FILED
AUG 27 2008
BRENDA A. UMSTATT
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

JOHN M. HUFF,
In his official capacity as
Director of the Missouri
Department Of Insurance,
Financial Institutions &
Professional Registration,

Plaintiff,

vs.

CENTRAL UNITED LIFE INSURANCE COMPANY,

Defendant.

Serve: Registered Agent
CT Corporation System
120 South Central Avenue
Clayton, Missouri 63105

Case No. 09AC-CC00480

PETITION FOR DECLARATORY JUDGMENT, PERMANENT INJUNCTION, CIVIL PENALTIES, RESTITUTION, COSTS AND OTHER COURT ORDERS

John M. Huff, in his official capacity as the Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, requests that the Court, in regard to consumers who are holders of cancer insurance policies issued or administered by Central United Life Insurance Company (CULIC): 1) issue an order declaring that CULIC engaged in acts, practices, omissions or courses of business which constitute unfair trade practices in violation of § 375.934, RSMo (2000) and improper claims practices in violation of § 375.1005, RSMo, (2000); 2) issue a permanent injunction prohibiting further violations of the insurance laws by CULIC; 3) issue an

order directing CULIC to readminister improperly administered claims and to pay restitution or disgorgement; 4) issue an order imposing a civil penalty or forfeiture; 5) order the payment of prejudgment and postjudgment interest; 6) order CULIC to pay reasonable costs of investigation and prosecution; 7) order the payment to the insurance dedicated fund an additional amount equal to 10 percent of the total restitution or disgorgement ordered, or such other amount as awarded by the court; and 8) other such relief as the Court considers necessary and appropriate.

PARTIES

1. John M. Huff is the duly appointed Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (Director) who has the duty to administer Chapter 354 and Chapters 374 to 385, RSMo, which includes the supervision, regulation, and discipline of insurance companies authorized to operate and conduct business in the state of Missouri.

2. CULIC is an Arkansas domiciled life insurance company, authorized by the Director to engage in the business of insurance in Missouri pursuant to a certificate of authority. CULIC's main administrative office is located at 10700 Northwest Freeway, 3rd Floor, Houston, Texas 77092. CULIC may be served through the Director or its registered agent, CT Corporation System, 120 South Central Avenue, Clayton, Missouri 63105.

JURISDICTION

3. Missouri law requires that insurers be truthful and provide adequate disclosure when marketing their insurance products. Failure to do so, in conscious disregard of the law or as a business practice, is an unfair trade practice. Section

375.936(6)(a), RSMo (2000) and 20 CSR 400-5.700(5)(A)1. This includes assuring that their advertisements do not omit information if that omission has the capacity, tendency, or effect of misleading or deceiving potential customers as to the extent of any policy benefits.

4. Missouri law prohibits making or permitting any unfair discrimination between individuals of the same class and essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance, or in the benefits payable thereunder. Section 375.936(11), RSMo (2000). Such discrimination in conscious disregard of the law or as a general business practice constitutes an improper claims practice under to § 375.1005, RSMo (2000).

5. Pursuant to § 376.500, RSMo (2000),

> No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants (the insured) of the same class and equal expectations of life in the amount [of] . . . dividends or other benefits payable thereon, or in any other of the terms and conditions of the contracts it makes; nor shall any such company, or agent thereof, make any contract of insurance or agreement as to such contract other than as **plainly expressed** in the policy issued thereon . . . The provisions of this section shall also apply to all companies incorporated under the provisions of sections 377.200 to 377.460, RSMo.
>
> Emphasis added.

6. Missouri law prohibits any insurance company transacting business in Missouri from conducting its business fraudulently, carrying out its contracts in bad faith, or compelling insureds to accept less than the amount due under the terms of the policy. Section 375.445, RSMo (2000 and Supp. 2008). Conduct which violates § 375.445, RSMo, and committed in conscious disregard of the law or as a general business practice,

constitutes an improper claims practice pursuant to § 375.1005, RSMo (2000), as defined by § 375.936(13), RSMo (2000).

7. The Circuit Court has jurisdiction of this action pursuant to § 374.048, RSMo (Supp. 2008), which provides, in part, as follows:

> 1. If the director believes that a person has engaged, is engaging in or has taken a substantial step toward engaging in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has or is engaging in an act, practice, omission, or course of business that materially aids a violation of the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, omission, or course of business and to enforce compliance with the laws of this state relating to insurance or a rule adopted or order issued by the director.
>
> 2. In an action under this section and on a proper showing, the court may:
> (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
> (2) Order other appropriate or ancillary relief, which may include:
> (a) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, which may be the director, for the defendant or the defendant's assets;
> (b) Ordering the director to take charge and control of a defendant's property, including accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;
> (c) Imposing a civil penalty or forfeiture as provided in section 374.049;
> (d) Upon showing financial loss, injury, or harm to identifiable consumers, imposing an order of restitution or disgorgement directed to a person who has engaged in an act, practice, omission, or course of business in violation of the laws or rules relating to insurance;
> (e) Ordering the payment of prejudgment and postjudgment interest;

> (f) Ordering reasonable costs of investigation and prosecution; and
> (g) Ordering the payment to the insurance dedicated fund an additional amount equal to ten percent of the total restitution or disgorgement ordered, or such other amount as awarded by the court, which shall be appropriated to an insurance consumer education program administered by the director; or
>
> (3) Order such other relief as the court considers necessary or appropriate.
>
> 3. The director may not be required to post a bond in an action or proceeding under this section.

***

VENUE

8. Venue is proper before this Court pursuant to § 374.048.4, RSMo (Supp. 2008), which provides:

> The case may be brought in the circuit court of Cole County, any county or city not within a county in which a violation has occurred, or any county or city not within a county which has venue of an action against the person, partnership, or corporation under other provisions of law.

STATEMENT OF FACTS

9. During 1997, CULIC acquired guaranteed renewable cancer health insurance policies that had been issued by Dixie National Life Insurance Company (Dixie) and Commonwealth National Life Insurance Company (Commonwealth).

10. Sometime after 1997, CULIC developed and marketed its own guaranteed renewable cancer health insurance policies.

11. The policy forms at issue include:

   i. CULIC Policy Forms

      1. CP-1003-MO
      2. CP3000AMO

ii. Dixie National Life Insurance Company Policy Forms

1. CP-1003
2. CP-1004
3. CP-1005

iii. Commonwealth National Life Insurance Company Policy Forms

1. CEP-350-MAX-COMB
2. CEP-93ULT
3. CEP-93CONV

12. The policies at issue contain "actual charge" benefits whereby CULIC contracts to pay benefits to policyholders based on the "actual charge" for a variety of medical and non-medical services related to the treatment of cancer. Collectively, these policies are referred to in this Petition as "actual charge" benefit policies.

13. Prior to February 1, 2003, as a general business practice, CULIC administered "actual charge" benefit policy claims based on the amount health care providers billed insureds or insureds' primary health insurance plans for their services.

14. Beginning on or about February 1, 2003, CULIC changed how it administered the "actual charge" claims.

15. From that date forward, CULIC administered "actual charge" claims such that "actual charge" was determined to be "the amount(s) actually paid by or on behalf of the Covered Person and accepted by the provider as full payment for the covered services provided."

16. Beginning on or after February 1, 2003, CULIC also began requiring Explanation of Benefit forms (EOBs), Medicare Benefit Summaries, or other proof of loss documentation to show "the amount(s) actually paid by or on behalf of the Covered Person and accepted by the provider as full payment for the covered services provided."

17. CULIC's changed administration of "actual charge" claims reduced the amount of benefits it paid to a majority of "actual charge" benefit claimants.

18. CULIC continued to administer existing "actual charge" claims and new "actual charge" claims filed by policyholders without other primary health insurance in the same manner as "actual charge" claims administered before February 1, 2003.

19. On July 1, 2003, CULIC sent "IMPORTANT NOTICE REGARDING CANCER CLAIMS" to all existing "actual charge" benefit policyholders regarding its changed administration of "actual charge" claims. The notice informed policyholders that, because of this change, EOBs, Medicare Benefit Summaries, or similar documents would be required as part of proofs of loss to show the amount of money a provider agreed to accept as full payment for covered services.

20. Sometime in July 2003, CULIC sent the same notice to its agents.

21. The term "actual charge" was not defined or explained in any of CULIC's Missouri marketing materials until October 2003.

22. On or about October 16, 2003, CULIC mailed Endorsement Form CP3ACEND to existing CULIC policyholders, and began attaching Endorsement Form CP3ACEND to new Policy Form CP3000AMO policies.

23. Endorsement Form CP3ACEND included a definition of "actual charge."

24. CULIC marketed Policy Form CP3000AMO until December 2003. CULIC never revised the marketing materials used in Policy Form CP3000AMO solicitations to incorporate a definition or explanation of "actual charge." None of the marketing materials explained that "actual charge" benefit claims would be administered based on

"the amount(s) actually paid by or on behalf of the Covered Person and accepted by the provider as full payment for the covered services provided."

25. Some of CULIC's "actual charge" benefit policies did not include a definition of the term "actual charge" or an explanation that "actual charge" benefit claims would be administered based on "the amount(s) actually paid by or on behalf of the Covered Person and accepted by the provider as full payment for the covered services provided" until December 2003.

26. No advertisement for "actual charge" benefit policies administered by CULIC or issued by CULIC prior to October 2003, define the term "actual charge" or explain that "actual charge" benefit claims would be administered based on "the amount(s) actually paid by or on behalf of the Covered Person and accepted by the provider as full payment for the covered services provided."

27. Furthermore, no advertisement for "actual charge" benefit policies administered by CULIC or issued by CULIC prior to October 2003, explain that the amount of "actual cost" benefits payable may depend upon the claimants' "other insurance."

28. Form CP-1005-Rev.3/88 which advertised "actual charge" benefit Policy Form CP-1005, lists six items under the heading Additional Benefits. The first and last bullet items appear in bold type and state:

i. "***Pays in additional to all other insurance**"

ii. "***Pays directly to you**"

29. Form NCP-5-(Rev.9/92) which advertised "actual charge" benefit Policy Form CP-1004, stated in bold type and in the largest font on the page "**PAYS IN**

ADDITION." Below that, also in bold type but in slightly smaller font, reads "**to any other insurance, private or governmental, including Medicare, and directly to you or whomever you designate. No reduction in benefits at any age.**"

30. Form BCEP-94 advertised "actual charge" benefit Policy Form CEP-93ULT. On the lower half of page 3 of Form BCEP-94, below the bolded, large type heading, "**Why does this outstanding policy deserve your consideration**" are six bullet point items in bold type. The second bullet point states: **It <u>pays regardless</u> of other insurance you may have!**"

31. Form CP-1003-GN-7/96, a CULIC advertisement, includes a list of six items describing the policy on the front page. The second item on this list states, "**PAYS** in addition to any other policy you might own."

32. Forms CP3000A 0102-MO and CP3000A-CC-0202 (AR, IL, MO) included substantially the following language: "**PAYS IN ADDITION to any other insurance, private or government, including Medicare, and directly to you or whomever you designate.**" Neither advertisement included a definition or explanation of the term "actual charge."

33. Nowhere do these "actual charge" benefit policy advertisements disclose that the payment the policyholder will receive may be impacted by the policyholder's primary health insurance carrier's discount negotiations with health care providers.

34. Instead, the sections in bold type in these "actual charge" benefit policy advertisements leave consumers with the impression that "actual charge" benefits of the policy are not affected in any way by "other insurance" a policyholder may have. These

characterizations of the "actual charge" benefits fail to inform consumers that the "actual charge" benefits do, in fact, depend on the consumer's "other insurance."

35. Because CULIC changed its administration of "actual charge" benefit policies, so that the amount paid on a claim depends on the amount the provider accepted as payment in full from the policyholder's "other insurance," rather than the billed amount, the policyholder's benefit under the CULIC policy was, and continues to be, adversely affected by any "other insurance" he or she may have in addition to the CULIC policy.

36. As a result of the changed administration of the "actual charge" benefit policies, any benefit payments that were based on a provider's "actual charge" were limited to whatever lower amount the provider agreed to accept from the policyholder's primary health plan, Medicare, or other third party payer.

RELIEF

WHEREFORE, based on the foregoing, the Director prays this Court order the following relief:

1. A Declaratory Judgment issued pursuant to § 374.048.2(1), RSMo (Supp. 2008), finding that Central United Life Insurance Company violated and is violating Missouri insurance laws as follows:

    a. Central United Life Insurance Company's marketing of an ambiguously worded Policy Form CP3000AMO between February 1, 2003 to July 1, 2003 through uninformed producers, is an unfair trade practice pursuant to § 375.936(6), RSMo (2000) and 20 CSR 400-5.700(5)(A)1.

b. Central United Life Insurance Company's failure to fully inform purchasers or potential purchasers of the effect of "other insurance" on the benefits provided by the "actual charge" benefit policies had the capacity, tendency, or effect of misleading or otherwise deceiving purchasers or potential purchasers as to the exact nature and extent of the benefits payable under the "actual charge" benefit policies. Such failure to fully inform purchasers or potential purchasers of the effect of "other insurance" on the benefits provided by the "actual charge" benefit policies is an unfair trade practice pursuant to § 375.936(6), RSMo (2000) and 20 CSR 400-5.700(5)(A)1.

c. Central United Life Insurance Company's change in claim administration unfairly discriminates against equally situated policyholders of essentially the same hazard due to differences among their primary health plans in violation of § 376.500, RSMo (2000), and an unfair trade practice as defined by § 375.936(11), RSMo (2000). Such discrimination, in conscious disregard of the law or as a general business practice, also constitutes an improper claims practice pursuant to § 375.1005, RSMo (2000).

d. Central United Life Insurance Company's unilateral imposition of a new or modified contractual term and change in claim administration for "actual charge" benefit policies constitutes a breach of contract to existing policyholders. Such conduct is

fraudulent, amounts to a failure to carry out contracts in good faith, and compels claimants to accept less than the amount due under the terms of the "actual charge" benefit policies in violation of § 375.445, RSMo (2000 and Supp. 2008), an d an unfair trade practice as defined by §375.936(13), RSMo (2000). Such conduct in conscious disregard of the law or as a general business practice also constitutes an improper claims practice pursuant to § 375.1005, RSMo (2000).

2. A Permanent Injunction issued pursuant to § 374.048.2(1), RSMo (Supp. 2008), prohibiting and enjoining Central United Life Insurance Company, and its agents, servants, employees, representatives, and individuals acting at their direction or on their behalf, who have notice of the Injunction, from violating the Missouri insurance laws, including the Unfair Trade Practice Act and the Unfair Claims Settlement Practices Act through the use of the unlawful practices alleged herein.

3. An Order of this Court, issued pursuant to §§ 374.048.2(2)(d), 374.048.2(3), RSMo (Supp. 2008), and/or § 374.046, RSMo (2000), directing Central United Life Insurance Company to reprocess, and pay, based on the provider's billed charge or equivalent amount, all claims filed on all "actual charge" benefit policies issued before October 16, 2003, for which benefits were payable based on the provider's "actual charge" unless:

a. Central United Life Insurance Company can show that the policy under which the claim was filed has contained a definition of the term "actual charge" since the date of issue, that the definition is

consistent with the way the claim was adjudicated, that any amendments to its policies were supported by the exchange of consideration, and that any amendments to the policies were explicitly agreed to by the policyholders; or

b. Claims for "actual charge" benefits were paid based on the provider's billed charges or equivalent amount.

4. An Order imposing a civil penalty or forfeiture for payment to distributed to the public schools as required by Article IX, section 7 of the Missouri Constitution as provided by § 374.280, RSMo (2000), and/or § 375.049, RSMo (Supp. 2008);

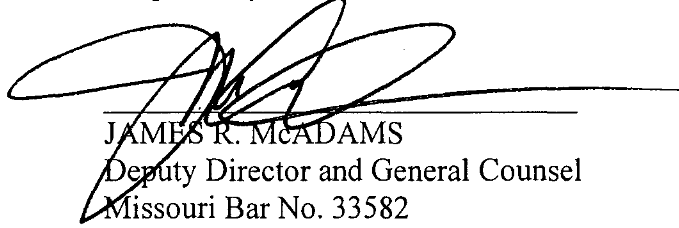
5. An Order requiring that Central United Life Insurance Company pay prejudgment and post judgment interest pursuant to §374.048.2(2)(e), RSMo (Supp. 2008);

6. An Order requiring that Central United Life Insurance Company pay reasonable costs of investigation and prosecution pursuant to § 374.048.2(2)(f), RSMo (Supp. 2008);

7. An Order requiring that Central United Life Insurance Company pay to the insurance dedicated fund an additional amount equal to 10 percent of the total restitution or disgorgement ordered, or such other amount as awarded by the court, which shall be appropriated to an insurance consumer education program administered by the Director pursuant to § 374.048.2(2)(g), RSMo (Supp. 2008); and

8. Other such relief as the Court considers necessary and appropriate.

Respectfully submitted,



JAMES R. McADAMS
Deputy Director and General Counsel
Missouri Bar No. 33582

TAMARA W. KOPP
Missouri Bar No. 59020
Senior Enforcement Counsel

Missouri Department of Insurance, Financial
Institutions & Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Telephone: (573) 751-2619
Facsimile: (573) 526-5492

ATTORNEYS FOR DIRECTOR
JOHN M. HUFF