



**STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION
DIVISION OF INSURANCE
1511 PONTIAC AVENUE, BUILDING 69-2
CRANSTON, RI 02920**

IN THE MATTER OF:

**JOHN HANCOCK LIFE & HEALTH
INSURANCE COMPANY**

RESPONDENT.

DBR No.: 2020-IN-006

CONSENT AGREEMENT

It is hereby agreed between the Department of Business Regulation (“Department”) and John Hancock Life & Health Insurance Company (NAIC Company Code 93610) (“Respondent” or the “Company”) as follows:

1. Respondent John Hancock Life & Health Insurance Company holds a life company insurance certificate and is domiciled under the laws of Massachusetts.
2. The relevant period for purposes of this Agreement is January 1, 2016 through December 31, 2018, and Respondent has been licensed in Rhode Island throughout that period.

Retaliatory and Reciprocal Non-Retaliatory Insurance Laws

3. Rhode Island has had a retaliatory statute since 1896 that requires a foreign insurer operating in Rhode Island to be treated the same way that a Rhode Island insurer operating in the state in which the insurer is domiciled.¹ That retaliatory law applies to “any fees, charges, taxes, deposits of money or of securities, or other obligations or prohibitions are imposed on insurance companies incorporated or organized under the laws of this state or on the insurance producers of

¹ R.I. Gen. Laws § 27-2-17(a), the first version of which was adopted in 1896 as Rhode Island Public Statute, Chapter 156, Chapter 181, Section 23.



the insurance companies.” The intent of this law is to discourage states from creating high barriers to entry on foreign insurers; states would be hesitant to create high barriers to entry on foreign insurers because, through retaliation, its own domestic insurers would be subject to similar high barriers in every other state in which it operates. The application of this law requires a Massachusetts domiciled insurer operating in Rhode Island to analyze each fee its domestic state (Massachusetts) charges Rhode Island companies and then pay to Rhode Island the higher of the Rhode Island or Massachusetts fee. All states but Hawaii have adopted similar retaliatory statutes.

4. In 1994, Rhode Island also adopted a reciprocal non-retaliatory statute with respect to taxes and fees.² This statute eliminates retaliatory “taxes or other charges” on insurers from states that agree by statute to also eliminate the retaliatory impact on Rhode Island insurers. The law is relatively unique and the Division of Insurance (the “Division”) is only aware of five states with similar provisions of statute, and not all such statutes are identical.³ Massachusetts is a state that adopted a reciprocal non-retaliatory statute, but the Massachusetts statute is different from the Rhode Island non-retaliatory statute.⁴

5. The Division reached this conclusion after it reviewed the Massachusetts statute authorizing retaliatory taxes, fees and other charges and compared that to the language in the Massachusetts reciprocal non-retaliatory tax statute.⁵ Mass. Gen. Laws Ch. 175, §159 creates the retaliatory impact for Massachusetts, and it applies to “taxes, fines, penalties, licenses, fees,

² R.I. Gen. Laws § 27-2-17(d).

³ Rhode Island, Massachusetts, New York, Minnesota and Arizona all have retaliatory insurance laws and then reciprocal non-retaliatory laws. Hawaii does not have a retaliatory insurance law, so seemingly would also be exempt from insurance tax and fee retaliation.

⁴ Compare R.I. Gen. Laws § 27-2-17(d) to Mass. Gen. Laws Ch. 63, § 24A.

⁵ Compare Mass. Gen. Laws Ch. 175 § 159 to Mass. Gen. Laws Ch. 63, § 24A.



deposits or other obligations.” Mass. Gen. Laws Ch. 63, § 24A, their non-retaliatory tax law, only refers to taxes and does not address fees, assessments or any other similar charges. The Massachusetts non-retaliatory tax law even defines the term “retaliatory tax” for the purposes of that section of law and does so in a very narrow way.⁶ In comparison, the Rhode Island non-retaliatory law clearly identifies both taxes as well as other charges.

Massachusetts Fees on Licensed Insurers

6. The Commonwealth of Massachusetts (“Massachusetts”) collects revenues from insurers doing business in that state. It does this through a number of mechanisms, including an insurance premium tax, an annual company licensing fee that varies based on the type of license held, annual statement filing fees, and among other fees, assessing licensed companies annually for specific costs that state’s insurance division has budgeted to incur during the year.

7. Massachusetts bills licensed insurers for an “Operations Assessment,” that is authorized by Mass. General Law 26, Section 8C and is calculated annually “to produce revenue to reimburse the Commonwealth for funds appropriated for the operation of the division of insurance...” That fee varied from year to year, but the fee has been assessed since at least 2016, and during the relevant period the fees were \$14,006.09 in 2016, \$14,503.83 (\$14,567.33 minus a subsequent \$63.50 refund) in 2017 and \$14,367.83 in 2018.

8. During that time, Rhode Island charged licensed life insurance companies an annual filing fee of \$100 and certificate renewal fees of \$100, in addition to a publications fee of \$25. Rhode Island does not issue any operational assessments to fund the Department.

⁶ ‘As used herein, "retaliatory taxes" means those taxes imposed upon insurance companies organized in another state or country which result from the fact that an insurance company organized in the taxing jurisdiction and doing business in such other state or country is taxable in an amount exceeding that imposed by the taxing jurisdiction upon an insurance company organized in such other state or country and doing business to the same extent in the taxing jurisdiction.’



The Current Issue

9. In December 2019, the Division sent a letter to Respondent identifying that the Division had reviewed the Massachusetts reciprocal non-retaliatory law and found that it only applied to taxes but did not apply to fees. The Division further identified that it had become aware of the Operations Assessment and that Rhode Island did not charge a similar fee related to their holding a Rhode Island license. The Division then asked John Hancock to review its retaliatory fee payments from 2016-2018 in light of the information in that letter.

10. After several discussions, the Department issued an Order to Show Cause beginning an administrative action on July 21, 2020.

Applicable Laws

11. R.I. Gen. Laws § 27-2-17(a) states “[w]henever, by the laws of any other state of the United States, any fees, charges, taxes, deposits of money or of securities, or other obligations or prohibitions are imposed on insurance companies incorporated or organized under the laws of this state or on the insurance producers of the insurance companies, so long as the laws continue in force, the fees, charges, taxes, deposits, and obligations shall be imposed on the insurance companies doing business in this state which are incorporated or organized under the laws of the other state and on their insurance producers.”

12. R.I. Gen. Laws § 27-2-17(d) states that “The provisions of this section shall not apply to insurance companies incorporated or organized under the laws of a state or country whose laws do not impose retaliatory taxes or other charges or which grant, on a reciprocal basis, exemptions from those taxes or other charges to insurance companies incorporated or organized under the laws of this state.”



13. R.I. Gen. Laws § 42-14-16(a) gives the Director authority over “any person or entity conducting any activities requiring licensure under title 27,” with provisions thereunder authorizing the assessment of administrative penalties.

AGREEMENT

THEREFORE, based on the foregoing, Respondent and the Department have decided to resolve this matter without further administrative proceedings and hereby agree to the following:

- I. Respondent acknowledges that R.I. Gen. Laws § 27-2-17(a) requires the payment of retaliatory fees and taxes based on the Massachusetts annual operations assessment based on a comparison of the current laws of Massachusetts;
- II. Respondent agrees to pay the Massachusetts operations assessments for 2016, 2017 and 2018 as retaliatory fees to the Department, totaling \$42,877.75 within 30 days of this agreement.
- III. Respondent agrees to pay, in a timely manner, the Massachusetts operations assessments for 2019, 2020, and on a going-forward basis as retaliatory fees to the Department unless a statutory change impacts the analysis contained herein.
- IV. Respondent agrees to pay an administrative penalty of two thousand dollars (\$2,000) within thirty (30) days.
- V. Waiver of Hearing and Appeal. By agreeing to resolve this matter through the execution of this Consent Agreement, Respondent knowingly and voluntarily waives any right to an administrative hearing and waives any right to pursue an appeal to the Superior Court under the Rhode Island Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq.
- VI. Enforcement. If the Respondent fails to comply with any term or condition of this Consent Agreement within any applicable time period set forth herein, the Respondent will be in



violation hereunder and the Department shall be entitled to immediately to take enforcement or other action in accordance with applicable law.

- VII. Compliance; Other Laws. Compliance with the terms of this Consent Agreement does not relieve the Respondent of any obligation to comply with other applicable laws or regulations administered by or through the Department or any other governmental agency.

Counsel for the Department and Respondent hereby consent and agree to the foregoing on behalf of their respective clients this 30th day of October, 2020.

Department of Business Regulation
By its Legal Counsel,

A handwritten signature in blue ink that reads "Matthew M. Gendron".

Matthew M. Gendron, Esq.

John Hancock Life & Health Insurance
Company

By its Officer,

A handwritten signature in blue ink that reads "Rick A. Carlson".

Rick A. Carlson

Vice President & Tax Controller