STATE OF MAINE
KENNEBEC, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-09-29

ANTHEM HEALTH PLANS OF MAINE, INC., d/b/a/ ANTHEM BLUE CROSS AND BLUE SHIELD,
Petitioner,

v.

SUPERINTENDENT OF INSURANCE,
Respondent, and

ATTORNEY GENERAL OF THE STATE OF MAINE,
Party in interest

PLAINTIFF/PETITIONER ANTHEM HEALTH PLANS OF MAINE, INC'S REPLY BRIEF IN SUPPORT OF PETITION FOR REVIEW OF FINAL AGENCY ACTION (M.R.Civ.P. 80C)

Pursuant to Maine Rule of Civil Procedure 80C, Plaintiff / Petitioner Anthem Health Plans of Maine, Inc. d/b/a Anthem Blue Cross and Blue Shield ("Anthem BCBS"), by and through its attorneys, hereby submits its reply brief in response to the Superintendent's Opposition Brief ("Opposition").[1]

INTRODUCTION

The question to be answered in this dispute is whether a 0% risk and profit charge as part of Anthem BCBS's individual insurance rates is "adequate" under 24-A M.R.S.A. §2736(2). Tacitly conceding that 0% for profit and risk is not adequate in the context of the actual individual products that are at issue in this case, the Superintendent spends the bulk of the first ten pages of her opposition pointing out the financial performance not of the individual products, but instead of Anthem BCBS and, more removed still, that of WellPoint, Inc. *See, e.g.*, Opposition, p.3 ("Together with Anthem, there are approximately 45 health insurance

[1] The Attorney General intervened in the rate setting proceeding underlying this Rule 80C appeal and has joined in the arguments raised by the Superintendent in the Opposition but did not submit a separate opposition brief.

subsidiaries of WellPoint with total annual net income (profit) averaging nearly $2.6 billion throughout the five-year period 2004-2008."). To her credit, the Superintendent does not attempt to obfuscate – she is clear – explaining that "adequacy" requires only that the resulting rates will not lead to the insolvency of the insurer or perhaps the insurer's parent company. There are several reasons why this newly-formulated definition of adequacy should be rejected:

- The Superintendent's testimony confirming that current Maine law requires the Superintendent to consider only the financial performance of products at issue in the rate filing is directly at odds with her 2009 rate decision for Anthem BCBS, which is based not only on the financial performance of the carrier's other lines of business, but on that of the entire parent company. The Superintendent failed to provide a reasoned basis for changing that well-established regulatory definition of adequacy.

- In all rate proceedings since 2000 (the year Anthem BCBS acquired the former non-profit Blue Cross Blue Shield of Maine), the Superintendent has approved rates that include a positive margin for risk and profit, thereby confirming that the concept of "adequacy" must include such margin (otherwise, rates including such a margin – at least for a carrier whose parent company is not in jeopardy of insolvency – would be deemed excessive). The Superintendent failed to provide a reasoned basis for changing that well-established regulatory definition of adequacy.

- The only testimony in this record – and indeed in all prior dockets of which the undersigned counsel is aware – reflects that rates must cover all costs plus include a positive profit and risk that will cover risk plus allow for a reasonable return so that the individual line will contribute to the surplus of the company. *See* Record, p. 1584, lines 1-8, p. 1602, lines 5-11 and Prefiled Testimony of Attorney General's Actuary in Docket Nos. INS-06-1000 and INS-07-1000 ("In determining the reasonableness of rates, the rates should be expected to cover the claims costs associated with the benefit plan, the administrative expenses and provide for a reasonable risk and profit charge to contribute to the surplus of the entire corporation.") Indeed, the Attorney General's witness whom the Superintendent cites as promoting a 0% profit and risk charge actually testified that rates must include a margin at least for risk. Record, p. 1602, lines 5-11. The Bureau has always accepted, but in any event, never refuted this concept of adequacy. The Superintendent failed to provide a reasoned basis for changing that well-established regulatory definition of adequacy.

- As reflected in the Superintendent's 2009 rate decisions for the three main carriers in the Maine individual market (Anthem BCBS, Mega and Harvard Pilgrim), the Superintendent's vacillating definition of adequacy does not lead to legitimate, non-discriminatory rate-making. *Compare* May 18, 2009 Decision, INS-09-1000 (providing 0% profit and risk charge for Anthem BCBS's 2009 rates) *with* December 1, 2008 Decision, INS-08-1000 (providing 3% profit and risk for 2009 for Mega) and Harvard Pilgrim (even non-profit Harvard Pilgrim had rates approved with .5% for risk).

The Superintendent in her Opposition attempts to justify the denial of any profit and risk charge to Anthem BCBS by (1) citing to Oklahoma law and its definition of adequacy in the context of property insurance rates, (2) focusing on the financial status of Anthem BCBS and its parent companies, and (3) improperly citing long-past gains as justification for allowing no profit and no protection against risk. None of the explanations or justifications provided in the Opposition solve the problems associated with the Superintendent's May 18, 2009 Decision and Order (the "Decision"), namely that it fails to provide a positive risk and profit charge and fails to give a reasoned basis for the Superintendent's change in policy. This failing has led to rates that violate 24-A M.R.S.A. § 2736 and the constitutional guarantee of equal protection under the law. The Superintendent's Decision must be vacated and remanded to require a positive risk and profit charge.

STANDARD OF REVIEW

Not surprisingly, the Superintendent relies heavily on the standard of review in Rule 80C appeals, which typically requires deference. The reviewing Court, however, is not charged with blind deference when, as here, a change or inconsistency in interpretations is not accompanied by a reasoned basis for the change and when the newly-constructed formulation of the statutory standards is unreasonable. *See Kane v. Comm'r of the HHS*, 2008 ME 185, ¶ 12, 960 A.2d 1196, 1200 ("We defer to an agency's interpretation of a statute it administers . . . only if the agency's interpretation is both reasonable and within the agency's expertise.). *See, e.g., Motor Vehicle Man. Ass'n v. State Farm Mut. Auto Ins. Co.* 403 U.S. 29, 42 (U.S. 1983) (agency changing its course by rescinding rule or policy "is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance"; vacating

decision upholding agency action due to agency's failure to provide rationale for change in policy).

ARGUMENT

1. The Superintendent's "Solvency Standard" is Without Support.

Starting with the definition of rate adequacy, the Superintendent, for the first time, states that "[r]ate adequacy is primarily a solvency standard, particularly in the context of the questions at issue in the underlying proceeding." Opposition, p. 20. At least two things stand out about this statement. First, the Superintendent made no mention of rate adequacy being synonymous with solvency in her Decision, and perhaps more importantly, no other Maine Superintendent of Insurance has applied the "solvency standard" to order rates without a positive margin for risk and profit. Second, the only support offered for the "solvency standard" by the Superintendent is a pair of Oklahoma cases and a succession of dictionary definitions, none of which actually support that position.

First, the cited cases are not controlling because (1) Oklahoma cases are not binding in Maine, (2) the Oklahoma cases are in the context of property insurance not individual health insurance, and (3) most importantly, because the Oklahoma insurance statutes expressly define adequacy of rates in terms of the solvency of the insurer. *See* 36 O.S. 1981 §902(A) ("No rate shall be held to be inadequate unless . . . the continued use of such rate endangers the solvency of the insurer using the same . . . ."). By contrast, the Maine insurance statutes contain no definition of adequacy, much less the specific solvency standard that is a part of the Oklahoma statutory framework. The Oklahoma cases simply and correctly reciting that statutory standard, accordingly, are inapposite to the present case.

Second, the dictionary definitions cited by the Superintendent, while accurately quoted, do not advance the Superintendent's cause. As the Superintendent explains, synonyms for

"adequate" are "satisfactory," "suitable," or "sufficient." None of these definitions for adequacy support the Superintendent's suggestion that the test for adequacy is a solvency test, to the exclusion of any reasonable return or allowance for risk. This is especially so in light of the Attorney General's own actuary's repeated testimony that adequate rates must cover all expenses plus allow for a reasonable return to contribute to the surplus of the company. *See* Record, p. 1584, lines 1-8, p. 1602, lines 5-11 and Prefiled Testimony of Attorney General's Actuary in Docket Nos. INS-06-1000 and INS-07-1000, attached hereto as Exhibits A and B.

This acknowledgement is significant because the Attorney General in rate proceedings is essentially representing all Maine consumers and, accordingly, has every interest in advocating for as low a rate increase as possible. Within this context, even the Attorney General's actuary (Beth Fritchen) agreed that "rates must cover claim costs, administrative expenses, and allow for a reasonable profit to contribute to surplus." Record, p. 1584, lines 1-8. This is consistent with testimony from the Attorney General's actuary in prior dockets. *See* the Attorney General's actuary pre-filed testimony Docket Nos. INS-06-1000 and INS-07-1000 ("In determining the reasonableness of rates, the rates should be expected to cover the claims costs associated with the benefit plan, the administrative expenses and provide for a reasonable risk and profit charge to contribute to the surplus of the entire corporation.")[2]

The Superintendent in her Opposition suggests that "[t]he AG argued that Anthem's profit and risk margin of 3% sought in rates was excessive and urged the Superintendent to allow no profit for the upcoming rating period." (Opposition, p.13.) This assertion does not reflect the testimony from Ms. Fritchen. More particularly, when asked directly by the Superintendent's

[2]The Attorney General intervened in the most recent rate proceeding, Docket No. INS-09-1000, and in previous individual insurance rate proceedings. The Attorney General's role in these rate proceedings is to protect the interests of consumers. Based on the Attorney General's actuary's testimony, the Attorney General, on behalf of consumers, considers an allowance for contribution to surplus reasonable and a component of adequate rates.

Chief Actuary if a 0% profit margin would be "adequate," Ms. Fritchen responded, "You know, no. I think you need to put some risk charge in." Record, p. 1602.[3] Considering the Attorney General's role in these proceedings, this candid acknowledgement supports Anthem BCBS's point that allowing 0% for risk and profit is not adequate and not supported by the record.

2. Footnote 24 of the Superintendent's Opposition Does Not Successfully Explain the Superintendent's Change of Policy with Regard to Consideration of the Overall Profitability of an Insurer when Setting Individual Insurance Rates.

In addition to having no direct support for the "solvency test" definition of adequacy, this newly-formulated definition flies in the face of the Superintendent's nearly contemporaneous April 2009 testimony rejecting review of overall profitability of an insurer and the performance of other lines of business when setting individual insurance rates. As explained in Anthem BCBS's initial brief, the Superintendent testified about proposed legislation in April 2009 and opined – unremarkably – that individual rate setting requires focus on the performance of the individual products that are at issue, not the "overall profitability of the carrier." *See* Anthem BCBS's Brief, p. 5. The Superintendent's decision now to advocate for a "solvency standard" and focus on WellPoint profitability contradicts her April testimony without providing a reasoned basis for her change in position.

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[3] The complete colloquy between the Attorney General's actuary and Richard Diamond, the Superintendent's actuary, Record p. 1602, lines 5-20, on the adequacy of a 0% risk and profit charge was as follows:

Q (Mr. Diamond): You said a 1 percent profit margin would be adequate. Would a zero percent be adequate?

A (Ms. Fritchen): You know, no. I think you need to put some risk charge in, Rick. Obviously, it's up to the discretion of the Superintendent. The plan is healthy. You have surplus that you can use. I guess from my perspective I think you need something in there.

Q: Why is that? Why would a break-even rate be inadequate?

A: It's not inadequate, I guess, but you do have fluctuations. Nothing is known. Like I said, if we were perfect, then we'd know we'd get 3 percent or 1 percent every year. We know that doesn't happen. There is variability. I think you need to build a little bit in for that. And I think – again, I think you need to weight it with the financial health of the company.

The Superintendent's only attempt to address her recent testimony appears in footnote 24 of the Opposition. In footnote 24, the Superintendent states that her April 2009 testimony did not disavow consideration of the overall profitability of an entire company or the profitability of other lines of business when setting individual insurance rates. The plain language of the Superintendent's testimony, *see* Anthem BCBS's brief, p. 5, does not support the Superintendent's characterization. The April 2009 testimony speaks for itself and bears repeating: "[i]f the intent of this provision [requiring the Superintendent to consider revenues and expenses from all line segments of the filing insurer] is to allow rates to be deemed excessive based on the overall profitability of the carrier, whether or not the rates are sufficient to make the product self-supporting, it could have the unintended consequence of encouraging carriers to withdraw from the individual market entirely, and concentrate on more profitable group markets." The Superintendent's Decision contains a complete reversal of opinion and policy on these points and is absent the required reasoning to justify and allow such a reversal. *See, e.g., Motor Vehicle Man. Ass'n.*, 403 U.S. at 42.

3. The Superintendent's Decision is Based on Impermissible Retroactive Ratemaking and Other "Factors" that are Erroneous.

Many of the first sixteen pages of the Opposition, including the chart on page 11, are spent describing the overall health of Anthem BCBS and its parent company and setting the stage for an attempt to justify retroactive rate-making by focusing on Anthem BCBS's past gains. As explained in Anthem BCBS's initial brief, even though the Superintendent has approved rates including a 3% risk and profit charge since 2004, Anthem BCBS has experienced an aggregate net loss of more than $3.7 million for its individual insurance line of business. *See* Anthem BCBS's Brief, p. 6-7. Using the information contained in the Superintendent's chart on page 11 of her Opposition, but imposing a 0% risk and profit charge (or "break even rates")

would have resulted in (1) even greater aggregate losses for Anthem BCBS's individual insurance between 2004 and 2008; (2) on an annual basis, a loss in four out of the past five years, and (3) achieving the permissible 3% pre-tax profit margin in not a single year:

Anthem BCBS Individual Line of Insurance					
Year	Margin in Rates (Risk and Profit %)	Profit (loss) % actually achieved	Average Rate Increase	Insurance Docket	Profit (loss) % with a 0% risk and profit charge[4]
2004	No rate filing	1.6%			(1.4%)
2005	3%	(4.2%)	14.5%	INS-04-610	(7.2%)
2006	3%	(7.9%)	16.3%	INS-05-820	(10.9%)
2007	3%	5.3%	16.7% 1.3%	INS-06-1000	2.3%
2008	3%	2.8%	12.5%	INS-07-1000	(0.2%)

It is unclear how this data could support the Superintendent's position that a 0% profit and risk charge is reasonably expected to result in rates that cover all costs, much less allow for a reasonable return.[5]

[4] The numbers in this column are calculated by subtracting 3% from Anthem BCBS's operating margin in a given year. This is simplified and not intended to be a precise calculation, but reflects generally the results if a 0% profit and risk charge had been imposed across the applicable years. This data further demonstrates that 0% is not reasonably calculated to cover all costs, much less allow for a reasonable rate of return to add to the surplus of the Company.

[5] Reliance on the older financial results – from 2000 to 2003- skews the results because gains in those early years in essence "hide" the losses from the individual lines over the last most recent five years. Anthem BCBS submits that

On pages 30-31 of the Opposition, Record, p. 311-12, the Superintendent lists the following seven "factors" that she "relied on" in ordering a 0% risk and profit charge:

> [1] Anthem's pre-tax operating gain from its individual line of insurance was $17.4 million during the nine years it owned the Company (2000-2008); [2] Anthem's nine-year weighted average gain from the individual line was 3.2% of total revenue from this line; [3] Anthem had pre-tax gain from the individual line of insurance of 5.3% in 2007 (or nearly $3.6 million profit), and 2.8% in 2008 (or nearly $1.8 million profit) - totaling approximately $5.4 million of profit from this line in the last two years; [4] Anthem had experienced losses in its individual line of insurance in only two of the last nine years; [5] HealthChoice and Lumenos members have contributed $17.4 million to Anthem's company-wide surplus should it be needed to cover any potential losses from the individual line of insurance in 2009-2010; [6] although a break-even rate (i.e., no profit) in the individual line of insurance would not contribute further to Anthem's company-wide surplus, neither would it be a drain (i.e., the approved rates will not result in losses if Anthem's assumptions, as modified by the Superintendent in her decision hold true); and [7] the existence of the individual line of insurance would continue to provide an indirect benefit to Anthem in that it provides a larger policyholder base over which to spread administrative costs (thereby providing Anthem the ability to offer lower rates for its group insurance products).

Five of these seven "factors" (numbers 1, 2, 3, 4, 5) include financial results from 2000 – 2003 and can be boiled down to one improper "factor" relied on by the Superintendent, i.e., because Anthem BCBS's individual line of business earned approximately $17 million from 2000 – 2008, rates for today including a 0% risk and profit charge meet the adequacy standard of the Maine Insurance Code. This is a prime example of impermissible retroactive ratemaking. *See Pub. Advocate v. Pub. Utils. Comm'n*, 718 A.2d 201, 204 (Me. 1998) (explaining in the utility context that the rule against retroactive ratemaking prohibits retrospective inquiries "to determine whether a prior rate was reasonable and imposing a surcharge when rates were too low or refund when rates were too high"). *See also* Anthem BCBS Closing Statement, INS-04-610, p. 3-4, attached hereto as Exhibit C (discussing impermissible retroactive ratemaking and the

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the expected results for 2009 and 2010 are better predicted based on recent data than on the now-stale results from nearly a decade ago. Furthermore, the population in the HealthChoice products was significantly different before 2005 and, as such, this old, dated experience provides little insight into projecting results for 2009 and 2010.

Superintendent's negative reaction to a rhetorical question of how the Bureau would respond if Anthem BCBS requested rates to make up for a prior year's financial shortfall and depleted surplus).

Of the two remaining factors listed by the Superintendent, number 6 ignores not only the continuing deterioration of the claims experience of the individual line of business, but perhaps more importantly, also the data reflected in the Superintendent's chart at page 11 of her Opposition, which reflects a relatively high likelihood that a 0% margin for profit and risk will actually result in a loss. Finally, there is simply no testimony in the record to support, much less quantify, factor number 7, the assertion that the individual line provides an indirect benefit of spreading administrative costs.[6] It is also contrary to the Superintendent's April 9 testimony concerning existing Maine law and her admonition that deeming rates excessive based on anything other than the performance of the particular product(s) at issue would be improper and have consequences of driving carriers out of the individual market.

4. By Ordering a 0% Risk and Profit Charge, the Superintendent Has Improperly Turned Anthem BCBS's Individual Line of Business into a Non-Profit.

Not only has the Superintendent made it a virtual certainty that Anthem BCBS will lose money on its individual insurance business in 2009, the Superintendent has removed any chance for Anthem BCBS, a for-profit company, to earn a profit.[7] Ironically, even Harvard Pilgrim, the non-profit insurance carrier offering individual insurance products in Maine, was given 0.5% for

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[6] In fact, based on Anthem BCBS's administrative allocations, the assertion that the individual line provides an indirect benefit by spreading administrative costs is incorrect.

[7] On May 25, 2000, the Superintendent issued an order approving Associated Hospital Services, d/b/a Blue Cross and Blue Shield of Maine, application to convert to a for-profit stock insurer and to voluntarily dissolve. On the same day, the Superintendent also approved the applications of Anthem Insurance Companies and Anthem Heath Plans of Maine to acquire the assets and liabilities of the converted Blue Cross and Blue Shield of Maine through a bulk reinsurance agreement, to acquire control of the subsidiaries and affiliates of Blue Cross and Blue Shield of Maine, and to be granted a certificate of authority to operate as a health insurer with an HMO line of business. *See* May 25, 2000 Order, Docket No. INS-99-014.

risk in its rates for 2009. More than tacit recognition, the inclusion of a margin for risk for Harvard Pilgrim explicitly acknowledges that risk must be covered to meet the standards of adequacy under Maine law. It is particularly telling that, for rates covering the same period, the Superintendent approved of an explicit risk margin for non-profit Harvard Pilgrim, but 0% for Anthem BCBS. Because the Superintendent's rates, including a 0% risk and profit charge, are confiscatory[8] and inadequate, the Superintendent's Decision should be vacated and remanded with instructions to include a 3% risk and profit charge in Anthem BCBS's rates.

5. Suggesting that Anthem BCBS Reduce its Administrative Expenses Does Not Cure the Error in Imposing a 0% Risk and Profit Charge.

On page 21 of the Opposition, the Superintendent suggests that the "'break-even' nature of the rates is an actuarial projection, not an inevitability" and that one of the ways for Anthem BCBS to improve the chances that a 0% risk and profit charge will actually be "break-even" and not worse is to reduce administrative expenses. Opposition, p. 21. This suggestion ignores that the Superintendent considered and approved of Anthem BCBS's administrative expense charge in this proceeding. There is no evidence in the record that these expenses can be reduced – indeed, even the Attorney General's actuary agreed that Anthem BCBS's estimated

[8] In footnote 20 of the Opposition, the Superintendent argues that Anthem BCBS has not made out a claim based on confiscatory rates. To the contrary, the Superintendent's 0% risk and profit charge and the associated rates for Anthem BCBS's individual insurance are confiscatory because they are not just and reasonable and do not allow for a fair return on investment. In *FPC v. Natural Gas Pipeline*, 315 U.S. 575, 585-86 (1942), a case addressing regulation of natural gas rates, the relevant statute required that the rates of natural gas companies be "just and reasonable." The Supreme Court defined a "reasonable rate" as one that is not confiscatory. The Court held that "[b]y long standing usage in the field of rate regulation, the 'lowest reasonable rate' is one which is not confiscatory." *Id.* at 585. The Supreme Court has reaffirmed this principle on a number of occasions. In *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989), the Court held that "[t]he guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory." In *Tenoco Oil Co. v. Dept. of Consumer Affairs*, 876 F.2d 1013 (1st Cir. 1989), the First Circuit discussed these principles in the context of gasoline price regulation in Puerto Rico. The court acknowledged the rule established in utility ratemaking cases "that regulated rates must be 'just and reasonable' in order to be constitutional." *Id.* at 1020 (citing *Barasch*, 488 U.S. at 310; *Natural Gas Pipeline Co.*, 315 U.S. at 586; *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1175 (D.C. Cir. 1987). The *Tenoco* court explained that "[t]o be just and reasonable, rates must provide not only for a company's costs, but also for a fair return on investment," and noted that "[r]ates which fall below this standard are 'confiscatory.' " *Id.* (citing *Barasch*, 488 U.S. at 310; *Natural Gas Pipeline Co.*, 315 U.S. at 585).

administrative expenses are reasonable. *See* Record, p. 1014 (Prefiled Testimony of Attorney General's Actuary, p. 19, lines 10-15). There is nothing in the Superintendent's Decision questioning those expenses. Suggesting now that Anthem BCBS should reduce those approved expenses to compensate for the failure to include any margin for risk or profit is a red herring; if the Superintendent determined that Anthem BCBS's administrative expenses were excessive, she would have so found. She did not.

6. The Superintendent's Decision Violates Anthem BCBS's Right to Equal Protection.

In footnote 33 of the Opposition, the Superintendent argues that there is a lack of factual support for Anthem BCBS's claim that it will have to subsidize its individual business with profits from its group business – a requirement for no other health insurer in Maine. The 3% profit and risk charge, previously approved by the Superintendent, has yielded negative actual profit for Anthem BCBS's individual insurance products since 2004. *See* Chart, Anthem BCBS's Brief, p. 6-7. As such, the 3% pre-tax charge has not even covered the risks of offering the individual products in Maine. Just as the Superintendent warned in her April 9 testimony, if individual rates are not designed to be self-supporting, the resulting loss will have to be absorbed from some other product line and will drive carriers out of the individual market. With this backdrop, the Superintendent's reliance on Anthem BCBS's surplus levels is nothing more than a requirement that Anthem BCBS subsidize its individual products with its group business.

This sort of subsidization is not required by law; indeed, it is contrary to existing Maine law as interpreted by the Superintendent. *See* April 9 Testimony from Superintendent Kofman (the inquiry under Maine law is "whether the rates for each product are adequate, but not excessive or unfairly discriminatory, in light of the costs associated with that product" and the rates must be "sufficient to make the product self-supporting" without regard to the "overall

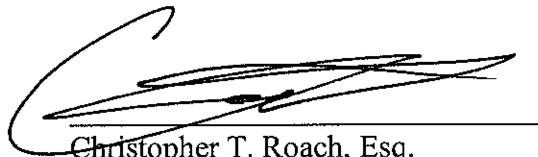
profitability of the carrier.") Moreover, even if this type of subsidization were authorized under Maine law (which it is not), it is not required of any other carrier doing business in Maine, and therefore constitutes an equal protection violation. If there is going to be an individual high risk pool in Maine, then it should recognized as such, and, if it needs to be subsidized, all carriers in the State should have to share in that effort. To require Anthem BCBS to shoulder this burden alone would be discriminatory, inequitable and, in any event, contrary to Maine's requirement that rates must be adequate.

CONCLUSION

For the reasons set forth herein and in Anthem BCBS's brief dated August 21, 2009, Anthem BCBS respectfully requests that the Court enter an order vacating the Superintendent's May 18, 2009 Decision and Order and remanding the case to the Superintendent with instructions to approve rates that include at least a 3% pre-tax profit and risk margin.

Dated: October 7, 2009

Respectfully submitted,



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