UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED HEALTHCARE INSURANCE — NO. 07-532-RET-DLD

VERSUS

HONORABLE KATHLEEN BLANCO
THE GOVERNOR OF THE STATE
OF LOUISIANA

Consolidated with

HUMANA INSURANCE COMPANY
AND HUMANA HEALTH BENEFIT
PLAN OF LOUISIANA, INC — NO. 05-594

VERSUS

JERRY LUKE LEBLANC, et al

AMENDED RULING ON MOTION FOR NEW TRIAL AND/OR MOTION TO ALTER OR AMEND JUDGMENT

Before the Court is a Motion for New Trial or to Alter or Amend Judgment (Doc. No. 54) filed by Intervenors Preston Taylor, Gloria Taylor, Leon Price, and Sherra Fertitta Hicks ("Covered Persons") and Vantage Health Plan ("Vantage") (jointly referred to as "Movers"). Plaintiffs United Healthcare Insurance Company (United) and Humana Insurance Company and Humana Health Benefit Plan of Louisiana (Humana) have filed opposition. Jurisdiction is based upon federal question, as Plaintiff asserts claims pursuant to the dormant Commerce Clause of the United States Constitution. Having reviewed the submissions of the

parties, the record, and the pertinent law, the Court will **DENY** Interveners' Motion for New Trial and/or Motion to Alter or Amend Judgment.

I. Factual and Procedural Background

The factual background of this litigation is fully set forth in the Court's October 7, 2007 ruling[1]. To briefly summarize, however, this is a consolidated action for preliminary and permanent injunctive relief and declaratory judgment brought by Plaintiffs Humana Insurance Company and Humana Health Benefit Plan of Louisiana, Inc. (Collectively "Humana") and United HealthCare Insurance Company ("United"). Humana Insurance Company is a business corporation with its principal place of business in the state of Kentucky that is authorized to do business in the State of Louisiana. Humana Health Benefit Plan of Louisiana, Inc. is a health maintenance organization under the laws of the State of Louisiana, with its principal place of business in the State of Louisiana. United is a Connecticut healthcare corporation doing business in the State of Louisiana.

Both Humana and United entered into contractual agreements with the Office of Group Benefits ("OGB"), an executive branch agency within the Division of Administration of the Office of the Governor of the State of Louisiana.[2] The OGB procures and administers benefits for state employees, their dependents, and state retirees ("Participants") in nine separate specifically defined regions of

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[1] **Humana Insurance Company vs. Jerry Luke LeBlanc, et. al.**, 524 F.Supp.2d 764 (M.D. La. 2007).

[2] La. R.S. 42:801(2007).

the state. Humana contracted to provide Administrative Services Only (ASO) for the OGB's' self-insured HMO plan and fully-insured Medicare Advantage plans to Medicare eligible OGB retirees. United contracted to provide ASO for the OGB's self-insured Exclusive Provider Organization (EPO) Plan.

On July 19, 2007, House Bill 247 was signed into law as Act 479 (2007) ("the Act"), amending La. R.S. 42:802(B) (6) and enacting La. R.S. 42:802.1. The Act mandated that the OGB solicit proposals from and award fully-insured contracts to up to three "Louisiana HMOs"[3] in each of the state's nine regions, defining the term "Louisiana HMOs" to exclude companies such as Humana and United.

On July 27, 2007, United filed a complaint alleging that Act 479 violated the Contract and Commerce Clauses as well as the Fifth and Fourteenth Amendments. On these premises, United sought several forms of relief: a declaratory judgment holding that Act 479 is unconstitutional, preliminary and permanent injunctive relief, and attorney's fees.

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[3] Act 479 defines the term "Louisiana HMO" as a health maintenance organization which meets ALL of the following criteria:

1) Offers fully insured commercial and/or Medicare Advantage products;
2) Is domiciled, licensed, and operating within the state;
3) Maintains its primary corporate office and at least seventy percent of its employees in the state; and
4) Maintains within the state its core business functions which include utilization review services, claim payment processes, customer service call centers, enrollment services, information technology services, and provider relations.

On August 1, 2007, pursuant to the provisions of Act 479, OGB publicly issued two Notices of Intent to Contract (NIC): one for a fully-insured HMO and a second for a Medicare Advantage Plan. The NICs requested proposals from any Louisiana HMO to provide fully-insured HMO coverage on a regional basis, as well as to provide Medicare Advantage HMO coverage on a statewide basis.

Shortly thereafter, on August 15, 2007, Humana filed a Complaint and Motion for Temporary Restraining Order ("TRO"). Like United, Humana alleged that the Act violated the Contract and Commerce Clauses, as well as the Fifth and Fourteenth Amendments. Humana further alleged that enforcement of the Act subjected it to an actionable deprivation of its rights, privileges, and immunities secured by the Constitution and laws of the United States pursuant to 42 U.S.C. § 1983.[4]

On August 29, 2007, Preston Taylor, Gloria Taylor, Leon Price, and Sherra Fertitta Hicks ("Covered Persons") moved to intervene. Vantage Health Plan, Inc. ("Vantage") also moved to intervene on August 30, 2007. Both parties' motions to intervene were granted by the Court on September 6, 2007.

This Court issued a temporary restraining order enjoining implementation of the Act on September 7, 2007. This TRO was extended and maintained through completion of the trial on the merits on the preliminary and permanent injunction.

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[4] Humana Compl. at 3.

Thereafter the Court received testimony and physical evidence in this matter at hearings that were conducted over the course of five (5) days between September 14 and October 12, 2007.

On October 31, 2007 the Court granted a permanent injunction in favor of Plaintiffs, United and Humana, declaring the provisions of Act 479 to be unconstitutional as a violation of the Commerce Clause of the United States Constitution. This ruling was reflected in this Court's November 5, 2007 judgment.

Post-trial motions filed by the other defendants were denied on September 19, 2008 (Doc. No. 156). Thus, the instant Motion for New Trial and/or Motion to Alter or Amend Judgment (Doc. No. 131) raise the only remaining unresolved issues in this litigation. The Court now addresses the merits of these final motions.

II. Motion for a New Trial

The Federal Rules of Civil Procedure provide that any party may file a motion to alter or amend a judgment within ten business days after its entry.[5] Under Rule 59, a district court enjoys considerable discretion in granting or

[5] FRCP 59(e).

denying such a motion.[6] There are certain grounds upon which a Court may grant a Rule 59 motion for reconsideration or to alter or amend the judgment. These grounds include: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, (3) the need to correct a clear error of law or prevent manifest injustice.[7]

A Rule 59(e) motion "calls into question the correctness of a judgment."[8] The Fifth Circuit has held that such a motion is not the proper vehicle for rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment.[9] Rather, Rule 59(e) "serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence."[10] Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly.[11]

III. Discussion

Movers seek a new trial on the grounds that the Court committed manifest errors of both fact and law in finding that Act 479 violates the Commerce Clause.

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[6] **Lavespere v. Niagara Mach. & Tool Works, Inc.**, 910 F.2d 167, 173 (5th Cir. 1990); **First Commonweatlh Corp. v. Hibernia Nat. Bank of New Orleans**, 891 F.Supp. 290 (E.D.La. 1995), amended 896 F.Supp. 634, aff'd 85 F.3d 622.

[7] **In re Benjamin Moore & Co.**, 318 F.3d 626, 629 (5th Cir. 2002).

[8] **Templet v. HydroChem Inc.**, 367 F.3d 473, 478-79 (5th Cir. 2004) (citing **In re Transtexas Gas Corp.**, 303 F.3d 571, 581 (5th Cir. 2002)).

[9] **Id.**

[10] **Id.**

[11] **Id.**

Movers further contend that when a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause.

United and Humana oppose, asserting that Movers have failed to allege a change in controlling law and that movers have not presented new evidence. United and Humana also argue that there is no "manifest injustice" in the reasons given by this Court and that there is no manifest error of law or fact upon which the judgment is based. Mere disagreement with the outcome, United and Humana urge, is not grounds for relief under Rule 59. The Court agrees.

Movers have not successfully alleged any of the grounds upon which this Court can grant the instant Rule 59 motion. An intervening change in the controlling law has not occurred; and further, Movers have not suggested that previously unavailable evidence has become available. This Court's ruling did not create a manifest injustice, nor was there a manifest error of law upon which the judgment was based. Therefore, the Court denies Movers' Motion for New Trial and/or to Alter or Amend Judgment. However, even if the Court were to consider the instant motion on its merits, Movers would still not be entitled to relief for the reasons outlined below.

A. Act 479 Violates the Commerce Clause

The Commerce Clause of the United States Constitution grants Congress the power "to regulate Commerce with foreign Nations, and among the several

States."[12] Although the Constitution does not in terms limit the power of States to regulate commerce, Courts have long interpreted the Commerce Clause as an implicit restraint on state authority, even in the absence of a conflicting federal statute.[13]

In determining whether Act 479 violates the Commerce Clause, the first step is to determine whether it discriminates against interstate commerce or whether it regulates evenhandedly with only incidental effects on interstate commerce. State regulations violate the dormant Commerce Clause by discriminating against or unduly burdening foreign or interstate commerce.[14] A statute discriminates against interstate commerce when it provides for "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter."[15] Regulations that discriminate facially or by effect are virtually per se invalid.[16] Absent a facially discriminatory purpose, a State statute or regulation is discriminatory when it provides for differential treatment of similarly situated entities based upon their contacts with the State or

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[12] U.S. Const., Art. I § 8, cl.3.

[13] **United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.,** 550 U.S. 330, 338 (U.S. 2007).

[14] **Piazza's Seafood World, LLC v. Odom**, 448 F.3d 744, 750 (5th Cir. La. 2006).

[15] **Ford Motor Co. v. Tex. DOT**, 264 F.3d 493, 499 (5th Cir. Tex. 2001).

[16] **Id**.

has the effect of providing a competitive advantage to in-state interests vis-a-vis similarly situated out-of-state interests.[17]

On the other hand, regulations that merely burden commerce are valid "unless 'the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'"[18] Considering all of the above, the Court now turns to the merits of the question whether Act 479 violates the Commerce Clause.

1. Act 479 is Facially Discriminatory

The first way a statute may violate the dormant Commerce Clause is when it is facially discriminatory.[19] Movers contend that the language of Act 479 is not facially discriminatory because the inclusion of Louisiana HMOs who submit competitive bids in the state's plan of benefits does not discriminate against commerce. Movers further contend that nothing in Act 479's language prevents out-of-state providers from also submitting competitive bids and being included in state's plan of benefits.

United and Humana counter and argue that Act 479, on its face, affirmatively discriminates against interstate commerce because it disadvantages interstate commerce relative to intrastate commerce. Again, the Court agrees.

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[17] **Id**.

[18] **Piazza's Seafood World, LLC v. Odom**, 448 F.3d 744, 750 (5th Cir. La. 2006).

[19] **Ford Motor Co. v. Tex. DOT**, 264 F.3d 493, 499 (5th Cir. Tex. 2001).

Act 479 provides in pertinent part:

A. In the development of contracts for health insurance plans intended to be offered in each of the office's regions, the office shall utilize a solicitation for proposals or other competitive process to determine whether there exists a Louisiana HMO which is licensed and authorized to sell insurance in that region. In the event that a Louisiana HMO submits a competitive offer, proposal, bid, or other response to such solicitation, then the office shall include that Louisiana HMO in its plan of benefits for that region. However, if more than three different Louisiana HMOs submit competitive offers, proposals, or bids for a region, then the office shall select at least three Louisiana HMOs for inclusion in the plan of benefits for that region. The selection shall be based on a comparison of the quotes of each competitor for coverage of an active single insured which have been adjusted to an actuarially equivalent basis.

...

C. As used in this Section, the term "Louisiana HMO" means a health maintenance organization which meets all of the following criteria:

(1) Offers fully insured commercial and/or Medicare Advantage products.

(2) Is domiciled, licensed, and operating within the state.

(3) Maintains its primary corporate office and at least seventy percent of its employees in the state.

(4) Maintains within the state its core business functions which include utilization review services, claim payment processes, customer service call centers, enrollment services, information technology services, and provider relations.[20]

Fifth Circuit dormant Commerce Clause jurisprudence finds discrimination only when a State discriminates among similarly situated in-state and out-of-state

[20] Act 479 (2007).

interests.[21] Such is the case here. Vantage, United, and Humana are all similarly situated health maintenance organizations. All three companies offer fully insured commercial and/or Medicare Advantage products. The difference between them is that Vantage functions as an in-state interest whereas United and Humana do not. Vantage qualifies as a Louisiana HMO because it meets the qualifications mandated by the statute – it is domiciled, licensed, and operating within the state; it maintains its primary corporate office and at least seventy percent of its employees in the state; and it maintains its core business functions within the state. Because Vantage qualifies as a Louisiana HMO pursuant to the statute, it enjoys the advantage of automatic inclusion in the State's plan of benefits so long as it submits a competitive bid.[22]

On the other hand, United and Humana are out-of-state interests. While both may submit bids for inclusion in the state's plan of benefits, neither qualifies as a Louisiana HMO. This distinction puts United and Humana at a disadvantage to Louisiana HMOs such as Vantage. Act 479 all but guarantees the acceptance of a competitive bid from a Louisiana HMO, but is silent on the acceptance or rejection of an out-of-state HMO's competitive bid. This omission suggests that

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[21] **Ford Motor Co. v. Tex. DOT**, 264 F.3d 493, 500 (5th Cir. Tex. 2001).

[22] The Court acknowledges that if three or more Louisiana HMO's submit competitive bids, "at least three" of them will be included in the State's plan of benefits. Thus, automatic inclusion of a Louisiana HMO would only occur if three or fewer Louisiana HMOs submitted competitive bids.

Louisiana HMOs enjoy preferential treatment over out-of-state HMOs with respect to inclusion in the state's plan of benefits.

For these reasons, the Court finds that the plain language of Act 479 facially discriminates against out-of-state economic interests in favor of Louisiana economic interests and is per se invalid.

2. Act 479 is Discriminatory by Effect

A statute also violates the dormant Commerce Clause if it discriminates by effect.[23] Here, Act 479 discriminates by effect because it inhibits the ability of out-of-state HMOs to fairly compete with Louisiana HMOs. When both a Louisiana and a non-Louisiana HMO submit a competitive bid for inclusion in the state's plan of benefits, Act 479, in effect, mandates that the Louisiana HMO be chosen.[24]

While Movers argue that nothing in Act 479's language prevents out-of-state providers from also submitting competitive bids and being included in the state's plan of benefits, this contention is misleading. If the OGB is soliciting bids for one contract, an out-of-state HMO's submission of a competitive bid is a vain and useless act because of Act 479's mandate that a Louisiana HMO be chosen

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[23] **Ford Motor Co. v. Tex. DOT**, 264 F.3d 493, 499 (5th Cir. Tex. 2001).

[24] Act 479 (2007). ("In the event that a Louisiana HMO submits a competitive offer, proposal, bid, or other response to such solicitation, then the office shall include that Louisiana HMO in its plan of benefits for that region.... if more than three different Louisiana HMOs submit competitive offers, proposals, or bids for a region, then the office shall select at least three Louisiana HMOs for inclusion in the plan of benefits for that region.")

to the exclusion of a more competitive bid by a non-Louisiana HMO. Thus, Act 479 has the effect of including Louisiana HMOs to the exclusion of out-of-state interests.

Movers also argue that the OGB "can seek bids and is perfectly free to seek offers from any and all providers, whether in state or out of state." While this may be true, Act 479 does not give the OGB the freedom to *accept* bids from any company it chooses. Instead, Act 479 mandates that up to at least three Louisiana HMOs that submit competitive bids be automatically included in the state's plan of benefits while non-Louisiana HMOs enjoy no such guarantee. The discrimination against non-Louisiana HMOs in favor of Louisiana HMOs is clear and unquestionable.

Furthermore, Act 479 compliance imposes additional administrative and operating costs on non-Louisiana HMOs that wish to enjoy the same benefits as Louisiana HMOs. At the trial of the permanent injunction, both United and Humana testified about the widespread investment each has made in the state of Louisiana. Yet, despite the extensive steps which each company has taken to employ staff and provide utilization management within the state, neither qualifies as a Louisiana HMO under the Act. Thus, and pursuant to the Act, neither will enjoy automatic inclusion in the state's plan of benefits by mere submission of a competitive bid. By effect, Act 479 makes it far less profitable for out-of-state

providers to enter or remain in the market because of its mandate that the state grant contracts to Louisiana HMOs that submit a "competitive" bid.

Therefore, and applying all of the foregoing precepts to this case, the Court finds that Act 479 also discriminates in practical effect against interstate commerce.

3. Act 479 Does Not Further a Legitimate Local Purpose Unrelated to Economic Protectionism

Although the Court has found that Act 479 is facially discriminatory and discriminatory by effect, the analysis does not end there. A state law that affirmatively discriminates against interstate commerce, either facially or in practical effect is constitutionally valid only if the state shows that the law actually furthers a "legitimate local purpose" and that this purpose could not be served as well by available nondiscriminatory means.[25] A state law affirmatively discriminates against interstate commerce if it disadvantages interstate commerce relative to intrastate commerce.[26] To be legitimate, the local purpose must be unrelated to economic protectionism.[27] The burden of establishing that a

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[25] **Oregon Waste Systems, Inc. v. Dept. of Envtl. Quality**, 511 U.S. 93, 99-101, 128 L. Ed. 2d 13, 114 S. Ct. 1345 (1994).

[26] **Id**. at 99.

[27] The dormant Commerce Clause "'prohibits economic protectionism--that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" (quoting **Wyoming v. Oklahoma**, 502 U.S. 437, 112 S. Ct. 789, 800, 117 L. Ed. 2d 1 (1992)).

challenged statute has a discriminatory purpose under the Commerce Clause falls on the party challenging the provision.[28]

Because the Court finds that Act 479 discriminates against interstate commerce, the burden now shifts to the state to show that Act 479 serves a legitimate local purpose which could not be served as well by available nondiscriminatory means. The state has not met this burden because it has failed to show that the local purpose of Act 479 is unrelated to economic protectionism.

A regulatory measure designed to benefit in-state economic interests by burdening out-of-state competitors is considered to be a form of economic protectionism.[29] Here, Act 479 benefits Louisiana HMO's that submit competitive bids by guaranteeing their inclusion in the state's plan of benefits. Out-of-state competitors are not provided the same advantage as Louisiana HMOs unless they meet the requirements to become Louisiana HMOs as defined by the Act. Such a feat is unquestionably burdensome to large nationwide HMOs, such as United and Humana, who maintain centralized processing centers in other parts of the country. Therefore, because Act 479 is designed to benefit Louisiana HMOs by burdening non-Louisiana HMOs, the Court finds that it is related to economic protectionism, and thus does not further a legitimate local purpose.

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[28] **Allstate Ins. Co. v. Abbott**, 495 F.3d 151, 160 (5th Cir. Tex. 2007).

[29] **Nat'l Solid Waste Mgmt. Ass'n v. Pine Belt Reg'l Solid Waste Mgmt. Auth.**, 389 F.3d 491, 497 (5th Cir. Miss. 2004).

B. OGB is not a Market Participant and thus Cannot Escape Commerce Clause Scrutiny

If a state acts as a market participant, it is not subject to Commerce Clause scrutiny.[30] Movers argue that the OGB, as a state agency, acted as a market participant in executing the contracts with United and Humana for administration of the self-insured EPO and HMO plans. For this reason, Movers argue that Act 479 is therefore is not subject to Commerce Clause scrutiny.

United and Humana disagree and argue that the market participant doctrine does not apply to the instant case because instead of acting as a true market participant, the State is impermissibly attempting to regulate downstream markets. The market participant exception is not applicable to the regulation of downstream markets in which the state is not a participant.[31] Thus, a state statute which attempts to do so cannot pass constitutional muster. Yet again, the Court agrees.

The market participant doctrine distinguishes between a state's role as a regulator, on the one hand, and its role as a market participant, on the other. Under the market-participant doctrine, a State is permitted to exercise "independent discretion as to parties with whom [it] will deal."[32] The doctrine thus

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[30] **South-Central Timber Development, Inc. v. Wunnicke**, 467 U.S. 82, 93, 104 S. Ct. 2237, 81 L. Ed. 2d 71 (1984).

[31] **Id.**

[32] **Reeves, Inc. v. Stake**, 447 U.S. 429, 438-439, 100 S. Ct. 2271, 65 L. Ed. 2d 244 (1980).

allows states to engage in certain otherwise-discriminatory practices (e.g., selling exclusively to, or buying exclusively from, the State's own residents), so long as the State is "acting as a market participant, rather than as a market regulator."[33] If the State is acting as a market participant, rather than as a market regulator, the dormant Commerce Clause places no limitation on its activities.[34]

A state may not avail itself of the market-participant doctrine to immunize its downstream regulation of a market in which it is not a participant.[35] However, such is the case here. While the State may be a participant in the market of creating plans of insurance benefits for its employees, in this case, it goes a step further by impermissibly attempting to regulate downstream markets in which it is not a participant.

Local HMOs that wish to be qualified as Louisiana HMOs pursuant to Act 479 must maintain their core business functions within the state. These functions include utilization review services, claim payment processes, customer service call centers, enrollment services, information technology services, and provider relations. Upon meeting those requirements along with domiciliary and licensure requirements, those local HMOs qualify as Louisiana HMOs pursuant to the Act. Under Act 479 however, should a Louisiana HMO wish to contract with out-of-

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[33] **South-Central Timber Development, Inc. v. Wunnicke**, 467 U.S. 82, 93, 104 S. Ct. 2237, 81 L. Ed. 2d 71 (1984) (emphasis added).

[34] **South-Central Timber Dev., Inc. v. Wunnicke,** 467 U.S. 82, 93 (1984).

[35] **Id.**

state companies to perform any of the above functions, it no longer qualifies as a Louisiana HMO. Thus, while admittedly indirectly, Act 479 attempts to impermissibly regulate downstream markets in which the State is not a participant and, therefore, the market-participant doctrine does not apply.

C. The McCarran-Ferguson Act Does Not Apply to Act 479

Finally, Movers argue that because Act 479 regulates insurance, the McCarran-Ferguson Act, which regulates the business of insurance, shields it from dormant Commerce Clause scrutiny. Movers contend that if the state is acting as a market regulator, then the McCarran-Ferguson Act removes the Commerce Clause limitations with respect to the State's regulation of insurance. Further, movers assert that the Louisiana Legislature passed Act 479 for the purpose of regulating insurance, thus Act 479 should not be subject to Commerce Clause scrutiny.

United and Humana argue that the McCarran-Ferguson Act does not apply to the instant case because Act 479 does not regulate the "business of insurance." Both contend that Act 479 does not attempt to impose an obligation on the relationship between all insurers doing business in Louisiana and their insured, but rather it attempts to impose an obligation to include Louisiana HMOs in the state's plan of benefits in a manner which undermines the existing contractual relationship between the OGB and both companies. The plaintiffs are correct.

The McCarran-Ferguson Act provides in pertinent part:

§ 1011. Declaration of policy

The Congress hereby declares that the continued regulation and taxation by the several States of the ***business of insurance*** is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

§ 1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948

> (a) State regulation. The ***business of insurance***, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.
> (b) Federal regulation. No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the ***business of insurance***, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act [15 USCS §§ 1 et seq.], and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 USCS §§ 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State law.[36]

The United States Supreme Court has noted several instances when state statues regulate the "business of insurance": 1) state statutes aimed at protecting or regulating the relationship between the insurance company and the policyholder, whether directly or indirectly[37]; 2) state laws concerning the fixing of

[36] 15 U.S.C. §§ 1011 - 1012. (emphasis added)

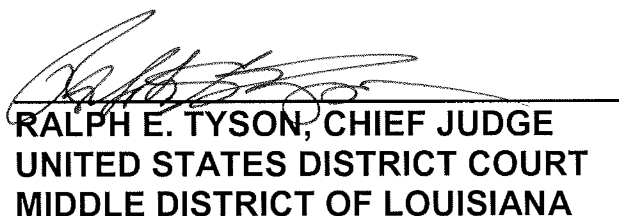
[37] **SEC v National Secur., Inc.,** 393 US 453, 21 L Ed 2d 668, 89 S Ct 564(1969).

rates by insurance companies[38]; 3) state regulation of insurers' advertising practices[39]; 4) laws which impose certain requirements for the protection of policyholders with respect to the merger of insurers[40]; 5) state laws which affect the priority of claims against insolvent insurers[41]; and 6) state laws which impose a tax on foreign insurers.[42] Because Act 479 does not even remotely attempt to achieve any of the above purposes constituting the "business of insurance," it is not shielded from Commerce Clause scrutiny by the McCarran-Ferguson Act.

Accordingly, for the above and foregoing reasons,

IT IS ORDERED that the Motion for New Trial and Motion to Alter or Amend Judgment filed by Intervenors Preston Taylor, Gloria Taylor, Leon Price, and Sherra Fertitta Hicks and Vantage Health Plan (Doc. No. 131) is **DENIED**.

Signed in Baton Rouge, Louisiana, on March 2, 2009.



RALPH E. TYSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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[38] **Id.**

[39] **FTC v National Casualty Co.,** 357 US 560, 2 L Ed 2d 1540, 78 S Ct 1260 (1958).

[40] **South-Central Timber Dev., Inc. v. Wunnicke,** 467 U.S. 82, 93 (1984).

[41] **United States Dep't of Treasury v Fabe** , 124 L Ed 2d 449, 113 S Ct 2202 (1993).

[42] **Prudential Ins. Co. v Benjamin**, 328 US 408, 90 L Ed 1342, 66 S Ct 1142 (1946).