclusive jurisdiction. *Id.*

The Court begins its analysis of judicial estoppel for application of res judicata principles with the common law of Pennsylvania and finds that the requirements for application of estoppel based on res judicata are not met. In Pennsylvania:

To support a claim of res judicata the party asserting the defense must show a concurrence of four conditions: (1) identity of the thing sued upon; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) The identity of the quality or capacity of the parties suing or being sued.

Callery v. Mun. Auth. of Blythe Twp., 432 Pa. 307, 311, 243 A.2d 385, 387 (1968) (citing *Stevenson v. Silverman*, 417 Pa. 187, 208 A.2d 786, *cert denied*, 382 U.S. 833, 86 S. Ct. 76, 15 L.Ed.2d 76 (1965)). On review, examining the facts of this case, the Pennsylvania test's factors do not suggest that res judicata applies to prevent Plaintiff from acting to protect Iowa's SHIP policyholders. The first problem is that the Pennsylvania action is still pending before the Pennsylvania Supreme Court. Commissioner Ommen and the State of Iowa are not parties to the Pennsylvania rehabilitation. The rehabilitator and the judgment of the Commonwealth court is to resolve the relationship between private individuals and the company. This case involves the State of Iowa interested in the modification of contracts between Iowa individuals and the company working with the rehabilitator. There were opt in and opt out provisions that are also relevant here. The analysis regarding application of claim preclusion by virtue of res judicata under Iowa law produces the same result.

The Iowa Supreme Court articulated the test for claim preclusion under Iowa law:

[T]he party seeking to invoke the doctrine of claim preclusion must establish three elements: (1) the parties in the first and second action were the same, (2) the claim in the second suit could have been fully and fairly adjudicated in the prior case, and (3) there was a final judgment on the merits in the first action.

Spiker v. Spiker, 708 N.W.2d 347, 353 (Iowa 2006) (internal quotations omitted). Under Iowa's analytical factors, the second and third prevent application of res judicata. The claim in "the second suit" is a Petition for Injunction filed pursuant to an injury suffered by the executive charged with ensuring conformance with Iowa's laws, while the first was a judicial approval of a Plan for rehabilitation, not accounting for prospective injuries brought before other state's courts by that state's insurance executive or affected policyholders. *Id.* As such, the "claim in the second suit could [*not*] have been adjudicated in the [Pennsylvania Commonwealth Court's proceedings]." *Id.* (emphasis added). The Pennsylvania Court's adjudication does not bind all policyholders of SHIP

form bringing suit in their respective states. The “first and second action” are not the same; the first action approved Defendants’ ability to implement the Plan under Pennsylvania law while the second is a Petition for Injunction by a State’s executive after approval of the Plan, to prevent possible harm to its policyholders commanded by the executive official’s duty. *Id.* The parties with interests and a “full and fair adjudication in the prior case” of the second action were not addressed in the Pennsylvania Court’s proceedings. *Id.* The Court concludes that claim preclusion as asserted to demand denial of this Petition, is legally unsupported under the facts of this case.

D. Full Faith and Credit Clause Analysis

Defendants’ assert that the Commonwealth Court’s Approval Opinion and Order is entitled to full faith and credit with respect to the policy modification issue underlying Plaintiff’s Petition. The Iowa Supreme Court found that an argument like what Defendants make here was “untenable”:

The first argument is that the Iowa court has no jurisdiction to restrain the prosecution of a suit in a sister state, because that would be an attempt on the part of Iowa courts to control the action of courts in a sister state; that to exercise such a jurisdiction is in violation of guarantees afforded by the Constitution of the United States and the laws of the United States. It is settled by the overwhelming weight of authority, indeed there is no dispute in authority, that such an injunction as is here prayed acts merely upon those who are within the jurisdiction of the court as a regulation of their conduct, and is not an attempt to control the action of the courts in a sister state, and is not in contravention of any right given by the Constitution or laws of the United States. The last objection is untenable. Nor is the first objection well taken.

Wabash Ry. Co. v. Peterson, 187 Iowa 1331, 175 N.W. 523, 525 (1919) (citing *Cole v. Cunningham*, 133 U.S. 107, 10 S. Ct. 269, 33 L.Ed. 538 (1890)). The court declined to find exclusive jurisdiction in the venue of a Kansas City, Missouri, court where the appellate-plaintiff desired the case to be brought. *Id.* at 524-25. In so doing, the Court offered not to invalidate the Iowa Code chapter 293 (1961) entitled, “Offenses against Public Policy” because the “injunction

as is here prayed acts merely upon those who are within the jurisdiction of [the Iowa court] as a regulation of their conduct.” *Id.* at 526-27. The alleged harm that brought the plaintiff before the *Wabash Ry. Co.* court resulted from Iowa’s regulation of the plaintiff’s conduct. *Id.*

The res judicata effect that Defendants seek regarding Iowa’s deference to the Pennsylvania court’s Order and the Plan does not demand that this Court violate its own declarations of public policy. *Id.* An older case states:

If the Iowa Act of Assembly in question does no more than define and enforce what the Legislature deems it wise to declare the public policy of the state to be, neither the [cited] Case nor any other we have been able to find prohibits such declaration of public policy or making it effective as against the citizens and residents of the state. So, on this head, the controlling question is whether the act of the Thirty-Seventh General Assembly is anything more than a declaration concerning what public policy shall be as to bringing suits in states other than Iowa . . . [T]he Legislature can declare conduct to be against public policy though it fails to make such conduct punishable.

Id. at 526-27 (citing *Bank v. Jameson*, 175 Iowa, 676, 157 N.W. 460, L.R.A. 1916E, 362 (1916)).

Iowa law has long recognized that the Iowa Legislature’s decisions regarding public policy for its residents will not fall to the Clause where the Iowa Legislature’s decision is a constitutional annunciation of Iowa’s public policy. *Id.*

Finally, the court in *Wabash Ry. Co.* addressed the circumstances in which a nonresident may be “haled into court” in Iowa. The plaintiff in *Wabash Ry. Co.* was a railroad company headquartered in Missouri that sought the venue in Kansas City for adjudication of the dispute which was rejected by the court. *Wabash Ry. Co.*, 175 N.W. at 525. Our supreme court reasoned that “irreparable or substantial injury to civil and property rights” occurring due to “maintenance of the suit in Missouri” authorized the Court’s jurisdiction. *Id.*

Needlessly compelling a party to pay for bringing witnesses 200 miles is a direct pecuniary injury. And it is an irreparable one . . . We are unable to see a distinction between having the right to an injunction between having the right to an injunction because a threatened act will impair the value of one’s dwelling house by \$1,000,

and a case where the same act will take \$1,000 out of the pocket of the defendant by useless witness fees.

Id. at 526-27. The distinction between the right to an injunction due to a “threatened act” and one after the “threatened act” was deemed to be immaterial. *Id.* As such, the court enforced Iowa Code chapter 293 (1961) based on its conclusion that “irreparable or substantial injury to civil and property rights” would occur after the “threatened act” and that placing burdens on the party who harmed be injured by the “threatened act” implicated Iowa Code chapter 293 (1961). *Id.* The Full Faith and Credit Clause did not prevent the *Wabash Ry. Co.* court from recognizing its own legislature’s annunciation of public policy and meeting its duty to enforce that policy. *See generally, Wabash Ry. Co., 175 N.W. at 527.*

The Full Faith and Credit clause establishes the principle that “a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every court as in that where the judgment was rendered.” *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439 (1943). Plaintiff and the State of Iowa are not parties to the Pennsylvania rehabilitation. Plaintiff’s request for an injunction acts merely upon those who are within the jurisdiction of the court as a regulation of their conduct, and is not an attempt to control the action of the courts in a sister state. This Court has determined it has jurisdiction to hear and decide Plaintiff’s Petition. The Court concludes that the Full Faith and Credit Clause does not prohibit the Court’s adjudication of this dispute.

VI. MOTION TO DISMISS STANDARDS.

The Court has Defendants’ Motion to Dismiss Plaintiff’s Petition for Temporary and Permanent Injunction. Rule 1.421(1)(f) of the Iowa Rules of Civil Procedure permits a party to request dismissal of a petition if it fails to state a claim upon which relief may be granted. “A motion to dismiss is properly granted only if a plaintiff’s petition on its face shows no right to

recover on its face under any state of facts.”⁶ Further, in determining whether the plaintiff has stated a claim upon which relief may be granted, courts consider only the facts alleged in the petition, or those of which judicial notice may be taken.⁷ On a motion to dismiss, the court accepts as true the petition’s well-pleaded factual allegations, but not its legal conclusions.⁸ Therefore, “a dismissal at this stage must rest on legal grounds.”⁹ The party opposing a motion to dismiss must present a “prima facie showing” their suit can stand as a cognizable claim with a reasonable chance of recovery to rebut the moving party’s motion. *Lannette v. State* 924 N.W.2d 878 (Iowa Ct. App. 2018)(Citing *Schmidt v. Wilkinson*, 340 N.W.2d 282, 284 (Iowa 1983)).

Defendants’ Motion to Dismiss argues that this Court lacks jurisdiction to entertain Plaintiff’s Petition. The Court has examined the legal grounds for Defendants’ positions. From the above analysis this Court does have jurisdiction and the Plaintiff has standing to bring his Petition to be heard. Defendants suggest that if this Court does entertain the Petition, it must deny it in accordance with the Full Faith and Credit Clause. The Court has addressed that argument and does not agree that Full Faith and Credit requires an automatic dismissal on legal grounds. On personal and subject-matter jurisdiction, this Court concluded that Defendants’ characterization of exclusive jurisdiction being vested and already-exercised by the Pennsylvania Commonwealth Court, was without merit. Neither principles of res judicata nor jurisdictional standards produced an analysis that require a dismissal of the action based on these legal principles.

The procedural posture of this case could suggest a procedural-bypass to ordinary intra-insurance departmental remedies and judicial review. There is no record of an agency decision of Plaintiff or the Iowa Department of Insurance which one would expect if this were an instance of

⁶ *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003).

⁷ *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 586 (Iowa 2004).

⁸ *Shumate*, 846 N.W.2d at 507.

⁹ *Trobaugh*, 668 N.W.2d at 580

judicial review. Rather, Defendants submitted their premium request, received a denial, and then this litigation took life. The Iowa executive agency that regulates insurance got involved to examine insurance policy modifications. Defendants have maintained that Iowa simply cannot act to possibly protect Iowa citizens that have policies subject to the Pennsylvania Plan. A thought-provoking issue exists because Iowa Legislature's statutory delegation of the authority, power, and duties involved with regulating insurance in Iowa is now connected and impacted by the Pennsylvania's courts' authority to affect their *in rem* receivership proceedings and dispositions across many states.

As set forth above, for purposes of reviewing a motion to dismiss this court must accept as true the petition's well-pleaded factual allegations. Based on this and the other standards set forth above that this court is required to apply in a motion to dismiss, and considering the facts that are plead, the court concludes that Plaintiff legally set forth sufficient allegations in his petition that defendants SHIP must obtain the Commissioner's approval pursuant to Iowa Code section 514A.13 before changing any rates or benefits for SHIP's Iowa policyholders. Consequently, dismissal is not appropriate at this stage of the case.

VII. INJUNCTION.

A temporary injunction is authorized under Iowa Rule of Civil Procedure 1.1502(1): "When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff." "A temporary injunction is a preventive remedy to maintain the status quo of the

parties prior to final judgment and to protect the subject of the litigation.”¹⁰ Injunctive relief is not available as an independent remedy if there is an adequate remedy at law.¹¹

“The issuance or refusal of a temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case.”¹² According to *Matlock v. Weeks*, 531 N.W.2d 118, 122 (Iowa 1995), a request for an injunction may be granted only when the moving party proves each of the following elements: (1) an invasion or threatened invasion of a legal or equitable right; (2) a substantial injury to that right; (3) the absence of an adequate remedy at law; and (4) that granting the injunction does not outweigh the relative hardship suffered by the enjoined party. The likelihood or probability of success on the merits of the underlying claim is one requirement for the issuance of a temporary injunction¹³. North Carolina did not find a likelihood of success. Other states did. The district court must also find that the moving party would be irreparably harmed absent an injunction¹⁴. In deciding whether an injunction is appropriate, the Court must also balance “the circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance.”¹⁵ After applying the pleaded facts to Iowa law, Plaintiff’s Motion for a Temporary Injunction is GRANTED.

Plaintiff argues that the legality of Defendants’ implementation of their Plan is dependent upon Defendants complying with the Iowa Director’s process and then judicial review procedures

¹⁰ *Lewis Invs., Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005) (quoting *Kleman v. Charles City Police Dep’t*, 373 N.W.2d 90, 95 (Iowa 1985)).

¹¹ *Id.* (citing *Opat v. Ludeking*, 666 N.W.2d 597, 603 (Iowa 2003)); see, e.g., *Sergeant Bluff–Luton Sch. Dist. v. City of Sioux City*, 562 N.W.2d 154, 156 (Iowa 1997) (holding the plaintiff was not entitled to permanent injunctive relief because the plaintiff could have pursued a certiorari action).

¹² *Lewis Invs., Inc.*, 703 N.W.2d at 184 (quoting *Kent Prods. v. Hoegh*, 61 N.W.2d 711, 714 (1953)).

¹³ *Lewis Invs., Inc.*, 703 N.W.2d at 185 (citing *Max 100 L.C.*, 621 N.W.2d at 181; *Kent Prods.*, 61 N.W.2d at 714).

¹⁴ *Mid-America Real Estate Co. v. Iowa Realty Co., Inc.*, 406 F.3d 969, 977 (8th Cir. 2005); accord *Lewis Invs., Inc.*, 703 N.W.2d at 185 (citing *Planned Parenthood of Mid-Iowa v. Maki*, 478 N.W.2d 637, 639 (Iowa 1991); *Myers v. Caple*, 258 N.W.2d 301, 304–05 (Iowa 1977)).

¹⁵ *Max 100 L.C.*, 621 N.W.2d at 181 (quoting *Kleman*, 373 N.W.2d at 96).

provided in Iowa law. Defendants request that this court must refuse any injunction because Plaintiff Ommen fails to allege or show that relief should be entered in his favor and injunctive relief is barred by the Full Faith and Credit Clause.

Here, Defendants did submit certain rate increases for some of Iowa's SHIP policyholders in 2021 and Plaintiff denied their rate change request. Defendants did not request review of that determination. Earlier the court found that Defendants may not have exhausted administrative remedies. For an injunction the Plaintiff must prove (1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is [not another] adequate [means of protection] available." *Ney v. Ney*, 891 N.W.2d 446, 451 (Iowa 2017) (internal quotation marks and citation omitted).

The Plan's injury to Iowans is easily identifiable. "One party to a contract cannot alter its terms unilaterally or without the assent of the other party." *Davenport Osteopathic Hosp.*, 154 N.W.2d at 157. Iowa's policyholders have not assented to any policy modification that decreases their policies' respective health care benefits for the same cost the parties agreed to years earlier. As such, Defendants' Plan seeks to irreparably injure all policyholders' contractual entitlements from SHIP. In this dispute, SHIP's obligations are the result of expressly triggered language located in the coverage provisions of the insurance policies between an insurer and an insured. "The law does not sanction breach of contract as a means of escape from its burdensome terms nor will it reward on offending party." *Id.* at 158.

When the Court looks at these injunction factors, the Court finds a preliminary injunction should be implemented. There is an invasion or threatened invasion of a legal or equitable right. Defendants believe they are acting pursuant to the approval and mandate of the Commonwealth Court and the statutory mandate of Pennsylvania law. The Court does not doubt that but an Iowa

law may be ignored or disregarded. It appears that SHIP is intending to violate Iowa law by pushing forward with the Plan. As discussed above there is a substantial injury to that right to have the Commissioner review modifications and have insurance contracts modified even if they are supervised by a court. The Commissioner in his statutory role believes that Iowa policyholders will be harmed when their rates are increased and their policy benefits changed, especially if these changes are done by default.

The facts show that there is an absence of an adequate remedy at law. The Commissioner will not be able to use the tools in Iowa Code § 507B for this issue. Fines or other sanctions are not available based on the current status of a statutory receivership. Administrative remedies were not used by SHIP and are not available for judicial review.

The last issue that this Court needs to evaluate is whether granting the injunction does not outweigh the relative hardship suffered by the enjoined party. The Court does not have complete evidence on this factor. The SHIP rehabilitators believe that it is inconvenient, time consuming and too expensive to be required to seek regulatory approval in every state where SHIP does business. The Court finds without more details involving the final plan and the financial impact on the rehabilitation, that granting a temporary injunction does not outweigh the relative hardship suffered by the enjoined party.

The Court concludes Plaintiff has shown sufficient evidence to meet the burden for temporary injunction against Defendants' attempts to implement their Plan against Iowa's SHIP policyholders.

VII. CONCLUSION AND DISPOSITION

In evaluating the Defendants' arguments, the most important consideration was to establish that this Court has jurisdiction to hear and decide this dispute (i.e., that it possesses the required

jurisdiction). This general jurisdiction court does have jurisdiction. Second, the Court found that the equitable remedies of res judicata and collateral estoppel do not prevent it from exercising its jurisdictional authority to hear and decide the issue involved. Third, the Court found the Full Faith and Credit Clause do not demand that the Plaintiff's Petition must be dismissed. Finally, this Court should issue a temporary injunction at this point in the litigation because of the potential that SHIP will violate Iowa law.

For all the reasons set forth above, the Court concludes that Defendants' Motion to Dismiss must be DENIED and Plaintiff's Petition for Temporary Injunction is **GRANTED**.

The injunction placed upon Defendants' acts in the State of Iowa as the receivers of SHIP, include, but are not limited to Defendants' actions pursuant to designation as fiduciaries of SHIP's assets and liabilities, and are HEREBY enjoined as described below. The Court issues a temporary injunction enjoining Defendant SHIP from taking any action in furtherance of their expressed plans to, without first obtaining regulatory approval from the State of Iowa, raise premium rates, reduce benefits, or both under certain contracts of insurance issued in or held by residents of the State of Iowa, 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 Commissioner and called for under the terms of the contract, adding additional premium, or withholding, delaying, or encumbering benefits in whole or in part. Notwithstanding the foregoing, Defendants may contact Iowa policyholders to send communications and information in the ordinary course of business concerning claims or premium payments due by such policyholders.



State of Iowa Courts

Case Number
EQCE087308

Case Title
DOUGLAS M OMMEN AS IA INS COMM VS JESSICA K
ALTMAN ET AL
Type: OTHER ORDER

So Ordered

William P. Kelly, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2023-03-23 21:25:07