Healthnow N.Y., Inc. v New York State Ins. Dept.
2012 NY Slip Op 33879(U)
July 11, 2012
Supreme Court, Albany County
Docket Number: 6358-11
Judge: Thomas J. McNamara
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PRESENT: HON. THOMAS J. McNAMARA
Acting Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

HEALTHNOW NEW YORK, INC., d/b/a BLUE CROSS BLUE SHIELD OF WESTERN NEW YORK and d/b/a BLUE SHIELD OF NORTHEASTERN NEW YORK,

Plaintiff,

DECISION AND ORDER
Index No.: 6358-11
RJI No.: 01-11-105520

-against-

NEW YORK STATE INSURANCE DEPARTMENT, JAMES J. WRYNN, in his official capacity as Superintendent of the NEW YORK STATE DEPARTMENT OF INSURANCE, NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES, and BENJAMIN M. LAWSKY, in his official capacity as Superintendent of the NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES,

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Defendants.

(Supreme Court, Albany County, Motion Term)

APPEARANCES: Eric T. Schneiderman
Attorney General of the State of New York
(By: Douglas J. Goglia, Assistant Attorney General)
Attorneys for Defendants
The Capitol
Albany, New York 12224-0341

Manatt, Phelps & Phillips, LLP
(By: David J. Oakley, Ronald G. Blum and Elizabeth K. Murray, Esqs., of Counsel)
Attorneys for Plaintiff
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McNamara, J.

Plaintiff is a not-for-profit health insurer licensed by the State and provides health care benefits to individuals in 37 counties of New York. In June 2010 the legislature enacted an amendment to Insurance Law §4308 (j). The amendment, signed into law by the governor in June 2010, and made effectively immediately, imposes an 82% minimum loss ratio requirement on all community rate contracts, other than medicare supplemental insurance contracts, issued or in effect during calendar year 2010. Thereafter, plaintiff brought this action seeking a judgment declaring Insurance Law §4308 (j) unconstitutional insofar as it affects contracts in place at the time the new minimum loss ratio requirement became effective. Plaintiff contends that the provision impermissibly interferes with its contractual relationships in violation of United States Constitution article I, section 10 and violates its right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution and New York State Constitution, article I, section 6.

Plaintiff's health insurance business falls into 3 categories: community rated, experience rated and government programs. The amendment to section 4308 (j) affects only community rated contracts wherein premiums for all persons covered by the policy is the same based on the experience of the entire pool of risks covered by the policy. Prior to the amendment the minimum loss ratio for community rated contracts was 75% for small groups, 80% for policies sold directly to the consumer and 65% for large group contracts (50 employees or more). The minimum loss ratio sets the percentage of premiums the insurer is required to use to pay claims with the remaining percentage used for administrative costs and profit.[1] Insurers are required to file a year end report which sets forth the actual loss ratio and if it falls below the minimum, corrective

[1] In the case of not-for-profit insurer like plaintiff the profit is effectively a contribution to the insurer's financial reserves.

action in the form of refunds is required.

Plaintiff's first cause of action is based on a violation of the contract clause in article I, section 10 of the United States Constitution. Plaintiff maintains that because the amendment to section 4308 (j) was enacted in June 2010 but applies to all community rated contracts in effect in 2010 the statute impermissibly interferes with contracts entered into prior to the effective date of the statute. Determining whether the amendment runs afoul of the Constitution involves the application of a two-part test. The first step is to find if the law has, in fact, operated as a substantial impairment of a contractual relationship (*Energy Reserves Group v. Kansas Power & Light Co.*, 459 U.S. 400 [1983]). If a substantial impairment is found, the State must have a significant and legitimate public purpose to justify the intrusion (Id. at 411).

According to plaintiff the primary impact of the change would be to its contracts with large groups. Here, the minimum loss ratio went from 65% to 82%. Plaintiff contends that application of the new minimum loss ratio to contracts entered into before the amendment took effect would require them to refund $3.3 million to large group customers. Plaintiff maintains that it incurred an $8.4 million loss in its community-rated business in 2010 and having to refund $3.3 million dollars would increase its loss by 40%. A shift of that magnitude from the insurer to the insured, plaintiff correctly argues, constitutes a significant impairment.

Defendants argue that the impairment is not substantial for two reasons. First, defendants point out that where the party "could anticipate, expect or foresee the governmental action at the time of the contract execution, [that party] will ordinarily not be able to prevail" (*Sal Tinnerello & Sons v Town of Stonington*, 141 F. 3d 46, 53 [1998]). Noting that the insurance industry has always been heavily regulated, defendants argue that plaintiff could have anticipated further regulation of its health insurance premiums. Although

defendants point to a number of factors which could inform an insurer that a change to the minimum loss ratio was possible, or even likely, none of those considerations offer a hint that such a change would be applied retroactively: the only issue raised by the complaint. Defendants also contend that the amendment to §4308 does not work an unconstitutional impairment of contract rights because an amendment to subsection 2, paragraph A gives an insurer until October 1, 2010 to adjust their premium rates without the consent of the Insurance Department. Defendants, relying on *Moore v Metropolitan Life Ins. Co.*, 33 NY2d 304 (1973), argue that the insurer's ability to adjust the premium without the consent of the Insurance Department takes the amendment out of the realm of an unconstitutional impairment. In Moore the court was faced with the question of whether a statute requiring insurers to reimburse policy holders for psychologists' payments violated the constitutional prohibition against interfering with the right of contract. Unlike the statute here, the legislation in Moore applied only to policies written, renewed, modified, or altered on or after the date of enactment. The court found that where the insurer does not have the right to terminate the policy or change the premium rate without consent of the State, renewal, by the payment of premiums, continues the pre-existing policy, and statutes enacted subsequently cannot be applied. However, because the insurer in Moore had the option of either raising the premium on any premium due date, or not renewing the contract on the next anniversary date of the policy following the enactment of the statute, the statute was found to be constitutional. Inasmuch as Moore did not involve existing contracts and the insurer had the option of not only raising the premium but also of cancelling the contract, the holding in that case does not support defendants' argument that the right to increase the premium means the amendment does not interfere with plaintiff's contract rights.

Having found that a substantial impairment exists, the question of whether there is a significant and

legitimate public purpose to justify the intrusion must be addressed. Among the reasons offered for the amendment are lowering premiums for consumers, discouraging insureds from discontinuing coverage by keeping premiums affordable and saving money for the State treasury by reducing the number of insureds who terminate coverage and instead seek coverage under the State's Medicaid program. Where, as here, a legitimate public purpose has been identified, the next inquiry is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption (*Energy Reserves Group v Kansas Power & Light Co.*, 459 U.S. 400 [1983], quotation marks and internal citation omitted). Though deference is usually afforded to a legislative assessment of reasonableness and necessity, in instance such as this where the State's self interest (savings realized by reducing the number on Medicaid enrollees) is at stake the standard of deference does not apply (see *United States Trust Co. v New Jersey*, 431 U.S. 1 [1977]).

None of the public purposes asserted are served by the retroactive provision of the amendment. Since insurers do not submit information regarding active loss ratios until after year's end[2], no one would know, including insureds, until that time whether corrective action in the form of refunds would be required. Consequently, an insured faced with the question of whether to continue coverage based on economic considerations would not know until after the fact whether some portion of their premium would be refunded. For the same reason, the amendment does not further the stated objective of reducing the number of applicants for Medicare by encouraging continuing coverage through an employer. Finally, standing alone, the reduction of premiums for consumers insured through community-rated contracts does not serve

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[2]Here, defendant distributed the forms to report year-end 2010 MLR results to insurers in May 2011.

a legitimate public purpose.

Accordingly, it is

ORDERED, ADJUDGED AND DECREED, that the provision in Insurance Law §4308 [j] (L 2010, ch 107, § 2) subjecting all community rated contracts to a minimum loss ratio of eighty-two percent presents an unconstitutional impairment of contract rights insofar as applied to such contracts formed or in effect prior to the date of enactment.

This constitutes the judgment of the Court. The original judgment is returned to the attorney for plaintiff. A copy of the judgment and the supporting papers have been delivered to the County Clerk for placement in the file. The signing of this judgment, and delivery of a copy of the judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

SO ORDERED, ADJUDGED AND DECREED!
ENTER.

Dated: Saratoga Springs, New York
July 11, 2012

Thomas J. McNamara
Acting Supreme Court Justice

Albany County Clerk
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Papers Considered:

1. Notice of Motion dated January 9, 2012;
2. Affirmation of Douglas J. Goglia, dated January 17, 2012, with Exhibits A through D annexed thereto;
3. Defendants' Memorandum of Law dated January 18, 2012;
4. Plaintiff's Memorandum of Law dated February 21, 2012;
5. Amended Notice of Cross-Motion for Summary Judgment dated March 23, 2012;
6. Affirmation of John Powell dated March 29, 2019, with Exhibits A through C annexed