

IN THE IOWA DISTRICT COURT 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. _____

**PETITION FOR TEMPORARY
AND PERMANENT INJUNCTION**

COMES NOW Plaintiff, Douglas M. Ommen, Iowa Insurance Commissioner, by and through the undersigned counsel, and hereby moves the Court, pursuant to Iowa Rule of Civil Procedure 1.1501, for an Order issuing an injunction prohibiting Defendants from taking any action in furtherance of their expressed plans to raise premium insurance rates, reduce benefits, and alter previously approved contracts of insurance issued in the state of Iowa or held by residents of the state of Iowa, without first obtaining the required regulatory approval of the Iowa Insurance Commissioner. Plaintiff seeks an injunction because Defendants' expressed plans will directly cause substantial harm to the financial and physical well-being of Iowa policyholders, most of whom are over the age of eighty years, and because no adequate legal remedy exists to prevent this injury. An injunction is proper and necessary to enforce the insurance laws of the state of Iowa and to protect policyholders.

I. PARTIES

1. Plaintiff Douglas M. Ommen is the Iowa Insurance Commissioner (“Commissioner”), and the chief executive officer of the Iowa Insurance Division (“Division”), authorized to regulate and supervise the business of insurance in the state of Iowa pursuant to Iowa Code chapter 505. Iowa Code §§ 505.2 (appointment of Commissioner); 505.8 (Commissioner’s powers and duties).

2. Defendant Jessica K. Altman is the Commissioner of Insurance for the Commonwealth of Pennsylvania and has been appointed as Rehabilitator for Senior Health Insurance Company of Pennsylvania (“Rehabilitator”) by order of the Commonwealth Court of Pennsylvania (“Commonwealth Court”) dated January 29, 2020 (“Rehabilitation Order”). Exhibit A.

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

4. Senior Health Insurance Company of Pennsylvania (“SHIP”) is a stock limited life and health insurance company that administers a closed block of long-term care (“LTC”) insurance policies. SHIP is domiciled in the Commonwealth of Pennsylvania.

II. JURISDICTION AND VENUE

5. Defendants, as an insurer and its representatives, doing business in Iowa, have consented to the jurisdiction of the Iowa district court. Iowa Code § 505.28.

6. The fact that Defendants’ certificate of authority in Iowa has lapsed does not deprive this Court of jurisdiction. Any unauthorized insurer doing business in this state has also

consented to jurisdiction of the Iowa district court and to the appointment of the Iowa Secretary of State for service of process. Iowa Code § 507A.6.

7. Venue is appropriate in Polk County where the Insurance Division is located and where Defendants filed their required disclosures and requests.

8. The Commissioner respectfully requests that a hearing on this Petition be held quickly. The Commissioner is concerned that the Defendants will begin contacting Iowa policyholders in contravention of Iowa law on February 15, 2022.

III. PROCEDURAL HISTORY

9. SHIP first became certified in Iowa as Conseco Senior Health Insurance Company, later as American Travellers Life Insurance Company, and in 2008, as SHIP. SHIP'S Certificate of Authority in the state of Iowa went out of compliance on December 31, 2017. SHIP currently does not have a valid Certificate of Authority in the state of Iowa.

10. SHIP's book of business consists almost entirely of policies covering long-term care services. SHIP has not written any new business since approximately 2003, and only a small fraction of SHIP's original business remains in force.

11. The average SHIP LTC policyholder age is approximately 86, and the average age of a policyholder on claim is 89. (Exhibit D, August 24, 2021 Order of the Pennsylvania Commonwealth Court, p. 4). At present, there are approximately 881 Iowa SHIP policyholders.

12. SHIP has been insolvent since at least December 31, 2018, when it reported a deficit of approximately a half-billion dollars as of that date. Exhibit B, Transcript of Pa. Proceedings (excerpt) at p. 46, ln. 9–10 (testimony of Special Deputy Rehabilitator Cantilo). SHIP's current funding deficit is approximately \$1.2 billion. Exhibit D, August 24, 2021 Order, p. 4).

13. Despite SHIP's dire financial condition, Commissioner Altman decided not to place SHIP in liquidation, which would have triggered State Guaranty Association coverage for affected policyholders, but instead applied to the Commonwealth Court of Pennsylvania on January 23, 2020 to place SHIP in rehabilitation. *See generally* <https://www.shipltc.com/court-documents>. On January 29, 2020, the Commonwealth Court entered an order placing SHIP in liquidation. Exhibit A.

14. Neither Plaintiff nor SHIP policyholders were parties to the rehabilitation proceedings in Pennsylvania, and Iowa policyholders were not represented by class representatives or counsel.

15. Commissioner Altman filed a Second Amended Rehabilitation Plan ("Plan") with the Commonwealth Court on May 3, 2021. Exhibit C. The Commonwealth Court entered a Memorandum Opinion and Order on August 24, 2021, approving the Plan. Exhibit D.

16. An appeal is currently pending before the Pennsylvania Supreme Court. The Pennsylvania Supreme Court has denied the application to stay the Commonwealth Court's Order and the implementation of the Plan.

17. On December 2, 2021, Defendants filed for a premium rate increase in Iowa in accordance with the Plan. Exhibit E.

18. On January 20, 2022, the court for the Fifth Judicial Circuit for the state of South Carolina, issued an order granting the South Carolina Insurance Commissioner's petition for temporary injunction against Defendants' implementation of the Plan against South Carolina policyholders. Exhibit F. On February 3, 2022, the court for the Nineteenth Judicial District Court Parish of East Baton Rouge in the state of Louisiana, granted the Louisiana Insurance

Commissioner's request for a temporary injunction against Defendants' implementation of the Plan against Louisiana policyholders. Exhibit G.

19. On February 10, 2022, Commissioner Ommen disapproved Defendants' request for a rate increase.

IV. FACTS

A. **Insurance Regulation in Iowa.**

20. Congress, by the McCarran-Ferguson Act, authorized the various states to regulate the insurance business. *Chicago Title Ins. Co. v. Huff*, 256 N.W.2d 17, 21 (Iowa 1977)(citing 15 U.S.C. §§ 1011-1015). The McCarran-Ferguson Act is now codified at 15 U.S.C. section 6701, *et seq.* and states that “no person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law.” 15 U.S.C. § 6701(b). Defendants' Plan undermines the state regulation of insurance by purporting to allow Defendants to change premium rates and policy terms without the approval of the Iowa Insurance Commissioner.

21. State legislatures are the public policymakers that establish set broad policy for the regulation of insurance by enacting legislation providing the regulatory framework under which insurance regulators operate. *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.

22. NAIC explains the benefits of state-based insurance regulation as follows: “State insurance regulatory systems are accessible and accountable to the public and sensitive to local social and economic conditions. State regulation has proven that it effectively protects consumers *and ensures that promises made by insurers are kept.*” *Id.* (emphasis added).

23. 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.* at 3.

24. The Iowa Legislature has expressly authorized the Commissioner to be the chief operating officer of the Division in order to “enforce all the laws of the state relating to federal and state insurance business transacted in the state.” Iowa Code § 505.8.

25. Further, the Commissioner is authorized to:

[R]egulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945, Pub. L. No. 79-15, 59 Stat. 33, codified at 15 U.S.C. § 1011--1015, by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

Iowa Code § 507B.1.

26. Pursuant to Iowa Code § 507B.3:

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.

27. All LTC policies in Iowa are subject to meeting the minimum standards as established by Iowa Code chapters 514A, 514D and 514G, and the administrative rules promulgated under the authority of these chapters.

28. Any LTC insurer seeking to increase rates, slash benefits or alter previously approved policy forms cannot do so until and unless submitted to the Division for review and approved by the Commissioner. *See* Iowa Code §§ 514A.13; 514A.14; 514D.3 and 514G.111. *See also* IAC rules 191–36.9; 36.10 and 191–39.13; 39.28; 39.29.

29. The Commissioner has the ultimate authority to determine that a LTC 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.

30. If a domestic or Iowa-domiciled insurer is insolvent, the Iowa Insurance Commissioner may petition the district court for an order placing the insurer into liquidation. Iowa Code § 507C.17. If an insurer is liquidated, the Iowa Life and Health Guaranty Association shall provide coverage according to the terms set forth by the Legislature. Iowa Code chapter 508C. The purpose of the Guaranty Association is to protect insureds from failure of an insurer's obligations due to insolvency. Iowa Code § 508C.2. All insurers who hold a certificate of authority to transact business in Iowa are members of the Guaranty Association. Iowa Code § 507C.5(12). If the Guaranty Association pays claims for an insolvent insurer in liquidation, it may assess its members for those funds. Iowa Code § 508C.9. An insurer may offset an assessment made pursuant to section 508C.9 against its premium tax liability to the extent of twenty percent of the amount of the assessment for each of the next five calendar years following the assessment. Iowa Code § 508C.19.

B. Defendants' Second Amended Rehabilitation Plan.

31. The Defendants' Second Amended Rehabilitation Plan's stated goal is to increase revenues and reduce liabilities so as to narrow or eliminate SHIP's severe funding gap through a combination of policy modifications for most of the approximately 39,000 policies in force as of the filing of the Plan. Exhibit C, p. 10.

32. Since SHIP is in rehabilitation and not liquidation under the Plan, the policyholders cannot receive coverage from the state guaranty funds. Defendant Cantilo has stated that the purpose of the Plan is to transfer the burden of insolvency from guaranty associations and their

member insurers to the policyholders. Exhibit B, pp. 78, 79, 83-84, 289, 292. Defendants have crafted a plan to circumvent not only state laws regulating rates and forms, but also legislatively-crafted mechanisms for distribution of the costs of paying claims against insolvent insurers. In doing so, they elevate the interest of the large insurers who may be members of guaranty associations over policyholders who have paid premium for many years and usurp the policy decisions of state legislatures.

33. The Plan is designed to operate in three phases. Phase One, commencing now, is the principal phase and Defendants believe it will reduce substantially or eliminate the Funding Gap. In this phase, Defendants will determine which policies require modification because their Current Premium is below the If Knew Premium for the benefits offered by the policies. The If Knew Premium is the rate that, if charged from inception, would have produced the greater of the initial target loss ratio or the minimum loss ratio applicable to the policy form. Under the Plan, this will be assumed to be 60%. Exhibit C, p. 27.

34. To calculate the If Knew Premium Rate, Defendants model each policy from its issue date over a 60-year projection, assuming that current best-estimate assumptions for morbidity, lapse, mortality, and interest are used from inception. They also assume that the current premium rate has been charged since issue and will be charged in all future periods (i.e., following the July 31, 2021 valuation date). The cash flows from this projection are used to produce an expected lifetime loss ratio based on the policy's current benefits and premium rate. They then solve for the If Knew Premium Rate by dividing this loss ratio by 60%. Exhibit E, Actuarial Statement section 14.

35. Policyholders with Current Premium below the If Knew Premium will have to increase their premiums or reduce their benefits so that the premium will be adequate on an If Knew Premium basis.

36. The concept of the If Knew Premium undermines the entire structure of insurance. Insurance transfers risk from the policyholder to the insurer. *See Iowa Contractors Workers' Comp. Group v. Iowa Ins. Guar. Ass'n*, 437 N.W.2d 909, 917 (Iowa 1989)(insurance contracts concern risk transference). Iowa's elderly policyholders accepted the bargain presented to them by Defendants: if you pay premium, we will accept the risk of future loss. It is unfair and contrary to Iowa law for Defendants to now change that bargain because of factors or events they wish the company had known or considered when the bargain was made, and to transfer that risk back to the policyholder.

37. In Phase Two, the results of Phase One will be evaluated and additional Policy Modifications may be necessary for certain policies. Even if a policyholder decides to pay the sharp premium increase in Phase One of the Plan, they will face an even more drastic increase to the Self-Sustaining Premium rate in Phase Two of the Plan. Exhibit C, pp. 58–59. Self-sustaining Premium is the premium calculated after evaluating the results of Phase One by determining the amount of premium required to eliminate a policy's Shortfall Amount in Phase Two.

38. In Phase Three, the Company will complete the run-off of the LTC business in force.

39. The Defendants admit they will not seek or act in compliance with state regulators' approval of their changes to premium rates or benefits: "It is important to note that Plan premium rate increases are not based on state of issue or state of residence. They are based exclusively on the characteristics of each individual policy, including the difference between Current Premium

and If Knew Premium (in Phase One) or Self-sustaining Premiums (in Phase Two).” Exhibit C, p. 20.

40. States other than Pennsylvania where policyholders reside, including Iowa, were given the option under the Plan to either opt in or opt out. See September 30, 2021, letter to the Commissioner, Exhibit H. A state which opts out is one that elects to make its own determinations as to modifications of premium rates. *Id.* If a state opts in, then the state agrees that the Defendants may make rate increases and benefit changes to that state’s policyholders.

41. If a state opts into the Plan, Defendants state that Policyholders with current premium below the If Knew Premium will have four options:

- (1) Reduce benefits to an amount selected by Defendants;
- (2) Elect a lower than If Knew Premium and also accept benefit reductions;
- (3) Non-Forfeiture Option: a policyholder can draw upon a pool of funds equal to the total premium paid over time;
- (4) Accept the increased If Knew Premium.

42. If a state opts out, then Defendants will file a premium rate application for all policies below the If Knew Premium.

43. If a state denies the requested premium or approves only a lower premium, Defendants’ state they will then adjust the benefits to the level they believe the approved premium supports. Exhibit H. Policyholders will have the option of accepting the If Knew Premium despite the fact it has not been approved to avoid benefit reduction.

44. Since the Insurance Commissioner did not agree that the Defendants had the right or ability to alter benefits or premium rates for Iowa policyholders without his approval, and because he was concerned about the impact of the Plan on Iowa policyholders, the Commissioner opted out of the Plan. The Commissioner submitted an Opt-Out Election letter to Defendants on November 15, 2021. Exhibit I.

C. Defendants' Rate Filing in Iowa.

45. On December 2, 2021, Defendants filed for approval of premium rate increases on 215 policies held by policyholders in Iowa. Exhibit E. Insurers file for rate approvals in an electronic system called SERFF, the System for Electronic Rates & Forms Filing, which the Insurance Commissioner and staff can then access.

46. Defendants state that they have not considered the law of Iowa in preparing the rate submission. Exhibit E, actuarial memo section 18. Under Iowa's administrative rules, an insurer must certify that the rate filing is in compliance with Iowa law. 191 Iowa Admin. Code r. 36.9.

47. Defendants' state they will increase the average annual premium for these 215 policies from \$2,307.00 to \$4,648.00 annually, an average premium increase of 201.5%. Exhibit E, section 15.

48. For some Iowa policyholders, Defendants requested even more drastic premium increases. For example, policy number 1003838 is held by an 89-year-old individual who has been paying premium since November 1, 1990. Defendants propose to increase her premium by 234%. Policy number 1092376 is held by a 91-year-old individual who has been paying premium since March 5, 1991. Defendants propose to increase her premium by 256%. Policy number 1181917 is held by a 69-year-old individual who has been paying premium since March 5, 1990. Defendants propose to increase her premium by 403%. Exhibit J (table of individual affected policies).

49. The highest requested premium increase is from \$1,642 annually to \$12,727 annually, an increase of 675%. Defendants have asked for an increase of 100% or more on 90 Iowa policyholders. *Id.*

50. The highest premium increase in one year that the Iowa Insurance Commissioner has previously approved for SHIP was 28.16%.

51. These requested rate increases are extreme and can reasonably be expected to cause policy lapses.

52. Defendants stated that if the Commissioner denies the rate increases Defendants have requested for 215 Iowa policyholders or approves less than the full requested increase, or if the Commissioner does not respond to the filing by February 15, 2022, Iowa policyholders will be offered the option of paying the unapproved rate or having their benefits reduced to an amount Defendants believe is supported by the approved premium. Exhibit E, Actuarial Statement, pp. 8-9; Exhibit L.

53. Defendants state that they will give Iowa policyholders the option to pay the premium for which they have requested approval even if that rate is not approved by the Iowa Insurance Commissioner. *Id.*

54. Under the Plan, the Defendants believe the Commissioner is bound by the timelines they set forth, rather than by the laws of the state of Iowa. Exhibit E, p. 1 of actuarial memorandum.

55. Defendants did not submit any policy forms detailing changes they intend to implement to policies previously approved by the Commissioner, nor did Defendants submit any information regarding how they intend to alter the contractual terms of those policyholders on premium waiver in order for the Commissioner to consider these matters pursuant to Iowa Code §§ 514A.13 and 514A.14.

56. On December 7, 2021, the Insurance Division sent Defendants a request for further information and received a response. Exhibit K.

57. On February 7, 2022, the Insurance Division asked Defendants whether it is still their intention to deem the rate filing denied if not approved by February 15, 2022, and why Defendants have not filed the required reduced benefit options letters and any contract amendments for affected policyholders with SERFF as part of its rate and form review process. Exhibit L. Defendants stated they would deem the filing denied on February 15, 2022, and under the Plan were not required to file reduced benefit options letters or contract amendments, and would not do so.

V. DEFENDANTS' REHABILITATION PLAN AND RATE FILING ARE CONTRARY TO IOWA LAW AND WILL INJURE IOWA POLICYHOLDERS.

A. Defendants' Plan Will Impose Premium Increases and Benefit Reductions on Iowa Policyholders Without the Insurance Commissioner's Approval in Violation of Iowa Law.

58. In their Plan and rate filings with the Insurance Division, Defendants have declared their intention to violate Iowa law and change premium rates and benefits for Iowa policyholders without the required approval of the Insurance Commissioner. Exhibit C, p. 20, 60; Exhibit E (rate filing and actuarial statement). Defendants intend to offer the increased premium rates, the If Knew Premium, to the policyholders they choose, regardless of if the Commissioner approves the rate or not. The consequence of a state not fully approving the submitted rate is that the options then offered to that state's policyholders will be less than those states that fully approved the rates or states that were opted-in to the Plan. Exhibit C, pp. 108–118.

59. The Plan includes a provision for states to “opt-out,” of the Plan. However, this provision is a mere pretense at complying with the authority of the state regulators. The Plan requires any Opt-out State, including Iowa, to fully approve the rates as they are submitted, or the state's policyholders will be offered lesser benefits under the Plan. Exhibit C, Plan, pp. 108–118;

Exhibit H, pp. 1–9. In addition, policyholders will still be presented the If Knew Premium as an option, whether or not it is approved by the Opt-out State.

60. Under the Plan, there is no intention of the Defendants presenting the altered contractual terms and policy downgrades for prior approval by the Insurance Commissioner. Defendants intend to alter policy provisions and eliminate contractual benefits such as premium waivers to policyholders currently on claim, without the authority from the individual states to do so, and without the policyholders having any right or remedy in this process. Exhibit C, pp. 9–13.

61. In designing and implementing the Plan, Defendants are relying on the purported authority granted to them by the Pennsylvania rehabilitation statute, 40 Pa. Stat. Ann. § 221.16. However, the Pennsylvania statute, like the analogous Iowa Code provision (Iowa Code § 507C.14) makes clear that the rehabilitator is granted the authority of the directors, officers, and managers of the insurer. 40 Pa. Stat. Ann. § 221.16(b). The Rehabilitator steps into the shoes of the insurer and is thereby bound to comply with the same regulatory statutes of the respective states as a solvent insurer. *See also Ommen v. Milliman*, 941 N.W.2d 310 (Iowa 2020)(Insurance Commissioner as Liquidator stands in the shoes of the insurer, and does not have independent rights or obligations). Defendants, standing in the shoes of the insolvent insurer SHIP, are still obligated to comply with Iowa law in order to change rates or benefits for Iowa policyholders.

62. Finally, Defendants are misusing the process designed to return an insurer to solvency. Deficit reduction is not the proper purpose of rehabilitation. *See* Iowa Code § 507C.14(2) (Commissioner as Rehabilitator shall take action necessary and appropriate to reform and revitalize the insurer); 40 Pa. Stat. Ann. § 221.16(b)(rehabilitator shall correct the condition or conditions which constituted the grounds for the order of the court to rehabilitate the insurer).

B. Defendants' Plan Will Injure Vulnerable Iowa Policyholders.

63. Iowa policyholders will be injured because Defendants' plan to unilaterally dictate new terms of a contract under which the Iowa policyholders have fully performed, by either reducing benefits or imposing drastic, unapproved premium rate increases on Iowa policyholders. In addition, the increased premiums will likely cause some policyholders to drop their policies. Finally, the altered contracts will mean that Iowa policyholders receive fewer benefits when SHIP is eventually put into liquidation.

64. The Plan further intends to penalize policyholders who have either purchased or are due, under the terms of their contract, a premium waiver. When a policyholder has a premium waiver, they receive benefits they are entitled to without having to pay further premium. Under Defendants' plan, a 90-year-old disabled Iowan on claim and in a nursing home who has a valid lifetime premium waiver under their contract will now be required to either pay a large premium increase to keep their waiver and benefits or face substantial downgrades. Exhibit E, pp. 56–58.

65. And even if policyholders decide to pay the sharp premium increase in Phase One of the Plan, they will face an even more drastic increase to the Self-Sustaining Premium rate in Phase Two of the Plan. Exhibit E, pp. 58–59.

66. With the aim of deficit reduction, the Plan provides for default provisions against policyholders who do not meet the deadlines set-out by the Defendants in the Plan. Exhibit E, p. 13. These default provisions impose draconian cuts in benefits on policyholders without any legal service of process or right to contest, many of whom are on claim and receiving long term care benefits.

67. Despite the efforts to increase premiums and diminish benefits, the Plan cannot restore SHIP to solvency. Instead, Defendants intend for the Plan to reduce SHIP's obligations to

policyholders before its eventual liquidation. Defendant Cantilo testified under oath: “it is not likely that we will magically restore SHIP to solvency, but it is likely that the plan...would substantially reduce the deficit.” Exhibit B, p. 80, ln. 6–12.

68. To achieve their goal of reducing SHIP’s obligations prior to eventual liquidation, Defendants are using the rehabilitation process to coerce vulnerable Iowa policyholders into paying confiscatory rates, accepting substantially less benefits than they are entitled to under their contracts, or even lapsing on their policies altogether. And when SHIP is eventually, inevitably, placed into liquidation, Iowa policyholders will only be entitled to their reduced policy value from the Guaranty Association.

69. Defendants do not believe that Iowa policyholders are entitled to benefits from the Guaranty Association and seem to blame policyholders for SHIP’s failure. Defendant Cantilo testified: “And the question that we were debating is, is it reasonable, if a policyholder has been paying a quarter for a dollar’s worth of insurance for decades, to adopt, as the workout plan, a plan in which the taxpayers step up to pay their remaining 75 cents.” Exhibit B, p. 78, ln. 8-25; p. 79, ln. 1-5.

70. The Iowa legislature, in creating the Guaranty Fund, determined that it was reasonable to spread the loss resulting from insurer insolvency and not to place it on the insolvent insurer’s policyholders alone. Furthermore, Iowa policyholders had no way to know that the premium they accepted and paid was insufficient. That risk was SHIP’s and it is unacceptable to now place that burden on policyholders.

VI. INJUNCTIVE RELIEF IS NECESSARY AND APPROPRIATE.

71. This Petition for injunctive relief is made in equity in the interest of protecting Iowa’s inherent interest in ensuring its respective laws are followed and enforced, and in protecting

Iowa consumers from substantial injury. Iowa R. Civ. P. 1501; *Ney v. Ney*, 891 N.W.2d 446 (Iowa 2017)(Petitions for injunctive relief generally invoke the court's equitable jurisdiction.)

72. Pursuant to Iowa Rule of Civil Procedure 1.1502(1) filed contemporaneously with this Petition, is the Affidavit of Commissioner Ommen.

73. The Court when exercising equitable jurisdiction, generally has the power to identify the relevant equities and fashion an appropriate remedy. *Id.* Generally, a party seeking a permanent injunction must show:

(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 no adequate legal remedy available.

Id.

74. The Commissioner is charged with enforcing the insurance laws for the state of Iowa and in doing so represents the interest not only of the state, but its citizens as consumers and policyholders. *See* Iowa Code §§ 505.1 and 505.8. *See also Holland v. State*, 115 N.W.2d 161, 162 (1962) (Statutes which regulate the insurance business are within the police power of the state. This business is one peculiarly impressed with a public interest and subject to public supervision and control.)

75. The Defendants have stated that the Commissioner has until February 15, 2022, to fully approve the rates as submitted or Iowa policyholders will face lesser options under the Plan. However, regardless of the Commissioner's decision on the rates submitted, Defendants intend to send out their Election Packages to Iowa policyholders with a deadline that will make consumers choose one of four options proposed to them or face the prospect of being defaulted into an option determined under the Plan. (Exhibit C, pp. 108–118; Exhibit E, p. 1)

76. The Plan and its implementation directly threaten the rights of Iowa policyholders by breaching contractual terms of the insurance contracts, and further threatens the rights granted the Commissioner to regulate the business of insurance for the state of Iowa and to protect Iowa consumers from unjust and inequitable policy provisions. *See* Iowa Code §§ 514A.14 and 507B.3.

77. An injunction is necessary to prevent substantial injury and damages to Iowa policyholders. There is no provision in the Plan that establishes how the Defendants will ensure all policyholders have been provided adequate service of these Election Packages before a policyholder is defaulted according to the Plan. If Defendants have an incorrect address or if a policyholder is without proper legal guardianship and is on claim and unable to check their mail, then they are subject to having their benefits downgraded as part of the default option. Exhibit C, p. 13 default.

78. Iowa policyholders will be subjected to deadlines for their choices established by the Defendants, not by Iowa law. Without this Court intervening and granting this injunction, the most vulnerable of Iowa consumers are facing the risk of substantial harm.

79. Further, Iowa consumers will be forced to make an election under the Plan that will downgrade their benefits or restructure their policy to provide fewer benefits, whereby when SHIP is inevitably placed in liquidation Iowa policyholders will only be able to recoup the value of their downgraded policy. Iowa consumers should be able to go into liquidation with the value of the policy they currently have.

80. There is no other adequate remedy available at this juncture. The Pennsylvania Supreme Court has refused to issue a stay of the appeal and so the Plan is being implemented by the Defendants. The Plan makes clear that the Defendants do not believe they are subject to the regulatory jurisdiction of the states and therefore the Commissioner and Iowa policyholders are

left with no other remedy other than to petition this Court to intervene and enjoin the Defendants from implementing their Plan in the state of Iowa.

81. No bond is required, as Iowa Rule of Civil Procedure 1.207 provides that in an action by the state, no security shall be required of the state.

82. The State certifies, pursuant to Iowa Rule of Civil Procedure 1.1504 that no prior petition seeking an injunctive relief against these parties has been previously presented to this Court.

83. The Plaintiff, the Iowa Insurance Commissioner, requests that the Court set this Petition for Injunctive Relief for a hearing and send notice to Defendants of the time and place of hearing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Iowa Insurance Commissioner, respectfully requests this Court grant the following relief:

A. Enter a TEMPORARY INJUNCTION enjoining Defendants from communicating, implementing or enforcing the Second Amended Rehabilitation Plan in the state of Iowa, or otherwise interfering with the rights of SHIP long-term care insurance policyholders in Iowa or otherwise violating the insurance laws of the state of Iowa, including, but not limited to, by offering any rates, forms, riders or policy documents to any Iowa SHIP policyholders that have not been previously authorized and approved by the Iowa Insurance Commissioner, and to refrain from altering, encumbering or diminishing the rights and benefits of any Iowa SHIP policyholder in whole or in part, until and unless all policy forms, contractual changes, rate increases and policyholder options offered by Defendants are approved by the Commissioner in accordance with the laws of the state of Iowa, and or until subsequent order of this Court; and

B. After a trial on the merits, default, or summary judgment, make such injunction
PERMANENT.

Respectfully submitted,

THOMAS J. MILLER
ATTORNEY GENERAL OF IOWA

/s/ Jordan E. Esbrook

JORDAN E. ESBROOK
Assistant Attorney General
Iowa Department of Justice
Hoover State Office Building
1305 East Walnut St., Second Fl.
Des Moines, Iowa 50319
Telephone: 515-281-8159
Email: Jordan.Esbrook@ag.iowa.gov
ATTORNEYS FOR PLAINTIFF