

Exhibit E

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Attorney for Plaintiff

ANDREW A. McELWEE, JR., In His
Capacity as Attorney-in-Fact
For Grace McElwee and All Others
Similarly Situated)

ANDREW A. McELWEE, JR., (In his	)	SUPERIOR COURT OF NEW JERSEY
Capacity as Attorney-in-Fact for	)	LAW DIVISION; SOMERSET
Grace L. McElwee, and on behalf	)	COUNTY
Of all those similarly situated),	)	Docket No. SOM-L-83-15
)	
Plaintiffs,	)	Civil Action
)	
v.)	
	)	SECOND AMENDED CLASS ACTION
	)	COMPLAINT AND DEMAND FOR
	)	TRIAL BY JURY
JOHN HANCOCK LIFE INSURANCE)	
COMPANY (USA),)	
)	
Defendant.)	
)	

Plaintiff, Andrew A. McElwee, Jr., in his capacity as the attorney-in-fact for Grace L. McElwee, alleges as follows:

The Parties

1. Andrew A. McElwee, Jr., is the son and attorney-in-fact for his 89-year old mother, Grace L. McElwee, who resides at 9000 Fellowship Road, Apartment 204, Basking Ridge, New Jersey. Grace L. McElwee is no longer mentally or physically able to handle her affairs and plaintiff has power of attorney over her financial and other affairs.

2. John Hancock Life Insurance Company (USA) (hereinafter "John Hancock") is a corporation of the Commonwealth of Massachusetts, having its principal place of business located at 601 Congress Street, Boston Massachusetts 02117. John Hancock is licensed by the New Jersey Department of Banking and Insurance to do business in this State and has its New Jersey office located at 90 Matawan Road, Suite 103, Matawan, New Jersey 07747.

Venue

3. Venue is properly laid in Somerset County since John Hancock regularly does business in the County of Somerset, State of New Jersey and is registered as a licensed insurer by the New Jersey Department of Banking and Insurance.

4. Venue is properly laid in Somerset County since Grace L. McElwee, plaintiff's legal principal and the beneficiary of the instant litigation, is a resident of Basking Ridge, Somerset County, New Jersey.

THE FACTS

Continuing Care Retirement Communities

5. Grace McElwee resides in a continuing care retirement community (hereinafter "CCRC").

6. CCRCs offer retirement accommodations and specified health care services to people of retirement age.

7. CCRCs typically have three levels of accommodations for retirees: (a) Independent Living, (b) Assisted Living and (c)

Skilled Nursing. [When discussed collectively, "Assisted Living" and "Skilled Nursing" shall be collectively referred to herein as "Dependent Living"].

8. Nearly all retirees who choose to live at CCRCs do so initially as members of the CCRC's Independent Living community where no healthcare services are provided.

9. However, if a member of a CCRC's Independent Living community becomes cognitively impaired or otherwise becomes in need of substantial assistance with the activities of daily living, he is transferred to a Dependent Living facility in the CCRC.

10. Typically, CCRCs have two types of Dependent Living facilities called "Assisted Living" and "Skilled Nursing".

11. As the name suggests, "Assisted Living" is available for those who are substantially cognitively impaired and/or require monitoring and/or substantial assistance in conducting some of the activities of daily living but who are not in need of round-the-clock monitoring or nursing care. This level of Dependent Care is commonly referred to as "Custodial Care".

12. In the event that a CCRC resident becomes wholly dependent upon others for undertaking the activities of daily living, that resident is transferred to the CCRC's Skilled Nursing facility where accommodations and specified healthcare services are provided to the Skilled Nursing resident.

13. CCRC Skilled Nursing facilities offer accommodations and round-the-clock nursing and/or rehabilitative care for those who require 24-hour per day monitoring and substantial assistance. This level of care is commonly referred to as "Nursing Care". [When discussed together, "Custodial Care" and "Nursing Care" shall be collectively referred to herein as "Dependent Care"].

14. CCRCs offer three industry-standard contracts: (1) the "Extensive Agreement", (2) the "Modified Agreement" and the (3) the "Fee for Services Agreement".

15. This litigation concerns only the "Extensive Agreement". Statistically, approximately 77% of all CCRC contracts nationally are Extensive Agreements.

16. When entering into an Extensive Agreement, a resident pays for accommodations and residential services and receives a promise from the CCRC that it will provide an unlimited amount of Dependent Car Care with just cost of living increases.

17. Pursuant to the Extensive Agreement model, a CCRC resident also prepays for his or her Dependent Care costs (in the event that he or she must be transferred from Independent Living) by advancing an enormous entrance fee, the average nationally being \$249,857.00 based on 2012 statistics.

18. Pursuant to the Extensive Agreement model, a CCRC resident also prepays for his or her Dependent Care costs by making a hefty monthly payment to the CCRC for the duration of

the resident's stay, regardless of whether or not that person is later transferred to a Dependent Living facility. Based upon 2012 statistics, the national average monthly fee paid to a CCRC under the Extensive Agreement model is \$4,326.00.

19. When a CCRC resident transfers from Independent Living to either an Assisted Living or Skilled Nursing facility, the CCRC will, pursuant to its Extensive Agreement, present a bill to that resident for the full monthly amount of actual charges for Dependent Nursing Care as if he had entered that CCRC's Dependent Care facility from the outside as a non-CCRC resident.

20. However, each month, the CCRC (1) will deduct the monthly payment made by the resident under the Extensive Agreement from its actual charges for Dependent Care, and (2) will not seek to collect from the resident that portion of the actual Dependent Care charges that exceed the resident's monthly payment under his Extensive Agreement.

21. Thus, for example, assume that an Independent Living resident is transferred to Assisted Living. Assume further that that his CCRC actually charges \$9,000.00 per month for Custodial Care provided in its Assisted Living program and that the Assisted Living resident pays \$4,000.00 per month to his CCRC pursuant to an Extended Agreement. In that situation, the CCRC applies a \$4,000.00 monthly credit against the \$9,000.00 actually charged to the resident for Custodial Care provided during that month. This leaves a monthly balance of actual charges for Custodial Care in the amount of \$5,000.00.

22. Because the resident had prepaid for the CCRC's costs for Custodial Care when he advanced to the CCRC an average of a quarter of million dollars entrance fee and paid, and continues

to pay, hefty monthly fees in the average amount of \$4,326.00, the CCRC will not seek to collect this \$5,000.00 balance of the \$9,000.00 of actual charges for Custodial Care.

Long Term Care Insurance

23. Long term care insurance policies are offered nationally for which issuers collect large premiums, typically in the amount of many thousands of dollars per year.

24. In fundamental terms, and subject to various policy exclusions and limitations, the issuer of a long term care insurance policy promises to reimburse a policy holder for actual charges for Dependent Care in the event that the policy holder is deemed "qualified" to receive such long term care benefits.

25. In fundamental terms, and subject to various policy exclusions and exceptions, before an insured may be deemed "qualified" to receive long term care benefits, he must first be deemed by the insurer to be contractually "eligible" to receive Dependent Care.

26. Upon the expiration of a specified period of time after the insured is first deemed to be "eligible" to receive Dependent Care under the policy, the insured then becomes "qualified" to receive long term care benefits.

27. This waiting period (starting from the date on which an insurer deems a policy holder to be "eligible" to receive Dependent Care through the date on which he is deemed to be "qualified" to receive long care benefits under the policy) is known as the "Elimination Period".

**Grace McElwee's Purchase of John
Hancock's Long Term Care Insurance Policy**

29. On January 10, 2002, when Grace L. McElwee was 76-year old, she contracted with John Hancock to purchase a long-term care insurance policy [hereinafter the "Policy"] in the event that she required long term care.

30. Since purchasing her Policy, Grace L. McElwee has paid John Hancock premiums in excess of \$83,000.00.

Grace McElwee's CCRC

31. In 2012, Grace McElwee entered into an Extensive Agreement by which she became an Independent Living member of a CCRC located in Basking Ridge, New Jersey, called "Fellowship Village".

32. Pursuant to that Extensive Agreement, Grace McElwee tendered a \$250,000.00 entrance fee to Fellowship Village as prepayment for costs for Dependent Care in the event that she needed to be transferred from Independent Living to one of Fellowship Village's Dependent Care facilities.

33. Pursuant to that Extensive Agreement, Grace McElwee agreed to make a large monthly payment to Fellowship Village for the duration of her stay there as prepayment for Fellowship Village's costs for Dependent Care in the event that she needed to be transferred to a Dependent Living facility. Currently,

that monthly payment under Grace McElwee's Extensive Agreement with Fellowship Village is \$4,521.00.

34. In October of 2013, Grace McElwee fell and suffered injuries that required her to receive Nursing Care. At about the same time, Grace McElwee became substantively cognitively impaired and in need of Custodial Care in Fellowship Village's Assisted Living facility.

35. John Hancock deemed Grace McElwee "eligible" to receive Dependent Care at Fellowship Village on November 6, 2013, when she was transferred to Skilled Nursing within Fellowship Village.

36. One hundred days thereafter, i.e., on February 27, 2014, John Hancock deemed Grace McElwee to be "qualified" to receive reimbursement for Fellowship Village's actual charges for Custodial Care (subject to certain limitations and exceptions under the policy). In other words, John Hancock determined that Grace McElwee had satisfied the Policy's "Elimination Period" requirement.

37. Since December of 2013, Grace McElwee has been confined in Fellowship Village's Assisted Living facility where she receives Custodial Care.

38. Under the Policy, John Hancock is required to pay Grace McElwee for actual charges for Dependent Care (subject to certain exclusions and limitations set forth in the Policy)

received by her after the expiration of the "Elimination Period".

39. John Hancock's duty to reimburse Grace McElwee for actual charges for Dependent Care is not unlimited. First, John Hancock's duty to pay for the actual charges of Dependent Care is subject to certain policy limitations and exclusions as to specified items that might be charged by a CCRC. Second, the Policy provides that Grace McElwee is limited to a maximum *per diem* amount of benefits, which is currently \$310.00.

40. Currently, Fellowship Village charges Grace McElwee for Custodial Care at the rate of \$280.00 per day, making the monthly actual charges of Custodial Care \$8,516.67, which Fellowship Village rounds off to \$8,517.00.

41. John Hancock admits that, if Grace McElwee had entered Fellowship Village's Assisted Living program as a non-CCRC member, she would be currently entitled to reimbursement for the amount of Fellowship Village's actual charges for Custodial Care (*i.e.*, \$8,517.00 less deductions for certain limitations and exclusions under the Policy).

42. However, John Hancock refuses to reimburse Grace McElwee for the full \$8,517.00 actually charged by Fellowship Village for Custodial Care, and it has agreed to reimburse her only for her monthly \$4,521.00 payment that she makes pursuant to Fellowship Village's Extensive Agreement.

43. Because John Hancock refuses to pay more than \$4,521.00 per month in long term care benefits, this leaves a balance of actual charges for Custodial Care in the amount of \$3,996.00--an amount that Fellowship Village does not seek to collect from Grace McElwee because she had prepaid for Custodial Care costs as explained in ¶¶ 17, 18, 22, 32 and 33 above.

44. This amount that the CCRC does not seek to collect (which is calculated as the difference between (a) the monthly amount of actual charges by a CCRC for Dependent Care [as adjusted by certain contractual limitations and exclusions] and (b) the resident's monthly payment to that CCRC) represents an improper subsidy exacted by John Hancock from its elderly, often cognitively impaired insureds. [Hereinafter this improper subsidy exacted by John Hancock shall be referred to as the "Unconscionable Subsidy from the Elderly"].

45. In Grace McElwee's case, the total monthly Unconscionable Subsidy from the Elderly exacted by John Hancock is currently \$3,996.00

46. John Hancock disingenuously argues that it is entitled to an Unconscionable Subsidy from the Elderly as to actual charges for Grace McElwee's Custodial Care because Fellowship Village, like all CCRCs operating under Extensive Agreements, does not require its residents to pay for the cost of Dependent Care on an on-going, monthly basis.

47. John Hancock has intentionally ignored the fact that Fellowship Village does not seek to collect this \$3,996.00

amount precisely because Grace McElwee had already prepaid that \$3,996.00 portion of Fellowship Village's Custodial Care costs when she (a) advanced the \$250,000.00 entrance fee and (b) paid (and continues to pay) a monthly fee to Fellowship Village in the amount of \$4,521.00.

48. In exacting an Unconscionable Subsidy from the Elderly, John Hancock self-servingly argues that it is entitled to a free ride on Grace McElwee's \$250,000.00 entrance fee and her hefty monthly fees paid to Fellowship Village in the amount of \$4,521.00, the purpose of which was to prepay for a portion of the costs for her future Dependent Care.

49. John Hancock refuses to recognize the true economic cost of Custodial Care incurred by Grace McElwee, and it reimburses her for only about half of the amount actually charged by Fellowship Village.

50. Grace McElwee never agreed to subsidize John Hancock's duty to pay the amount of long term care benefits for which she had bargained and for which she has paid \$83,000 of premiums.

51. Since April 15, 2014, John Hancock has injured Grace McElwee by exacting from her an Unconscionable Subsidy from the Elderly in the monthly amount of \$3,996.00.

52. John Hancock exacts an Unconscionable Subsidy from the Elderly from all CCRC residents similarly situated with Grace McElwee who have long term care insurance contracts with it. (The formal definition of those persons similarly situated, (i.e., the plaintiff "Class") is more specifically alleged in ¶¶ 54 & 55 below).

Allegations Common to All Class Members

53. Plaintiff brings this matter as a class action pursuant to R. 4:32-1 et seq., on behalf of Grace McElwee and all John Hancock insureds similarly situated, their assignees, subrogees, heirs, devisees and personal representatives (hereinafter the "Class").

54. The plaintiff "Class" is defined as comprising those persons within CCRC communities who (a) live in Dependent Living facilities, (b) entered those facilities as an existing CCRC resident, (c) have Extensive Agreements with their CCRCs, (d) have long term care insurance contracts issued by John Hancock, (e) "qualify" to receive long term care benefits under John Hancock's Policy and (f) from whom John Hancock has exacted an "Unconscionable Subsidy from the Elderly" (as that term is defined in ¶ 44 above).

55. This action is properly maintained as a statewide class action because the Class consists of all persons described in ¶ 54 above who reside in New Jersey or have contracted in this State of New Jersey with John Hancock for long for long term health insurance coverage under the Plan.

56. The Class satisfies all the requirements of New Jersey Court Rule 4:32-1 et seq., for maintaining a class action because:

A. Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds and (perhaps) thousands of persons who have been improperly denied benefits under the Plan.

B. Upon information and belief, the Class is so numerous that joinder of all members is impracticable because there are hundreds (if not thousands) of persons who have been denied prompt processing of their claims for coverage under the Plan;

C. There exist questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

(i) Whether John Hancock has breached its contract with the members of the plaintiff Class by taking from them an Unconscionable Subsidy from the Elderly;

(ii) Whether John Hancock has breached the contract's implied covenant of good faith and fair dealing by taking an Unconscionable Subsidy from the Elderly from the plaintiff Class;

(iii) Whether the plaintiff Class has sustained compensable damages as a result of John Hancock's breach of express contractual terms and/or breach of the covenant of good faith and fair dealing implied in the Policy.

(iv) Whether or not, by demanding the Unconscionable Subsidy from the Elderly, John Hancock's breach of the contract was so unreasonable, wantonly reckless or malicious that it rises to the level of "egregious circumstances" warranting an award of punitive damages under *Pickett v. Lloyd's*, 131 N.J. 457 (1993).

D. Plaintiff's claims are typical of the Class, which all arise from the same operative facts and are based on the same legal theories;

E. Plaintiff has no interest adverse or antagonistic to the interest of the other members of the Class;

F. Plaintiff will fairly and adequately protect the interest of the Class and has retained experienced and competent attorneys to represent the Class.

G. A Class Action is superior to other methods for the fair and efficient adjudication of the claims herein asserted.

H. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action

I. A Class Action will permit large numbers of similarly situated persons to prosecute their common claims in a single forum simultaneously and without the duplication of effort and expense that numerous individual actions would engender.

J. Class treatment will also permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein.

K. Absent a Class Action, class members will continue to suffer monetary damages.

L. If Defendant's conduct is allowed to proceed without remedy, it will continue to improperly reap and retain the benefits from taking an Unconscionable Subsidy from the Elderly.

M. John Hancock has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I

(Breach of Expressed and Implied Contractual Obligations)

57. Plaintiff repeats and realleges ¶¶ 1 through 56 of this Second Amended Complaint as if set forth fully herein.

58. By virtue of the foregoing, John Hancock has breached its contractual obligation expressed in the Policy that it would reimburse its insureds for the amount actually charged for

Dependent Care (subject to certain limitations and exclusions set forth in the Policy).

59. By virtue of the foregoing and by taking an Unconscionable Subsidy from the Elderly, John Hancock has breached the express terms of its Policy with Grace McElwee and the Plaintiff Class.

60. By virtue of the foregoing and by taking an Unconscionable Subsidy from the Elderly, John Hancock has breached the Policy's implied covenant of good faith and fair dealing as to both Grace McElwee and the Plaintiff Class.

61. Grace McElwee and the plaintiff Class have suffered compensatory damages as a result of John Hancock's breach of the expressed terms and implied covenants of its Policy, which damages are measured as the amount of the Unconscionable Subsidy from the Elderly exacted by John Hancock times the number of months that John Hancock improperly exacted said unconscionable subsidies.

WHEREFORE, plaintiff Grace McElwee and all others similarly situated demand judgment in their favor and against defendant John Hancock Life Insurance Company (USA) as follows:

For Compensatory damages up to the full amount of the Policy' (s) benefit limits;

For consequential damages;

Reasonable attorney's fees and costs of suit;

For pre-judgment and post-judgment interest thereon, and

For any other relief that this Court deems just and proper.

II. Breach of Common Law Duty to Promptly Provide a Reasonable Explanation for Denial of Plaintiff(s) Claims

62. Plaintiff realleges paragraphs 1 through 61 of the Second Amended Complaint as if set forth fully herein.

63. As required by the Policy, plaintiff has submitted to John Hancock "Proofs of Loss" for actual charges billed by Grace McElwee's CCRC. Those monthly "Proofs of Loss" include invoices showing Fellowship Village's full amount of actual charges for Dependent Care that Grace McElwee actually received during the month to which those invoices relate.

64. Upon information and belief, the other members of the plaintiff Class also submit to John Hancock on a monthly or regular basis Proofs of Loss that include invoices for the full amount of their CCRC's actual charges for Dependent Care.

65. Under common law, insurers such as John Hancock are required to promptly provide reasonable explanations of denials of claims made by their insureds.

66. By enacting the Unfair Claims Practices Act, the New Jersey Legislature has codified an insurer's obligation to promptly provide reasonable explanations of denials of claims made by their insureds, which provides in pertinent part:

No person shall engage in unfair claim settlement practices in this State. Unfair claim settlement practices which shall be unfair practices as defined in N.J.S. 17B:30-2, shall include the following practices:

* * *

Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

N.J.S.A. 17B:30-13.1(N) (emphasis supplied).

67. John Hancock has breached its duty to promptly provide plaintiff with a reasonable explanation of its denial of Grace McElwee's claim for benefits in the full amount of actual charges for Dependent Care, choosing instead to ignore her request for indemnification for any actual charge that exceeds her monthly payment to Fellowship Village.

68. Upon information and belief, John Hancock has also breached its duty to promptly provide members of the plaintiff class with a reasonable explanation of its denial of its insureds' claims for the full amount of actual charges for Dependent Care. As with Grace McElwee, John Hancock offers no explanation to its elderly and often cognitively-impaired insureds as to why it is exacting the Unconscionable Subsidy from the Elderly.

69. By reason of the foregoing, John Hancock has caused the plaintiff and the plaintiff class to suffer damages calculated as

(A) The amount representing the difference between (i) their CCRC's actual charges for Dependent Care [subject to certain policy exceptions and limitations] and (ii) the amount of their monthly payments made to their CCRC's pursuant to their Extensive Agreements;

times

(B) The number of months in which Proofs of Loss have been filed by each individual member of the plaintiff class.

WHEREFORE, plaintiff Grace McElwee and all others similarly situated demand judgment in their favor and against defendant John Hancock Life Insurance Company (USA) as follows:

For Compensatory damages up to the full amount of the Policy'(s) benefit limits;

For consequential damages;

Reasonable attorney's fees and costs of suit;

For pre-judgment and post-judgment interest thereon, and

For any other relief that this Court deems just and proper.

COUNT III

(John Hancock's Bad Faith Breach of The Policy's Implied Covenant of Good Faith and Fair Dealing)

70. Plaintiff repeats and realleges ¶¶ 1 through 69 of this Class Action Complaint as if more fully set forth herein.

71. John Hancock entered into its long term care insurance contracts with persons of, or entering into, retirement age, believing that it was making a good business deal.

72. John Hancock priced its long term care insurance policies based in part on longevity data and various actuarial statistics.

73. John Hancock also priced its long term care insurance policies in part on estimated future medical costs.

74. Longer life spans and higher-than projected healthcare costs have created a financial crisis within John Hancock which is now forced to pay substantially more benefits under its long term care policies than it had anticipated.

75. Of course, John Hancock knew that its longevity and healthcare cost projections might prove to be inaccurate but it willingly accepted that possible eventuality as one of the risks of doing business when it took huge long term care insurance premiums from an aging public

76. This financial crisis has caused John Hancock to take unprecedented steps to recoup its losses, such as increasing its long term care premiums in some markets by an incredible 90% in a single year.

77. However, John Hancock does not have the legal right to insist upon extraordinary premium increases in existing policies already sold to individuals like Grace McElwee.

78. As a result, John Hancock cannot legally earn a profit on its portfolio of individual policies that it has underpriced.

79. In order to improperly insulate itself from loss or to make an illegal profit as to this portfolio of underpriced long term care policies, John Hancock has adopted as its bad faith *modus operandi* the practice of exacting an Unconscionable Subsidy from the Elderly.

80. As alleged above, John Hancock never complied with its common law and statutory duty to explain why it was not

reimbursing its insureds for the full amount of actual charges for Dependent Care. Instead, John Hancock choose simply to exact its Unconscionable Subsidy from the Elderly without giving its insureds any explanation whatsoever.

81. Only since the filing of the Amended Complaint has John Hancock offered any "explanation" at all for why it believes it has a right to exact an Unconscionable Subsidy from the Elderly. As is alleged below, John Hancock's "explanation" not only comes too late, but it is also patently "unreasonable" and in itself evidences the company's bad faith.

82. In order to "justify" its bad faith practice of exacting an Unconscionable Subsidy from the Elderly, John Hancock has belatedly concocted an obviously bogus "explanation", sloughing off its duty to pay the full amount of actual charges for Dependent Care by disingenuously citing the Policy's "Elimination Period" provision.

83. Specifically, John Hancock unreasonably and incomprehensibly advances the following self-contradictory "argument":

On the one hand, John Hancock

A. Admits that Grace McElwee is, in fact, entitled to receive long term care benefits for Custodial Care, which the company has actually paid, precisely because she has satisfied the Policy's "Elimination Period";

While, on the other hand, John Hancock

B. Simultaneously argues the opposite, namely that Grace McElwee is not entitled to benefits for the same Custodial

Care because she allegedly has not satisfied that "Elimination Period".

84. John Hancock would have its elderly, cognitively-impaired insureds believe that its unreasonable, self-contradictory pretext for denying long term care benefits is not fashioned out of thin air, and John Hancock pretends that its "reason" "justifying" it to exact the Unconscionable Subsidy from the Elderly is based upon plain contractual text.

85. John Hancock argues (confusingly) that the Policy's "Elimination Period" provision supposedly bars Grace McElwee from receiving reimbursement for the Dependent Care provided by Fellowship Village even though that Dependent Care was received by her after she had satisfied the Policy's "Elimination Period".

86. John Hancock pretends that the Policy's "Elimination Period" provision bars Grace McElwee (in some inexplicable way) from receiving reimbursement for Dependent Care costs that she prepaid before requiring Dependent Care. [For an explanation of how prepayments for Dependent Care are made under Extensive Agreements with CCRCs, see ¶¶ 17, 18, 22, 32, 33, 47 & 48 above].

87. No reasonable reading of the plain language of the Policy's "Elimination Period" definition or of the Policy's application of that term could possibly justify John Hancock's pretext.

88. The Policy's definition of the "Elimination Period" definition is:

1.2 Elimination Period. Elimination Period (waiting period) means the number of Dates of Service in each Period of Care that would otherwise be covered by this Policy, for which We will not pay benefits. The Elimination Period is shown in the Policy Schedule. The Elimination Period starts on the first Date of Service in each Period of Care. Benefits are not payable during the Elimination Period.

89. The Policy's application of the term "Elimination Period" relates only to when Dependent Care was received by the insured, not charges:

LIMITATIONS ON OR CONDITIONS FOR ELIGIBILITY FOR BENEFITS

2.1 Conditions. To receive Benefits under this Policy:

Your Elimination Period must be satisfied;

You must receive services while this Policy is in effect;

You must receive services covered under this Policy and which are specified in the Plan of Care; and

You must submit to Us a Current Plan of Care and written Proof of Loss.

[Emphasis added].

90. The unambiguous purpose of the "Elimination Period" is to bar the policy holder from receiving benefits for Dependent Care received before the expiration of the Elimination Period.

91. It is incontrovertible that Grace McElwee seeks reimbursement for Dependent Care given to her by Fellowship Village, which Dependent Care was received by Grace McElwee after the expiration of the Elimination Period, not before.

92. It is incontrovertible that Grace McElwee's proofs of loss submitted to John Hancock were for Dependent Care and actual charges with respect thereto, both of which were received by her after the expiration of the "Elimination Period".

93. John Hancock knows that the insureds whom it has chosen to victimize are overwhelming octogenarians and older, many of whom are cognitively impaired.

94. John Hancock's intentional, unreasonable and bad faith practice of exacting an Unconscionable Subsidy from the Elderly is outrageous and constitutes "egregious circumstances" warranting an award of punitive damages under Pickett v. Lloyd's, 131 N.J. 457 (1993).

95. John Hancock's outrageous, unreasonable and bad faith practice of exacting an Unconscionable Subsidy from the Elderly is wantonly reckless and constitutes "egregious circumstances" warranting an award of punitive damages under Pickett v. Lloyd's, 131 N.J. 457 (1993).

96. John Hancock's outrageous, unreasonable and bad faith practice of exacting an Unconscionable Subsidy from the Elderly is malicious and constitutes "egregious circumstances" warranting an award of punitive damages under Pickett v. Lloyd's, 131 N.J. 457 (1993).

97. Grace McElwee and the plaintiff Class have suffered compensatory damages as a result of John Hancock's bad faith breach of the Policy's express terms and implied covenants,

which damages are measured as the number of months that John Hancock has improperly exacted from its insureds an Unconscionable Subsidy from the Elderly times the monthly amount of that unconscionable subsidy.

WHEREFORE, plaintiff Grace McElwee and all others similarly situated demand judgment in his favor and against defendant JOHN HANCOCK Life Insurance Company (USA) as follows:

For Compensatory damages up to the full amount of the Policy' (s) benefit limits;

For consequential damages;

For punitive damages;

For reasonable attorney's fees and costs of suit;

For pre-judgment and post-judgment interest thereon, and

For any other relief that this Court deems just and proper.

JURY DEMAND

Plaintiff(s) hereby demands a trial by jury.

KENNETH L. McELWEE
Attorney for Plaintiff
Andrew A. McElwee, Jr. (In
His Capacity as the
Attorney-in-Fact
For Grace L. McElwee) and
For All Those Similarly
Situated)

By: 
Kenneth L. McElwee

DATED: September 20, 2015

CERTIFICATION PURSUANT TO R.4:5-1

The undersigned hereby certifies that the within matter in controversy is not the subject of any other contemplated or current action pending in any other court or of a pending arbitration proceeding. There are no other known parties who should be joined in this action at this time. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Kenneth L. McElwee

DATED: September 20, 2015

CERTIFICATION PURSUANT TO R. 4:5-1(b) (3)

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Dated: September 20, 2015


Kenneth L. McElwee

KENNETH L. McELWEE (KM-6307)

ATTORNEY AT LAW

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ATTORNEY FOR PLAINTIFF

ANDREW A. McELWEE, JR., In His
Capacity as Attorney-in-Fact
For Grace McElwee and All Others
Similarly Situated)

ANDREW A. McELWEE, JR., (In his	)	SUPERIOR COURT OF NEW JERSEY
Capacity as Attorney-in-Fact for	)	LAW DIVISION; SOMERSET
Grace L. McElwee, and on behalf	)	COUNTY
Of all those similarly situated),	)	Docket No. SOM-L-83-15
)	
Plaintiffs,	)	Civil Action
)	
v.)	
	)	CERTIFICATION OF SERVICE OF
	)	THE SECOND AMENDED COMPLAINT
)	
JOHN HANCOCK LIFE INSURANCE)	
COMPANY(USA),)	
)	
Defendant.)	
)	

I, Kenneth McElwee, certify that the following is true:


1. I am the attorney for the plaintiff, Andrew A. McElwee, Jr., In His Capacity as the Attorney-in-Fact for Grace L. McElwee, and on behalf of all those similarly situated.

2. On September 21, 2015, I served defendant, John Hancock Insurance Company (USA), with a copy of Plaintiff's Second Amended Complaint, by causing same to be delivered via Federal Express overnight delivery, to the offices of its attorneys at the following address:

Stephen A. Serfass, Esq.
Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, Pennsylvania 19106

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

September 21, 2015


Kenneth L. McElwee

KENNETH L. McELWEE

ATTORNEY-AT-LAW

88 EAST MAIN STREET, # 315
MENDHAM, NEW JERSEY 07945

TEL. (267) 880-6920

FAX (267) 880-6884

September 21, 2015

Via Federal Express

Stephen A. Serfass, Esq.
Drinker Biddle & Reath
One Logan Square, Suite 2000
Philadelphia, Pennsylvania 18103-6996

**Re: Re: Andrew A. McElwee, Jr., In His Capacity as the Attorney-in-Fact for
Grace McElwee et als., v. John Hancock Life Insurance Company (USA);
Docket No. SOM-L-83-15**

Dear Mr. Serfass:

Today we have filed the Second Amended Complaint via hand delivery. Enclosed please find served upon your client, John Hancock Insurance Company (USA), the Second Amended Complaint as well as my own certification of service.

As we informed you in our last correspondence, if we heard nothing from you before filing the Second Amended Complaint, our settlement demand would increase. Accordingly, if your client is interested in settling, we now require, in addition to the terms and conditions of our proposed stipulation of settlement, \$250,000.00 plus the immediate acceleration of all benefits due under Grace McElwee's long term care insurance policy with John Hancock.

If your client again moves to dismiss and we subsequently prevail, our demand will increase to \$350,000.00 plus the immediate accrual of Grace McElwee's benefits. If we prevail on a motion for partial summary judgment, you should expect our demand to increase many fold. After all, a staggering sum of money is at stake.

Probably before a summary judgment is even filed, however, we will enter into an agreement with a nationally-known class action firm for it to act as lead counsel. Depend on it. For the immediate future, however, we will not divulge to anyone the defendant's identity or the specifics of the case before giving you notice. Simply stated, the time for settling this case is now.

In reviewing our Second Amended Complaint, we ask you to keep the following question in mind: Is John Hancock's policy crystal clear or somewhat ambiguous as to the issue in

controversy? If the policy is at all ambiguous, then the judge must liberally construe that ambiguity against John Hancock and in favor of the elderly insureds as a matter of law.

Very truly yours,



Kenneth L. McElwee