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,

-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,

Defendants.

JUDGMENT
Index No.: 6358-11
RJI No.: 01-11-105520

(Supreme Court, Albany County, Motion Term)

APPEARANCES: Manatt, Phelps & Phillips LLP
(By: Ronald G. Blum, Esq. of Counsel)
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New York, New York 10036

Eric T. Schneiderman
Attorney General of the State of New York
(By: Douglas J. Goglia, Assistant Attorney General of Counsel)
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McNamara, J.

Healthnow New York v. NYS Ins. Dept., et al.
Index No.: 6358-11; RJI No.: 01-11-105520

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 8, 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.

The court previously granted plaintiff's cross motion for summary judgment declaring 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 to be unconstitutional *(HealthNow New York, Inc. v New York State Insurance Dept.*, Supreme Court, Albany County, Index No. 6358-11, July 12, 2012, McNamara, J.). On appeal, the Appellate Division determined that there was no basis in the record upon which to conclude that retroactive application of the statutory amendment resulted in a substantial impairment of plaintiff's contract rights (*HealthNow New York, Inc. v New York State Insurance Dept.*, 110 AD3d 1216 [3d Dept 2013]).

Plaintiff contends in the complaint 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. According to plaintiff the primary impact of the change would be to its contracts with large groups. Here, the minimum loss ration went from 65%, prior to the amendment, 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%. However, in determining the appeal the court found that plaintiff had not shown what portion of the asserted $3.3 million refund/credit ordered by the Insurance Department was assignable to contracts entered into before the effective date of the amendment and consequently, had failed to satisfy the first prong of the Contract Clause inquiry (Id. at 1219). Following remand, both parties again moved for summary judgment.

As determined by the Appellate Division, "[a]nalysis of a claimed Contract Clause violation requires consideration of three factors: (1) whether the contractual impairment is in fact substantial; if so, (2) whether the law serves a significant public purpose, such as remedying a general social or economic problem; and, if such a public purpose is demonstrated, (3) whether the means chosen to accomplish this purpose are reasonable and appropriate" (*HealthNow New York, Inc. v New York State Insurance Dept.*, at 1219 [internal quotation marks and citations omitted].

Plaintiff has now shown by documentary proof, unchallenged by defendants, that $3,075,917, or 91.82%, of the $3,349.976 requested by the Division of Financial Services to be refunded to holders of large-group community rated contracts relates to contracts entered into prior to July 2010. Whether the change is defined in absolute terms of an increased loss of $3,075,917, or an increase of 36.6% in plaintiffs overall

loss or a 17% increase in the minimum loss ratio applied to large group contracts, the impact is substantial. And, for the reasons discussed in the prior decision, the arguments offered by defendants to support their claim that the impairment is not substantial are without merit.

As was previously found, the reasons offered for the amendment, 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, taken as a whole serve a legitimate public purpose. However, only the lowering of premiums for consumers is served by the retroactive provision of the amendment because insurers do not submit information regarding active loss ratios until after year's end. Thus, no one, including insureds, would know until that time if a refund would be forthcoming. Consequently, the refund resulting from the retroactive increase in the minimum loss ratio could not play a role in the previously made decision to continue or discontinue coverage. For the same reason, the retroactive aspect of the amendment does not further the stated objective of reducing the number of applicants for Medicare by encouraging continuing coverage through an employer. Standing alone, the reduction of premiums for consumers insured through community-rated contracts does not serve a legitimate public purpose.

Accordingly, it is

ORDERED, ADJUDGED AND DECLARED, 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 DECLARED!
ENTER.

Dated: Saratoga Springs, New York
January 5, 2015

Thomas J. McNamara
Acting Supreme Court Justice

01/15/2015

Papers Considered:

1. Notice of Motion dated June 6, 2014;
2. Affirmation of Douglas J. Goglia, dated January 17, 2012, with Exhibits A through D annexed thereto;
3. Affirmation of Douglas J. Goglia, dated June 5, 2014, with Exhibits A and B annexed thereto;
4. Affirmation of Troy J. Oechsner dated June 5, 2014, with Exhibits A and B annexed thereto;
5. Defendants' Memorandum of Law dated June 6, 2014;
6. Plaintiff's Cross-Motion for Summary Judgment dated July 3, 2014;
7. Affidavit of John V. Salciccioli, sworn to July 3, 2014;
8. Plaintiff's Memorandum of Law dated July 3, 2014;
9. Defendants' Memorandum of Law in Opposition to Plaintiff's Cross-Motion dated July 21, 2014; and
10. Plaintiff's Reply Memorandum of Law dated August 22, 2014.