SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

MATTHEW E. KELLER, *Plaintiff,* -against- ST. JOHN'S UNIVERSITY, RSC INSURANCE BROKERAGE, INC., AETNA STUDENT HEALTH AGENCY INC., AETNA LIFE INSURANCE CO., *Defendants.*	Index No.: 723071/2025

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes & Rules — **Page(s)**

Miscellaneous

PRELIMINARY STATEMENT

Plaintiff respectfully submits this Memorandum of Law in support of the application for an Order to Show Cause with a Temporary Restraining Order (TRO) pursuant to New York Civil Practice Law and Rules (CPLR) 6301 and 6313. Plaintiff seeks immediate relief to prevent irreparable harm and to preserve the status quo pending a hearing on a motion for a preliminary injunction.

NY CLS Ins § 4224(b)(1) provides that no health insurer shall "make or permit any unfair discrimination between individuals of the same class in the amount of premiums." For the 2025-26 academic year, the defendants have split the St. John's Student Health Insurance Plan for on-campus students and off-campus students and are charging off-campus students 235% more than on-campus students. There is no rational basis for believing that a student living off-campus should cost more than 3 times as much to insure as a student living on-campus. As such, this decision lacks a proper underwriting basis and is therefore the sort of unfair discrimination that § 4224(b)(1) is intended to prevent.

Splitting the off-campus group will imminently lead to the destruction of the off-campus student plan as a result of an "adverse selection death spiral" (*see* David M. Cutler & Richard J. Zeckhauser, *Adverse Selection in Health Insurance*, in 1 Frontiers in Health Policy Research 1, 8 [Alan M. Garber ed., 1998]). Accordingly, Plaintiff respectfully requests that defendants be enjoined from continuing their unfair discrimination until this matter is resolved.

STATEMENT OF FACTS

St. John's University (hereinafter "St. Johns") offers a Student Health Insurance Plan (SHIP) to all of its students. (Exhibit "B") Students living on campus (hereinafter "resident students") are automatically enrolled in the plan with an option to waive coverage. (Exhibit "B", p. 2) Students living off campus (hereinafter "non-resident students") can voluntarily enroll. (Exhibit "B", p. 2) For the 2024-25 academic year, the premium was $3,942 with no difference between resident and non-resident students in either premiums or level of coverage. (Exhibit "B", p. 2) Plaintiff, being a full-time, first year law student living off campus, opted to enroll in the plan. (Exhibit "C")

On June 13, 2025, non-resident SHIP members received an email notifying them that the current SHIP term would be ending soon. (A copy of the email is attached hereto as Exhibit "F") It went on to explain that the "[r]ating methodology has changed for the 2025-26 policy year and the cost for SHIP is now based specifically on the voluntary group's utilization" (Exhibit "F"). As a result, the annual premium for non-resident students wishing to enroll in SHIP for the upcoming year is $11,862 (*id).*

This constitutes a tripling of the price from one year to the next. Additionally, the upcoming year's premiums for resident students is $3,544 which is roughly a $400 decrease in premiums (A copy of the 2025-26 St. John's SHIP plan summary is attached hereto as Exhibit "D"). The net effect is that a non-resident student at St.

John's wishing to purchase health insurance through the school would have to pay 235% more than a resident student to get health coverage. Acknowledging the extreme price increase, the email advised that, "[d]ue to the *tremendous premium increase*, we encourage you to review all insurance options available to you (employer, family, and Marketplace plans) before making a final enrollment decision" (Exhibit "F").

A systematic review of SHIP premiums for universities in the New York tri-state area reveals this to be an extreme outlier (A table of the SHIP premiums of 25 nearby universities is attached hereto as Exhibit "G"). When comparing the prices of SHIPs from 25 other universities for the 2025-26 academic year, the average price for student health insurance plans is $4,271 and the most expensive plan is $7,234 (Exhibit "G"). The St. John's non-resident plan is 64% more expensive than the second most expensive plan (*id).*

Plaintiff commenced this action to enjoin the defendants from continuing their unlawful discrimination against Plaintiff and other non-resident students at St. John's and recover compensatory damages from St. John's and its insurance partners.

LEGAL STANDARD

Under CPLR 6301, preliminary injunctive relief may be granted if a defendant is committing "an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual." Further, a

TRO may be granted where it appears that "immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had" (CPLR 6301). "The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits" (*Arcamone-Makinano v Britton Prop., Inc.*, 83 AD3d 623, 624, 920 N.Y.S.2d 362 [internal quotation marks omitted]).

To obtain a TRO, the movant must demonstrate: (1) a likelihood of success on the merits; (2) danger of irreparable harm absent the TRO; and (3) that the balance of equities favors the movant (*Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840, 833 N.E.2d 191 [2005]). The decision to grant preliminary injunctive relief is at the sound discretion of the Supreme Court (*see Reichman v Reichman*, 88 AD3d 680, 681, 930 NYS2d 262 [2011]; *Doe v. Axelrod*, 73 N.Y. 2d 748, 750, 536 N.Y.S. 2d 44, 532 N.E. 2d 1272 [1988]).

First, the movant must demonstrate a likelihood of ultimate success on the merits of the underlying claim (*Nobu Next Door, LLC*, 4 N.Y.3d at 840). This requires a prima facie showing of a clear legal right to the relief sought, but it does not require proving the case in full at this stage (*see Ying Fung Moy v. Hohi Umeki,* 10 A.D.3d 604, 604-05, 781 N.Y.S.2d 684 [2d Dept 2004]; CPLR 6312 [c]).

Second, the movant must show that there is a danger that they will suffer immediate and irreparable harm if the TRO is not granted (*Nobu Next Door, LLC*, 4 N.Y.3d at 840). Irreparable harm refers to injury that cannot be adequately compensated by monetary damages or remedied through legal means (*see EdCia*

Corp. v McCormack, 44 AD3d 991 [2d Dept 2007]*; see e.g. Int'l Union of Operating Eng'rs, Local No. 463 v. City of Niagara Falls,* 191 Misc. 2d 375, 380 [Sup Ct, Niagara County 2002]).

Third, the movant must demonstrate that the balance of equities tips in their favor (*Nobu Next Door, LLC*, 4 N.Y.3d at 840). This involves showing that the harm that the movant would suffer without the TRO outweighs any potential harm to the opposing party if the TRO is granted (*see e.g. Samaha v. Brooklyn Bridge Park Corp.*, 230 A.D.3d 608, 610 [2d Dept, 2024]; *Int'l Union of Operating Eng'rs, Local No. 463,* 191 Misc. 2d at 380).

ARGUMENT

I. PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER

A. Plaintiff Has a Likelihood of Success on the Merits

Plaintiff has a clear legal right to not be discriminated against provided by NY CLS Ins § 4224(b)(1). Furthermore, Plaintiff has demonstrated a strong likelihood of success on the merits of the underlying action for the following reasons: (1) NY CLS Ins § 4224(b) provides that "[n]o insurer doing in this state the business of accident and health insurance . . . shall . . . make or permit any unfair discrimination between individuals of the same class in the amount of premiums," and the federal regulations governing student health insurance plans indicate that such plans must comply with state law (45 CFR § 147.145 [a]); (2) the university's prior treatment of these two groups of students and the lack of actuarial

justification for the split indicate that these two groups should both be considered members of a single class; and (3) the basis for the discrimination and large disparity in the amount of premiums meets the definition of unfair discrimination under the text of the statute (*see Fleisher v. Phoenix Life Ins. Co.* 18 F. Supp. 3d 456, 479 [SDNY 2014]; *Polan v. State of N.Y. Ins. Dep't*, 3 A.D.3d 30, 33 [N.Y. App. Div. 2003]).

1. **Defendants Must Comply with NY CLS Ins § 4224.**

Applicable federal and state law indicates that the defendants are bound by § 4224 in the context of this insurance plan because the federal regulation governing student health insurance plans requires that they follow applicable state law (*see* 45 CFR § 147.145[a][3]). Additionally, § 4224(b) has broad language regarding the parties to whom it applies including insurers, officer or agent of such insurer, licensed insurance broker, or employee or other representative of such insurer, agent or broker.

At the federal level, the Affordable Care Act (ACA) 1312(c) establishes a single risk pool requirement for health insurance issuers in the individual and small group markets (42 USCS § 18032 [c]). This provision mandates that all enrollees in a given market segment (individual or small group) be considered part of a single risk pool when determining premiums, ensuring that risk is shared broadly across all enrollees (*id).*

However, 45 CFR § 147.145(b)(3) provides an exemption to the single risk pool requirement for student health insurance coverage. Under this exemption,

universities are permitted to establish one or more risk pools "based on [] bona fide, school-related classification[s]" (45 CFR § 147.145 [b] [3]).

Nevertheless, § 147.145(a)(3) stipulates that student health insurance programs must comply with any additional requirements imposed under State Law. For example, state regulations may impose specific standards or consumer protections for student health insurance plans, such as coverage mandates or rate review processes (*see e.g* NY CLS Ins § 3240*2).

Therefore, because the plan in question is a student health plan as defined in 45 CFR § 147.145; subsection (a)(3) of that provision requires that student health insurance plans follow applicable state law; and the defendants are insurers, brokers or representatives of same, they must comply with NY CLS Ins § 4224.

2. The Resident and Non-Resident Students Are Members of the Same Class.

The resident and non-resident groups should be considered part of the same class (*see Dornberger v. Metropolitan Life Ins. Co*, 961 F. Supp. 506, 547-48 [S.D.N.Y. 1997]). Section 4224 prohibits "any unfair discrimination between individuals of the *same class* in the amount of premiums" (NY CLS Ins § 4224 [emphasis added]). "Class" in this context has multiple possible interpretations. One interpretation is organizational (*see e.g.* NY CLS Ins § 4237 [referring to a class in regard to group policy insurance plans the eligibility for which is conditioned upon membership to the organization]). Another is actuarial where a class is defined as a distinct subgroup within a larger class which is charged different premiums according to the

actuarial risk of members of that class (*see Health Ins. Ass'n v. Corcoran,* 140 Misc. 2d 255, 258 [Sup Ct, Albany County 1988] ["The plain meaning of 'same class' as used by the Insurance Law is actuarially similar in terms of morbidity and mortality."]; *see generally* ASOP No. 12 § 2). Plaintiff was not, however, able to find any usage of class where it is defined by the enrollment mechanism for the insurance plan (e.g. whether or not members are enrolled in the plan automatically or have to voluntarily elect to participate). Accordingly, under the possible interpretations of class in § 4224(b), if a subgroup has not been actuarially defined as a distinct risk class, that subgroup must still be considered as part of the original, organizational class.

The standards for establishing a risk class are set forth in the Actuarial Standards of Practice, which are published by the Actuarial Standards Board (*see* ASOP No. 12). The general legal test for risk classification is that it "is allowed so long as it is 'based on sound actuarial principles' *and* 'related to actual or reasonably anticipated experience'" (*id* at p. 9 [emphasis added]). Two important considerations when establishing a new risk class are avoiding adverse selection and ensuring credibility (*see id* at § 3.3.2). Adverse selection, in the context of health insurance, is the phenomenon whereby only the people who require the most care choose to purchase insurance (*see Simpson v. Phoenix Mut. Life Ins. Co.*, 24 N.Y.2d 262, 268-69 [1969]). To avoid adverse selection, actuaries "should establish risk

classes such that each has sufficient homogeneity with respect to expected outcomes[1]" (ASOP No. 12 § 3.3.2 [a]).

In addition to avoiding adverse selection, actuaries must consider the "credibility" of the new risk pool (*see* ASOP No. 12 § 3.3.2 [b]). Credibility refers to ensuring that the pool is large enough to make "credible statistical inferences" about the expected outcomes (*id).*

Here, given the university's historical treatment of these groups and the actuarial deficiencies in the decision to split the non-resident group into a separate class, all full-time students should be considered members of a single class. First, for the 2024-25 academic year, all of the documentation indicated that there was a single class and all participants would be charged the same premium (Exhibit "B", p. 3). This indicates that the university viewed all of these students as belonging to a single class even though the enrollment method differed between resident and non-resident students. As far as Plaintiff has been able to determine, the different enrollment mechanism was never historically used to distinguish between the premiums or level of service offered to the groups. Furthermore, even without this historical treatment as a single class, it's not clear that having a different enrollment mechanism is sufficient to consider these groups as belonging to two different classes, as used in § 4224(b).

In addition to St. John's prior treatment of these groups, the decision to split the groups and rate them separately does not appear to have been based on "sound

[1] In this context, expected outcomes refer to the probability that a member of a pool requires a certain cost of medical care.

actuarial principles" as there are substantial issues with both credibility and adverse selection. The comparison of St. John's against its peers indicates that the group is not large enough to draw credible statistical inferences. The 25 universities surveyed had an average premium of $4,271.75 and a standard deviation[2] of $2,047 (Exhibit "G"). This equates to the new premiums being 3.7 standard deviations above the average. From conversations with the university, Plaintiff has come to understand that the population of the non-resident group is approximately 120[3] members (Plaintiff's Aff., ¶7). For this premium to be valid, this group of 120 students must be a stable, and predictable population whose risk is genuinely 3.7 standard deviations above the mean. This would make them one of the most uniquely high-risk groups of students imaginable.

A far more plausible explanation is that this extreme result is a statistical fluke caused by a small number of outlier members within a small, non-credible group. In other words, the 3.7-standard-deviation figure isn't proof of high risk, thereby justifying exorbitant premiums; it's evidence that the data is skewed by outliers and therefore should not be used as a justification for establishing a new class.

The fact that the utilization of this group is likely skewed by outliers is just one of many indications that this new class will suffer from extreme adverse

[2] The "standard deviation" is a statistical tool that describes how "spread out" a series of data points is. The standard deviation can be used to estimate the probability of a particular event. To use adult male height as an example, let's say average height is 5' 10" with a standard deviation of 3 inches. 3.7 standard deviations is equal to a person who is 6' 9" tall and the normal distribution gives an estimated probability of that event of 1/10,000.

[3] This is very close to the "small group" threshold of 100 set forth in NY CLS Ins § 4317 at which point group plans are no longer permitted to use experience rating, lending further credence that this group is not large enough to make "credible statistical inferences."

selection. The actions of the St. John's administration also indicate that there is significant heterogeneity of expected outcomes within the proposed group. From the initial email describing the "tremendous increase," the university administration has actively encouraged students to seek alternative options, indicating that they are aware that the premiums for this plan would likely not reasonably relate to the expected outcomes for the typical member of the non-resident plan (Exhibit "F"). In conversations with the administration, when asked about whether it was the result of outliers, they acknowledged that this was a possibility (Plaintiff's Aff., ¶5). Furthermore, the administration acknowledged an awareness of certain students with medical bills above $100,000 within an academic year, further reinforcing the likelihood that this comes as a result of outliers (Plaintiff's Aff., ¶6). All of this points to an indication that the group is not "sufficiently homogeneous" to avoid adverse selection and that the university administration either was aware or should have been aware that the group would be at risk of significant adverse selection. Accordingly, as a result of the issues relating to credibility and adverse selection, this cannot be considered an actuarially justifiable risk classification.

Any attempt to argue that these were always two separate classes as a result of the voluntary versus automatic enrollment mechanism is not borne out by the university's previous behavior with respect to these groups (Exhibit "B", p. 3), nor does that interpretation of "class" seem to be supported in statute or case law. The 2024-25 student health insurance documentation provides no indication that these are separate classes (Exhibit "B", p. 3). Furthermore, it is precisely the voluntary nature of the non-resident group that exacerbates the aforementioned adverse

selection issues, thereby making it less reasonable to split the group out, which will only exacerbate the problem of adverse selection for that group.

In sum, as a result of the university's previous treatment of these students as a single class, in addition to the serious actuarial concerns with the new group, all students should be considered members of a single class.

3. **The Basis for the Discrimination and the Degree of Disparity Indicates This Is Unfair Discrimination.**

As explained above, § 4224 prevents unfair discrimination against members of the same class. In this context, "unfair discrimination" means the "offering for sale to customers in a given market segment identical or similar products at different probable costs" (*Polan*, 3 A.D.3d at 33). The discrimination described means differential treatment in general, as opposed to requiring discrimination on the basis of, for example, race, gender, or age (*see Dornberger,* 961 F. Supp. at 487). In addition, the disparity in the amounts charged need not be large to recover under this statute (*see Metropolitan Life Ins. Co. v. Trilling,* 194 A.D. 178, 183 [1st Dept 1920] [holding that an insurer was entitled to equitable relief under a predecessor to § 4224 when a customer was charged 10% less than other people his age]).

Fleisher v. Phoenix Life Ins. Co. indicates that determining whether differential treatment is unfair discrimination, pursuant to 4224(b)(1) is a question of fact (18 F. Supp. 3d at 479). In ruling on a motion for summary judgment, the *Fleisher* court explained that differential treatment is not unfair if it has "a proper underwriting basis" (id at 480). At issue in that case was whether it was proper to

apply a premium increase to life insurance policies[4] for people 65 or older with face amounts[5] of greater than $1 million (id at 479). The court reasons:

> Intuitively, it seems obvious that age would be an appropriate way to classify insureds in the life insurance context—the older a person is, the higher his risk of death. However, it is not so apparent that face value is an appropriate way to classify insureds; this factor is not clearly tied to life expectancy, and it seems more closely associated with profitability.

Therefore, a proper underwriting basis for differential treatment of insureds should be a factor that is "clearly tied" to the insurance risk.

Here, the fact that the differential treatment is based on students' resident status and that there is a 235% price difference indicates that this is unfair discrimination. Basing the premium differential on the resident status is comparable to the discrimination based on "face amount" in *Fleisher* insofar as it bears very little or even no relation to the risk of the insureds. The only other explanation for the difference in claim experience is that participation in the plan is voluntary but, as discussed above, that is tantamount to an admission that the defining characteristic of this group is the adverse selection it has experienced which ASOP No. 12 explicitly says to avoid when establishing a new risk class.

With regard to the extreme disparity of premiums between the classes, Plaintiff respectfully proposes that a plain reading § 4224(b)(1) implies a requirement that, when deciding to split a class, the level of actuarial rigor be at

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[4] The court in *Fleisher* analyzed "unfair discrimination" pursuant to 4224(a)(1) but the court explicitly stated that, given that the language is nearly identical, analysis of what constitutes unfair discrimination under 4224(a)(1) "is equally applicable" in the health insurance context and vice versa.

[5] "face amounts" refers to the amount that a policy pays out to a beneficiary.

least somewhat commensurate with the disparity of the result. The dearth of actuarial justifiability in concert with the extreme difference does not measure up.

In conclusion, while Plaintiff acknowledges that insurance providers need a certain amount of flexibility to provide their services, this goes too far and is the sort of unfair discrimination that § 4224(b)(1) is intended to prevent. Ultimately, the university's historical treatment of these groups as a single class, the extreme disparity in premiums, the small group size, the many indicia of adverse selection risks, and the likely presence of outliers in the group all indicate that this is unlawful discrimination against members of the same class.

B. Plaintiff Will Suffer Immediate Irreparable Harm Absent a TRO

Irreparable harm is defined as harm for which monetary damages are insufficient (*Nobu Next Door, LLC*, 4 N.Y.3d at 840). Plaintiff faces immediate and irreparable injury, as a result of the defendants' actions. The deadline for non-resident students to enroll in SHIP is September 18, 2025 (Exhibit "F"). Given the aforementioned adverse selection risks, it is highly likely that the plan will suffer a "death spiral" and will cease to be offered next year as a result (*see* Cutler & Zeckhauser, *supra*, at 5 [describing a case study wherein a roughly 2.5x increase in premiums caused an employer health plan to become untenable and was disbanded the following year]). This is comparable to *Int'l Union of Operating Eng'rs, Local No. 463 v. City of Niagara Falls* where the loss of access to an employer-sponsored healthcare plan was an irreparable harm of the sort that would merit a preliminary

injunction (191 Misc. 2d at 379). ("The court finds that health care coverage is a very important employee benefit and a loss of or reduction in coverage cannot be measured solely by monetary damages."); *but see Mangovski v. DiMarco,* 175 A.D.3d 947, 949.

Therefore, due to the peculiarities of the student health insurance enrollment process, if the defendants are not enjoined from discriminating against members of the same class in violation of § 4224, Plaintiff will suffer immediate and irreparable harm.

C. The Balance of Equities Favors Plaintiff

The balance of equities weighs heavily in Plaintiff's favor. Granting the TRO will merely preserve the status quo, while denying it would allow the defendants to continue actions that will cause irreparable harm to Plaintiff. When deciding the plan arrangement for this year, the university was presented with an option to raise premiums 10% across the board (Plaintiff's Aff., ¶8). Given that the current SHIP scheme is likely to cause Plaintiff (and other similar students) to completely lose access to the student health insurance program and the alternative is a modest increase in premiums for other students, the balance of equities weighs in Plaintiff's favor.

II. PROCEDURAL REQUIREMENTS HAVE BEEN SATISFIED

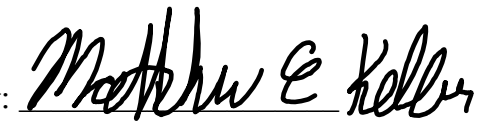
Plaintiff has complied with all procedural requirements for the issuance of a TRO. The TRO and supporting papers will be personally served on Defendant in accordance with CPLR 6313(b), unless the Court orders otherwise. Additionally, Plaintiff is prepared to provide an undertaking in an amount to be fixed by the Court, as required by CPLR 6312(b).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Order to Show Cause with a Temporary Restraining Order, and schedule a hearing on the motion for a preliminary injunction at the earliest possible time.

Dated: August 14, 2025
Sunnyside, New York

Respectfully submitted,

By: 

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DOCUMENT LENGTH CERTIFICATION

Pursuant to NY CLS Unif Rules, Civil Cts § 202.8-b, I hereby certify that the length of this document complies with the limit of 7,000 words because it is 3,965 words long, excluding the caption, table of contents, table of authorities, and signature block.

Matthew E. Keller, pro se